

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE CALIFORNIA



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Order Instituting Investigation on the Commission's Own Motion into the Operations and Practices of Pacific Gas and Electric Company with Respect to Facilities Records for its Natural Gas Transmission System Pipelines.

I.11-02-016
(Filed February 24, 2011)

**CONSUMER PROTECTION AND SAFETY DIVISION'S APPEAL OF
PRESIDING OFFICER'S DECISION**

Pursuant to Rule 14.4 of the Commission's Rules of Practice and Procedure, the Consumer Protection and Safety Division ("CPSD")¹ now files its appeal of the Presiding Officer's Decision in the recordkeeping proceeding, Investigation 11-02-016 ("Recordkeeping POD"), mailed September 2, 2014. The recordkeeping proceeding is an investigation into Pacific Gas and Electric Company's ("PG&E") failure to safely operate its transmission pipeline system based upon its deficient recordkeeping practices.

Although the Recordkeeping POD does not adopt all of CPSD's proposed violations, it adopts much of CPSD's position, finding numerous violations related to PG&E's operations and practices regarding records for its natural gas transmission pipeline system, and is amply supported by the record. Therefore, CPSD generally supports the Recordkeeping POD. However, CPSD raises technical and legal errors in its appeal of the Recordkeeping POD, which are immaterial in terms of the results or holding the Recordkeeping POD reaches.

This appeal raises three categories of error that appear in the Recordkeeping POD and offers appropriate corrections. In Section I, there are instances of internal

¹ On January 1, 2013, CPSD officially changed its name to the Safety and Enforcement Division ("SED"). However, for the sake of convenience, we will continue to refer to SED as "CPSD" in this appeal and through the remainder of this proceeding.

inconsistencies and errors in the discussion of operating pressure records and pressure test records that require correction. In Section II, there is a misstatement regarding the Commission staff's authority to initiate investigation proceedings. In Section III, there are apparent clerical errors, some that result in incorrect statements that must be corrected for clarity and others that are less substantive, but which the Commission may wish to correct before issuing a final decision. Suggested corrections for each of these errors are provided in Appendix A.

I. THERE ARE ERRORS IN THE PRESIDING OFFICER'S DECISION ON RECORDKEEPING

The POD extensively references the record and includes violation 20 in the table of violations. Violation 20 provides that PG&E's operating pressure records are missing, incomplete, or inaccessible. As shown below, several errors should be corrected to ensure consistency with violation 20.

A. The Recordkeeping POD incorrectly references and makes statements that are inconsistent with Violation 20, regarding missing operating pressure records.

Violation 20, which considers PG&E's lack of operating pressure records,² is valid because it is captured in the POD Table of Violations.³ Moreover, based upon numerous references to the record,⁴ including alleged Violation 20 in the testimony of CPSD witness Margaret Felts,⁵ additional hearing testimony from Ms. Felts,⁶ and additional evidence⁷ the Recordkeeping POD properly makes the following finding in regards to Violation 20.

² Operating pressure records track the operating pressure history over the life of a pipe. (Recordkeeping POD, p. 161).

³ See Recordkeeping POD Appendix B, Table of Violations, Line 18, which adopts Violation 20.

⁴ Violation 20 is part of section 8.5 of the Recordkeeping POD and is referred to as "section 8.5" below.

⁵ CPSD Exhibit 2, pages 37-38.

⁶ See for example Recordkeeping POD, p. 162, fn 504, citing 2 RT at 339:13-26 (CPSD/Felts); and p. 163, fn 510, citing 2 RT at 344:4-11 (CPSD/Felts).

⁷ See Recordkeeping POD, p. 162 fn 506, citing Exh. CPSD-18(Disc 17) PG&E Response to CPSD DataRequest 15, Q10 at 1-2 (GasTransmissionSystemRecordsOII_DR_CPUC_015-Q10).

“ . . . PG&E has represented that it voluntarily complied [with] ASME B.31.8. Therefore, since at least 1955, PG&E would have created and retained operating pressure records to allow it to ensure that its gas transmission pipelines were operated and maintained safely. By failing to do so, PG&E did not maintain records necessary to ensure the safe operations of its gas transmission system. We find that this constitutes a violation of Pub. Util. Code § 451.

. . . Based on our discussion above, we find that the start date of this violation should be 1955, the publication date of ASME B.31.8. Further, we agree with CPSD that this should be considered a continuing violation. We find that this violation ended on December 17, 2004, at the time the Integrity Management rules became effective.”⁸

However, as discussed below, there are several incorrect references to, and several other inconsistencies with, the above section 8.5 holding regarding operating pressure records. These incorrect references and inconsistencies are erroneous pursuant to Commission Rule of Practice and Procedure 14.4, and should be corrected in the fashion shown in Appendix A.

There are other errors that appear to combine the two types of records; operating pressure records and pressure test records.⁹ The corrections proposed in this section of the appeal are also included in the attached Corrections Appendix.

1. Textual Reference

A subsequent discussion of operating pressure records appears to be inconsistent with the above text from section 8.5. In discussing an alleged violation relating to operating pressure records, proposed by Duller and North,¹⁰ the Recordkeeping POD states:

⁸ Records POD, pages 165-166, section 8.5.

⁹ Pressure test records are the set of documents that an operator creates when a segment of pipe is pressure tested to prove the strength of the pipe meets minimum operating pressure requirements. The records required to be retained for the useful life of the pipe are listed in 49 CFR 192.517.

¹⁰ CPSD Exhibit 8.

“Operating Pressure Test Records – CPSD notes that PG&E has admitted that operating pressure records from 1965 – 1970 are no longer available, and that it is missing operating pressure data from 1999 for all of its pipelines. [Footnote omitted.] We have considered these assertions in Section 8.5 above and found CPSD has failed to prove this allegation.”¹¹

Because the above statement notes that assertions relating to operating pressure records are considered in section 8.5, and because in section 8.5 the Recordkeeping POD finds a violation, the phrase “. . . found CPSD has failed to prove this allegation,” is inaccurate and should be deleted. To be consistent with other items listed on pages 207 and 208, it appears that the paragraph should conclude with the phrase, “. . . and found CPSD has proven this allegation.”

In addition, the heading of the paragraph, “Operating Pressure Test Records” mistakenly includes the word “test,” although the POD text addresses only operating pressure records. The word “test” should be deleted. Thus the first full paragraph on p. 208 should be modified to read:

Operating Pressure Records – CPSD notes that PG&E has admitted that operating pressure records from 1965 – 1970 are no longer available, and that it is missing operating pressure data from 1999 for all of its pipelines.¹² We have considered these assertions in Section 8.5 above and have found CPSD has proven this allegation.

2. Finding of Fact Number 185

Finding of Fact No. 185, in the section of the Recordkeeping POD stating findings based on alleged violations from Duller and North, under the heading “General Records Management (Violation A)” also is inconsistent with the POD’s section 8.5 holding.¹³ In addressing operating pressure records, the finding includes the statement, “CPSD has failed to prove.” CPSD recommends modifying Finding of Fact No. 185 to delete the inconsistent statement. CPSD proposes the following revision:

¹¹ Recordkeeping POD, p. 208.

¹² CPSD Opening Brief at 171.

¹³ Recordkeeping POD, p. 267.

185. PG&E is missing operating pressure records from 1965 – 1970, and from 1999.¹⁴

3. Conclusion of Law Number 71

Conclusion of Law No. 71 states, “CPSD has proven that PG&E failed to retain operating pressure test records from 1965 to 1977.”¹⁵ This Conclusion of Law appears to address operating pressure records and, thus, the word “test” should be deleted. Further, CPSD notes that, if the Conclusion of Law is intended to characterize the Duller and North testimony regarding operating pressure records, the date range should be corrected to reflect that testimony, which states the range 1965-1970.¹⁶ CPSD proposes the following revision:

71. CPSD has proven that PG&E failed to retain operating pressure ~~test~~ records from 1965 – ~~1977~~ 1970.¹⁷

B. In a discussion of pressure test records, the Recordkeeping POD incorrectly refers to section 8.5, which addresses operating pressure records.

In a paragraph addressing pressure test records, the Recordkeeping POD mistakenly lists section 8.5 as one of the sections that addresses retention of pressure test records.¹⁸ The incorrect sentence, in the last paragraph on page 234 states:

However, consistent with Sections 7.2, 8.3 and 8.5, we find that PG&E has violated its internal policies with respect to the retention of pressure test records.

As discussed above, section 8.5 addresses operating pressure records and, thus, should be deleted from the paragraph. This proposed correction is included in the attached Corrections Appendix.

¹⁴ CPSD Exhibit 8, Duller/North Rebuttal, p. 13, l. 17.

¹⁵ Recordkeeping POD, p. 280.

¹⁶ CPSD Exhibit 8, Duller/North Rebuttal, p. 13.

¹⁷ CPSD Exhibit 8, Duller/North Rebuttal, p. 13.

¹⁸ Recordkeeping POD, p. 234.

II. THERE IS AN INCORRECT STATEMENT OF COMMISSION PROCEDURE REGARDING INITIATING INVESTIGATIONS

The Recordkeeping POD addresses PG&E's claim of administrative laches. The POD correctly rejects PG&E's claim, but commits an immaterial legal error in its discussion of the issue. The POD states:

. . . there was no basis for CPSD to conclude or suspect that PG&E's records were so deficient so as to create a safety concern until after the San Bruno explosion. Indeed, once the severity of these deficiencies was identified, CPSD acted promptly and initiated this proceeding within months of the San Bruno explosion.

Moreover, PG&E failed to demonstrate that it suffered prejudice as a result of CPSD's alleged unreasonable delay in bringing forward this enforcement proceeding.¹⁹

Rule 5.1 of the Commission's Rules of Practice and Procedure provides that the Commission (not its staff) initiates formal investigations. It states:

The Commission may at any time institute investigations on its own motion. Orders instituting investigation shall indicate the nature of the matters to be investigated.

Thus, the Recordkeeping POD statement should be corrected to indicate that the Commission, not CPSD, initiated the proceeding. The proposed correction is included in the attached Corrections Appendix.

III. CORRECTION OF ADDITIONAL ERRORS

There are a number of proposed corrections included in the attached Corrections Appendix that are self-explanatory or are typographical and, thus, are not discussed in the body of this appeal. These proposed corrections appear in section B of the Appendix.

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¹⁹ Recordkeeping POD, p. 67.

IV. CONCLUSION

Based on the record evidence and the law, CPSD respectfully requests that the Commission modify the POD to correct the errors identified in this appeal.

Respectfully submitted,

HARVEY Y. MORRIS
DARRYL J. GRUEN

/s/ DARRYL J. GRUEN

Darryl J. Gruen

Attorneys for the Consumer Protection
and Safety Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-1973
Fax: (415) 703-2262
Email: djg@cpuc.ca.gov

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APPENDIX A

PROPOSED CORRECTIONS

RECORDKEEPING POD

A. Proposed Corrections Addressed in the Body of this Appeal

1. Page 208 - As discussed in section I.A.1, above, the POD should be corrected to reflect that in section 8.5, considering operating pressure records, it has found a violation. The statement that CPSD “has failed” to prove a violation is inconsistent with section 8.5. Therefore, the last sentence in the first full paragraph should be corrected as follows:

“Operating Pressure Records – CPSD notes that PG&E has admitted that operating pressure records from 1965 – 1970 are no longer available, and that it is missing operating pressure data from 1999 for all of its pipelines.⁶⁸³ We have considered this assertion in Section 8.5 above and have found CPSD has proven this allegation.”

2. Page 234 – As discussed in section I.B. of this appeal, the POD text mistakenly includes section 8.5 as one of the sections addressing pressure test records. The last paragraph on page 234 should be corrected as follows:

“However, consistent with Sections 7.2, and 8.3 ~~and 8.5~~, we find that PG&E has violated its internal policies with respect to the retention of pressure test records.”

3. Page 267 – As discussed in section I.A.2 of this appeal, Finding of Fact No. 185 mistakenly finds that CPSD failed to prove a failure to retain operating pressure records prevents PG&E from safely operating its system. CPSD proposes modifying the finding to state merely:

⁶⁸³ CPSD Opening Brief at 171.

“PG&E is missing operating pressure records from 1965 – 1970, and from 1999.”

4. Page 280 – As discussed in section I.A.3 of this appeal, Conclusion of Law No. 71, addressing operating pressure records, mistakenly includes the word “test” and also misstates the date range. To correct these two errors, CPSD proposes the following revision:

“71. CPSD has proven that PG&E failed to retain operating pressure ~~test~~ records from 1965 – ~~1977~~ 1970.”

5. Page 67 - As discussed in section II, above, the POD should be corrected to reflect that the Commission, not the staff, initiates investigation proceedings. The last sentence in the first full paragraph; and the first sentence in the following paragraph should be corrected as follows:

“Indeed, once the severity of these deficiencies was identified, ~~CPSD~~ the Commission acted promptly and initiated this proceeding within months of the San Bruno explosion.

Moreover, PG&E failed to demonstrate that it suffered prejudice as a result of ~~CPSD’s~~ the alleged unreasonable delay in bringing forward this enforcement proceeding.”

B. Additional Proposed Corrections

6. Page 9 – On the first line of the page, correct a typographical error as follows:

On January 3, 2011, the NTSB issued ~~Safety Recommendation~~ Safety Recommendation P-10-2 and -3 (Urgent) and P-10-4.”

7. Page 15 – On the first line of the page, correct a typographical error as follows:

“2. PG&E failed to provide ~~produce~~ all copies of audio files and transcripts for calls recorded in the San Francisco Control Room for

September 9 and 10, 2010, as requested by CPSD.”

8. Page 20 – On the second line of this page, the name of CPSD witness Alison North is misspelled. It should be corrected as follows:

“...Mrs. ~~Allison~~ Alison North....”

9. Page 80 - The first sentence in the first full paragraph is unclear as written. CPSD proposes correcting it as follows:

“PG&E’s arguments that it had no prior notice that it would need to defend itself against allegations relating to ~~that~~ the prudence or reasonableness of its recordkeeping practices is also without merit.”

10. Page 152 – The POD should be corrected so that it refers to a failure to keep pressure test “records,” rather than to a “failure to keep pressure tests.” The third sentence in the first full paragraph should be corrected as follows:

“Further, it maintains that the failure to keep pressure tests records should be considered a continuing violation . . .”

11. Page 158 – There appears to be a word or phrase missing in the first sentence of the first full paragraph. CPSD proposes correcting the sentence as follows:

“There is no dispute that PG&E, through its voluntary compliance with ASME B.31.8, or as directed pursuant to GO 112 or 49 CFR 192, has been required to ~~conducted~~ weld inspection prior to putting pipelines into service.”

12. Page 258, Findings of Fact No. 75 and 76 appear to be the same finding, although they are worded differently. CPSD recommends deleting Finding No. 76, because the date range of 1978 – 2003 stated in Finding No. 75 is consistent with the record and is actually 25 years, rather than the 26 years stated in Finding No. 76.

13. Page 265 – Finding of Fact No. 153 is unclear. CPSD proposes revising the finding as follows:

“153. Continued use of unidentified reused or reconditioned pipe presents safety risks, especially when ~~GIS this pipe is attributed higher specifications that~~ records reflect installation date rather than ~~but not~~ manufacture date.”
14. Page 265, Finding of Fact No. 159 is unclear because it appears to refer to “one or more assumed or unknown values” for PG&E’s entire transmission system, rather than for each mile of the transmission system as the record shows.²⁰ The finding should be revised as follows:

“PG&E indicated that each mile in its entire transmission system has one or more assumed or unknown values in GIS.”
15. Page 271, - Finding of Fact No. 222 is unclear as written. CPSD proposes to clarify the statement as follows:

“GIS ~~equates~~ records the date of re-installation of re-used and reconditioned pipe as the date of manufacture.”
16. Page 271, Finding of Fact No. 223. “Reconditioned pie” should be corrected to state “Reconditioned “pipe.”

²⁰ When asked to state the number of miles of pipeline in PG&E’s transmission system that have one or more assumed or unknown values in the GIS and the pipeline survey sheets, PG&E answered “approximately 5,324 miles,” which is the total number of miles in service in PG&E’s transmission pipeline system. [DR 27 Q 12 & 13] Indeed, PG&E produced a list showing the assumed and blank values in the GIS system for every segment of each pipeline. [DR 27 Q 12 Attachment 1 & 2].