



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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Order Instituting Investigation And Order to Show Cause 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 Distribution System Pipelines.

I.14-11-008
(Filed November 20, 2014)

**REPLY BRIEF
OF PACIFIC GAS AND ELECTRIC COMPANY**

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I. INTRODUCTION AND SUMMARY OF REPLY ARGUMENT

As PG&E has said in the past, it regrets the incidents at issue in this proceeding and the resulting property damage and inconvenience to the public. PG&E shares the Commission's objectives in this OII of ensuring regulatory compliance, enhancing safety, and reducing risk through improved recordkeeping practices.¹ PG&E has been vigorously pursuing these same goals. The evidence PG&E presented in this proceeding demonstrated its unwavering commitment to safety, as well as the significant progress the Company has made in implementing technology, systems, procedures, and training to continuously improve the quality and accessibility of its records and mitigate the risks related to imperfect records. Because of these efforts, PG&E employees—at every level of the business—are working more effectively than ever before, finding and fixing problems as they arise, and searching for creative solutions to the issues that beset many gas pipeline operators. PG&E acknowledges, however, that in some instances its conduct, viewed in hindsight, did not meet the expectations that PG&E sets for itself when it comes to safety, risk mitigation, and coordination with its regulators. As discussed below²—particularly as related to the Carmel and Mountain View incidents, the issue of unmapped plastic inserts, and PG&E's alternative method for setting MAOP on certain of its distribution systems—PG&E believes it could have done better.³

As part of its ongoing commitment to continuously improving the safety of the gas distribution system, PG&E has undertaken a number of mitigative actions to reduce the risk that events such as the Carmel and Mountain View incidents might reoccur, as well as to assess and, if needed, address any risks related to plastic inserts and the alternative method for setting MAOP.⁴ PG&E acknowledges that the Commission may determine it is appropriate to order

¹ See generally Order Instituting Investigation and Order to Show Cause, I. 14-11-008 (Nov. 20, 2014) (OII).

² See *infra* pp. 7-10.

³ As PG&E demonstrated in its Opening Brief and in this submission, it does not agree that any of the violations alleged by SED have merit or that any penalty is appropriate. See PG&E Opening Brief (OB) at 41-48.

⁴ See PG&E OB at 17-30, 48-56, 61-62, App. C.

further actions to expedite progress in that direction, and PG&E appreciates SED's engagement and thoughtful input regarding potential additional remedial actions. SED's experts, P Wood Associates (PWA), recommended a number of such additional measures in SED's Supplemental Testimony (the PWA Report), and SED has made several further proposals in its Opening Brief. A number of these proposals are appropriate and useful, particularly those suggested in the PWA Report, several of which PG&E is already implementing.⁵ Some of SED's proposed remedies, however, either are not implementable, or would not achieve meaningful reduction of risk in comparison with other layers of mitigation to which resources could be dedicated. In those instances, PG&E has proposed alternative remedial measures that it believes are more specifically tailored to achieving the objectives intended by SED's proposals. PG&E proposes to implement measures directed at gas distribution records review, asset data validation, excavation damage prevention, and assessing whether any safety risks are associated with PG&E's alternative method for setting MAOP on certain of its distribution systems.⁶ PG&E is prepared, if the Commission so orders, to invest approximately \$30 million to implement the identified remedial measures. And, in all events, PG&E is committed to working with SED to achieve trackable and measurable progress toward their mutual goal of enhanced safety.

PG&E submits that the maximum appropriate penalty in this proceeding is approximately \$33.636 million, which is commensurate with the total amount of penalties that SED has proposed for the four areas identified above—the Carmel and Mountain View incidents, unmapped plastic inserts, and PG&E's alternative method for setting MAOP. SED's recommended penalties for alleged violations associated with those four areas consist of the following:

⁵ See PG&E OB at 30.

⁶ The specific measures PG&E proposes to implement are described in Appendix C.

- \$9.88 million for an alleged violation of 49 C.F.R. §192.605(a) in connection with the Carmel incident, *after* taking into account the \$10.85 million penalty PG&E has already paid in connection with the Carmel citation;⁷
- \$5.863 million for alleged violations related to the Mountain View incident;
- \$10.85 million for alleged violations associated with unmapped plastic inserts; and
- \$7.12 million for alleged violations arising out of PG&E’s alternative method for setting MAOP.

Although PG&E does not agree that any penalty is appropriate, it respectfully submits that any penalty that may be imposed on PG&E in this proceeding should not exceed this \$33.636 million total.⁸ PG&E further submits that, to the extent the Commission imposes any penalty in this proceeding, it should be invested in the safety of the gas distribution system rather than paid to California’s General Fund. This could be accomplished by earmarking approximately \$30 million of any fine imposed for implementation of the remedial measures discussed above. All customers in PG&E’s service territory would benefit from these ordered investments in a safer gas distribution pipeline system paid for by PG&E.

SED proposes total fines of \$111.926 million.⁹ This amount is unreasonable on many grounds, including the fact that SED has not proven the violations on which the fines purport to be based.¹⁰ Moreover, SED’s recommended penalty is excessive when analyzed in light of the traditional factors used by the Commission to establish fines. Even though there is no regulatory

⁷ Resolution ALJ-323, *Resolves the Appeal of Pac. Gas & Elec. Co. from Citation ALJ-274 2014-11-001 Issued by the Safety & Enforcement Div.*, 2015 Cal. PUC LEXIS 757, at *1-2, 6-7.

⁸ See *infra* pp. 7-10.

⁹ While Carmel proposes a penalty of \$651.77 million, it offers very little in the way of evidentiary support for its proposal. Carmel Opening Brief (OB) at 2, 17-19. It also states that it supports SED’s calculation of the fines for all six gas incidents identified in the OII and defers to SED and the Commission to arrive at the proper number. SED OB at 17; see discussion *infra* pp. 28-30.

¹⁰ See PG&E OB at 41-48; *infra* pp. 30-49; Appendix A.

requirement that an operator's records be perfect¹¹—and PWA admits that no operator in fact has perfect records¹²—SED seeks tens of millions of dollars in fines based only on isolated instances of inaccuracies in maps and records.¹³

SED's penalty recommendation also does not take into account the evidentiary record showing PG&E's commitment to improving the quality of its records management practices and implementing industry leading safety measures.¹⁴ PG&E has implemented numerous proactive mitigative programs to improve records quality and enhance safety and has made a serious and sustained commitment to becoming an industry leader across multiple procedural and operational dimensions that touch on everything from its records and information management systems to the training and tools provided to its field workers. Indeed, the many new technologies, procedures, and other corrective actions that PG&E has adopted in the last several years are already accomplishing the goals that many of SED's proposed remedial measures are intended to achieve.

There is ample evidence corroborating PG&E's progress toward realizing its ambitious vision of becoming the nation's safest gas utility. Certifications by Lloyd's Register, a leading international provider of independent assessment services, confirm PG&E's achievements in

¹¹ See PG&E OB at 36-38; 1/20/16 Tr. at 339:15-17 (PG&E/Paskett) (“[S]tate and federal regulators . . . acknowledge that no operator has perfect maps and records . . .”); Ex. 1 at 2:9-11 (PWA Report) (“The US Department of Transportation Distribution Integrity Management Program (DIMP) regulation recognizes the existence of accuracy and completeness issues in distribution pipeline maps and records.”); Ex. 2 at 61 (PWA Rebuttal) (“PWA agrees that the Standard of Care for the accuracy and completeness of distribution pipeline records is not explicitly defined in state or federal pipeline safety regulations. However, we have used the pipeline safety regulations to infer a Standard of Care.”).

¹² 1/19/16 Tr. at 44:9-10 (SED/PWA) (“[PWA does not] know a pipeline operator who has perfect maps and records.”); 1/20/16 Tr. at 339:15-17 (PG&E/Paskett) (“[S]tate and federal regulators . . . acknowledge that no operator has perfect maps and records . . .”); Ex. 16 at 5 (SED's Consolidated Response to Dec. 22, 2015 Meet and Confer Demands & Dec. 1, 2015 Data Requests) (“PWA consultants are not aware of utility companies whose maps and records contain no inaccuracies.”).

¹³ PG&E's comprehensive responses to SED's penalty recommendations, category by category and incident by incident, are provided in Appendices A and B.

¹⁴ See PG&E OB at 17-30.

complying with industry standards for asset management.¹⁵ SED's own experts, PWA, noted 17 instances of innovative or best practices instituted by PG&E in areas ranging from adoption of new technologies and data integration, to validating asset information, to performance measurement, to improved controls and quality assurance.¹⁶ When PWA's experts learned that PG&E had been certified as compliant with the American Petroleum Institute's (API) Recommended Practice 1173, which creates a pipeline safety management systems framework that includes dedicated focus on recordkeeping and safety culture, PWA's experts acknowledged that, as far as they are aware, PG&E is the only gas pipeline operator to have achieved that recognition.¹⁷

In recommending the \$111.926 million penalty, SED also does not consider the evidence going to the core question of whether imperfections in PG&E's records raise systemwide safety issues. PG&E's own excavation damage record, as well as the comparative excavation damage metrics collected and reported by PHMSA, are proof that the many procedural and operational safety measures PG&E has instituted are working.¹⁸ These metrics, with which SED's experts had no disagreement,¹⁹ show that PG&E ranks number 13 among the state-by-state averages for operators in the fifty states in terms of its excavation damage performance.²⁰ PG&E locates and marks the hundreds of thousands of USA tickets submitted annually with 99.98% accuracy,²¹

¹⁵ Lloyd's Register reviewed PG&E's safety practices, information and risk management policies, employee qualifications, emergency response protocols, and more than 20 additional critical areas of asset management. PG&E OB at 28-29; Ex. 4 at 1-21:32 to 1-22:19 (PG&E Reply Testimony, Howe); *id.* at 2-8:12-25 (PG&E Reply Testimony, Singh).

¹⁶ Ex. 1 at 59-67 tbl.9 (PWA Report).

¹⁷ 1/19/16 Tr. at 37:3-6 (SED/PWA).

¹⁸ Ex. 4 at 8-5, 8-23 tbl.6 (PG&E Reply Testimony, Paskett); Ex. 10 at 8-22, 8-22 tbl.5 (PG&E Errata to Reply Testimony, Paskett).

¹⁹ 1/19/16 Tr. at 51:22 to 54:15 (SED/PWA) (noting PWA has not analyzed publicly available PHMSA data set forth in Mr. Paskett's report, but PWA has no reason to doubt data or conclusions presented by Mr. Paskett).

²⁰ Ex. 4 at 8-5, 8-23 tbl.6 (PG&E Reply Testimony, Paskett); Ex. 10 at 8-22, 8-22 tbl.5 (PG&E Errata to Reply Testimony, Paskett).

²¹ 1/20/16 Tr. at 329:2-10 (PG&E/Higgins); Ex. 4 at 3-40:21-23 (PG&E Reply Testimony, Higgins).

while the number of PG&E's at-fault dig-ins compared to the volume of jobs is small,²² and the number of at-fault dig-ins related to imperfect records is even smaller.²³ These facts provide important context for the isolated examples of records and operational imperfections on which SED chooses to focus—imperfections that, while never acceptable, are also not indicative of the systemwide failings for which SED cites them.

PG&E respectfully requests that, in determining the appropriate amount of any penalty it may impose, the Commission take into account the progress PG&E has made so far. Doing so would achieve the Commission's interest in deterring regulatory violations, while at the same time helping to promote PG&E's "find it and fix it" culture and motivating PG&E's employees to continue their drive to improve the safety of PG&E's gas system.

* * *

PG&E's Reply Brief is organized as follows:

Penalties: The first two sections of the brief explain PG&E's reasoning for proposing that the maximum penalty imposed in this proceeding, if any, should not exceed \$33.636 million, and the legal and factual reasons why the \$111.926 million penalty recommended by SED, as well as Carmel's proposed penalty, are excessive.

New Alleged Violations: This section of the Reply Brief addresses the fact that SED alleges a number of new violations in its Opening Brief that were not identified in the OII or in the PWA Report. For example, in one case, the PWA Report expressly *disclaimed* the same violation that SED asserted for the first time in its Opening Brief.²⁴ Because PG&E had no notice of these alleged violations at the time it submitted its Reply Testimony, it was precluded

²² *Id.*

²³ 1/21/16 Tr. at 397:4-8 (PG&E/Thierry). The great majority of dig-ins on PG&E's system are caused by third-party excavators, Ex. 4 at 1-17 tbl.1-2 (PG&E Reply Testimony, Howe), a fact that can be attributed to California's lack of an effective state damage prevention scheme or effective enforcement. Ex. 2 at 50 tbl.2 (PWA Rebuttal); Ex. 13, Attachment E019 at E019.016, .038-.039 (Pipeline & Hazardous Materials Safety Admin., et al., *Integrity Management for Gas Distribution Report of Phase 1 Investigations* (Dec. 2005) (PHMSA Phase 1 Report)); *see also* 1/19/16 Tr. at 53:7-25 (SED/PWA).

²⁴ *See infra* pp. 40-43.

from introducing evidence to address them, except what facts its witnesses were able to include in their responses to cross-examination questions. PG&E submits that fairness and due process require that the alleged violations that are considered and decided by the Commission be limited to those to which PG&E has an opportunity to respond—*i.e.*, those identified in the OII and/or in the initial PWA Report.²⁵

Remedies: The next section of the Reply Brief provides an overview of the remedy proposals made by SED, Carmel, and TURN and addresses some of the broader issues that these recommendations implicate. It also discusses the estimated costs associated with implementing the remedies PG&E supports in this proceeding, as well as PG&E’s proposal that such costs, if ordered, would be borne by PG&E’s shareholders.

Rule 1 Allegations: The final section of the brief responds to Carmel’s assertion that PG&E and its counsel violated Rule 1.1 of the Commission’s Rules of Practice and Procedure by introducing certain testimony at the hearing. Carmel’s accusation is entirely unsupported and based on its misconstruction of both the record and the law.

Appendices: The following appendices are provided at the end of this brief:

Appendices
Appendix A: PG&E’s Position on SED’s Penalty Calculations
Appendix B: Incidents and Alleged Violations
Appendix C: PG&E’s Responses to Proposed Remedial Measures

II. THE PENALTY IMPOSED IN THIS PROCEEDING, IF ANY, SHOULD NOT EXCEED \$33.636 MILLION.

PG&E acknowledges that in some instances, when viewed in hindsight, it did not meet its own expectations when it comes to safety. Accordingly, PG&E believes that the penalties

²⁵ PG&E provides a comprehensive analysis of each proposed incident and violation at issue in this proceeding in table form at Appendix B.

imposed by the CPUC, if any, should not exceed \$33.636 million, which reflects SED's proposed penalties for the alleged violations identified in this section.²⁶

Based on the discussion in its Opening Brief, SED appears to have formulated its recommended \$111.926 million penalty without adequate consideration of PG&E's measurable and significant strides in improving the quality of its records management practices and implementing industry leading safety measures.²⁷ Indeed, PG&E's sustained commitment to continuous improvement—acknowledged by SED's own experts and covered in detail in this proceeding—cannot be reconciled with SED's assertion that PG&E has a “lack of remorse,” which implies that PG&E has manifested indifference for the recordkeeping and other issues that contributed to these incidents. The record amply demonstrates that the opposite is true, in that PG&E has incorporated a strong safety imperative at all levels of its gas operations business. PG&E respectfully requests that, in arriving at any appropriate penalty amount, the Commission takes into account PG&E's considerable efforts to reduce risk.

A. The Components of PG&E's Proposed \$33.636 Million Maximum Penalty.

1. A Maximum Additional Fine of \$9.88 Million for the Carmel Incident, After Taking Into Account the \$10.85 Million Penalty PG&E Has Already Paid

SED proposes a fine of \$20.73 million for violating section 192.605(a) in connection with the Carmel explosion.²⁸ PG&E has already paid \$10.85 million in penalties for violations associated with the Carmel incident.²⁹ Any additional penalty imposed in this OII for the same incident should take the previous fine into account and be adjusted accordingly. Thus, the CPUC should consider, at most, an additional \$9.88 million fine associated with the Carmel incident.³⁰

²⁶ PG&E does so without waiving any of its legal or factual arguments asserted throughout this proceeding or conceding that any of the violations alleged by SED have merit.

²⁷ See PG&E OB at 17-30.

²⁸ SED OB at 77-78.

²⁹ Resolution ALJ-323, 2015 Cal. PUC LEXIS 757, at *6-7; see also PG&E OB at 53.

³⁰ See PG&E OB at 53-56; *infra* Appendix A. PG&E proposes this maximum additional fine calculation without waiving its arguments that SED has not met its burden of proving that PG&E violated section 192.605(a) and has not properly calculated the penalty.

2. A Maximum \$5.836 Million Penalty for the Mountain View Incident

PG&E has previously told SED that it does not contest the Mountain View incident; it therefore submits that any penalty associated with this incident should not exceed SED's proposal of \$5.836 million.³¹ For the reasons explained in PG&E's Opening Brief and herein,³² PG&E does not waive its arguments that SED has not proven a violation of sections 192.605(a) or 192.605(b)(3).

3. A Maximum \$10.8 Million Fine Associated with Unmapped Plastic Inserts

SED argues that PG&E should be penalized for failing to adequately address the issue of unmapped plastic inserts before the Carmel incident, after having been placed on notice of the issue following the Mountain View incident.³³ With the benefit of hindsight, PG&E agrees it could have started work earlier to develop measures to mitigate the risks of unmapped plastic inserts.³⁴ However, PG&E has since taken extensive actions to address this issue, which PG&E believes argue in favor of a lesser penalty than the \$10.8 million fine proposed by SED.

4. A Maximum \$7.12 Million Penalty Associated with PG&E's Alternative Method for Setting MAOP

SED recommends that PG&E should be ordered to pay \$7.12 million in penalties for its use of an alternative method for setting MAOP for approximately 243 distribution systems.³⁵ SED is also critical of PG&E's failure to retain written records of pressure levels from 1965 to 1970 for these systems. PG&E is on record as stating that its alternative method for setting MAOP is safe and consistent with the regulatory guidance issued by PHMSA, and that SED in 2013 gave its written approval for this method.³⁶ SED does not dispute these points,³⁷ and also

³¹ SED OB at 77, 85.

³² See *infra* pp. 40-43 (explaining that SED did not previously allege failure to have procedures).

³³ SED OB at 80-81.

³⁴ PG&E OB at 50-51; 1/20/16 Tr. at 317:19 to 318:8 (PG&E/Higgins); Ex. 4 at 3-26:18-25 (PG&E Reply Testimony, Higgins).

³⁵ SED OB at 86.

³⁶ *Id.* at 67-71.

³⁷ *Id.*

has not recommended that PG&E adopt a new policy for setting MAOP among its proposed remedial measures.³⁸ That said, while not admitting to the alleged violations,³⁹ PG&E recognizes that it could have communicated more effectively with SED regarding its alternative method for setting MAOP. For that reason, PG&E submits that any fine associated with this issue should not exceed SED's proposed \$7.12 million.

B. Any Fine Imposed Should Be Invested in the Safety of the System for the Benefit of PG&E's Customers.

SED has not taken a position on where any penalty funds should be directed.⁴⁰ PG&E respectfully requests that any penalty the Commission may order should be invested in the safety of the gas distribution system for the benefit of PG&E's customers rather than paid to the state General Fund. There is little reason to think that a fine payable to the General Fund would improve gas distribution pipeline safety. Nor does California Public Utilities Code section 2107 contain a requirement that a penalty imposed pursuant to that provision must be paid to the General Fund. All customers in PG&E's service territory would benefit from any ordered investments in a safer gas distribution pipeline system paid for by PG&E.

PG&E proposes the following approach, if a penalty is imposed. Of the maximum \$33.636 million fine, up to \$30 million should be earmarked for implementation of the remedial measures that PG&E has indicated below it believes will meaningfully improve safety, to the extent such measures are ordered by the Commission.⁴¹ For the remaining \$3.636 million, the

³⁸ *Id.* at 95-96.

³⁹ PG&E also notes that SED continues to base its MAOP argument on a mis-quoting of section 303.1 in General Order 112, despite the fact that PG&E's counsel pointed out this mistake in the PWA Report and Rebuttal at the hearing, and the PWA witnesses acknowledged their error. *Id.* at 69. SED has replaced "maximum *actual* operating pressure," the term that appears in section 303.1, with "maximum *allowable* operating pressure," the issue in this proceeding. *Id.* at 69 (emphasis added); Ex. 15, Attachment E010 at E010.058 (Cal. Pub. Utils. Comm'n, General Order No. 112 (July 1, 1961)). "Maximum *actual* operating pressure" is a distinct concept which is separately defined in General Order 112. *Id.* at E010.007 (emphasis added). PWA included the identical misquotation in both its initial report and rebuttal testimony. Ex. 1 at 28 tbl.3, 114-115 attach. C (PWA Report); Ex. 2 at 30 tbl.2 (PWA Rebuttal). PG&E pointed this out during the hearing, and PWA admitted they had misquoted the regulation and that it actually has nothing to do with setting MAOP. 1/19/16 Tr. at 67:16 to 70:27 (SED/PWA).

⁴⁰ SED OB at 96.

⁴¹ *See infra* pp. 53-55.

Commission may order a one-time distribution revenue requirement disallowance. Although PG&E is already motivated to do everything reasonably possible to operate a safe gas distribution system, directing any penalty toward improving gas pipeline safety would further the Commission's and PG&E's shared goal of enhancing the safety and reliability of PG&E's system, while serving a deterrence objective.

III. SED'S AND CARMEL'S RECOMMENDED PENALTIES ARE EXCESSIVE.

A. SED's Proposed Penalty Cannot Be Justified in Light of the Traditional Factors Used by the Commission to Set Fines.

The Commission looks to Public Utilities Code section 2104.5 and D. 98-12-075 for the factors in determining an appropriate penalty.⁴² Stated generally, these factors are: (1) the severity of the offense; (2) the good faith of the utility, including the conduct of the utility before, during and after the offense to prevent, detect, disclose and rectify a violation; (3) the size of the business (including its financial resources); (4) the totality of circumstances in furtherance of the public interest; and (5) the role of precedent.⁴³ As PG&E demonstrated in its Opening Brief and in this submission, SED has not proven the violations.⁴⁴ Setting that issue aside, the discussion below explores the implications of those factors for SED's proposed penalty. Appendices A and B respond in detail to SED's proposed penalties on an incident-by-incident basis.

1. The Severity of the Offense

In addressing the severity of the offense, the Commission evaluates physical harm, economic harm, harm to the regulatory process, and the number of violations.⁴⁵ When viewed through this lens, the recommended \$111.926 million fine is not commensurate with the

⁴² Cal. Pub. Util. Code § 2104.5; *Regarding Standards of Conduct Governing Relationships between Energy Utils. & Their Affiliates*, D. 98-12-075, 1998 Cal. PUC LEXIS 1018, at *9-10.

⁴³ Cal. Pub. Util. Code § 2104.5; D. 98-12-075, 1998 Cal. PUC LEXIS 1018, at *70-77.

⁴⁴ See PG&E OB at 41-48.

⁴⁵ D. 98-12-075, 1998 Cal. PUC LEXIS 1018, at *71-73.

incidents at issue in this proceeding. Even if the Commission finds that PG&E has committed violations, this factor militates against the fine recommended by SED.

Physical Harm: The Commission has said that “[v]iolations which cause actual physical harm to people or property are generally considered the most severe, with violations that threaten such harm closely following.”⁴⁶ SED contends, with no evidentiary support, that this case is “rife with violations threatening physical harm.”⁴⁷ While dig-ins certainly have the potential to cause physical harm, it is clear that the gas distribution business is not one in which risk can be eliminated completely. An important question the regulator should examine is what the operator is doing to reduce those risks. As detailed in the evidentiary record, PG&E’s excavation damage record compares favorably to other operators in the state and nation,⁴⁸ and it has introduced an array of programs and incentives designed to further decrease dig-ins on its gas distribution system.⁴⁹ Despite PG&E’s best efforts, emergency and non-emergency gas leaks will occur.⁵⁰ To contextualize the number of gas leaks on PG&E’s distribution system compared to the risk of serious incidents, consider the following: Using its Picarro Surveyor technology and Super Crew, PG&E repaired 2,200 leaks in just 17 business days,⁵¹ and PG&E experiences approximately 156 accidental dig-ins per month, or between 1,800 and 1,900 dig-ins, on average, annually.⁵² Nationwide, there have been at least 63,000 reported leaks due to excavation damage every year between 2010 and 2014.⁵³ But during the same time period, there were only an average of six

⁴⁶ Resolution ALJ-277, *Affirming Citation No. ALJ-274 2012-01-001 Issued to Pac. Gas & Elec. Co. for Violations of Gen. Order 112-E*, 2012 Cal. PUC LEXIS 629, at *16.

⁴⁷ SED relies for that assertion exclusively on testimony by the Mayor of Carmel, whose testimony, in turn, is also unsupported. SED OB at 72.

⁴⁸ Ex. 4 at 8-5, 8-23 tbl.6 (PG&E Reply Testimony, Paskett); Ex. 10 at 8-22, 8-22 tbl.5 (PG&E Errata to Reply Testimony, Paskett).

⁴⁹ Ex. 4 at 3-5:17 to 3-17:22, 3-20:5 to 3-23:20 (PG&E Reply Testimony, Higgins).

⁵⁰ As Raymond Thierry testified, dig-ins that result in an unplanned release of gas are classified as gas leaks. Ex. 4 at 6-8:1-5 (PG&E Reply Testimony, Thierry).

⁵¹ *Id.* at 3-6:19-26 (PG&E Reply Testimony, Higgins).

⁵² *Id.* at 7-14 (PG&E Reply Testimony, Huriaux).

⁵³ *Id.* at 8-18 (PG&E Reply Testimony, Paskett).

reported “serious incidents” per year due to excavation damage on gas distribution systems,⁵⁴ or approximately 9/1,000 of 1% of the number of reported leaks—a very tiny fraction. PG&E does not recount these facts to minimize the dangers of gas leaks. Quite the opposite, PG&E has demonstrated throughout this proceeding the seriousness with which it has approached its efforts to reduce excavation damage through its damage prevention program. However, SED’s arguments regarding the severity of the alleged violations must be viewed with some perspective. The probability of a serious incident due to known excavation damage on a gas distribution system is low. An approximate \$111 million fine greatly surpasses what is necessary to continue to address the risks of gas distribution leaks and deter future at-fault dig-ins.

Economic Harm: SED does not provide support for its assertion that the “economic harm” identified during its investigation justifies the recommended fine. Rather, SED’s proposed fine dwarfs by several orders of magnitude even the most aggressive estimates of property damage or other economic harm resulting from the incidents. The damage estimates in SED’s Opening Brief range from \$2,000 to \$10,000 per incident, with two outliers at \$105,000 (San Jose Incident I) and \$302,000 (Carmel incident).⁵⁵

The Supreme Court’s jurisprudence assessing the legality of punitive damages awards provides a useful benchmark. In that context, the Court has held that “few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process.”⁵⁶ The table below shows the ratio of the proposed SED fines to the asserted property damage for the six incidents highlighted in SED’s Opening Brief:⁵⁷

⁵⁴ *Id.* at 8-19 (PG&E Reply Testimony, Paskett).

⁵⁵ SED OB at 73. To the extent additional information on property damage is in the record, property damage was estimated at less than \$50,000. Ex. 6, Attachment W060 at W060.001 (30-Day Letter from Glen Carter, PG&E to Raffy Stepanian, Cal. Pub. Utils. Comm’n (Oct. 28, 2010)); *id.*, Attachment W062 at W062.001 (30-Day Letter from Glen Carter, PG&E to Raffy Stepanian, Cal. Pub. Utils. Comm’n (April 15, 2010)).

⁵⁶ *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 425 (2003).

⁵⁷ SED OB at 73.

Incident	SED's Total Proposed Fines	Property Damage Estimate	Ratio of Proposed Fine to Property Damage
Castro Valley	\$1.42 million	\$2,000	710:1
Morgan Hill	\$5.378 million	\$2,000	2,689:1
Milpitas I	\$2.074 million	\$2,000	1,037:1
Mountain View	\$5.786 million	\$10,000	584:1
Carmel	\$31.58 million	\$302,000	104:1
San Jose I	\$100,000	\$105,000	0.95:1

For five out of six of these incidents, SED's proposed fines yield ratios that vastly exceed the 9:1 threshold that the Supreme Court has identified as the outer limit of acceptability.

SED closes its treatment of economic harm with speculative statements about purported economic harm from service interruptions and "public trust harm."⁵⁸ These assertions do not support the recommended fine based on economic harm from PG&E's alleged violations.

Harm to the Regulatory Process: The Commission's guidance states that "compliance is absolutely necessary to the proper functioning of the regulatory process."⁵⁹ PG&E agrees. It shares the Commission's goal of achieving the best possible safety outcome, and submits that it, and the industry, would benefit from a Commission rulemaking to define the highest levels of compliance, safety performance, and risk reduction.

SED devotes its discussion of the regulatory process exclusively to the De Anza leak repair records.⁶⁰ As is detailed below, PG&E timely disclosed all information about the missing records,⁶¹ including the fact that the information from the paper leak repair records is captured in PG&E's electronic database.⁶² PG&E will not repeat those arguments here. Notably, every incident at issue in this proceeding was reported to SED. There is no evidence in this record that

⁵⁸ SED cites, again, to Mayor Burnett's entirely unfounded testimony. *Id.* at 74-75.

⁵⁹ D. 98-12-075, 1998 Cal. PUC LEXIS 1018, at *72.

⁶⁰ SED OB at 75.

⁶¹ *See infra* pp. 37-40.

⁶² Ex. 33 (PG&E's Supplemental Response No. 1 to SED Data Request No. 25); *see also* 1/21/16 at 437:23 to 441:8 (PG&E/Trevino); *id.* at 485:1-25 (PG&E/Singh); Ex. 4 at 6-6:28-32 (PG&E Reply Testimony, Thierry).

PG&E misled the Commission, withheld information, or acted other than in good faith. There is no basis for assessing a substantial fine based on harm to the regulatory process.

Number of Violations: The Commission looks to the number of violations as one factor in assessing the severity of the offense.⁶³ As is discussed in detail in Appendix A, SED has overstated the number of violations through duplicative allegations and overusing the continuing violation doctrine.⁶⁴

2. There Is No Evidence That PG&E Acted in Bad Faith.

California Public Utilities Code section 2104.5 states that the Commission should consider “the good faith of the person charged in attempting to achieve compliance.”⁶⁵ The Commission has elaborated on the “good faith” factor, adding that the conduct of the utility should be considered, including its “conduct in (1) preventing the violation, (2) detecting the violation, and (3) disclosing and rectifying the violation.”⁶⁶

As a threshold matter, there is no evidence that PG&E acted in bad faith. There is no justification for penalizing PG&E because it was unable to prevent all the alleged violations—if the Commission finds that violations were, in fact, committed. Of course, PG&E strives to prevent violations, even though no utility is perfect, as SED’s experts conceded.⁶⁷ After these incidents occurred, PG&E immediately went about correcting any errors in its maps and records that may have been contributing factors.⁶⁸ Indeed, PG&E’s actions went significantly beyond mere corrections to maps and records and included wholesale changes to how its gas distribution

⁶³ D. 98-12-075, 1998 Cal. PUC LEXIS 1018, at *73.

⁶⁴ See *infra* Appendix A at pp. A-2 to A-6.

⁶⁵ Cal. Pub. Util. Code § 2104.5.

⁶⁶ D. 98-12-075, 1998 Cal. PUC LEXIS 1018, at *73.

⁶⁷ 1/19/16 Tr. at 44:5-15 (SED/PWA) (PWA stating that it “[does not] know a pipeline operator who has perfect maps and records” and that it “seriously doubt[s] that there is . . . a pipeline operator that is in full compliance [with the applicable regulations]”); Ex. 16 at 5 (SED’s Consolidated Response to Dec. 22, 2015 Meet and Confer Demands & Dec. 1, 2015 Data Requests) (“PWA consultants are not aware of utility companies whose maps and records contain no inaccuracies.”).

⁶⁸ See Ex. 6, Attachment W040 at W040.002-.016 (PG&E’s Final Statement of Facts) (explaining that after each of the six incidents discussed in the OII, PG&E corrected any of the underlying maps and records that were inaccurate).

employees approach virtually every aspect of their work.⁶⁹ These measures have been commended by PWA.⁷⁰

3. SED's Recommended Fine Is Not Necessary to Deter Future Violations of the Pipeline Safety Regulations.

In considering an operator's ability to pay a fine, the Commission looks to "adjust fine levels to achieve the objective of deterrence, without becoming excessive, based on each utility's financial resources."⁷¹ Nowhere is it stated that a more financially resourceful utility should automatically be subject to greater fines. Thus, the question is not whether PG&E can afford the proposed penalty; rather, the right question is, what penalty level is necessary to deter future conduct? As is evident from PG&E's numerous and varied corrective actions detailed in PG&E's testimony and the PWA Report, PG&E has demonstrated a continuous commitment to embedding safety culture in the DNA of its gas operations organization and mitigating the risk that similar incidents reoccur.

The Commission is already on record as remarking in 2011, in the context of a more serious incident than anything alleged here, that a \$97 million penalty "is moderate to large in comparison to the size of PG&E's operation of its public utility business, and would serve as a significant deterrent to ensure that similar incidents do not occur in the future."⁷² And, even after finding that \$97 million would deter future conduct, the Commission ordered a \$38 million fine.⁷³ This result suggests, correctly, that the goal should *not* be to find a number high enough to inflict maximum pain. Instead, the Commission should determine an appropriate penalty under the circumstances. SED's recommendation is not reasonable in light of PG&E's ongoing commitment and progress in improving safety.

⁶⁹ See PG&E OB at 17-30, App. A.

⁷⁰ Ex. 1 at 59-67 tbl.9 (PWA Report); see PG&E OB at 17-18, App. A.

⁷¹ D. 98-12-075, 1998 Cal. PUC LEXIS 1018, at *76.

⁷² *Order Instituting Investigation on the Comm'n's Own Motion into the Operations & Practices of Pac. Gas & Elec. Co., Regarding the Gas Explosion & Fire on Dec. 24, 2008 in Rancho Cordova, Cal.*, D. 11-11-001, 2011 Cal. PUC LEXIS 509, at *60.

⁷³ D. 11-11-001, 2011 Cal. PUC LEXIS 509, at *62.

4. The Totality of the Circumstances in Furtherance of the Public Interest Further Undermines SED's Recommended Fine.

In weighing the totality of the circumstances, the Commission balances competing factors to be considered, most of which overlap with those already discussed above: the severity of the offense, potential for harm to persons and property, number of years of non-compliance, number of missed opportunities to discover and correct the non-compliance, harm to the integrity of the regulatory process, inadequacy of the regular reviews of the utility's own operations, size of the utility, precedent, self-discovery of the issue, self-reporting, no known harm to persons or property, and quick actions.⁷⁴ In addition, the Commission has stated that any fine should be specifically tailored "to the unique facts of the case," including those that "tend to mitigate the degree of wrongdoing."⁷⁵ SED has not examined any of these factors in detail in arguing for its proposed fine, relying instead on the conclusory assurance that "[a]ggravating and mitigating facts have been appropriately weighted."⁷⁶

A number of these factors should mitigate any fine ultimately imposed in this case. First, the most serious incident in this case, the Carmel explosion, was caused by a unique confluence of circumstances—an unknown plastic insert, a damaged sewer lateral, and the unsealed plumbing of the nearby home—two of which are unrelated to PG&E's conduct, and all three of which are relatively unlikely to recur simultaneously.⁷⁷ Additionally, while an unknown plastic insert was also involved in the Mountain View incident, there is no evidence that unmapped plastic inserts are a widespread problem in PG&E's gas distribution system.⁷⁸ Second, while PG&E recognizes that the Commission will also consider potential harm, the incidents at issue in this proceeding are characterized by a lack of bodily harm and, with the exception of the Carmel

⁷⁴ Resolution ALJ-277, 2012 Cal. PUC LEXIS 629, at *9-10, 13-14 (discussing violations related to failure to include 16 plat maps on the leak survey schedule).

⁷⁵ D. 98-12-075, 1998 Cal. PUC LEXIS 1018, at *76. The Commission directs that harm shall be evaluated from the perspective of the public. *Id.*

⁷⁶ SED OB at 92.

⁷⁷ PG&E OB at 52-53.

⁷⁸ 1/20/16 Tr. at 306:2-8 (PG&E/Higgins) (stating that since the incident in Carmel, PG&E has not encountered any unmapped plastic inserts as a result of using the gas carrier pipe checklist).

incident, relatively modest amounts of property damage.⁷⁹ Third, each of the 19 incidents discussed in the PWA Report was reported by PG&E to the Commission pursuant to General Order 112-E, section 122.⁸⁰ PG&E's prompt reporting of these incidents to the Commission mitigates the degree of alleged wrongdoing.

SED argues that "PG&E has a track record of violations, and needs to improve its practices."⁸¹ As an initial matter, this overstates the scope of the issues identified in the OII. SED admits that it did not conduct a comprehensive review of PG&E's gas distribution recordkeeping system.⁸² Instead, it identified a mere 19 incidents out of—to compare to one benchmark—the more than two million locate and mark tickets that PG&E worked over the relevant time period.⁸³ SED still has not explained how it could draw such a sweeping conclusion from the evidentiary record in this case, and its own experts agreed that it could not.⁸⁴ SED also has not acknowledged that its own experts agree that PG&E has already "improve[d] its operation" with the many corrective actions that have already been implemented.⁸⁵ PG&E's corrective actions, many of which were initiated in pursuit of continuous improvement and not in

⁷⁹ Shortly before PG&E filed its Opening Brief, a personal injury lawsuit was filed against PG&E for damages allegedly resulting from the Carmel house explosion. Nevertheless, there is no allegation at issue in this proceeding that the explosion caused any bodily harm.

⁸⁰ See Ex. 9, Attachment E011 at E011.010 (Cal. Pub. Utils. Comm'n, General Order No. 112-E, § 122.2(a) (Aug. 21, 2008)) (requiring PG&E to report certain events to the Commission, including a release of gas that leads to injury or property damage or events that attract public attention or media coverage); see, e.g., Ex. 6, Attachment W040 at W040.002, .004-.005, .008 (PG&E's Final Statement of Facts) (stating that PG&E reported the Castro Valley, Morgan Hill, and Mountain View incidents to the CPUC due to media being observed on the scene).

⁸¹ SED OB at 92.

⁸² 1/19/16 Tr. at 81:6 to 82:14 (SED/PWA); see PG&E OB at 15-16.

⁸³ 1/19/16 Tr. at 77:9 to 80:19 (SED/PWA); see Ex. 4 at 7-Ex. 2 (PG&E Reply Testimony, Huriaux).

⁸⁴ 1/19/16 Tr. at 79:26 to 80:19 (SED/PWA).

⁸⁵ Ex. 2 at 43-44 tbl.2 (PWA Rebuttal) ("PWA agrees and has stated in its testimony that PG&E's current efforts to improve its operation are extensive, and in many cases appear to represent best or innovative practices.").

direct response to an incident,⁸⁶ demonstrate the Company's commitment to improving the safety of its operations and a desire to reduce the chances of future incidents.

5. There Is No Precedent for a \$111 Million Fine for Incidents Without Fatalities.

In its final consideration, the Commission must “address previously issued decisions involving sanctions, including ones with the most reasonably comparable facts.”⁸⁷ The analysis should account for any “substantial differences in outcome.”⁸⁸ PG&E respectfully submits that a meaningful evaluation of past precedents requires the identification of distinguishing characteristics on which to base thoughtful comparisons. The primary distinguishing characteristics of the incidents at issue in this proceeding are (1) absence of fatalities or bodily injury, (2) minor to severe property damage or customer inconvenience, and (3) recordkeeping issues. Thus, PG&E submits that precedents based on “reasonably comparable” facts generally consist of prior Commission decisions in which fines have been imposed in response to non-fatality and non-injury incidents with some evidence of the second and third characteristics, namely, evidence of property damage, customer inconvenience, and/or recordkeeping issues. The maximum fine that PG&E has enumerated above exceeds the level suggested by Commission precedents. And, as discussed below, such precedents do not support SED's recommended fine.

a. The San Bruno Incident Is Not a “Reasonably Comparable” Precedent.

SED argues that the San Bruno and other incidents are relevant precedents because they “demonstrate[] that PG&E is a frequent violator.”⁸⁹ It is not sufficient to cite Commission

⁸⁶ See, e.g., Ex. 4 at 3-7:23 to 3-8:2 (PG&E Reply Testimony, Higgins) (explaining that “PG&E launched Super Gas Ops in response to employee feedback to improve [work flow and efficiency within Gas Operations]”); *id.* at 1-23:22 to 1-24:10 (describing PG&E's commitment to continuous improvement and how that is evidenced by the Company's “regular solicitation and consideration of internal feedback and third-party perspectives”).

⁸⁷ Resolution ALJ-277, 2012 Cal. PUC LEXIS 629, at *27-28.

⁸⁸ D. 98-12-075, 1998 Cal. PUC LEXIS 1018, at *60.

⁸⁹ SED OB at 93.

precedent involving a single incident and then assert that the operator is a recidivist and therefore deserves a larger fine. Rather, the Commission has instructed parties to address cases that “involve the most reasonably comparable factual circumstances.”⁹⁰ By that measure, the San Bruno incident is not an appropriate precedent.

PG&E has repeatedly acknowledged its deep regret for the San Bruno tragedy, in which the rupture of a transmission pipeline resulted in an explosion and fire resulting in eight deaths and extraordinary property damage. PG&E was fined \$1.6 billion. San Bruno is in no way comparable to the alleged violations cited by SED in this OII. Among the many differences between this proceeding and San Bruno are that this OII is focused on the gas distribution system, not the transmission system, none of the incidents here resulted in death or injury, and the property damage can be measured in the hundreds of thousands of dollars,⁹¹ rather than the hundreds of millions. The fine levied by the Commission in that situation is not a useful comparator except to the extent it illustrates the unreasonableness of the fine proposed by the City of Carmel, which is nearly half of the San Bruno fine.⁹²

b. The Malibu Canyon Fire and San Diego Fire Settlements Also Illustrate That SED’s Recommended Fine Is Excessive.

The Malibu Canyon Fire occurred when three utility poles fell to the ground during a Santa Ana windstorm.⁹³ The utility admitted that “one of these poles was overloaded in violation of General Order [No.] 95 due to the facilities that were attached to the pole by another utility [and also] that it violated California Public Utilities Code section 451 [] when it failed to take prompt action to prevent the pole overloading.”⁹⁴ The fire burned 3,836 acres and caused

⁹⁰ D. 98-12-075, 1998 Cal. PUC LEXIS 1018, at *60.

⁹¹ SED OB at 73.

⁹² See Carmel OB at 2; see also *infra* pp. 28-30.

⁹³ *Investigation on the Comm’n’s Own Motion into the Operations & Practices of S. Cal. Edison Co., et al. Regarding the Util. Facilities & the Canyon Fire in Malibu of Oct. 2007*, D. 13-09-028, 2013 Cal. PUC LEXIS 514, at *1.

⁹⁴ *Id.*

roughly \$14.5 million in property damage.⁹⁵ Southern California Edison agreed to pay a fine of \$20 million, three telecommunications providers—who were joint owners of the pole—collectively paid \$6.9 million, and a fourth telecommunications provider paid an \$8.5 million fine.⁹⁶ The total fine payable to the state General Fund was \$35.4 million.⁹⁷ SED’s Opening Brief states that the parties settled for \$63.5 million, but that amount includes the value of restitution paid to private parties in addition to the penalties.⁹⁸ And, in all events, SED had sought \$99.2 million in total fines, an amount three times larger than the eventual settlement.⁹⁹

SED cites the Malibu Canyon Fire as an appropriate analogue to this proceeding, but the only similarity between the two is that neither resulted in bodily injury. There are significant differences between the two cases, including the nature and scale of the property damage involved. While the Malibu Canyon Fire resulted in \$14.5 million in property damage in the form of numerous burned buildings and vehicles, the property damage identified in SED’s Opening Brief totals approximately \$423,000¹⁰⁰ and, aside from the Carmel incident, is largely limited to damage to PG&E’s pipelines and the immediate ground coverings. Yet, SED recommends a fine in this OII that is more than three times larger than the Malibu Canyon Fire fine.

Another series of fire-related settlements (the “Guejito and Witch and Rice” fires near San Diego) resulted in total fines of \$14.35 million paid by San Diego Gas & Electric and a telecommunications carrier.¹⁰¹ The Guejito and Witch and Rice Fires burned 197,900 acres; two people died, approximately 40 firefighters were injured, and approximately 1,141 homes,

⁹⁵ *Id.* at *4.

⁹⁶ *Id.* at *10-11, 12-13.

⁹⁷ *Id.* at *47, 62.

⁹⁸ SED OB at 93; D. 13-09-028, 2013 Cal. PUC LEXIS 514, at *47.

⁹⁹ *Id.* at *10.

¹⁰⁰ See SED OB at 73 (listing the amount of property damage that the record reflects is associated with six of the incidents).

¹⁰¹ *Investigation on the Comm’n’s Own Motion into the Operations & Practices of San Diego Gas & Elec. Co. Regarding the Util. Facilities Linked to the Witch & Rice Fires of Oct. 2007*, D. 10-04-047, 2010 Cal. PUC LEXIS 142, at *22-23.

509 outbuildings, and 239 vehicles were destroyed, while 77 homes and 25 outbuildings were damaged.¹⁰² These wildfires had many times the impact of the incidents here, but the fines paid were substantially less than the fine SED recommends.

6. Penalties Imposed for the Carmel Citation, 2011 Missing Leak Surveys, and the Rancho Cordova Incident Suggest a “Reasonably Comparable” Range for a Penalty in This Case.

First, the Commission imposed a \$10.85 million fine in connection with the citation issued to PG&E for the Carmel incident, which alleged two violations for failing to equip its personnel with the tools necessary to stop the flow of gas and failing to make the surrounding area safe despite signs of a possible leak.¹⁰³ That \$10.85 million fine suggests a ceiling on the appropriate penalty for any individual incident in the OII. The severity of the Carmel incident was many times that of any of the other incidents in this case. Notwithstanding PG&E’s acknowledgment of the economic harm, potential harm, and inconvenience caused by each incident, because of the unique facts of Carmel, no other single incident should warrant a fine approaching \$10.85 million.

The proposed fines for the other incidents should be evaluated with reference to their proportionality to the Carmel fine. For example, SED has recommended total fines of \$5.12 million for the Milpitas II incident, which resulted in no injuries and only \$2,000 in property damage.¹⁰⁴ SED’s recommendation is almost half the Carmel fine amount despite the dramatic differences in the incidents. SED proposes a \$5.378 million fine for the Morgan Hill incident, which also involved only \$2,000 in property damage.¹⁰⁵ SED claims the Fresno incident, a dig-in resulting in one service interruption,¹⁰⁶ warrants a \$6.32 million fine.¹⁰⁷ These

¹⁰² *Investigation on the Comm’n’s Own Motion into the Operations & Practices of Cox Commc’ns & San Diego Gas & Elec. Co. Regarding the Util. Facilities Linked to the Guejito Fire of Oct. 2007*, I. 08-11-007, 2008 Cal. PUC LEXIS 445, at *32.

¹⁰³ Resolution ALJ-323, 2015 Cal. PUC LEXIS 757, at *1-2, 6-7.

¹⁰⁴ SED OB at 73, 77, 85-86.

¹⁰⁵ *Id.* at 73, 77, 84-85.

¹⁰⁶ Ex. 1 at 23 tbl.2 (PWA Report).

¹⁰⁷ SED OB at 78, 85-86.

examples, and the further discussion above and in Appendices A and B, support the conclusion that SED's recommended fines are disproportionate to the harm caused by the incidents.

Second, the penalty associated with a set of missing leak surveys (Leak Survey Incident) is also relevant to the Commission's inquiry.¹⁰⁸ In 2011, PG&E self-reported to the Commission its discovery of 16 plat maps containing 13.83 miles of distribution mains and 1,242 services that had not been included in PG&E's leak survey schedule.¹⁰⁹ Upon discovery of this oversight, PG&E notified the Commission and, among other things, immediately leak surveyed all of the affected mains and services.¹¹⁰ The leak surveys identified 23 leaks, the most serious one of which was immediately repaired.¹¹¹ The Commission found that there were 838 violations of 49 C.F.R. §192.723(b)(2).¹¹² The violations were compounded monthly and PG&E was ordered to pay a fine of \$20,000 per violation, for a total of \$16.76 million.¹¹³

The factual circumstances of the Leak Survey Incident are both similar yet also, in some ways, more concerning than the incidents in this OII (with the exception of Carmel). Similar, in that the violations resulted from an inaccurate document, in that case, the incomplete leak survey schedule. The Leak Survey Incident involved the gas distribution system, as is the focus of this OII. Following the missed leak surveys in that case, PG&E discovered 23 gas leaks, which is roughly equivalent to the number of gas leaks caused by the dig-ins and construction work at issue in this case.¹¹⁴ Different, in that the potential harm extended to a much larger geographic area in that case, as PG&E had not timely leak surveyed significant portions of seven East Bay cities.¹¹⁵ The Leak Survey Incident also involved over a thousand gas distribution services and

¹⁰⁸ *See id.* at 92.

¹⁰⁹ Resolution ALJ-277, 2012 Cal. PUC LEXIS 629, at *2.

¹¹⁰ *Id.* at *3.

¹¹¹ *Id.* at *3.

¹¹² *Id.* at *4-6, 10.

¹¹³ *Id.* at *13-14.

¹¹⁴ The 19 incidents described in the PWA Report resulted in 18 unplanned releases of gas. *See* SED OB at 77 (noting that Milpitas I did not result in a release of gas); Ex. 1 at 14 tbl.1, 15-24 tbl.2.

¹¹⁵ Resolution ALJ-277, 2012 Cal. PUC LEXIS 629, at *2 (listing to the Contra Costa County cities of Antioch, Brentwood, Byron, Concord, Danville, Discovery Bay, and Pittsburg).

over 13 miles of distribution mains.¹¹⁶ The incidents in this OII do not come close to implicating that large a portion of PG&E’s gas distribution system.¹¹⁷ Accordingly, the Commission said of the Leak Survey Incident that “PG&E’s offenses were severe. . . . The potential public harm from these violations was great. The violations were significant, with the capacity for serious injury to persons and property[.]”¹¹⁸ Even in the wake of these serious findings, the Commission agreed that the violations should be compounded *monthly, not daily*. The total fine of \$16.76 million was less than one-fifth the SED’s recommended fine in this proceeding even though the facts were no less concerning.

Third, the Rancho Cordova incident involved a leak on a repaired distribution main that resulted in an explosion and fire that killed one person and injured two others.¹¹⁹ PG&E continues to feel remorse for these tragic events. The accident was the result of the improper use of “packing pipe” to repair the pipeline and a failure to perform a required pressure test.¹²⁰ PG&E and SED proposed a joint stipulated settlement of \$26 million payable to the General Fund.¹²¹ The Commission ordered PG&E to pay \$38 million.¹²² The Rancho Cordova incident, again unlike the incidents here, involved loss of life and serious bodily injury. The closest analogue in this OII to Rancho Cordova is the Carmel incident, because it also involved a house explosion. The incidents are notably distinguishable, however, in that Carmel was caused by a unique confluence of events. In addition, nothing about the Rancho Cordova incident could have put PG&E on notice that an unmapped plastic insert might one day contribute to a house explosion (*e.g.*, the Carmel incident). Given the Rancho Cordova incident’s nexus to the gas distribution system (similar to the incidents in this OII) and its extremely tragic consequences

¹¹⁶ *Id.* (noting that 1,242 services and 13.83 miles of mains were involved).

¹¹⁷ There were only 19 mains and services at issue in this proceeding. *See* Ex. 1 at 14 tbl.1, 15-24 tbl.2 (PWA Report) (describing the underlying causes of each incident).

¹¹⁸ Resolution ALJ-277, 2012 Cal. PUC LEXIS 629, at *14.

¹¹⁹ D. 11-11-001, 2011 Cal. PUC LEXIS 509, at *1, 8-9.

¹²⁰ *Id.* at *24-28, 28 n.12.

¹²¹ *Id.* at *45.

¹²² *Id.* at *62.

(far in excess of the incidents in this OII), it is reasonable to view the \$38 million fine in the Rancho Cordova incident as the outer limit of the range of fines that would be appropriate in this case.

In sum, there is no Commission precedent for a nine-figure fine for incidents resulting in significantly fewer consequences. However, the \$10.85 million Carmel citation, the \$16.75 million fine for the Leak Survey Incident, and the \$38 million Rancho Cordova fine all suggest that a penalty, if any, ranging from \$5 million to \$38 million could be appropriate in this case—if the Commission decided that violations had actually occurred. The \$33.636 million maximum penalty described above by PG&E is near the high end of this range and is more appropriate than \$111.926 million in light of the balancing of the traditional factors considered by the Commission.

B. Spoliation Does Not Apply, and No Adverse Inferences Should Be Drawn to Maximize the Penalty Against PG&E.

SED argues that the Commission should apply spoliation to draw adverse inferences against PG&E in making its penalty determination, basing its argument on the Commission’s ruling in D. 15-04-021.¹²³ PG&E disagrees, because SED has not shown that PG&E destroyed or failed to preserve evidence in reasonably foreseeable litigation, and the facts supporting the Commission’s finding in the transmission recordkeeping OII (D. 15-04-021) are critically distinguishable from the ones at issue here.¹²⁴

Spoliation is “the destruction or significant alteration of evidence, or the failure to preserve property for another’s use as evidence in pending or reasonably foreseeable litigation.”¹²⁵ In D. 15-04-021, the Commission found that PG&E’s inability to produce testing and maintenance records for its transmission pipelines prompted application of spoliation

¹²³ *Order Instituting Investigation on the Comm’n’s Own Motion into the Operations & Practices of Pac. Gas & Elec. Co. with Respect to Facilities Records for its Nat. Gas Transmission Sys. Pipelines*, D. 15-04-021, 2015 Cal. PUC LEXIS 228, at *50-51.

¹²⁴ *See Reeves v. MV Transp., Inc.*, 186 Cal. App. 4th 666, 681 (2010).

¹²⁵ *Id.* at 681 (quoting *Byrnie v. Town of Cromwell Bd. of Educ.*, 243 F.3d 93, 107 (2d Cir. 2001)).

because: (1) PG&E had a statutory obligation to preserve the records; (2) the records ensured PG&E was operating safely and served to protect PG&E from future litigation should a safety related injury occur; and (3) PG&E should have reasonably expected litigation resulting from the safety of its operations due to the inherently dangerous nature of natural gas.¹²⁶

No analogous finding is warranted in this matter. PG&E does not dispute that it had an obligation to preserve records at issue. But it is inaccurate to state that PG&E's distribution records guarantee the system's safe operation, or that regulations require or expect that records will be perfect. The facts that the regulations do not require perfection and that every operator has imperfections in its records, well established in this proceeding, demonstrates that although accurate records play an important role in the safe operation of PG&E's distribution system, they are not an ultimate guarantor of safety.¹²⁷ PG&E's approach to safety involves layers of security against the risk of an incident, with each layer consisting of multiple mitigations, and each layer further mitigating risk for the layer behind it.¹²⁸ Although PG&E fully acknowledges the importance of accurate records to the safety of its distribution system, it is inaccurate to characterize such records as guaranteeing the system's safe operation.¹²⁹

Furthermore, the Commission's finding in D. 15-04-021 that every record related to the testing or maintenance of PG&E's transmission system was evidence in reasonably foreseeable litigation due to the inherent danger of natural gas appears to be limited to the unique circumstances of the San Bruno proceedings. California courts apply spoliation as a discovery sanction against parties who "misuse . . . the discovery process"¹³⁰ by destroying or failing to

¹²⁶ D. 15-04-021, 2015 Cal. PUC LEXIS 228, at *50-51.

¹²⁷ 1/19/16 Tr. at 44:9-10 (SED/PWA) (PWA stating that it "[does not] know a pipeline operator who has perfect maps and records"); Ex. 16 at 5 (SED's Consolidated Response to Dec. 22, 2015 Meet and Confer Demands & Dec. 1, 2015 Data Requests) ("PWA consultants are not aware of utility companies whose maps and records contain no inaccuracies.").

¹²⁸ Ex. 4 at 1-17:12 to 1-18:9 (PG&E Reply Testimony, Howe) (describing PG&E's Gas Safety Excellence framework).

¹²⁹ To the extent SED focuses on PG&E's loss of certain of the De Anza Division A Forms, its argument for spoliation is fatally flawed due to the total disconnect between those lost records and the safety of PG&E's distribution system. See PG&E OB at 51-52.

¹³⁰ *Cedars-Sinai Med. Ctr. v. Super. Ct.*, 18 Cal. 4th 1, 12 (1998).

preserve evidence in “pending or future litigation.”¹³¹ At the crux of the case law is, therefore, something missing from the instant matter: the connection of the allegedly spoliated documents to “pending or future” litigation.¹³² In fact, any destruction or loss of documents relevant to this case would squarely implicate the concern voiced by California’s Supreme Court that spoliation is intended for litigation-related documents and should not be used to punish parties for documents “discarded or misplaced in the ordinary course of events.”¹³³ Because there is no evidence that PG&E should have foreseen litigation concerning its distribution system records, and because the Commission’s outlier opinion in D. 15-04-021 is the only support for the contention that every pipeline record is evidence in reasonably foreseeable litigation, spoliation should not apply.

Finally, PG&E respectfully asks the Commission to consider the broader implications of a rule that would find a pipeline operator to have destroyed or failed to preserve evidence and consequently would impose the ultimate evidentiary sanction every time that the operator detected a missing record.¹³⁴ That result would do nothing to serve the policy underpinning the spoliation doctrine, which is to deter parties from destroying evidence in anticipation of

¹³¹ *Williams v. Russ*, 167 Cal. App. 4th 1215, 1223-24 (2008) (where plaintiff in a legal malpractice case requested his client file from the defendant’s attorney, copied certain parts of it and then allowed the remainder to be destroyed by failing to pay fees on the storage unit housing the file, the court affirmed the trial court’s sanction of dismissal).

¹³² *Id.* at 1223; see *New Albertsons, Inc. v. Super. Ct.*, 168 Cal. App. 4th 1403, 1431 (2008) (citing *Cedars-Sinai Med. Ctr.*, 18 Cal. 4th at 15 (refusing to apply spoliation as discovery sanction where defendant supermarket had allowed relevant surveillance videotapes to be recorded over, because defendant did not disobey a discovery order and because of the concern that “the evidence was destroyed innocently in the ordinary course of business”); *TSMC, N. Am. v. SMIC Ams.*, 2009 Cal. Super. LEXIS 627, at *11-12 (Sept. 10, 2009) (stating that “[n]o California case has identified an obligation to retain documents in anticipation of litigation more than a year before a lawsuit was filed,” although nevertheless applying spoliation due to the “unusual fact[]” that the party arguing against spoliation had itself identified the pertinent documents as having been prepared in anticipation of litigation).

¹³³ *Cedars-Sinai Med. Ctr.*, 18 Cal. 4th at 15.

¹³⁴ See *Reeves*, 186 Cal. App. 4th at 681.

litigation.¹³⁵ In fact, PG&E's incentives are *exactly the opposite*; it has no reason to destroy the very records that would be exculpatory if they were found. Because none of the policy justifications underlying spoliation are implicated here, PG&E asks the Commission to find the doctrine inapplicable.¹³⁶

C. SED's Methodology for Calculating Penalties Is Inaccurate.

PG&E submits that SED's methodologies for counting violations and calculating penalties contain numerous errors. As a consequence, SED overstates both the number of violations and the resulting penalties. These errors in SED's calculations are fully explained in Appendix A hereto.

D. Carmel's Recommended Fines Should Be Entirely Disregarded.

Carmel says that it defers to SED and the Commission to identify the appropriate penalty in this proceeding.¹³⁷ Carmel nevertheless would "support" a penalty of \$651 million, which it calculates solely based on allegations involving the six incidents that prompted the OII.¹³⁸ That is over \$100 million per incident, some of which, such as those in Milpitas, Castro Valley, and Morgan Hill, caused only the temporary interruption of service for a handful of customers.¹³⁹ Carmel's proposed penalty is more than five times the number proposed by SED for all the

¹³⁵ See Cal. Evid. Code § 413 ("In determining what inferences to draw from the evidence or facts in the case against a party, the trier of fact may consider, among other things, the party's . . . willful suppression of evidence relating thereto . . ."); *R.S. Creative, Inc. v. Creative Cotton, Ltd.*, 75 Cal. App. 4th 486, 495, 497 (1999) (describing spoliation as a misuse of discovery for which "[a] traditional remedy . . . is discovery sanctions").

¹³⁶ Additionally, the Commission's finding in D. 15-04-021 that PG&E's negligent loss of records satisfied the requirement of a culpable state of mind should not be applied here. See D. 15-04-021, 2015 Cal. PUC LEXIS 228, at *53-54. PG&E's loss of certain records "result[ed] [in] injury to the [San Bruno] investigation," whereas here, SED has failed to show any such harm to its ability to prove the case it presented in the PWA Report from the lost De Anza A Forms. Indeed, SED should be precluded from making *any* claims in regard to the missing De Anza A Forms at this late stage in the proceeding. See *infra* pp. 30-40.

¹³⁷ Carmel OB at 17.

¹³⁸ *Id.* at 2, Ex. A.

¹³⁹ Ex. 6, Attachment W040 at W040.002-.005 (PG&E's Final Statement of Facts).

issues in this case, which includes 13 additional incidents, the missing De Anza records, and allegations regarding PG&E's policy for setting MAOP since the 1970s.

To arrive at this grossly inflated number, Carmel has misrepresented the record and the law in several significant respects. For example, Carmel has assigned a penalty of "\$2 million / flat" to several alleged violations of section 192.605 without providing any explanation or legal basis.¹⁴⁰ PG&E understands this figure to be based on a federal code provision that permits the U.S. Secretary of Transportation to impose a maximum \$2 million penalty for "a related series of violations" of the pipeline safety regulations.¹⁴¹ As is plain from the language of that regulation, and as the Commission has previously recognized, it is inapplicable in CPUC proceedings.¹⁴²

Carmel also argues that, according to California Public Utilities Code section 2104.5, the Commission should find that PG&E's failure to admit to these alleged violations and settle SED's claims weighs in favor of imposing the maximum possible penalty.¹⁴³ Section 2104.5 merely gives the Commission the power to settle a claim; it says nothing about punishing a respondent for defending itself against alleged violations.¹⁴⁴ Carmel's allegations regarding the parties' settlement discussions are not only irrelevant, but they also violate CPUC Rule of

¹⁴⁰ Carmel OB at Ex. A.

¹⁴¹ 49 U.S.C. § 60122(a)(1).

¹⁴² *Id.* ("A person that *the Secretary of Transportation* decides, after written notice and an opportunity for a hearing, has violated . . . a regulation prescribed or order issued under this chapter . . .") (emphasis added); *Order Instituting Investigation on the Comm'n's Own Motion into the Operations & Practices of Pac. Gas & Elec. Co. to Determine Violations of Pub. Util. Code Section 451, Gen. Order 112, & Other Applicable Standards, Laws, Rules & Regulations in Connection with the San Bruno Explosion & Fire on Sept. 9, 2010*, D. 15-04-024, 2015 Cal. PUC LEXIS 230, at *309 (finding 49 U.S.C. § 60122(a)(1) inapplicable to the Commission's damages calculation Pub. Util. Code section 2107 and 2108).

¹⁴³ Carmel OB at 17-18.

¹⁴⁴ Cal. Pub. Util. Code § 2104.5.

Practice and Procedure 12.6, which forbids any disclosure of confidential settlement discussions in proceedings before the Commission.¹⁴⁵

Many of Carmel's other misapplications of the law are explained elsewhere in PG&E's submission. For example, Carmel's claim that the failure to follow a procedure for updating a record constitutes a "continuing violation" is contrary to Commission precedent, which holds that "it is the *violation itself* that must be ongoing, not its *result*."¹⁴⁶ And there is not even an allegation, much less any evidence, that would support Carmel's proposed penalties for violations of the code section requiring PG&E to "prepare" certain procedures.¹⁴⁷ There is likewise no basis for Carmel's characterization of all six of the incidents identified in the OII as "severe" events for which PG&E ignored "many warning signs."¹⁴⁸

In these and many other ways, Carmel's \$651 million "calculation" is replete with unexplained assumptions and misapplications of the law. Given that Carmel's damages calculation lacks any basis and that Carmel has deferred to SED to arrive at the proper number, PG&E respectfully submits that the penalty should be based on the examination of SED's proposed penalty alone, and in any event not exceed \$33.636 million.

IV. VIOLATIONS

A. The Commission Should Not Consider the New Violations That SED Alleged for the First Time After Filing Its Supplemental Testimony.

In its Opening Brief, SED describes alleged violations that were not identified in the OII or in SED's Supplemental Testimony (the PWA Report).¹⁴⁹ Ordering penalties based on these

¹⁴⁵ Carmel OB at 17-18; Cal. Pub. Utils. Comm'n, Rules of Practice & Procedure, Rule 12.6 ("No discussion, admission, concession or offer to settle, whether oral or written, made during any negotiation on a settlement shall be subject to discovery, or admissible in any evidentiary hearing against any participant who objects to its admission. Participating parties and their representatives shall hold such discussions, admissions, concessions, and offers to settle confidential and shall not disclose them outside the negotiations without the consent of the parties participating in the negotiations.").

¹⁴⁶ See *infra* Appendix A at pp. A-2.

¹⁴⁷ See PG&E OB at 43-44 (discussing alleged violations of section 192.605(a)); *supra* pp. 42-45.

¹⁴⁸ Carmel OB at 18.

¹⁴⁹ SED OB at 79-85, 87.

late-asserted violations would not comport with due process, which requires that PG&E be given notice of the specific charges against it before the state may deprive it of its property.¹⁵⁰ That “basic ingredient” of fair procedure gives meaning to the guarantee of a hearing because without such notice, the respondent is left “without an opportunity to make [its] defense.”¹⁵¹ California courts have applied this fundamental tenet to condemn the late assertion of new charges in administrative proceedings.¹⁵²

In *In re Ruffalo*, 390 U.S. 544 (1968), the Supreme Court found a due process violation in an administrative hearing involving disbarment proceedings where the attorney under investigation was not given notice that certain facts would form the basis for disciplinary actions “until *after* . . . [he] had testified at length on all the material facts pertaining to this phase of the case.”¹⁵³ The Court held that the charges against the petitioner had to be “known before the proceedings commence” and could not be “amended on the basis of testimony of the accused” without running afoul of the petitioner’s due process rights.¹⁵⁴

PG&E’s only opportunity to present facts to respond to SED’s allegations was in its Reply Testimony, at which time PG&E could not have rebutted allegations of which it had no notice. Here, SED not only alleged a number of violations for the first time after PG&E filed its direct testimony, but used PG&E’s testimony at the hearing as the basis for violations alleged for

¹⁵⁰ *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972).

¹⁵¹ *Pinsker v. Pac. Coast Soc’y of Orthodontists*, 12 Cal. 3d 541, 555 (1974); *see also Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)); *Rosenblit v. Super. Ct.*, 231 Cal. App. 3d 1434, 1447-48 (1991); *Hackethal v. Cal. Med. Ass’n*, 138 Cal. App. 3d 435, 444 (1982).

¹⁵² *See Rosenblit*, 231 Cal. App. 3d at 1447-48; *Hackethal*, 138 Cal. App. 3d at 444.

¹⁵³ *In re Ruffalo*, 390 U.S. at 550-51.

¹⁵⁴ *Id.* at 551-52.

the first time in SED's Opening Brief.¹⁵⁵ Under *Ruffalo* and the other cited precedents, allowing those allegations to proceed to decision would constitute a due process violation.¹⁵⁶

PG&E acknowledges that in D. 15-04-023, the San Bruno proceedings,¹⁵⁷ the Commission rejected PG&E's argument that SED had unfairly asserted new violations and legal theories for the first time in its Opening Brief.¹⁵⁸ The Commission found *Rosenblit* inapplicable because "the alleged acts and omissions relied upon" had been described in the San Bruno OII and SED initial report.¹⁵⁹ The Commission's ruling does not foreclose the argument in this case. Unlike in D. 15-04-023, SED has not merely provided "greater specificity" with regard to previously identified regulatory violations; SED has alleged entirely new violations, many based on facts that were not referenced at all in the OII or the PWA Report.¹⁶⁰ As was true in *Rosenblit*, the infirmity of this process lies in SED's pursuit of belated allegations based on an undeveloped factual record.¹⁶¹

PG&E's Reply Testimony and hearing preparation concentrated on responding to the allegations in PWA's report in order to provide the Commission with a useful record that focused on the issues in dispute. The process and structure provided for by the Commission's rules and the Scoping Memo in this proceeding would be illusory if SED could pursue violations

¹⁵⁵ See SED OB at 50-51 (alleging that PG&E committed a "substantial recordkeeping failure" with regard to the missing De Anza A Forms based largely on PG&E's testimony from the hearing).

¹⁵⁶ See *In re Ruffalo*, 390 U.S. at 550-52. Similarly, in *Rosenblit*, the court found a due process violation where a physician facing disciplinary action was denied the opportunity to know "the specific acts or omissions" underlying the charged offenses. 231 Cal. App. 3d at 1434, 1446.

¹⁵⁷ *Order Instituting Investigation on the Comm'n's Own Motion into the Operations & Practices of Pac. Gas & Elec. Co. to Determine Violations of Pub. Utils. Code Section 451, Gen. Order 112, & Other Applicable Standards, Laws, Rules & Regulations in Connection with the San Bruno Explosion & Fire on Sept. 9, 2010*, D. 15-04-023, 2015 Cal. PUC LEXIS 229, at *89-90. Although PG&E does not agree that the Commission's ruling in D. 15-04-023 went far enough to protect PG&E's due process rights, the facts here are different, making the analysis in D. 15-04-023 inapplicable.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at *88.

¹⁶⁰ *Id.* at *86-87.

¹⁶¹ See *Rosenblit*, 231 Cal. App. 3d at 1445-46.

based on allegations that did not receive a full and fair hearing. For all of these reasons, the violations that were not referenced in the OII or in the PWA Report should be disregarded.

B. De Anza Division Leak Repair Records

SED makes the wholly unsubstantiated assertion that the missing De Anza Division leak repair records, which are referred to internally at PG&E as “A Forms,” were somehow causally related to the Mountain View incident.¹⁶² *There is no evidence in the record even hinting at such a connection*, and based on the evidence in the record, it is virtually certain that no such connection exists.

1. There Is No Evidence That the Missing A Forms Contributed to the Mountain View Incident or Created a Meaningful Risk for PG&E’s System.

Without basis, SED has assumed that, “if all of the [leak repair] records were accessible, then the Mountain View Incident, which was due to missing records, would not have occurred.”¹⁶³ SED’s assumption is inaccurate, and it would be inappropriate to impose any penalty based on this assumption when it is contradicted by all of the relevant evidence.

First, the information PG&E needs to operate its system safely has been routinely transferred from paper A Forms into its electronic leak repair records database since 1970, where it is still available today.¹⁶⁴ Thus, the fact that the paper records are missing does not interfere with PG&E’s ability to safely administer its policies as required by 49 C.F.R. § 192.603(b).¹⁶⁵

Second, there is no evidence that the plastic insert accidentally breached in Mountain View was installed as part of a leak repair, as opposed to having been installed for some other reason.¹⁶⁶

Accordingly, there is no reason to believe that a leak repair record related to that installation was

¹⁶² SED OB at 50.

¹⁶³ SED OB at 50.

¹⁶⁴ 1/21/16 at 437:23 to 439:17 (PG&E/Trevino); *id.* at 485:1-25 (PG&E/Singh); Ex. 4 at 6-6:28-32 (PG&E Reply Testimony, Thierry); Ex. 33 (PG&E’s Supplemental Response No. 1 to SED Data Request No. 25).

¹⁶⁵ PG&E OB at 47 n.292, 52.

¹⁶⁶ 1/21/16 Tr. at 483:4 to 484:26 (PG&E/Singh).

ever created.¹⁶⁷ **Third**, even if the Mountain View plastic insert had been installed as part of a leak repair, that job would have generated a Gas Service Record (GSR) in addition to an A Form, and PG&E mappers typically rely on GSRs to update maps.¹⁶⁸ There is accordingly no basis for concluding that the missing record would have caused the mapping inaccuracy that contributed to the Mountain View incident. **Finally**, even if there had been a paper A Form reflecting work on the pipe in Mountain View, SED has identified no reason why a PG&E crew would have reviewed it in preparation for its work. PG&E crews typically look to job estimates and plat maps, not paper leak repair records, to identify assets in the field.¹⁶⁹ PG&E personnel who need to review leak repair information would look first to the electronic database where such information dating back to 1970 is stored, not the paper archive.¹⁷⁰ Paper records would only be used as backup if a discrepancy is discovered or some question arises.¹⁷¹ For all these reasons, SED's assumption that the missing De Anza leak repair records somehow contributed to the incident in Mountain View is not correct.

2. SED Did Not Allege Violations Based on the Missing De Anza Division Records Until Its Opening Brief, Long After PG&E Had Submitted Its Evidence.

SED asserts for the first time in its Opening Brief that the missing De Anza Division paper A Forms give rise to multiple violations of the regulations that together amount to over \$19 million in proposed penalties. These include violations for misplacing those paper records, allegedly failing to timely investigate the issue, and allegedly failing to disclose the De Anza records facts before producing all the relevant information in discovery in this proceeding.¹⁷²

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* at 413:1-5, 438:22 to 439:10 (PG&E/Trevino); *id.* at 483:17 to 484:2 (PG&E/Singh).

¹⁶⁹ Ex. 4 at 3-13:13 to 3-15:20 (PG&E Reply Testimony, Higgins); Ex. 6, Attachment W040 at W040.009 (PG&E's Final Statement of Facts).

¹⁷⁰ 1/21/16 Tr. at 437:23 to 439:17 (PG&E/Trevino); *id.* at 468:16 to 469:14 (PG&E/Singh); *id.* at 485:1-25 (PG&E/Singh); Ex. 4 at 6-6:29-32 (PG&E Reply Testimony, Thierry); Ex. 33 (PG&E's Supplemental Response No. 1 to SED Data Request No. 25).

¹⁷¹ 1/21/16 Tr. at 488:11 to 489:1 (PG&E/Singh); Ex. 4 at 6-7:30-32 (PG&E Reply Testimony, Thierry).

¹⁷² SED OB at 80-81, 83-84.

These penalties are unwarranted for a number of reasons, most fundamentally because SED acknowledged knowing about the missing De Anza records, but gave no indication that it would assert any violations based on these facts until after PG&E filed its testimony, depriving PG&E of the opportunity to submit evidence addressing the issue.

SED specified the alleged “violations identified during the [PWA] investigation” in a section of the PWA Report titled “Evidence of Non-Compliance.”¹⁷³ The De Anza leak repair records were not mentioned among the purported violations.¹⁷⁴ Indeed, PWA did not discuss the De Anza records anywhere in the Report, except to briefly note in an appendix that PG&E had disclosed the information about the De Anza records issue in a data request response months earlier.¹⁷⁵

PG&E’s only opportunity to present affirmative evidence responding to SED’s allegations consisted of its Reply Testimony, served after SED’s Supplemental Testimony and before its Rebuttal Testimony.¹⁷⁶ In formulating its Reply Testimony, PG&E understandably responded to the violations alleged in the PWA Report, and therefore did not submit any evidence addressing the De Anza records. Indeed, at that point there was nothing to which PG&E could have responded. Despite this background, SED criticizes PG&E for its “paltry showing” on this subject.¹⁷⁷ But the lack of evidence submitted by PG&E is directly attributable to SED’s failure to provide timely notice of the alleged violations which it now vigorously pursues.

Had PG&E received notice of these allegations, it could have presented a complete factual record regarding the nature of the A Form records and the purposes for which they were created and used. Given the opportunity, PG&E would have explained that the purpose of the

¹⁷³ Ex. 1 at 36-54 (PWA Report).

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* at 90 (PWA Report). SED discussed the fact that these records were missing in the PWA Rebuttal Report but still did not specify any associated violations, and in any event, by that point PG&E had no further opportunity to introduce new responsive evidence. Ex. 2 at 15, 32, 49 (PWA Rebuttal).

¹⁷⁶ Scoping Memo at 4.

¹⁷⁷ SED OB at 51.

original paper A Forms was to gather leak information for entry into PG&E's leak tracking system. This information then would have been used to verify that leaks were found and repaired in a timely manner, make required reports to regulators, document inspections to exposed facilities, and make pipe replacement decisions about when pipe should be replaced. PG&E also would have provided a full explanation about its procedures for entering and maintaining information from the A Forms in its electronic leak repair records database, and a complete description of the information from the 1979 to 1991 De Anza A Forms that is preserved to this day in that electronic database.

PG&E also could have comprehensively responded to and rebutted SED's theory that these missing records somehow contributed to the Mountain View incident.¹⁷⁸ For example, PG&E could have explained specifically why the PG&E construction crew working at the Mountain View location would not have used a paper A Form from the De Anza Division records in connection with the work performed at the time of the incident. PG&E also could have developed and presented evidence showing that the missing De Anza A Forms were unrelated to the Mountain View mapping error because the De Anza records were almost certainly misplaced *after* the leak repair work reflected in those records had been entered onto PG&E's maps, in addition to the fact, noted above, that mappers typically do not use A Forms to update maps.¹⁷⁹

Finally, PG&E also was deprived of the opportunity to respond fully to SED's penalty recommendations due to the lack of notice of the De Anza violations. SED proposes a \$1.29 million penalty for PG&E's alleged failure to timely investigate this issue.¹⁸⁰ The only evidence in the record going to this proposed violation is a single note in the Mountain View Corrective Action Program (CAP) report based on multiple levels of hearsay, which was raised

¹⁷⁸ *Id.* at 50. SED merely asserts, without any evidence, that "if all of the [leak repair] records were accessible, then the Mountain View Incident, which was due to missing records, would not have occurred." *Id.*

¹⁷⁹ *See supra* pp. 33-34.

¹⁸⁰ SED OB at 81.

for the first time on the afternoon of the last day of the hearing.¹⁸¹ PG&E had no opportunity to demonstrate when the missing De Anza records issue first came to light, or how it was investigated and resolved prior to and independent of the search prompted by the Mountain View incident.¹⁸²

With very limited exceptions, PG&E was unable to introduce new testimony or exhibits into the record by the time of the hearing since the time for making its affirmative case had passed. Although some of this information came in piecemeal through the responses PG&E's witnesses were permitted to give to cross-examination questions, largely over SED's objections,¹⁸³ it was far from the comprehensive showing that PG&E would have included in its Reply Testimony had it been on notice of these alleged violations.¹⁸⁴

3. PG&E Timely Disclosed All Information Relevant to the De Anza Division Records to SED.

SED claims that it ultimately had to "pry" the information about the missing De Anza records from PG&E¹⁸⁵ and proposes that PG&E should be penalized \$8.6 million for not

¹⁸¹ *Id.*; 1/21/19 Tr. at 473:10-28 (PG&E/Singh); Ex. 6, Attachment W049 at W049.002 (Gas CAP Notification No. 7001870, INC Charleston Street).

¹⁸² SED also asserts that the missing De Anza A Forms constitute a violation of PG&E's obligation "to have controls in place to ensure maintenance and update of its operating maps and data," and recommends a \$9.496 million penalty for that alleged violation. SED OB at 79-80. Not only did SED provide no notice of potential violations related to these missing records, it provided no notice of any violation in this proceeding related to an alleged lack of "controls," as PG&E explains below. *See infra* pp. 40-43.

¹⁸³ 1/21/16 Tr. at 468:23 to 469:23, 481:7-12, 486:26 to 487:26, 495:11 to 496:24 (PG&E/Singh).

¹⁸⁴ If the Commission determines that the alleged violations relating to the De Anza Division leak repair records should be considered and that the evidence included in the record is insufficient to respond to these allegations, PG&E respectfully asks for leave to supplement the record to present additional evidence that it deems necessary to rebut to SED's untimely allegations.

¹⁸⁵ SED OB at 76.

disclosing this information earlier.¹⁸⁶ The truth is that PG&E produced this information as soon as it became relevant to SED’s investigation. PG&E produced the CAP item and related documents pertaining to the missing De Anza Division A Forms in June 2015, in response to SED’s request for “every document in [PG&E’s] possession that references PG&E’s gas distribution record-keeping problems.”¹⁸⁷ In September 2015, in response to a further SED data request asking for a “listing of currently known missing document types,” PG&E described the 1979-1991 De Anza leak repair records and cross-referenced the previously produced CAP item by Bates number.¹⁸⁸ In response to SED’s question asking how PG&E “proposes to obtain the necessary information,” PG&E explained that it already has the necessary information, as it “was entered into PG&E’s predecessor leak data repair system and remains available today.”¹⁸⁹ All of this information was provided in advance of SED’s Supplemental Testimony.¹⁹⁰

SED argues that PG&E had an obligation to disclose that these records were missing at several earlier points but failed to do so. SED’s arguments rest entirely on its assumption that the missing records caused the Mountain View incident and that the information from those paper records had not already been entered into the electronic system, assumptions that, as

¹⁸⁶ *Id.* at 45-50, 83-84. SED has not identified any reporting obligation that would have required the disclosure of the missing De Anza records. PG&E is required to report certain events to the Commission, including a release of gas that leads to injury or property damage or events that attract public attention or media coverage. Ex. 9, Attachment E011 at E011.010 (Cal. Pub. Utils. Comm’n, General Order No. 112-E §122.2(a) (Aug. 21, 2008)); *see also* Ex. 1 at 12 n.30 (PWA Report). PG&E had no obligation to report these missing records pursuant to ALJ-274 either. The fact that the original paper A Forms are missing does not constitute a violation of the regulations because all the information PG&E needs to operate its system safely is available in its leak repair database. PG&E OB at 43-48; 1/21/16 Tr. at 437:23 to 439:17 (PG&E/Trevino); *id.* at 485:1-25 (PG&E/Singh); Ex. 4 at 6-6:28-32 (PG&E Reply Testimony, Thierry); Ex. 33 (PG&E’s Supplemental Response No. 1 to SED Data Request No. 25).

¹⁸⁷ SED OB at 48; Ex. 1 at 86 atch. B (PWA Report); Ex. 33 (PG&E’s Supplemental Response No. 1 to SED Data Request No. 25).

¹⁸⁸ Ex. 33 at 1 (PG&E’s Supplemental Response No. 1 to SED Data Request No. 25).

¹⁸⁹ *Id.* SED implies that there is something suspicious about the fact that the “PG&E Witness” field on this data request response is blank. SED OB at 48 (“The PG&E witness field is blank on Exhibit 33.”); *id.* at 51 (arguing that “an unsigned data request response” is “not credible” and “should not be given any weight”). This field was left blank in all but three of PG&E’s over 120 data request responses to SED in this proceeding. There is no requirement to identify a sponsoring witness in CPUC’s rules or guidelines.

¹⁹⁰ Ex. 1 at 86, 90 atch. B (PWA Report).

shown above, are incorrect. Once that purported connection is set aside, it becomes clear that information relating to the De Anza Division A Forms is not relevant to any of the previous communications or filings to which SED points. This is clear from a review of the purpose and content of each such previous statement by PG&E.

Mr. Singh's April 4, 2014 letter to SED regarding the Mountain View incident:¹⁹¹

As explained in Mr. Singh's testimony and below,¹⁹² the purpose of the letter was to explain the preventive actions PG&E was taking in the wake of the Carmel explosion to minimize the risk of another incident involving an unmapped plastic insert.¹⁹³ Because PG&E had—and has—no reason to believe the missing A Forms contributed to the Carmel incident, it had no reason to mention those records in this letter. SED nevertheless suggests that PG&E may have agreed to a regulatory violation in that letter in order to avoid a dispute with SED that could flush out the disclosure of the missing De Anza records.¹⁹⁴ That is simply not true, is inconsistent with PG&E's behavior in addressing the Carmel incident, and is unsupported by the record in this proceeding.

PG&E's December 24, 2014 Initial Report: SED claims that PG&E had an obligation to disclose the missing De Anza records in its Initial Report filed in response to the OII in this proceeding.¹⁹⁵ The OII instructed PG&E to identify in its Initial Report any factual contentions that PG&E believed were incorrect in SED's Incident Investigation Reports for the six incidents that prompted the OII.¹⁹⁶ SED has not even attempted to identify a fact in any of the SED

¹⁹¹ SED OB at 42-47; Ex. 36 (4/4/2014 Letter from S. Singh to M. Robertson).

¹⁹² See 1/21/16 Tr. at 466:8 to 467:6 (PG&E/Singh); *infra* pp. 61-63.

¹⁹³ Ex. 36 at 1-2 (4/4/2014 Letter from S. Singh to M. Robertson).

¹⁹⁴ SED OB at 46.

¹⁹⁵ *Id.* at 48.

¹⁹⁶ OII at 9.

Incident Investigation Reports that would have called for PG&E to address the missing A Forms, and there is none.¹⁹⁷

PG&E’s May 5, 2015 Statement of Facts: SED next claims that PG&E should have identified the missing De Anza records in the Statement of Facts PG&E filed on May 5, 2015.¹⁹⁸ PG&E filed the Statement of Facts specifically in response to a direction from the Administrative Law Judge to identify the undisputed factual contentions in the SED Incident Investigation Reports.¹⁹⁹ The missing De Anza records were not included in, or relevant to, the factual contentions in the SED Incident Investigation Reports.

SED’s allegation that PG&E intentionally suppressed information relating to the missing De Anza Division A Forms is based on an artificially constructed chain of causation between those records and the Mountain View incident that has no basis. In addition, as explained above, the information contained on the forms is not actually missing. SED’s allegation should be disregarded.

C. Other Newly Alleged Violations

1. In Its Opening Brief, SED Alleged Violations for Failure to Have Sufficient “Controls” Based on “Systemwide Recordkeeping Failures” Despite Having Previously Stated That PG&E’s Procedures Were Not at Issue.

a. PG&E Had No Notice of These Alleged Violations Prior to SED’s Opening Brief.

SED argues for the first time in its Opening Brief that PG&E violated 49 C.F.R. §§ 192.603(b), 192.605(a), 192.13(c), and Cal. Pub. Util. Code § 451 by failing to have “controls” in place to ensure that its maps and records are updated,²⁰⁰ pointing for support to

¹⁹⁷ SED OB at 47-48. SED also criticizes PG&E for failing to include in its Initial Report the names of the individuals with knowledge of the search for the missing records. *Id.* at 48. This information would have been equally nonresponsive to the OII’s instructions to correct the factual contentions in the SED Incident Investigation Reports.

¹⁹⁸ *Id.* at 48.

¹⁹⁹ Ex. 6, Attachment W040 (PG&E’s Final Statement of Facts); *see also* 3/9/15 Pre-Hearing Conference Tr. at 64:27 to 65:8.

²⁰⁰ SED OB at 79-80. This is also styled as a recommended violation for “Systemwide Failure.” *Id.*

isolated instances of records imperfections.²⁰¹ To begin with, none of the regulations cited by SED contains requirements regarding “controls.”²⁰² Section 192.603(b) relates to the maintenance and retention of records, and sections 192.605(a) and 192.13(c) speak to an operator’s procedures—that is, whether the operator has appropriate procedures, and follows them.²⁰³

Rather, these allegations appear to be directed at PG&E’s *procedures* for updating its maps and records. However, prior to filing its Opening Brief, SED had specifically disclaimed any challenge to PG&E’s procedures: PWA specifically stated in its Report, its Rebuttal, and at the hearing that it was *not* challenging PG&E’s procedures.²⁰⁴ As the Administrative Law Judge confirmed after hearing PWA’s testimony, “it’s important to remember they’re [SED] not alleging that the [Operations & Maintenance (O&M)] manual doesn’t exist and that’s a violation. They’re just alleging the [section 192.605] violations are [for] failure to follow the regulation that you received.”²⁰⁵

If SED’s allegations are meant to refer to the adequacy of PG&E’s procedures for updating maps and records, as seems to be the case, this is a new argument that cannot be raised for the first time at this late stage, when PG&E has had no opportunity to respond by showing that its procedures comply with the regulations.²⁰⁶ Because PG&E relied on SED’s representation that its procedures were not at issue,²⁰⁷ it did not introduce evidence specifically to

²⁰¹ See *infra* pp. 43-47.

²⁰² See 49 C.F.R. §§ 192.605(a), 192.13(c).

²⁰³ *Id.*; PG&E OB at 43-45.

²⁰⁴ See, e.g., Ex. 1 at 1 (PWA Report) (stating “[v]iolations related to recordkeeping were not the result of defective procedures”); *id.* at 37:27 to 41:5, 42-47 tbl.4 (PWA Report) (solely citing section 192.605(a) for failure to *follow* internal procedures); Ex. 2 at 9 (PWA Rebuttal) (stating that “[t]he basis for PWA’s contention that PG&E has violated the regulations cited in the initial PWA testimony is the observation that PG&E maps and records contain errors, *that these errors provide evidence that PG&E’s policies and procedures have not been followed*, and that these errors have contributed to incidents”) (emphasis added).

²⁰⁵ 1/19/16 Tr. at 156:11 to 157:1 (SED/PWA).

²⁰⁶ See *supra* pp. 30-33 (discussing due process implications).

²⁰⁷ *Id.*

establish that its controls for updating maps and records comply with the applicable regulatory requirements. However, PG&E provided PWA and SED with many of its standards and procedures for creating and updating maps and other records.²⁰⁸ PG&E also presented SED with evidence of the quality control measures that it has implemented to reduce the risk that imperfections will be introduced into those maps or records.²⁰⁹ Yet, in its Opening Brief, SED does not explain how any of these standards, procedures, or controls allegedly fall short of the regulatory requirements. Moreover, PG&E presented evidence regarding its quality management program, which conducts quality assurance reviews to validate that the controls within a process are effective, and PWA described that program as “useful” and an industry “best practice.”²¹⁰ If PG&E had been given notice that its “controls” would be the basis for alleged violations in this proceeding, it could have presented additional evidence about the ways in which it has expanded its quality management reviews in recent years and how its implementation of improved technologies, such as mobile A Forms and GD GIS, provide additional controls improvements.²¹¹

Thus, as the record stands, the only evidence going to this issue *supports* the fact that PG&E’s procedures comply with the regulatory requirements.²¹² Neither the PWA Report, the PWA Rebuttal, nor PWA’s testimony at the hearing contain any evidence relevant to PG&E’s supposed procedural deficiencies. SED’s only testimony pertaining to PG&E’s procedures focuses on the allegation that PG&E violated sections 192.605(a) and 192.13(c) by failing to

²⁰⁸ See, e.g., Ex. 6, Attachment W073 (PG&E’s Response to SED Data Request No. 42); Ex. 7, Attachment W081 (PG&E’s Response to SED Data Request No. 33).

²⁰⁹ Ex. 8, Attachment W118 (PG&E’s Response to SED Data Request No. 48).

²¹⁰ Ex. 1 at 64-65 (PWA Report).

²¹¹ See, e.g., Ex. 4 at 2-22, 5-32 to 5-33 (PG&E Reply Testimony, Singh).

²¹² See *id.* at 7-2 (PG&E Reply Testimony, Hurliaux) (stating “PG&E is in compliance with [section] 192.605(b) because it maintains an O&M manual that contains all the required procedures”); Ex. 27 (PG&E’s Response to SED Data Request No. 23) (PG&E delineating, in its data request response, each of its procedures for making asset records available to personnel engaged in operational and maintenance activities).

follow certain procedures.²¹³ PG&E respectfully requests that these belated and vague allegations regarding PG&E’s alleged lack of “controls” be disregarded, not only for having been unfairly asserted at this late stage, but also because there is no evidence in the record to support them.

b. SED’s Anecdotal Evidence of Imperfections in PG&E’s Gas Distribution System Does Not Support the Alleged Violations Based on “Systemwide Recordkeeping Issues.”

In its Opening Brief, SED identifies isolated examples of imperfections in PG&E’s distribution system records and argues that they reflect systemic failures that support these alleged violations.²¹⁴ Although the PWA Report included scattered references to these issues,²¹⁵ SED never asserted that it intended to extrapolate from these isolated events to allege systemwide violations until it filed its Opening Brief.

Moreover, SED’s position in its Opening Brief is contrary to PWA’s acknowledgment at the hearing that it is not possible to draw general conclusions about PG&E’s records or the safety of its system as a whole based on such a small number of observations.²¹⁶ A review of the evidence SED has cited in support of its claims demonstrates that PWA was right: these isolated examples cannot support the conclusion that PG&E’s recordkeeping overall is “deeply flawed.”²¹⁷ In most instances, they do not even support the narrow conclusion SED seeks to draw with respect to the particular example being discussed.

²¹³ See, e.g., Ex. 1 at 1 (PWA Report) (stating that “[v]iolations related to recordkeeping were not the result of defective procedures”); *id.* at 37:27 to 41:5, 42-47 tbl.4 (solely citing 192.605(a) for failure to follow internal procedures); Ex. 2 at 9 (PWA Rebuttal) (stating that “[t]he basis for PWA’s contention that PG&E has violated the regulations cited in the initial PWA testimony is the observation that PG&E maps and records contain errors, *that these errors provide evidence that PG&E’s policies and procedures have not been followed*, and that these errors have contributed to incidents . . .”) (emphasis added). SED referenced section 192.603(b) at a few places in its Report but, as PG&E explained in its Opening Brief, SED never identified any fact in the proceeding as giving rise to a violation of that regulation. PG&E OB at 47-48.

²¹⁴ SED OB at 7-17; Ex. 1 at 36-48 (PWA Report). SED also claims that these isolated events support its alleged Category 2 violations. SED OB at 79-80.

²¹⁵ See, e.g., Ex. 1 at 34:26 to 35:14, 57:4-11, 57 tbl.8, 124-125 attach. E (PWA Report).

²¹⁶ 1/19/16 Tr. at 81:6 to 82:14 (SED/PWA).

²¹⁷ SED OB at 7.

“Mapping Errors and Corrections”: SED points to a PG&E report that identifies 390 “mapping errors and corrections” across PG&E’s entire distribution system over a six-month period.²¹⁸ On a system of PG&E’s size, this does not come close to establishing endemic recordkeeping problems. PG&E’s distribution maps have approximately 60 million data fields; 390 reported changes reflect a miniscule fraction of the mapping entries for PG&E’s system—less than 1/1,000 of 1%.²¹⁹ Moreover, fewer than half of mapping corrections involve correcting an actual “error” on a map²²⁰ rather than, for example, an update based on new information that had not been previously captured on PG&E’s maps.²²¹

CAP Item Regarding At-Fault Dig-Ins: SED also proffers a 2014 CAP item that identifies an “adverse trend” in at-fault dig-ins as support for its allegation of systemwide failure.²²² As the CAP item notes, only a small fraction of these dig-ins were even related to recordkeeping errors.²²³ Moreover, this single report must be evaluated in the context of PG&E’s comprehensive evidence demonstrating its excavation damage performance, which shows that PG&E ranks first among California utilities and number 13 among the state-by-state averages for operators in the fifty states,²²⁴ and that it locates and marks the hundreds of thousands of USA tickets submitted annually with 99.98% accuracy.²²⁵ In fact, PG&E hopes the Commission views this CAP item—and the Corrective Action Program more generally—as an encouraging demonstration of PG&E’s proactive approach to evaluating and driving down the

²¹⁸ *Id.* at 7-8.

²¹⁹ 1/21/16 Tr. at 419:15 to 420:6 (PG&E/Trevino).

²²⁰ *Id.* This fact is obscured by the bolding and italicizing of the words “**390 mapping errors . . .**” while “. . . and corrections” is in plain font. SED OB at 7.

²²¹ For example, when the name of a road in PG&E’s service territory changes, the resulting update to PG&E’s plat map is counted as a mapping correction. 1/21/16 Tr. at 418:14 to 419:14 (PG&E/Trevino); *id.* at 540:22 to 541:10 (PG&E/Singh).

²²² Ex. 30 at PGE_GDR_000033024 (Gas CAP Notification No. 7005503); *see* SED OB at 9-10.

²²³ 1/20/16 Tr. at 329:2-10 (PG&E/Higgins); 1/21/16 Tr. at 397:4-8 (PG&E/Thierry); Ex. 4 at 3-40:21-23 (PG&E Reply Testimony, Higgins).

²²⁴ Ex. 4 at 8-5, 8-23 tbl.6 (PG&E Reply Testimony, Paskett); Ex. 10 at 8-22, 8-22 tbl.5 (PG&E Errata to Reply Testimony, Paskett).

²²⁵ 1/20/16 Tr. at 329:2-10 (PG&E/Higgins); Ex. 4 at 3-40:21-23 (PG&E Reply Testimony, Higgins).

rate of dig-ins.²²⁶ Penalizing PG&E for the fact that CAP is working as intended by identifying potential improvement opportunities would create the wrong incentives and work against the transparency and safety culture that PG&E and the Commission wish to promote.

Plastic Pipe Without Locating Wire: SED points to a PG&E internal audit that identifies plastic pipe installed without locating wire as a “medium risk.”²²⁷ Because this issue is plainly unrelated to recordkeeping, it is outside the scope of this proceeding and should be disregarded.²²⁸ Moreover, as Mr. Higgins explained, PG&E employees are trained in and equipped to use accepted industry-wide locating methods whenever tracer wires are ineffective.²²⁹ And again, the numbers do not support drawing any systemwide conclusions about the magnitude of this issue. The audit identifies missing or damaged locating wires as the cause of 17 dig-ins over the previous two years.²³⁰ If the dig-in numbers for 2010 to 2012 (which are not in the record) were similar to those for 2013 and 2014, tracer wires issues would have caused less than one half of one percent of total dig-ins.²³¹ The audit does not indicate a systemwide failure; it merely highlights an acknowledged risk that PG&E is addressing directly.

Unmapped Stubs: SED also alleges that unmapped stubs are a “major source of marking errors” throughout PG&E’s system,²³² but has not pointed to any evidence supporting its suggestion that unmapped stubs are prevalent. SED asserts that the number of *mapped* stubs on PG&E’s system evidences this recordkeeping issue, but mapped stubs are irrelevant because, by

²²⁶ The CAP item explains that identification of this trend triggered a causal analysis, followed by a meeting to formulate corrective actions, and a notification in 6-12 months to evaluate the efficacy of those measures. Ex. 30 at PGE_GDR_000033027 (Gas CAP Notification No. 7005503).

²²⁷ SED OB at 11-12 (referring to PG&E’s February 2012 audit).

²²⁸ See PG&E OB at 41-42.

²²⁹ See 1/20/16 Tr. at 275:5 to 276:10 (PG&E/Higgins); Ex. 4 at 3-13:13 to 3-14:8, 3-15:7-20 (PG&E Reply Testimony, Higgins).

²³⁰ Ex. 32 at PGE_GDR_000007923 (Internal Auditing Memo Re: Audit of Gas Damage Prevention Program (Feb. 2, 2012)); see SED OB at 12.

²³¹ Ex. 4 at 7-Ex. 2 (PG&E Reply Testimony, Huriaux).

²³² SED OB at 14, 81-82.

definition, they appear on the maps.²³³ PWA identified three incidents across PG&E’s 3.3 million service lines caused by an unmapped stub over the six-year period it examined.²³⁴ The only other evidence cited by SED is an internal PG&E audit from 2005 that found one stub service had been deleted from a map without first excavating the area to confirm that it had been removed.²³⁵ These three isolated events are insufficient to show systemic risks associated with unmapped stubs. Nevertheless, PG&E is working to reduce whatever risk is posed by this issue, consistent with recommendations made by PWA.²³⁶

“Significant” Mapping Delays: SED alleges that PG&E’s mapping suffers from “significant” delays.²³⁷ This conclusion seems to be based on PWA’s identification of four jobs where mapping updates were delayed. With respect to two of those jobs, PWA misread the data.²³⁸ PWA’s remaining two observations do not support a finding that delays are widespread. PG&E’s distribution mapping workforce processed approximately 10,000 gas distribution capital production orders in 2014.²³⁹ In that year, PG&E reached its goal of updating its maps following

²³³ *Id.* at 15 (explaining that “[t]he PWA Report also points out the scope of this issue, with PG&E’s recent realization that there were over 71,000 known subject stubs”). Contrary to SED’s insinuation, PG&E did not miscount or underestimate mapped stubs. *See id.* PG&E provided an initial count from its newly centralized inventory of mapped stubs in the limited number of divisions where GD GIS had been implemented. Ex. 4 at 5-5:21 to 5-6:6 (PG&E Reply Testimony, Singh). The number in that centralized inventory increased as GD GIS was rolled out in additional divisions. *Id.*

²³⁴ SED OB at 14-15, 81-82; Ex. 1 at 37:36-39, 42 tbl.4 (PWA Report) (describing Morgan Hill and San Jose II incidents); Ex. 4 at 6-3:9-13 (PG&E Reply Testimony, Thierry); Ex. 6, Attachment W053 at W053.017 (Response to GD 2-20-15 NOV, Appendix A) (describing Lafayette incident).

²³⁵ SED OB at 14-15.

²³⁶ Specifically, PG&E has implemented a pilot initiative for proactively identifying unmapped stubs through a comparison of service termination data and GD GIS. Ex. 4 at 4-18:23 to 4-19:3 (PG&E Reply Testimony, Trevino). The Company is also conducting a benchmarking analysis of industry best practices to determine how other operators are potentially addressing this issue. Ex. 4 at 6-15:26 to 6-16:8 (PG&E Reply Testimony, Thierry).

²³⁷ SED OB at 13.

²³⁸ *Id.* at 13-14; Ex. 4 at 4-14:17 to 4-15:15 (PG&E Reply Testimony, Trevino) (stating that “for the two San Jose leak repairs identified in Table 8, PG&E conducted a further investigation and determined that those capital jobs were in fact mapped timely, but to nearby addresses based on final repair information”).

²³⁹ Ex. 4 at 4-4:11-18 (PG&E Reply Testimony, Trevino).

capital jobs in an average of 30 days, an achievement that PWA describes as a best practice.²⁴⁰ And PWA acknowledged that the procedures implemented by PG&E to increase the speed with which its maps are updated go even a step beyond best practices in the industry.²⁴¹

Other Mapping Issues: SED also claims that three mapping errors related to a valve position, the location of an electronic test station, and an abandoned main, respectively, provide evidence of systemwide problems with PG&E's records.²⁴² In the one incident SED identified related to a valve position, the mistake was not that PG&E failed to update the map, but that a field employee failed to open the valve.²⁴³ Similarly, SED points to only one incident involving an unmapped electronic test station.²⁴⁴ And while the record on the removal of abandoned mains is somewhat unclear, SED has, at most, identified only a single incident in which this allegedly led to confusion between active and inactive mains.²⁴⁵ These solitary occurrences do not support a general conclusion that PG&E's recordkeeping suffers from systemic flaws.

Given the opportunity, PG&E could have developed a complete factual record in response to these allegations of systemwide failures. But even on the current record, the evidence submitted by SED cannot support the alleged violations.

2. Newly Alleged Violations That Are Outside the Scope of This Proceeding.

The new alleged violations described below are based on regulations that plainly do not address recordkeeping requirements.²⁴⁶ As such, they belong in the same category as those

²⁴⁰ 1/19/16 Tr. at 31:13 to 33:12 (SED/PWA); Ex. 1 at 60-61 tbl.9 (PWA Report); Ex. 4 at 4-12:17-28 (PG&E Reply Testimony, Trevino). In addition, at the end of 2014, PG&E's Mapping Department began the process of making the changes to SAP that were necessary to track expense jobs. Ex. 4 at 4-13:15-18 (PG&E Reply Testimony, Trevino).

²⁴¹ Ex. 1 at 60-61 tbl.9 (PWA Report).

²⁴² SED OB at 15-17.

²⁴³ *Id.* at 15-16; Ex. 4 at 3-25:18 to 3-26:16 (PG&E Reply Testimony, Higgins).

²⁴⁴ SED OB at 16.

²⁴⁵ *Id.* at 17; Ex. 1 at 35 n.51 (PWA Report) (describing San Francisco incident); Ex. 2 at 39-40 tbl.2 (PWA Rebuttal).

²⁴⁶ *See* PG&E OB at 42.

described in Appendix C to PG&E's Opening Brief, and should be excluded from the Commission's consideration.

a. Sections 192.605(b)(4) and (b)(8) Are Not Related to Recordkeeping.

SED alleges with greater specificity that PG&E has violated 49 C.F.R. §§ 192.605(b)(4) and (b)(8) in connection with PG&E's alleged failure to investigate incidents and incorporate lessons learned.²⁴⁷ Sections 192.605(b)(4) and (b)(8) relate to gathering data to report incidents and conducting periodic reviews of work performed by operator personnel, respectively. These regulations have nothing to do with recordkeeping and are therefore out of scope.²⁴⁸

SED also has not shown that PG&E violated section 192.605(b)(4) or (b)(8). In its brief, SED alleges that PG&E violated these regulations by failing to adequately evaluate the causes and implications of incidents and to incorporate findings into Company policies.²⁴⁹ SED rests these broad allegations on several isolated events, even though it has previously conceded, through its experts, that its investigation was narrowly focused on the 19 incidents at issue and could not serve as a basis for drawing general conclusions about PG&E's distribution system.²⁵⁰ And, the record evidence is plentiful that PG&E is committed to identifying recurring issues and analyzing their causes and consequences for PG&E's system by, for example, its implementation of CAP.²⁵¹ Indeed, PWA itself identified CAP as an innovative practice.²⁵² Because the evidentiary record does not support a finding that PG&E systematically fails to investigate the causes of incidents in order to prevent their reoccurrence, the Commission should disregard these claims.

²⁴⁷ SED OB at 80.

²⁴⁸ Section 192.605(b)(4) requires an operator to gather certain data needed for reporting incidents, while section 192.605(b)(8) pertains to an operator's responsibility to periodically review the work done by the operator's personnel to determine the effectiveness of procedures used in normal operations and maintenance. 49 C.F.R. §§ 192.605(b)(4), (b)(8); *see* Scoping Memo at 3; PG&E OB at 41-42.

²⁴⁹ SED OB at 80-83.

²⁵⁰ *Id.*; 1/19/16 Tr. at 81:6 to 82:14 (SED/PWA).

²⁵¹ Ex. 4 at 5-27:9-22 (PG&E Reply Testimony, Singh).

²⁵² Ex. 1 at 63 tbl.9 (PWA Report).

b. SED's Untimely Alleged Violation of Section 192.805(h) Is Also Out of Scope.

SED alleges for the first time in its Rebuttal that PG&E violated section 192.805(h), which requires an operator to have a qualification program that includes training for personnel, in connection with the Colusa gas transmission incident.²⁵³ Neither the OII nor the PWA Report identified this issue, again precluding PG&E from developing a factual record showing that its training programs are in compliance with that regulation because by the time SED filed its Rebuttal, it was too late for PG&E to present additional evidence.²⁵⁴ Furthermore, SED attempts to show that PG&E suffers from programmatic training problems by identifying only one instance in which an employee did not understand a symbol on the plat map.²⁵⁵ That isolated event cannot serve as an indictment of PG&E's entire training program.²⁵⁶ Indeed, other than this allegation, the only reference in SED's testimony to training constitutes PWA's conclusion that "[b]ased on interview information it appears that training for the people [it] interviewed . . . was adequate."²⁵⁷ Regardless, this incident pertains to transmission and this regulation does not relate to recordkeeping; the alleged violation is therefore outside the scope of this proceeding.²⁵⁸

V. PROPOSED REMEDIES

SED, Carmel, and TURN each submitted a number of proposed remedial measures in this proceeding, SED both in the PWA Report and in its Opening Brief. PG&E welcomes thoughtful input from the Commission and other stakeholders to identify the most effective methods for allocating resources to enhance safety and for developing objective measures to evaluate those efforts. In the discussion below, PG&E provides an overview of the remedies proposals and

²⁵³ SED OB at 86-87. Note that the Colusa incident itself is out of scope because it relates to transmission, not distribution. *See* PG&E OB at B-3.

²⁵⁴ *See supra* pp. 30-33 (discussing due process implications).

²⁵⁵ SED OB at 56-57, 86-87; *see* Ex. 4 at 3-34:2-20 (PG&E Reply Testimony, Higgins) (stating that PG&E responded to that incident by adding gas and electric map reading and interpretation of symbols to the curriculum of several classes of field personnel).

²⁵⁶ 1/19/16 Tr. at 81:6 to 82:14 (SED/PWA).

²⁵⁷ Ex. 1 at 71:2-4 (PWA Report).

²⁵⁸ 49 C.F.R. § 192.805(h); Scoping Memo at 3; *see* PG&E OB at 41-42.

addresses some of the broader issues that they implicate. A detailed response to each of these proposals is provided in Appendix C.

A. SED's Proposed Remedies

In SED's Supplemental Testimony, PWA made six specific recommendations for improving PG&E's recordkeeping practices,²⁵⁹ tailored to address specific issues raised in this proceeding, such as plastic inserts, stubs, and MAOP.²⁶⁰ PG&E agreed with all of these recommendations, and has already begun implementing some of them. PG&E appreciates the benefit of PWA's experience and agrees that these remedial measures will strengthen PG&E's recordkeeping practices and enhance distribution safety.

In its Opening Brief, SED proposed eight additional remedies.²⁶¹ PG&E agrees that some of these measures are appropriate and, in fact, has already been undertaking corrective actions that are accomplishing the objectives intended to be served by several of them. Several of the additional measures SED identifies in its Opening Brief are also feasible and specifically address issues raised in this proceeding in a manner that may improve PG&E's recordkeeping or enhance the safety of its system. These include SED's recommendation that PG&E evaluate the need for a proactive program to identify unknown plastic inserts and provide a report describing its policy for stub identification and documentation.²⁶² PG&E also agrees with SED's recommendation that it identify the facilities in its distribution system for which PG&E established MAOP pursuant to its alternative method and conduct a risk analysis to evaluate whether that method creates any safety risk.²⁶³

²⁵⁹ Ex. 1 at 75:25 to 76:30 (PWA Report). These recommendations and PG&E's responses thereto are detailed in Appendix C, at C-1 to C-4, *infra*.

²⁶⁰ Ex. 1 at 75:25 to 76:30 (PWA Report) (PWA Recommendations 1, 2, 3, and 5).

²⁶¹ Each of these measures is addressed in detail in Appendix C, *infra*.

²⁶² SED OB at 94-95.

²⁶³ *Id.* at 95-96.

However, some of SED’s proposals are too broad to be implementable and would divert vast resources from critical operational work as well as from alternative measures that more effectively reduce risk.

For example, SED proposal (b) recommends that PG&E conduct a “systemic review of its distribution system to ensure that all of its facilities are accounted for.”²⁶⁴ This suggestion, while seemingly straightforward and simple on its face, is unworkable. The vast majority of PG&E’s 42,000 miles of distribution system assets are buried underground. To accomplish this proposed remedy, PG&E literally could be expected to dig up every foot of pipe and confirm that it is accurately reflected on PG&E’s maps and records. Even a visual inspection of PG&E’s above-ground facilities to “ensure [they] are accounted for” would require an enormous devotion of resources, and months, if not years, of effort, with little incremental benefit to show for it. SED’s proposal that PG&E be ordered to report to the Commission on the results of this effort within 90 days fails to recognize the practical context in which this proposal would have to be implemented.²⁶⁵

Similarly, SED’s proposed remedy (c) recommends that PG&E “conduct a review of its GD GIS system to validate the data using *all available records* to ensure completeness and accuracy” and then, again, submit a report documenting “all aspects of this review” within 90 days.²⁶⁶ This recommendation would require, among many other things, a *manual* comparison of tens of millions of distribution records against the data in GD GIS. To say that this recommendation is unrealistic understates the situation. Let us assume, for purposes of illustration, that:

- Some 50 million paper records would have to be reviewed,
- PG&E could divert 100 employees from their other responsibilities to devote full time to this project,

²⁶⁴ *Id.* at 94.

²⁶⁵ *Id.*

²⁶⁶ *Id.* (emphasis added).

- Each worker could retrieve and review a hardcopy record, identify and locate the corresponding GD GIS record, carefully compare the two, and enter any necessary data corrections, all in ten minutes, and
- The entire workforce could sustain this pace without flagging for seven hours a day, 365 days a year.

At this rate, it would take approximately *32 years* to complete this project.

As PG&E has explained, it has already undertaken a number of initiatives to verify the data in GD GIS through a comparison with other groups of electronically available records and databases.²⁶⁷ For example, the PAR analysis automatically identifies anomalies among PG&E's records as they are incorporated into GD GIS.²⁶⁸ PG&E has also compared service location information in GD GIS to its Customer Care & Billing (CC&B) database to identify discrepancies and is now conducting similar comparisons using Google Earth.²⁶⁹ It has also launched an initiative to compare asset data in its leak repair database against information in GD GIS in an effort to identify any unmapped plastic inserts.²⁷⁰ As issues are identified through these electronic processes, they are researched and resolved by PG&E personnel.²⁷¹

In addition, because millions of records have already been scanned and linked to the related assets on GD GIS, and because GD GIS is synced in real time with SAP, PG&E personnel increasingly are able to quickly and easily validate the data in GD GIS using available records as a routine part of their work. PG&E is always looking for opportunities to further improve the quality of its records and, as more and more of those records are digitized, PG&E will have additional analytical tools for verifying the accuracy of the data in GD GIS.²⁷²

²⁶⁷ PG&E OB at 19-20; Ex. 4 at 2-19:6 to 2-22:9 (PG&E Reply Testimony, Singh).

²⁶⁸ Ex. 4 at 2-19:6 to 2-19:23 (PG&E Reply Testimony, Singh).

²⁶⁹ *Id.* at 2-20:21 to 2-21:3 (PG&E Reply Testimony, Singh); *id.* at 4-21:4-12 (PG&E Reply Testimony, Trevino)

²⁷⁰ *Id.* at 2-20:9-13 (PG&E Reply Testimony, Singh); *id.* at 4-15:16 to 4-16:17 (PG&E Reply Testimony, Trevino).

²⁷¹ *Id.* at 2-19:12-23 (PG&E Reply Testimony, Singh).

²⁷² *Id.* at 2-21:19-25 (PG&E Reply Testimony, Singh).

However, a manual record-by-record validation of every piece of data in GD GIS is neither feasible, nor a productive use of resources.

B. Treatment of Costs Associated with Implementing SED’s Proposed Remedies.

As stated above and detailed in Appendix C, PG&E supports a number of proposed remedies that will continue to enhance its records and associated gas distribution safety.²⁷³

PG&E’s proposals can be grouped into three categories of activities, which are summarized here, along with their estimated associated costs:²⁷⁴

Activities PG&E Intends to Undertake to Continue to Enhance System Safety	Activities to Address Proposed Violations Related to Alternative Method for Setting MAOP, if Sanctioned	Activities with No Identified Incremental Costs²⁷⁵
PG&E’s Proposed Alternatives to SED’s Proposed Remedies (a), (b), (c), and (f)	PG&E’s Proposed Alternative to SED’s Proposed Remedy (g)	SED’s Proposed Remedies (d) and (e), and PG&E’s Proposed Alternative to SED’s Proposed Remedy (h)
Estimated Cost: ~ \$15 MM	Estimated Cost: ~ \$14 MM	Estimated Incremental Cost: \$0

The first column includes new costs associated with activities that PG&E intends to undertake in an effort to continue to enhance its system safety. If adopted as a remedy, PG&E would undertake these measures on a one-time basis at shareholder expense. SED’s proposed remedies (a), (b), and (c)—in addition to being unworkable in certain respects, as described above—overlap with and are duplicative of one another. PG&E proposes an implementable alternative that it believes more effectively addresses the goals intended by SED’s proposals. Specifically, PG&E would develop a list of activities to define an extent of condition for missing

²⁷³ See *infra* Appendix C.

²⁷⁴ PG&E cannot prepare a detailed cost forecast for several of the remedies until it begins the process of resolving the discrepancies resulting from the GD GIS and CC&B analysis, using the analysis results and other available data.

²⁷⁵ PG&E considers incremental costs to be those instances in which (1) PG&E incurs costs for materials or outside vendors or contractors, or (2) PG&E retains additional internal resources to complete the work, or (3) PG&E’s internal resources cannot complete the work without allocating resources away from the work they otherwise would perform.

records, undertake those activities, and modify procedures and standards as needed to address any identified issues going forward. PG&E also proposes to take the next step in its 2015 GD GIS and CC&B services review process and to further compare GD GIS with other sources of information such as, for example, aerial imagery, to identify potential locations of incomplete assets in GD GIS. SED's remedy (f) proposes that PG&E perform an analysis of at-fault dig-ins and measures to reduce at-fault dig-ins stemming from records issues, something that PG&E already performs on a monthly basis. PG&E will share the results of its analyses with SED. PG&E is also proposing as an additional alternative remedy that, as a one-time investment, it equip, at a minimum, two "hard-to-locate" crews for its northern and southern service areas. Once equipped, these crews would support the locate and mark teams in the normal course of PG&E's business.

The second column includes costs related to activities that PG&E would undertake if ordered in response to proposed violations, if they are sanctioned, in connection with PG&E's alternative method for setting MAOP on certain of its distribution systems. PG&E proposes a slight modification to SED's proposal (g) so that the suggested MAOP information can be provided accurately, and also proposes to verify MAOP for distribution facilities connected to high pressure transmission pipelines, also known as "farm taps."²⁷⁶

The third column includes remedies suggested by SED to which PG&E agrees, and in some cases has already begun to take action. PG&E has not proposed any modification to SED's recommended remedies (d) and (e), which address stubs and plastic inserts. PG&E does propose to update the MAOP risk analysis suggested in SED's proposed remedy (h) once PG&E has completed the MAOP review identified in SED (g).

²⁷⁶ Farm taps include regulation equipment and provide gas directly to one or two services at pressure levels that are at or below 60 psig. Although evidence pertaining to the farm tap issue was not introduced into the record, PG&E disclosed the issue to SED in advance of the hearing. As PG&E notes below, it respectfully requests leave to supplement the record if additional facts are needed to evaluate this proposed remedy. *See infra* p. 60-61.

PG&E agrees that the costs, not to exceed \$30 million,²⁷⁷ to implement the remedies it supports in this proceeding would be borne by PG&E's shareholders. PG&E respectfully requests that the Commission include the amounts that PG&E shareholders will spend to implement the adopted remedies as part of any penalty that may be ordered.²⁷⁸

C. Carmel's Proposed Remedies Are Outside the Scope of this Proceeding and Should Be Rejected.

Carmel proposes eight remedies,²⁷⁹ all of which are either being addressed in other proceedings, such as the pending Safety Culture OII, or do not relate to recordkeeping and therefore are out of scope and should be rejected. PG&E responds to some of Carmel's more significant proposals here, with more detailed responses provided in Appendix C.

Carmel first suggests that executive compensation at PG&E should be linked to safety performance through some unspecified arrangement, to be formulated by an "executive compensation advisor" who would be chosen by SED and Carmel.²⁸⁰ As PG&E noted early in this proceeding, this issue would be more appropriately addressed in the separate OII initiated by the Commission for the purpose of investigating PG&E's organizational culture related to safety.²⁸¹ Indeed, the OII in that proceeding indicates that it will specifically consider the relationship between executive compensation and meeting safety goals.²⁸² Moreover, Carmel's proposal is based on the unsubstantiated allegation that "PG&E suffers from a lack of safety culture fostered by upper management."²⁸³ PG&E submits that the scope of the corrective

²⁷⁷ These estimated one-time costs may include capital expenditures for which PG&E agrees to forego the revenue requirement to implement, but which PG&E will seek to include in rate base in the 2020 GRC, since the investments inure to the benefit of customers.

²⁷⁸ In the San Bruno Recordkeeping OII proceedings, the Commission applied the costs to implement the imposed remedies to the total penalty calculation. D. 15-04-024, 2015 Cal. PUC LEXIS 230, at *161-62.

²⁷⁹ Carmel OB at 20-25.

²⁸⁰ *Id.* at 21.

²⁸¹ Ex. 4 at 1-19:16 to 1-20:2 (PG&E Reply Testimony, Howe).

²⁸² *Order Instituting Investigation on the Comm'n's Own Motion to Determine whether Pac. Gas & Elec. Co. & PG&E Corp.'s Organizational Culture & Governance Prioritize Safety*, I. 15-08-019, 2015 Cal. PUC LEXIS 539, at *24; *see* Carmel OB at 20-22.

²⁸³ Carmel OB at 21.

actions adopted by the Company that have been described in this proceeding—and applauded by PWA—amply demonstrate management’s commitment to strengthening PG&E’s safety culture.²⁸⁴

Carmel also proposes that the Commission order a third-party review of PG&E’s safety culture—another proposal that is being addressed in other regulatory proceedings.²⁸⁵ This proposal also should be rejected because it is based on the meritless accusation that independent consultants Exponent and Lloyd’s Register are “too cozy” with PG&E and have a “conflict of interest” because PG&E compensated them for their professional services.²⁸⁶ Exponent is a widely respected consultant firm that has worked on several of the most significant engineering investigations of the past half century.²⁸⁷ Lloyd’s Register, which is unaffiliated with Lloyd’s of London, is an internationally recognized 250-year-old institution that is wholly owned by a registered UK charity, and the profits generated by its consultancy work are used to fund its parent’s charitable objectives.²⁸⁸ These are respected organizations with professional requirements to adhere to and reputations to uphold. Carmel points to no evidence that they have provided biased analyses or otherwise compromised their independence in their audits or assessments of PG&E.

Carmel’s other criticism is that Exponent and Lloyd’s Register only “scratch the surface” because they do not address PG&E’s “implementation” of the policies it adopts.²⁸⁹ This comment demonstrates Carmel’s lack of understanding of Exponent and Lloyd’s work. For example, Exponent’s investigation of the Carmel incident spanned several weeks, and included multiple site visits, an extensive review of documents, and over a dozen employee interviews.²⁹⁰

²⁸⁴ Ex. 1 at 65-67 (PWA Report); Ex. 4 at 1-19:1-15 (PG&E Reply Testimony, Howe).

²⁸⁵ Carmel OB at 22.

²⁸⁶ *Id.* Of course, under Carmel’s proposal, this new, supposedly more impartial consultant would also be compensated by PG&E for its work. *Id.*

²⁸⁷ Ex. 4 at 5-28:16-25 (PG&E Reply Testimony, Singh).

²⁸⁸ Lloyd’s Register, About us, <http://www.lr.org/en/who-we-are/organisation>.

²⁸⁹ Carmel OB at 22.

²⁹⁰ *See* Ex. 7, Attachment W116 at W116.086-.101 (Exponent, Inc., Carmel Gas Incident (Apr. 2014)).

Similarly, the Lloyd's Register assessment that certified PG&E's compliance with the PAS 55 and ISO 55001 standards was conducted in several stages over nine months, and entailed more than 1,700 miles of travel through PG&E's service territory and interviews with more than 150 management and field employees and contractors.²⁹¹

Moreover, PWA, an entity whose independence from PG&E cannot be questioned, conducted an undoubtedly arm's-length investigation of PG&E's distribution system and concluded that PG&E is meeting and exceeding industry best practices across a wide range of activities.

Carmel also proposes that the Commission order the creation and endowment of a gas safety intervenor that is similar to TURN but focused on issues of public safety.²⁹² This proposal is beyond the scope of this OII, which is limited to PG&E's gas distribution recordkeeping. Moreover, the creation of such an institution would constitute rulemaking by the Commission as it would affect all regulated gas distribution companies in California²⁹³ and would require careful consideration of how the role of the proposed "safety intervenor" would relate to the roles currently played by existing rate intervenors, community and grass-roots intervenors, local

²⁹¹ Ex. 4 at 1-22:1-32 (PG&E Reply Testimony, Howe); *id.* at 2-8:1-25 (PG&E Reply Testimony, Singh); Ex. 5, Attachment W007 at W007.001 (PG&E's Response to SED Data Request No. 15, Supp. 1). To maintain its certification PG&E must undergo independent audits of its asset management processes approximately every six months, as well as an independent recertification audit every three years. Ex. 4 at 1-22:25-28 (PG&E Reply Testimony, Howe). SED expert Paul Wood agreed that the Lloyd's audit was "extensive," and testified that understanding the elements of the PAS 55 and ISO 55001 standards would be an "appropriate action" for a utility seeking to manage safety and records effectively. 1/19/16 Tr. at 38:4-11, 43:23 to 44:4 (SED/PWA).

²⁹² Carmel OB at 21.

²⁹³ *See* Cal. Pub. Util. Code §§ 1701.1(c)(1), 1701.4 ("Quasi-legislative cases, for purposes of this article, are cases that establish policy, including, but not limited to, rulemakings and investigations *which may establish rules affecting an entire industry.*") (emphasis added).

governments, and retained experts.²⁹⁴ Carmel has provided no detail or evidence of how this institution would function. Its request should be rejected.²⁹⁵

Carmel also asks the Commission to order “binding commitments” from PG&E to improve its emergency response procedures.²⁹⁶ Because emergency response is beyond the scope of this recordkeeping investigation, there is no evidence in the record from which the Commission could evaluate the quality of PG&E’s current emergency response performance or the appropriateness of Carmel’s proposed measures.²⁹⁷ Finally, Carmel also requests compensation (separate from the intervenor compensation allowed under the Commission’s rules) in the form of direct costs and “opportunity costs” for damage it claims to have sustained as a result of the Carmel incident.²⁹⁸ In the context of an OII, the California Public Utilities Code authorizes the Commission to order penalties, fines and restitution as well as equitable remedies, but not to order damages.²⁹⁹ Indeed, Carmel has identified no precedent for the Commission to order such compensation to a private party or municipality in an OII, and PG&E is aware of none. Carmel’s request to submit evidence of damages via “separate, further briefing” at some

²⁹⁴ Cal. Pub. Utils. Comm’n’s Safety Action Plan En Banc (Sept. 25, 2015) (statements of Connie Jackson, City Manager, San Bruno) (discussing the complexity and multitude of issues and interests that need to be addressed in creating a safety intervenor suggested by the City of San Bruno).

²⁹⁵ Carmel OB at 21; *see* D. 15-04-024, 2015 Cal. PUC LEXIS 230, at *236-37 (denying the City of San Bruno’s proposed remedy to create a California Pipeline Safety Trust that would intervene in Commission proceedings to advocate for public safety, because the City “provided no specifics on how the Pipeline Trust would be organized”).

²⁹⁶ Carmel OB at 23.

²⁹⁷ *See* Scoping Memo at 3.

²⁹⁸ Carmel OB at 23-24.

²⁹⁹ *Compare* Cal. Pub. Util. Code § 2106 (stating that “[a]n action to recover for . . . loss, damage, or injury [caused by a public utility] may be brought in any court of competent jurisdiction”) *with* Cal. Pub. Util. Code § 2107 (granting the Commission the power to impose a penalty on any public utility that fails to comply with a state law or Commission order) *and* D. 15-04-024, 2015 Cal. PUC LEXIS 230, at *45-46 (finding that although the Commission is empowered to impose remedies outside of those available under section 2107, such additional remedies are limited to those equitable in nature); *see also* *Order Instituting Rulemaking on Regulations Relating to Passenger Carriers, Ridesharing, & New Online-Enabled Transp. Servs.*, D. 16-01-014, 2016 Cal. PUC LEXIS 22, at *90 (stating “[t]he Commission has broad authority to impose *finis and penalties* on persons subject to the Commission’s jurisdiction”) (emphasis added).

later time should have been raised much earlier in this proceeding, is untimely at this late date, when the record is closed, and should be rejected.

D. TURN's Proposed Remedies

TURN submits five proposed remedies, three of which are largely duplicative of the SED proposals addressed above.³⁰⁰ Of the remaining remedies, one recommends that the 21 transmission recordkeeping remedies adopted in D. 15-04-024 (Transmission Recordkeeping OII Remedies) should be extended wholesale to PG&E's distribution system in this proceeding.³⁰¹

One of these 21 Transmission Recordkeeping OII Remedies, in turn, incorporates 58 recommendations made in a 2012 PricewaterhouseCoopers (PwC) report entitled "Gas Operations and Records and Information Management Assessment" (PwC Recommendations).³⁰² TURN provides no analysis or rationale supporting the adoption of the 21 Recordkeeping Transmission OII Remedies or the 58 PwC Recommendations here. Indeed, it is not clear that TURN even intended to request that the Commission adopt the PwC Recommendations.

A number of the 21 Transmission Recordkeeping OII Remedies have already been adopted by PG&E's gas distribution operations.³⁰³ For example, remedies related to creating and maintaining a Records and Information Management (RIM) program have been successfully implemented in both PG&E's transmission and distribution systems.³⁰⁴ These remedies are accordingly unnecessary. The remaining remedies from the Transmission Recordkeeping OII are inapplicable to distribution systems or pertain to issues outside the scope of this proceeding.

³⁰⁰ See TURN Proposed Remedies (2), (3), and (4). Each of these remedies is addressed in Appendix C, *infra*.

³⁰¹ D. 15-04-024, 2015 Cal. PUC LEXIS 230, at *430-36 (listing 21 remedies); TURN OB at 1, App. A. TURN's last proposed remedy, that the costs incurred by PG&E for any remedies imposed be paid by PG&E's shareholders and not be recovered from ratepayers, is discussed *supra* at pp. 53-55.

³⁰² See *Gas Operations and Records and Information Management Assessment* (Mar. 31, 2012) (PwC Recommendations).

³⁰³ See D. 15-04-024, 2015 Cal. PUC LEXIS 230, at *430-36 (Remedies 1, 3, 4, 5, 7, 8, 9, 10, 11, 15, and 17).

³⁰⁴ *Id.* at *433; Ex. 1 at 84 (PWA Report) (describing PG&E's Response to SED Data Request No. 2); Ex. 4 at 1-21:24-31 (PG&E Reply Testimony, Howe); *id.* at 2-7:29-34 (PG&E Reply Testimony, Singh).

For example, the proposal that “salvaged” pipe be specially recorded in GIS does not apply to the gas distribution system, which does not recondition and reuse pipe.³⁰⁵

The PwC report is dated March 31, 2012, and many of its recommendations have already been implemented. Others are simply unrelated to recordkeeping issues or to issues raised by the parties. For example, one of the recommendations proposes that PG&E create a “Gas Employee of the Month” program to highlight employees who have demonstrated a positive impact on RIM culture. None of the parties raised issues about RIM culture or employee morale in this proceeding.

Nearly all of the 80 Transmission Recordkeeping OII Remedies and PwC recommendations have been or are being implemented for both transmission and distribution operations.³⁰⁶ Thus, it is unnecessary and duplicative to impose the same remedies here. The remaining handful of remedies that have not been applied to distribution activities either are inapplicable to gas distribution or do not relate to the issues raised by the parties. Accordingly, the 21 Transmission Recordkeeping OII Remedies and 58 PwC recommendations should be rejected.³⁰⁷ Further details and responses to all of TURN’s specific proposals are addressed in Appendix C.

E. If Additional Facts Are Needed to Evaluate the Proposed Remedies, PG&E Respectfully Requests Leave to Supplement the Record.

Aside from the six recommendations made in the PWA Report, none of the other proposed remedies were presented in the parties’ testimony or at the hearing, and many are not connected to the issues in this proceeding. Before the Commission orders any remedies with a significant and potentially lasting impact on PG&E’s operations and for which there is little to no evidence in the record, PG&E respectfully requests an opportunity to provide an appropriate

³⁰⁵ D. 15-04-024, 2015 Cal. PUC LEXIS 230, at *436.

³⁰⁶ Of the remedies that are being implemented to both distribution and transmission activities, more than half have already been completed. The remaining are either ongoing commitments or projects that are in progress. For further details, see *infra* Appendix C.

³⁰⁷ See *infra* Appendix C, at C-21 to C-63.

evidentiary submission—including an analysis of the effectiveness and safety benefits of those remedies, if any—through either supplemental written testimony or declarations with exhibits.

VI. CARMEL’S CLAIM THAT PG&E VIOLATED RULE 1.1 IS BASELESS.

In its Opening Brief, Carmel makes the serious allegation that PG&E violated Rule 1.1 of the California Public Utilities Commission Rules of Practice and Procedure (Rule 1.1) by attempting to mislead the Commission in this proceeding.³⁰⁸ This accusation is vacuous. PG&E’s witnesses testified honestly and accurately, and there is no colorable argument to be made that they or PG&E’s counsel misled the Commission at any point.

A. Mr. Singh Did Not Mislead the Commission.

Shortly after the Carmel incident, in a letter sent by Mr. Singh, PG&E agreed to a violation of 49 C.F.R. § 192.605(b)(3) alleged by SED in connection with the Mountain View incident.³⁰⁹ PG&E received SED’s notice of violation just three days after the explosion in Carmel.³¹⁰ At the time, PG&E had halted all related work while it moved quickly to develop and implement measures to reduce the risk of any similar event in the future.³¹¹ A dispute with SED at that time regarding the meaning of the alleged violation would not have contributed to that effort,³¹² and PG&E therefore decided not to contest the issue.

Carmel claims that Mr. Singh’s testimony, in which he provided the context for his letter concerning the Mountain View incident, violated Rule 1.1.³¹³ According to Carmel, Mr. Singh claimed that “he didn’t understand the significance of what he wrote” and that he is unqualified to opine on regulatory issues.³¹⁴ The opposite is true. Mr. Singh testified repeatedly that he only signs letters with which he agrees and that he stands by this letter today.³¹⁵ He also stated more

³⁰⁸ Carmel OB at 14-16.

³⁰⁹ PG&E OB at 49-50; Ex. 36 at 1 (Letter from S. Singh to M. Robertson (Apr. 4, 2014)).

³¹⁰ Ex. 36 at 1 (Letter from S. Singh to M. Robertson (Apr. 4, 2014)).

³¹¹ Ex. 1 at 40:21-22 (PWA Report); Ex. 4 at 5-25:8-10 (PG&E Reply Testimony, Singh).

³¹² 1/21/16 Tr. at 466:8 to 467:6 (PG&E/Singh).

³¹³ Carmel OB at 14-15; Ex. 36 (Letter from S. Singh to M. Robertson (Apr. 4, 2014)).

³¹⁴ Carmel OB at 14-15.

³¹⁵ 1/21/19 Tr. at 454:4-17, 455:7 to 456:25, 460:2-11, 466:3 to 467:6 (PG&E/Singh).

than once his opinion that PG&E did not violate section 192.605.³¹⁶ Mr. Singh further explained that PG&E sent the letter so that the Company could move forward in cooperation with SED to address the issues raised by the Carmel incident.³¹⁷

To create the false impression that Mr. Singh feigned ignorance of section 192.605, Carmel quotes a one-sentence excerpt from his testimony in which he accurately noted that he does not have a legal background.³¹⁸ In the sentences immediately before and after Carmel's excerpt, however, Mr. Singh provided his opinion regarding section 192.605, as he did elsewhere in his testimony. Moreover, Mr. Singh's clarification that he does not have a legal background is relevant, given that the proper interpretation of section 192.605(b)(3) and the recordkeeping regulations in general is a disputed legal issue in this proceeding. Carmel's claim that this testimony was somehow "prompt[ed]" by counsel is preposterous.³¹⁹ In fact, the transcript demonstrates that counsel for PG&E misunderstood Mr. Singh's testimony, which is of course inconsistent with having tried to "prompt it." The full exchange is as follows:

MR. MOLDAVSKY: Okay. Why was PG&E's recordkeeping conduct in the Carmel incident excusable or not a violation, in your view? Whereas, as indicated in your letter here, the Mountain View incident was a violation of the Title CFR part 192.605(b)?

MS. FIALA: Objection. Misstates the witness's testimony and lacks foundation. Mr. Singh testified he had no opinion. He did not testify that he had an opinion that there was no violation.

MR. MOLDAVSKY: He testified that he had an opinion.

ALJ BUSHEY: Then we need to clarify, because I understood your answer of no to be that no, you did not believe there was a violation in the Carmel incident; is that correct?

THE WITNESS: That is my opinion, yes.

ALJ BUSHEY: That is his opinion.

³¹⁶ *Id.*

³¹⁷ *Id.* at 466:8 to 467:6 (PG&E/Singh).

³¹⁸ Carmel OB at 15.

³¹⁹ *Id.*

MS. FIALA: I misunderstood.

ALJ BUSHEY: So the record is crystal clear. He has an opinion about the Carmel incident and it is his opinion that there was no violation there. Mr. Moldavsky has asked to compare and contrast the two.

THE WITNESS: Can I clarify, your Honor? No specific violation as pertains to 605(b). I'm not well versed, I don't have a legal background to make legal conclusions. You asked me about my opinion about 605(b) and that is what I've provided.³²⁰

Mr. Singh provided a clear statement about the letter and its relationship to the Carmel incident, which was unmistakably his own and not prompted by counsel. SED repeatedly blocked Mr. Singh's attempts to explain the context in which the letter was written.³²¹ On re-direct examination, counsel for PG&E merely allowed Mr. Singh the opportunity to provide a complete answer regarding what motivated PG&E's agreement to the alleged Mountain View violation, which is that PG&E did not believe it was in anyone's best interests to contest the violation at a time that all efforts were focused on investigating the Carmel accident and implementing corrective actions to reduce the risk of another such incident.³²² Carmel's claim that his testimony or the conduct of PG&E's lawyers violated Rule 1.1 is completely without merit.

B. Mr. Huriaux Did Not Mislead the Commission.

Carmel also claims that PG&E expert witness Richard Huriaux attempted to mislead the Commission by expressing his opinion that California Public Utilities Code section 451 does not contain "standards or objectives" for determining compliance.³²³ Carmel's claim is not that Mr. Huriaux holds a different opinion from the one he expressed to the Commission. Nor does Carmel suggest that Mr. Huriaux attempted to misrepresent the state of the law on this issue. Indeed, he stated at the outset of his testimony on this subject that he is "not offering a legal

³²⁰ 1/21/16 Tr. at 455:20 to 456:25 (PG&E/Singh).

³²¹ *Id.* at 449:1-10, 454:4 to 455:2, 459:20 to 460:1, 462:8-11 (PG&E/Singh).

³²² *Id.* at 557:3 to 558:13 (PG&E/Singh).

³²³ Ex. 4 at 7-12 to 7-13 (PG&E Reply Testimony, Huriaux).

opinion on the interpretation of [California Public Utilities Code] section 451” but only his “perspective as a former national pipeline safety regulator.”³²⁴

Instead, Carmel claims that Mr. Huriaux’s testimony violates Rule 1.1 because his opinion is inconsistent with prior Commission decisions and therefore “wrong.”³²⁵ It is hard to believe that offering expert opinion should not be allowed in these proceedings. Mr. Huriaux’s *opinion* that section 451 does not provide enough specificity for an operator to determine compliance cannot be “wrong,” even if the Commission has taken a different view. And regardless of whether one’s honest opinion can ever be “wrong,” it certainly cannot be “mislead[ing]” or “false,” as is required for a violation of Rule 1.1. As SED explained in its Opening Brief:

Despite not being an attorney, Mr. Huriaux is permitted to testify that he simply disagrees with the Commission’s interpretation of PU Code § 451.³²⁶

SED is correct. Carmel’s interpretation of Rule 1.1, in contrast, would prohibit parties appearing before the Commission from providing opinions or argument regarding any regulation about which the Commission has issued a decision. Addressing such issues is not only ethical, but is critical to the success of any proceeding.

Carmel nevertheless argues that PG&E should be fined for this testimony and, ironically, for wasting the Commission’s time by submitting it.³²⁷ Carmel’s accusations are not only baseless, but themselves an unfortunate distraction from the issues this proceeding was conducted to address.

³²⁴ *Id.* at 7-12 (PG&E Reply Testimony, Huriaux). And Carmel clearly does not believe there is any risk of the Commission being misled on this issue, as it suggests the Commission might experience “déjà vu all over again” when presented with Mr. Huriaux’s opinion. Carmel OB at 16.

³²⁵ Carmel OB at 15-16.

³²⁶ SED OB at 22.

³²⁷ Carmel OB at 16-17.

VII. CONCLUSION

PG&E is committed to working with the Commission in pursuit of their shared goal of enhancing the safety performance of PG&E's gas distribution system. The many initiatives PG&E has undertaken to build state-of-the-industry infrastructure, achieve recordkeeping best practices, and minimize the risk of incidents on its gas distribution system demonstrate the durability and sincerity of PG&E's commitment. PG&E acknowledges that more work remains to be done and that, at times in the past, its conduct has not measured up to the high expectations that the Company sets for itself. For this reason, even though PG&E disagrees that the violations alleged by SED have merit or have been proven, PG&E respectfully submits that the maximum penalty imposed in this proceeding should not exceed \$33.636 million, which is the amount consistent with the top end of the range bracketed by reasonably comparable Commission precedents.

PG&E intends to continue doing exactly what it has been doing—focusing on safety, finding and fixing problems as they arise, and searching for innovative, effective, and technologically advanced solutions to the challenges that remain. PG&E looks forward to working cooperatively with the Commission and SED in that effort to continuously improve the quality and safety of its operations and the service it provides to its customers.

Respectfully submitted,

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