

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



**FILED**  
2-12-15  
04:59 PM

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)

**COMMENTS OF THE OFFICE OF RATEPAYER ADVOCATES ON THE  
PROPOSED DECISION ADOPTING REVISED GENERAL ORDER 112-F**

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February 12, 2015

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## I. INTRODUCTION

Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, the Office of Ratepayer Advocates (ORA) files these Comments on the Proposed Decision to Revise General Order (GO) 112-E.

There are two significant errors contained in the Proposed Decision (PD) and the proposed revisions to GO 112-E which should be corrected. First, even though this proceeding was opened in the wake of the San Bruno disaster of September 9, 2010 to address shortcomings in the current GO 112-E,<sup>1</sup> the PD and proposed GO 112-F are silent regarding several significant new requirements for maintaining and operating gas transmission systems that the Commission has ordered since that disaster.<sup>2</sup> This oversight should be corrected. Second, the PD and proposed GO 112-F should be revised to eliminate the requirement that gas operators double their leak survey inspections by performing them twice a year instead of annually. These two issues are discussed in Sections II.A and B, respectively, below, and ORA provides proposed rules changes in Section III below.

## II. DISCUSSION

### A. **The Commission Should Clarify And Codify Its Rules Relative To The Grandfather Clause (§ 192.619(c)) Of The Federal Gas Safety Regulations And Enhance Record-Keeping Requirements Regarding Reduced Minimum Allowable Operating Pressures**

The existing GO 112-E sets forth the State of California rules governing the design, construction, testing, operation, and maintenance of gas gathering, transmission,

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<sup>1</sup> R.11-02-019, p. 1 (describing the San Bruno disaster and the opening of this rulemaking: "The human suffering caused by these events is overwhelming. Families lost loved ones and an entire community endured widespread destruction. The depth of this tragedy is the source of our resolve to take all actions necessary to ensure that it never happens again. This rulemaking is a forward-looking effort to establish a new model of natural gas pipeline safety regulation applicable to all California pipelines."). See also PD, p. 2 ("Today's decision brings forward modern rules for California's natural gas transmission and distribution system operators.").

<sup>2</sup> The PD summarizes SED's proposed changes to GO 112-E at pages 12 and 13, but ignores the proposal raised by ORA in comments on September 27, 2013 and July 18, 2014 that the revised GO should reflect the changes ordered in D.11-06-017.

and distribution piping systems. As such, the PD describes GO 112-E as “the linchpin of the Commission’s regulation of natural gas pipelines”<sup>3</sup> and explains that the proposed GO 112-F “brings forward modern rules for California’s natural gas transmission and distribution system operators.”<sup>4</sup>

As the state authority certified under 49 USC § 60105, the Commission has the obligation under federal law to implement and enforce the minimum federal safety standards codified in the Code of Federal Regulations (CFR) at 49 CFR Part 192. It also has the authority under 49 USC § 60104 “to adopt additional or more stringent safety standards for intrastate pipeline facilities and intrastate pipeline transportation” so long as “those standards are compatible with the minimum standards prescribed under this chapter.” As such, to be comprehensive and useful to Commission staff, the regulated utilities, and the public, the proposed GO 112-F should incorporate the minimum federal safety standards in the CFR, as well as any “additional or more stringent safety standards” that the Commission has elected to impose.

In response to the San Bruno disaster of September 9, 2010, the Commission adopted a number of “additional or more stringent safety standards” to address that disaster in response to Safety Recommendations made by the National Transportation and Safety Board (NTSB).<sup>5</sup> These additional safety standards include the requirement that all gas operators regulated by the Commission test or replace line segments which do not have traceable, verifiable, and complete records to justify their Maximum Allowable

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<sup>3</sup> PD, p. 10.

<sup>4</sup> PD, p.2.

<sup>5</sup> See D.11-06-017 and NTSB Safety Recommendations including P-10-002, P-10-003, P-10-004, and P-10-005, issued by the NTSB on January 2, 2011 and available on the NTSB’s website at: <http://www.nts.gov/Investigations/AccidentReports/Pages/PAR1101.aspx>

Operating Pressures (MAOPs).<sup>6</sup> However, inexplicably, the PD’s proposed revisions to GO 112-E do not include these “additional” and “more stringent safety standards.”<sup>7</sup>

The Commission’s response to the San Bruno explosion is set forth primarily in Decision (D.) 11-06-017, which ended the practice of relying upon the “Grandfather Clause” in the Federal Gas Safety Regulations (49 CFR § 192.619(c)) to operate vintage gas transmission pipelines at historical operating pressures without the need for a pressure test. Decision 11-06-017 stated that “historic exemptions [from pressure testing] must end,”<sup>8</sup> and ordered that all in-service natural gas transmission pipeline in California be pressure tested or replaced.

While this language seems clear enough, it has become evident over time that the Commission’s intent regarding the Grandfather Clause is not entirely clear. While many parties<sup>9</sup> have claimed that the Commission “eliminated” reliance on the Grandfather Clause,<sup>10</sup> it is not clear that the Commission actually eliminated the utilities’ ability to continue to calculate MAOP pursuant to the Grandfather Clause. It is much more likely that the Commission intended that an operator may continue to operate under the Grandfather Clause, provided that the operator has a valid pressure test record. This is, in fact, what the 2011 Decision purports to do:

### **3.2. Replace or Pressure Test Implementation Plan**

We order all California natural gas transmission pipeline operators to prepare Implementation Plans to either pressure test or replace all segments of natural gas pipelines which were not pressure tested or lack sufficient details related to performance of any such test. These plans should provide for testing or replacing all such pipeline as

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<sup>6</sup> D.11-06-017, p. 19 and Ordering Paragraphs 4 through 7.

<sup>7</sup> ORA provided comments on September 27, 2013 and July 18, 2014 observing the need to capture the rule changes set forth in D.11-06-017 in any revision of GO 112-E. Therefore, this is not a new issue for the Safety and Enforcement Division’s consideration.

<sup>8</sup> Decision 11-06-017, p. 18.

<sup>9</sup> Including, at times, ORA.

<sup>10</sup> The Grandfather Clause is not solely an exemption from the obligation to pressure test a line segment; it also exempts operators from the need to reduce the Maximum Allowable Operating Pressure (MAOP) of a pipeline segment due to design pressure.

soon as practicable. At the completion of the implementation period, all California natural gas transmission pipeline segments must be (1) pressure tested, (2) have traceable, verifiable, and complete records readily available, and (3) where warranted, be capable of accommodating in-line inspection devices.<sup>11</sup>

Nevertheless, parties disagree, and some argue for whichever interpretation supports their current situation.<sup>12</sup> The only thing that is clear about D.11-06-017 is that it required testing or replacement for all segments missing traceable, verifiable, and complete pressure test records, but not how MAOP should be established once a pressure test is performed.

The other thing that is clear is that the Commission may impose more stringent standards than those imposed in the federal regulations “only if those standards are compatible with the minimum standards prescribed” in those regulations. 49 USC § 60104(c). This raises the concern that any total elimination of the Grandfather Clause may be preempted by federal law. Imposing a pressure test requirement in order to confirm a MAOP established under the Grandfather Clause, as described above and included in ORA’s proposed rule, may be more legally feasible.

Absent clarification regarding what the Commission intended regarding an operators’ ability to calculate MAOP under the Grandfather Clause (§ 619(c)), there is no way for the Commission’s Safety and Enforcement Division (SED) (or any interested party) to determine whether an operator is properly complying with Commission requirements and federal regulations. Put simply, there can be no effective enforcement

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<sup>11</sup> D.11-06-017, pp. 19-20 (citations omitted).

<sup>12</sup> In November 2013, PG&E, in the Line 147 Pressure Restoration proceedings in this docket repeatedly argued it had the right to request to operate Line 147 at 400 psig, even though it admitted that the design pressure of the line was 330 psig. While PG&E refused to explain the legal basis for this claim, it could only base this claim on its rights to operate under the Grandfather Clause. Calculating the MAOP pursuant to § 619(a) would not permit an MOAP above 330 psig. See 18 RT 2837: 1-7; 2839: 18-20; 2841: 8-13; 2861:1-5 (Johnson/PG&E). See also, Ex. OSC-6, PG&E Response to ORA 96, Question 6(f). Now, facing issues regarding its failure to comply with § 192.611 (See note 14 below) PG&E argues that D.11-06-017 does not permit it to calculate the MAOP of its pipelines pursuant to the Grandfather Clause. See A.13-12-012 (GT&S Rate Case) 16 RT 1603-1604 lines 24 to 14 (February 6, 2015).

without clear rules. Consequently, ORA renews its proposal for changes to GO 112-E to codify the Commission’s intentions regarding the Grandfather Clause; ORA’s Proposed Rule Changes are provided in Section III below. ORA has also provided Proposed Rule Changes about informing the Commission and public when MAOP has been lowered by an operator, or where a waiver is being sought to operate above MAOP.<sup>13</sup>

Recent events have revealed the complexity of the issues raised in determining MAOP, particularly for older pipelines where many factors, such as class location, may have changed over time. These events suggest that some operators may have a significant number of pipeline segments that are not currently in compliance, or only recently have been brought into compliance, with the federal minimum safety standards for establishment of MAOP.<sup>14</sup> Consequently, ORA recommends that the Commission open a second phase in this proceeding to have public workshops with Commission Staff, natural gas pipeline operators, and other parties, including ORA, to further clarify the rules for establishing MAOP and, where necessary, to identify the nature and timing for compliance plans to bring pipeline systems into compliance with these rules. This will permit the Commission to move forward with other changes to GO 112-E, while allowing for consideration of these issues. In this context, ORA’s three proposed rule changes provided in Section III below could be adopted now, or serve as a starting point for the dialogue and development of the second phase of the GO 112 rule changes.

**B. The Increased Inspection Requirements Proposed In § 143.1 Have No Demonstrated Safety Benefits Justifying The Costs**

The PD and the proposed revisions to GO 112-E require a doubling of leak survey requirements from their current annual requirement to twice a year. The PD mischaracterizes the objections to this proposal, emphasizing the additional time required

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<sup>13</sup> Operators may lower the operating pressure of pipelines without impacting the MAOP, which is a common practice. MAOP changes should rarely occur.

<sup>14</sup> For example, see PG&E’s Ex Parte Notice filed October 10, 2014 in the San Bruno Investigation Dockets: I.12-01-007, I.11-02-016, and I.11-11-009 regarding self-reported potential violations of class location requirements.

to implement the new requirement,<sup>15</sup> and concludes: “With [a] timeline for implementation, the objections raised to the proposals are largely addressed.”<sup>16</sup> With no inquiry into the costs compared to the benefits, the PD concludes: “we find public safety will be enhanced with the revisions and additions to GO proposed by SED to GO 112 as summarized above and as set forth in Attachment A.”<sup>17</sup>

SED’s proposal to double leak survey requirements from their current annual requirement to twice a year has been opposed by nearly every party participating in these proceedings, has not been shown to have any significant public safety benefit, and would potentially detract both financial and physical resources from other, more productive work that the gas utilities could be pursuing, such as continued pressure testing and replacement of line segments that do not have traceable, verifiable, and complete records.<sup>18</sup> As such, this requirement should be eliminated from proposed GO 112-F.

### **III. ORA Proposed Rule Changes**

#### **A. ORA Proposed Rule Change To Implement The Commission’s Additional Requirements Regarding Establishment Of MAOPs**

##### **Requirements Regarding the Establishment of the Maximum Allowable Operating Pressure (MAOP) of a Pipeline Segment**

- 1) All in-service natural gas transmission pipelines in California shall be pressure tested in accordance with 49 CFR Part 192 subpart J, or have been pressure tested under the standards in place at the time of the test, and the operator shall retain all records of the test required by this

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<sup>15</sup> PD, p. 14 (“The essence of most objections, see e.g., SoCalGas and SDG&E comments at 2, is that implementing these rule change will require significant modifications to a natural gas system operator’s automated scheduling, data collection, and work process systems. Written procedures will need to be developed, and personnel trained. All of this will take time and financial resources.”)

<sup>16</sup> PD, p. 14.

<sup>17</sup> PD, p. 14.

<sup>18</sup> PG&E, ORA and TURN objected to this change due to a lack of information in the proceeding. Sempra noted that these costs are not in rates, nor were they in their [then upcoming] GRC. Only UWUA supported doubling the leak survey requirements.

subpart. The schedule for conformance with this requirement has been determined for each operator according to the plan submitted pursuant to D.11-06-017 and approved by the Commission, as modified by later Commission decisions.

- 2) An operator shall specify in its records, and report promptly to the Commission as requested, the specific provision of 49 CFR Part 192 it is relying upon to establish the MAOP for each segment.
- 3) For an operator to rely upon 49 CFR § 192.619(c) to establish the MAOP of a segment, it shall have readily available traceable, verifiable, and complete records sufficient to establish the pipeline segment's condition and operating and maintenance history, including without limitation: (1) historical pressure records for the maximum operating pressure to which the entire pipeline segment was subjected during the five years prior to July 1, 1970;<sup>19</sup> and (2) records confirming that the segment has been subjected to a valid pressure test consistent with the requirements at the time of the test.<sup>20</sup>
- 4) The Grandfather Clause in § 192.619(c) cannot be used to determine the MAOP after a change in class location.<sup>21</sup>
- 5) Unless MAOP is established pursuant to subsection (3) above, where pipe characteristics are unknown, the operator shall comply with the requirements of 49 CFR 192 Subpart C to establish the MAOP of design for purposes of calculating of MAOP pursuant to 49 CFR § 192.619(a).

## **B. ORA Proposed Rule Change To Require Reporting Where MAOP Has Been Lowered**

### **Reporting Requirements Where MAOP Has Been Lowered**

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<sup>19</sup> These requirements are described in the Regulatory Interpretation Letter from Jeffrey D. Wiese, Associated Administrator for Pipeline Safety, Pipeline and Hazardous Materials Safety Administrations (PHMSA) to Joseph P. Como, Acting Director, Office of Ratepayer Advocates, California Public Utilities Commission, dated January 23, 2015, page 3 (PHMSA Regulatory Interpretation Letter). A copy of this PHMSA Regulatory Interpretation Letter is available on PHMSA's website at <http://phmsa.dot.gov/vgn-ext-templating/v/index.jsp?vgnextoid=4bf8588a7ab1b410VgnVCM100000d2c97898RCRD&vgnnextchannel=2b9b34d513f95410VgnVCM100000d2c97898RCRD&vgnnextfmt=print>. See also D.12-12-030, p. 96 describing records required to operate under 49 CFR § 192.619(c).

<sup>20</sup> D.11-06-017, p. 19 Ordering Paragraphs 4 through 7.

<sup>21</sup> PHMSA Regulatory Interpretation Letter, p. 3.

- 1) No later than 30 days after a decrease in the MAOP of a pipeline segment, an operator shall file a notice in the docket of: (1) any pending gas safety proceeding; and (2) any of its pending gas rate cases where a pipeline segment:
  - a) Is found to be operating above the lowest of the four categories identified in 49 CFR § 192.619 (a); or
  - b) Is not in compliance with the Commission's requirements for operating under 49 CFR § 192.619(c).
- 2) The notice shall include:
  - a) The prior MAOP;
  - b) The new MAOP;
  - c) The reasons for the change;
  - d) The specific section of 49 CFR Part 192 relied upon to establish the new MAOP;
  - e) A complete record of the pipeline features list for the segment and the changes to that pipeline features list since installation of the segment;
  - f) An explanation of how the change impacts other programs, such as integrity management; and
  - g) If the reason for the change has implications for the MAOP of other pipeline segments, the steps and timeframe required to verify the MAOP of those other segments.

**C. ORA Proposed Rule Change To Identify The Waiver Process Required To Operate Above MAOP**

**The Waiver Process Required To Operate A Pipeline Segment Above MAOP**

Where an operator has identified a need to operate a pipeline segment above the MAOP permitted under 49 CFR Part 192 and these Rules, the operator shall file an application with the Commission for a waiver from 49 CFR Part 192 and these Rules pursuant to 49 USC § 60118.

#### IV. CONCLUSION

The Commission should close the gaps in General Order 112-E by adopting the three proposals set forth in Section III above to codify the Commission's intent and regulations regarding the Grandfather Clause and to impose additional reporting requirements for when MAOP must be raised or is lowered. The Commission should defer adoption of the Proposed Rule Change increasing the number and frequency of line inspections until such time as the safety benefits of such a rule can be compared with its costs.

Respectfully submitted,

/s/ TRACI BONE

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## APPENDIX A

### Proposed Changes To The Findings of Fact, Conclusions of Law, and Ordering Paragraphs of the Proposed Decision

#### Findings of Fact

1. The Commission opened this proceeding to consider revisions to rules applicable to California natural gas system operators.
2. The Commission's SED brought forward numerous proposed changes to GO 112-E, issued a staff report delineating the proposed changes, received comments, and held a workshop.
3. The proposed changes to GO 112-E are summarized in a table in the body of today's decision and are reflected in Attachment A.
4. A mandatory effective date of January 1, 2016 will allow for the orderly and efficient implementation of the new rules set forth in Attachment A.
5. The Risk Spending Accountability Reports required in D.14-12-025 serve the purpose of the financial audits that were ordered in D.12-04-010 and no financial audits need to be ordered in this proceeding.

#### Conclusions of Law

1. As the state authority certified under 49 USC § 60105, the Commission has the obligation under federal law to implement and enforce the minimum federal safety standards codified in the Code of Federal Regulations (CFR) at 49 CFR Part 192.
2. The Commission also has the authority under 49 USC § 60104 “to adopt additional or more stringent safety standards for intrastate pipeline facilities and intrastate pipeline transportation” so long as “those standards are compatible with the minimum standards prescribed under this chapter.”
3. To be comprehensive and useful to Commission staff, the regulated utilities, and the public, the proposed GO 112-F should incorporate the minimum federal safety standards in the CFR, as well as any “additional or more stringent safety standards” that the Commission has elected to impose.
4. The Commission adopted “additional” and “more stringent safety standards” in Decision 11-06-017, including the requirement that all gas operators regulated by the

Commission test or replace line segments which do not have traceable, verifiable, and complete records to justify their Maximum Allowable Operating Pressures (MAOPs).

5. These additional safety standards should be codified in the proposed GO 112-F.
6. GO 112-F as set forth in Attachment A today's decision should be adopted effective today; except that as to sections 122, 123, 125, 142, 143, 144, 145, and 162, the gas operators shall comply as soon as feasible but no later than January 1, 2016, unless compliance is extended for a particular provision pursuant to Rule 16.6 of the Commission's Rules of Practice and Procedure or its successor.
7. A second phase of R.11-02-019 should be opened to permit public workshops led by Commission Staff to address issues related to the establishment of MAOP to ensure compliance with the federal regulations and the Commission's rules, and to address the need and format for compliance plans that may be needed going forward.

~~2. R.11-02-019 should be closed.~~

## **ORDER**

**IT IS ORDERED** that:

1. General Order 112-F as set forth in Attachment A to today's decision is adopted effective today; except that as to the revised sections 122, 123, 125, 142, 143, 144, 145, and 162, the gas operators shall comply as soon as feasible but no later than January 1, 2016, unless compliance is extended for a particular provision pursuant to Rule 16.6 of the Commission's Rules of Practice and Procedure or its successor.
2. A second phase of R.11-02-019 shall be opened to permit public workshops led by Commission Staff to address issues related to the establishment of MAOP to ensure compliance with the federal regulations and the Commission's rules, and to address the need and format for compliance plans that may be needed going forward.
3. ~~Rulemaking 11-02-019 is closed.~~