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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion to Adopt New Safety and Reliability Regulations for Natural Gas Transmission and Distribution Pipelines and Related Ratemaking Mechanisms.	Rulemaking 11-02-019 (Filed February 24, 2011)

REPLY COMMENTS OF THE UTILITY REFORM NETWORK ON THE PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE BUSHEY IMPOSING SANCTIONS FOR VIOLATION OF RULE 1.1 OF THE COMMISSION'S RULES OF PRACTICE AND PROCEDURE

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I. INTRODUCTION

In accordance with Rule 14.3 of the Commission's Rules of Practice and Procedure ("Rule" or "Rules"), The Utility Reform Network ("TURN") submits these reply comments on the Proposed Decision ("PD") of Administrative Law Judge ("ALJ") Bushey Imposing Sanctions on Pacific Gas and Electric Company ("PG&E") for violations of Rule 1.1. TURN focuses its reply on the comments of PG&E and those of Southern California Gas Company and San Diego Gas and Electric Company ("the Sempra Utilities").

II. THE PD AND THE FERRON ALTERNATE SATISFY DUE PROCESS REQUIREMENTS

A. The Evidence Shows By a Preponderance of the Evidence, If Not More Emphatically, That PG&E Violated Rule 1.1

PG&E contends that the Order to Show Cause ("OSC") procedure impermissibly shifted the burden of proof to PG&E.[1] This argument fails for at least three reasons. First, PG&E confuses its burden of production with the ultimate burden of proof.[2] The August 19, 2013 OSC Ruling presented facts showing *prima facie* violations of Rule 1.1. The OSC effectively shifted the burden of production to PG&E to present facts that would show that PG&E had not committed Rule 1.1 violations. Although PG&E was required to come forth with evidence, such requirement did not necessarily impose on PG&E the ultimate burden of proof.[3]

Second, PG&E's due process objection to the OSC procedure is untimely. If PG&E believed the procedure violated its due process rights, it was incumbent upon PG&E to raise its objection before the close of the evidentiary record and certainly not, in the first instance, after issuance of an adverse PD. PG&E had ample opportunity to raise such objections before and after the Rule 1.1 evidentiary hearing and chose not to do so.[4]

Third, as discussed in the PD and the Alternate Proposed Decision of Commissioner Ferron ("Ferron APD"), the record shows that there is more than ample evidence of Rule 1.1 violations to

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[1] PG&E Comments on PD, pp. 2-3.

[2] *See generally,* D.87-12-067, 27 CPUC 2d 1, 21-23, distinguishing the burden of proof from the burden of production (also commonly referred to as the burden of going forward).

[3] The Commission has held that the burden of proof ordinarily resting upon one party as to a disputed issue may shift to the other party when the true facts relating to the disputed issue lie peculiarly within the knowledge of the other party. D.08-08-017, p. 38.

[4] Indeed, PG&E waived the opportunity to make an opening statement (16B Reporter's Transcript (RT) p. 2341), which would have been the appropriate time to raise due process issues.

satisfy a preponderance of the evidence standard with respect to both PG&E's delay in correcting the record and the titling and content of the "Errata" submission. Under these circumstances, the Commission fully satisfied its due process obligations concerning burden of proof.

B. PG&E Misstates the Scope of the Rule 1.1 Order to Show Cause Ruling

PG&E claims that, by finding that PG&E delayed in correcting the record, the PD would find violations that are outside the scope of the OSC.[5] However, PG&E relies on an unreasonable, unduly narrow interpretation of the Rule 1.1 OSC. In fact, the OSC expressly raised the timing issue and thereby put PG&E on notice that it should put in evidence explaining the timing of the submission.[6] PG&E unreasonably construes the OSC's mention of the "day before the holiday weekend" as excusing PG&E from introducing evidence to explain why it waited to file long after it discovered the pipeline features errors. In fact, the full paragraph containing the sentence PG&E references raises the issue of correcting the error 18 months after the Commission's decision. Moreover, as evidenced by their questions, Commissioners Sandoval and Ferron had no trouble recognizing that the OSC included the issue of why PG&E took so long to correct its significant error.[7] Likewise, as evidenced by their briefs, the non-PG&E parties also recognized that the OSC scope included the issue of PG&E's lengthy delay in correcting the record.[8] PG&E's interpretation of the OSC is unreasonable and should be rejected.

C. PG&E Has Failed Even to Allege that It Would Be Able to Make a Different Showing Regarding Its Lengthy Delay If Given Such an Opportunity

As explained above, TURN believes that PG&E had ample notice that it was subject to Rule 1.1 violations for its long delay in correcting the record. However, even if the Commission were to agree with PG&E that the utility did not receive adequate notice of such alleged offenses, PG&E has failed to show that such hypothetical error prejudiced PG&E.

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[5] PG&E Comments o PD, p.p. 3-5.

[6] The OSC (p. 4) states: "Attempting to correct an application eighteen months after the Commission issued a decision appears to be an unreasonable procedural choice and could be interpreted as attempting to create an inaccurate impression of a routine correction. The timing of the attempted filing, the day before a summer holiday weekend, also raises questions."

[7] 16A RT, pp. 2396-2397 (Comm. Sandoval); 16A RT, pp. 2410-2411 and 16B RT, p. 2474 (Commissioner Ferron, "trying to construct a timeline")

[8] TURN Op. Br., 9/26/13, pp. 5-9; SED Op. Br., 9/26/13, pp. 10-11; DRA Op. Br., pp. 3-10;

PG&E's "outside the scope" argument reduces to a claim, that, if it had been given requisite notice of the delay issue, it would have put on evidence that would support a different decision. However, in reply briefs and opening comments on the PD, PG&E has now had two opportunities to explain what probative evidence it would have offered that it has not been able to present. In neither pleading, has it made any such showing. In fact, PG&E admits that "no one knows" what evidence PG&E would put on if given a new hearing;[9] no one knows because PG&E has failed to provide any offer of proof. Absent such a showing, it is appropriate for the Commission to conclude that, even if there was any error, it was harmless.

In fact, PG&E's admissions in the record show that PG&E cannot dispute that its upper management knew about the material pipeline feature errors for almost one year before finally attempting to correct them in the formal record. As discussed in TURN's opening comments, the undisputed evidence shows that PG&E's upper management knew about the material error in its pipeline features data no later than mid-November 2012 and that this error required reducing the MAOP for Line 147.[10] Any further hearing would only cement this indisputable evidence.

III. UNDER THE CIRCUMSTANCES PRESENT HERE, RULE 1.1 REQUIRED PG&E TO TIMELY CORRECT ITS ERONEOUS PREVIOUS FILING AND TESTIMONY AND NOT JUST INFORMALLY NOTIFY SED STAFF

PG&E[11] and the Sempra Utilities[12] claim that PG&E discharged its Rule 1.1 responsibilities when it notified SED staff of its errors on March 20, 2011 and that finding violations after that date impermissibly expands Rule 1.1. These arguments fail to recognize that PG&E misled not just the parties, but the Commission as well, by not correcting material errors in previously filed documents and testimony as soon as PG&E became aware of the errors.

PG&E reported the Line 147 features and MAOP that proved to be erroneous in both a formal filing and sworn testimony.[13] Given that PG&E's errors were part of the formal evidentiary record on which Commission decisions must be based, informal notice of errors to SED did not correct the record, and thus the record continued to perpetuate the incorrect information. For the

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[9] PG&E Comments on PD, p. 5.
[10] TURN Comments on PD, p. 3.
[11] PG&E Comments on PD, p. 5.
[12] Sempra Utilities' Comments on PD, p. 3
[13] *PG&E's Supporting Information for Lifting Operating Pressure Restrictions on Lines 101, 132A and 147*, filed October 31, 2011; D.11-12-048, pp. 4-6 (summarizing supporting information filed with Commission and PG&E evidentiary hearing testimony)

period that PG&E knew about its material errors and failed to correct them, PG&E misled the Commission in a fundamental way.

The Sempra Utilities contend that the Commission should allow utilities "sufficient time to determine that a problem exists" before a utility is required to correct significant errors.[14] The PD and Ferron APD afford PG&E such sufficient time. The Ferron APD, which correctly determines the violation period for failing to correct the record, allows a full month between the time PG&E first learned of the seam weld errors on Line 147 and the date that the APD finds PG&E had a duty under Rule 1.1 to correct its errors.[15] One month was more than ample time for PG&E to research the issue and make an appropriate filing to correct the evidentiary record.

IV. THE PD PROPERLY FINDS THAT PG&E VIOLATED RULE 1.1. BY ATTEMPTING TO USE AN 'ERRATA' PLEADING TO CORRECT SUBSTANTIVE ERRORS IN THE RECORD ON WHICH THE COMMISSION HAD RELIED IN A PREVIOUS DECISION

PG&E claims that its use of an "errata" submission was appropriate and that the procedural vehicles identified by the PD -- a motion to reopen the record or a petition for modification -- would have been inappropriate or unnecessary.[16] PG&E's argument splits hairs and misses the point. PG&E fails to grasp that, whatever the label, it needed to file a pleading that called attention to the fact that, because of PG&E's material error, D.11-12-048 was incorrect and needed to be changed.[17] PG&E's errata submission did not even raise the issue of modifying the erroneous decision, let alone set in motion a process to correct it.

V. LEVYING MAXIMUM FINES FOR PG&E'S VIOLATIONS IS AMPLY SUPPORTED BY THE EGREGIOUSNESS OF PG&E'S VIOLATIONS

PG&E argues that the PD errs in levying maximum fines based on an invocation of public safety concerns.[18] However, PG&E misrepresents the basis for the maximum fine, which is PG&E's "lack of candor and appreciation of the public interest," not that concealing the error put

[14] Sempra Utilities' Comments on PD, p. 3.
[15] TURN Comments on PD, pp. 2-4.
[16] PG&E Comments on PD, pp. 7-10.
[17] TURN's opening brief , pp. 1-4, explains in detail why PG&E is patently incorrect in arguing that D.11-12-048 did not need to be modified.
[18] PG&E Comments on PD, pp. 10-11.

safety at risk.[19] In any event, failing to timely correct an erroneous MAOP is clearly an issue related to safety, as the purpose of the MAOP is to ensure the safety of the pipeline. PG&E frustrated the Commission's ability to ensure that its MAOP determination in D.11-12-048 was grounded in correct facts, thereby undermining the Commission's safety regulation. This is extremely serious and warrants the maximum fines allowed by law.

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Respectfully submitted,

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[19] PD, p. 12, Ferron APD, p. 17.