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

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)

**PACIFIC GAS AND ELECTRIC COMPANY'S
RESPONSE PURSUANT TO RULE 14.4(D) OF THE CALIFORNIA PUBLIC
UTILITIES COMMISSION RULES OF PRACTICE AND PROCEDURE TO THE
APPEALS OF THE SAFETY AND ENFORCEMENT
DIVISION AND CITY OF CARMEL-BY-THE-SEA**

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I. INTRODUCTION

Pursuant to Rule 14.4(d) of the California Public Utilities Commission (Commission) Rules of Practice and Procedure, Pacific Gas and Electric Company (PG&E) hereby submits this joint response to the Appeals of the Presiding Officer's Decision (POD)¹ filed by the Safety and Enforcement Division and the City of Carmel-by-the-Sea.

The Commission issued the Order Instituting Investigation and Order to Show Cause (OII)² to investigate whether PG&E violated any applicable laws, regulations, or rules by its "recordkeeping policies and practices with respect to maintaining safe operation of its gas distribution system."³ PG&E agrees that this is an important question, and appreciates the opportunity provided by this proceeding to respond to the concerns raised in the OII and explain the initiatives it has undertaken to improve its recordkeeping and enhance the safety of its operations. PG&E acknowledges that it does not have perfect records—indeed, as was established in this proceeding, and as SED's own experts agreed, it is doubtful that any pipeline operator does.⁴ PG&E also acknowledges that, particularly as related to the Mountain View and Carmel incidents, it did not meet the expectations that PG&E sets for itself when it comes to safety and risk mitigation. It regrets the incidents and the resulting property damage and inconvenience to the public. However, PG&E respectfully disagrees that the occurrence over a

¹ Presiding Officer's Decision on 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 (POD). PG&E has not appealed from the POD.

² Order Instituting Investigation and Order to Show Cause, I. 14-11-008 (Nov. 20, 2014) (OII).

³ Assigned Commissioner's Scoping Memo and Ruling, I. 14-11-008 (Apr. 10, 2015) (Scoping Memo) at 3; *see also* OII at 1.

⁴ POD at 8; PG&E Opening Brief (OB) at 38-39; 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.").

six-year period of the 19 incidents that were reviewed in this proceeding means that its gas distribution system is unsafe, especially when that system spans 42,000 miles of mains and 3.3 million services over its 72,000 square-mile service territory, documented by nearly 15,000 linear feet of records. The evidence, which was largely undisputed, established that PG&E has worked continuously to identify and implement robust measures to improve the quality of its recordkeeping and reduce the risks resulting from imperfect records, including risks associated with unmapped plastic inserts. PG&E's adoption of these industry leading practices is corroborated by independent assessments, including SED's own experts in this proceeding, as well as objective measures of PG&E's safety performance based on data compiled by the Pipeline and Hazardous Materials Safety Administration (PHMSA).⁵ There is more to be done. However, as SED's experts, P Wood Associates (PWA), confirmed, change is "well underway" at PG&E.⁶

As explained in its post-hearing briefs, PG&E does not believe a fine of the magnitude proposed is warranted or necessary to deter future conduct.⁷ PG&E nevertheless chose not to appeal from the POD because it believes that the public interest would be best served if PG&E, SED, and the Intervenors moved forward cooperatively to address the concerns expressed by the OII. PG&E has already agreed to act on many of SED's recommendations for recordkeeping improvements and looks forward to meeting with SED and the Intervenors regarding opportunities to improve further.

This joint Response to the Appeals filed by SED and Carmel is organized as follows:

⁵ PG&E OB at 28-29.

⁶ Ex. 1 at 10 (PWA Report); *see* PG&E OB at 41; Ex. 2 at 43-44 tbl.2 (PWA Rebuttal) (acknowledging that "PG&E's current efforts to improve its operation are extensive, and in many cases appear to represent best or innovative practices").

⁷ So far as permissible, PG&E suggests that any fines ordered should be invested in gas system safety.

First, PG&E provides an overview of the numerous corrective actions it has implemented in recent years to improve its gas distribution recordkeeping and the safety of its system overall. These facts comprise a significant part of the evidence in the record, which is not described in the POD or the appeal briefs.

Second, PG&E describes the objective data compiled by PHMSA indicating that PG&E operates its system safely compared to other gas distribution operators nationally, and responds to SED's and Carmel's claims that isolated examples of records imperfections undermine this measure of PG&E's overall performance.

Third, PG&E explains why SED's and Carmel's proposals for calculating higher fines for specific incidents, including the Carmel incident, are inappropriate. SED's and Carmel's alternative proposals largely involve a mechanical application of fines at the top of the statutory range, while giving no consideration to the fact-specific criteria that must be considered under the Public Utilities Code and Commission precedent when determining an appropriate penalty. PG&E submits that the decision in this proceeding should consider the evidence of record and the relevant criteria for assessing a penalty—including factually comparable precedents, the relative severity of the incidents, PG&E's commitment to continuous improvement, and the objective measures demonstrating PG&E's general compliance with regulations.⁸

Fourth, PG&E explains how SED and Carmel misconstrue the evidentiary record and the POD's findings in challenging the fine imposed regarding the De Anza leak repair records.

Fifth, PG&E refutes SED's claim that PG&E previously admitted that its method for setting maximum allowable operating pressure for certain distribution systems is a violation.

⁸ PG&E agrees with SED that the fine proposed by the POD at page 55 does not include the \$50,000 penalty imposed for the POD's finding that PG&E's communication with city officials in Carmel was inadequate. POD at 42; SED Appellate Brief (AB) at 3 n.10. PG&E also supports keeping the proceeding open so that the Presiding Officer may assess the compliance plan for remedial measures produced through the ordered meet-and-confer process. POD at 53-54; Carmel AB at 11-12.

Last, PG&E responds to the procedural challenges to the POD raised by Carmel.

For all of these reasons, PG&E respectfully disagrees with SED and Carmel that additional penalties are warranted.

II. THE ISSUES RAISED BY THE OII WERE THOROUGHLY INVESTIGATED AND RESULTED IN AN EXTENSIVE AND LARGELY UNDISPUTED EVIDENTIARY RECORD.

Citing six incidents that occurred in the last six years, the Commission instituted this OII to determine “whether PG&E’s recordkeeping practices for its gas distribution system have been unsafe and in violation of the law.”⁹ The questions raised in the OII were thoroughly investigated over the course of nearly 18 months. During discovery, PG&E produced tens of thousands of pages of documents in response to over 100 data requests, responded to written interrogatories under oath, and arranged interviews and site visits for SED and its experts with PG&E managers and field employees.¹⁰ The parties submitted more than 400 pages of written testimony from eight fact witnesses and five experts on gas distribution recordkeeping, plus over 2,500 pages of attachments.¹¹ SED’s testimony included two reports authored by its experts, PWA, who commented at length on 19 incidents they identified and positively assessed PG&E’s progress in implementing industry leading or best practices.¹² In PG&E’s testimony, six executives addressed the incidents and provided detailed explanations of the technology initiatives, records and information management practices, and corrective actions PG&E has implemented since 2010 to improve recordkeeping and operational safety.¹³ PG&E’s experts,

⁹ OII at 1.

¹⁰ Ex. 1 at 6 (PWA Report); Ex. 4 at 1-2:25-30 (PG&E Reply Testimony, Howe).

¹¹ Ex. 1 (PWA Report); Ex. 2 (PWA Rebuttal); Ex. 3 (TURN Testimony); Ex. 4 (PG&E Reply Testimony); Exs. 5-10 (PG&E Reply Testimony Supporting Attachments); Ex. 43 (Carmel Testimony, Calhoun); Ex. 44 (Carmel Testimony, Burnett).

¹² Ex. 1 (PWA Report); Ex. 2 (PWA Rebuttal).

¹³ Ex. 4 at Chs. 1-6 (PG&E Reply Testimony).

including the former Director of Regulations and Technical Standards at PHMSA’s Office of Pipeline Safety, opined on PG&E’s regulatory compliance and performance compared to gas distribution pipeline operators nationally.¹⁴ After four days of hearings, the parties submitted two rounds of post-hearing briefs, which, taken together, exceeded 500 pages, including appendices addressing each of SED’s alleged violations.¹⁵ In the end, the facts were almost entirely undisputed, and the parties differed mostly as to the conclusions that should be drawn on that record.

III. THE RECORD REFLECTS THAT PG&E HAS IMPLEMENTED NUMEROUS CORRECTIVE ACTIONS TO IMPROVE THE QUALITY AND MANAGEMENT OF ITS GAS DISTRIBUTION RECORDS AND PROMOTE SAFETY.

A significant portion of the testimony and evidence in this proceeding described PG&E’s extensive efforts to improve its gas distribution recordkeeping practices, reduce risk, and enhance the safety of its operations. While these facts are not discussed at length in the POD,¹⁶ they provide critical context for the Commission’s review.

Before the Commission issued this OII, PG&E had already undertaken numerous initiatives to improve its gas distribution recordkeeping and mitigate the risks created by imperfect records,¹⁷ including the risk that incidents, such as those at issue in this proceeding, might occur again. PWA evaluated these measures and found that they meet—and in many cases exceed—industry best practices.¹⁸ According to PWA, nine of the 24 measures PG&E has adopted are “industry best practices” that “produce superior safety results” beyond those required

¹⁴ *Id.* at Ch. 7 (PG&E Reply Testimony, Huriaux); *id.* at Ch. 8 (PG&E Reply Testimony, Paskett).

¹⁵ PG&E OB; SED OB; Carmel OB; PG&E Reply Brief (RB); SED RB; Carmel RB.

¹⁶ *See* POD at 17.

¹⁷ *See infra* Appendix A; PG&E OB at 17-30.

¹⁸ 1/19/16 Tr. at 27:15-28, 30:4-14, 31:13 to 33:13 (SED/PWA); Ex. 1 at 59-67 tbl.9 (PWA Report).

by safety regulations.¹⁹ An additional eight measures, according to PWA, are “innovative practices,” extending a “step beyond” industry best practices.²⁰ The table attached as Appendix A summarizes more than 40 measures that PG&E has undertaken to improve the quality and management of its gas distribution records and promote safety.²¹

A. PG&E Has Adopted Innovative Technologies That Have Improved the Accuracy, Accessibility, and Processing of Its Gas Distribution Records.

PG&E is improving the quality of its records by investing in and implementing new technologies. The cornerstone of this effort is the Pathfinder Project, which consolidates multiple sources of gas distribution asset data, much of it previously stored in paper form, into a single electronic mapping system, called GD GIS.²² This system stitches together tens of thousands of individual plat maps into one continuous electronic map, with links to various location-specific asset records.²³ PG&E has scanned millions of Gas Service Records (GSRs), which are created whenever PG&E installs, replaces, or modifies a gas distribution service line, and linked them to the related service line on the GD GIS map, making the underlying asset data available by clicking on the map.²⁴ This technology also allows PG&E to improve the accuracy of the underlying data by using analytical tools to identify inconsistencies or inaccuracies.²⁵

¹⁹ *Id.*

²⁰ *Id.*

²¹ Where the current status of PG&E’s implementation of various technological enhancements and corrective actions is described in this submission, it refers to the status as of the close of the evidentiary record in this matter.

²² PG&E OB at 18-19; Ex. 4 at 1-12:23 to 1-13:21 (PG&E Reply Testimony, Howe); *id.* at 2-10:9 to 2-19:23, 5-13:17-23 (PG&E Reply Testimony, Singh); *see also* Ex. 1 at 55:30-36 (PWA Report) (explaining that PWA anticipates that the Pathfinder Project will correct many inaccurate records).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

PWA recognizes GD GIS as an “innovative practice[]” that goes a step beyond the “best practices” in the gas industry.²⁶

With an integrated electronic system, PG&E is now also able to improve the accuracy of its asset data by cross-checking its various datasets against each other.²⁷ For example, when conducting a leak repair, PG&E crews record the size, type, and location of the underground assets.²⁸ PG&E uses these observations to verify the mapping information in GD GIS.²⁹

A further advantage of electronic recordkeeping is that GD GIS and other records can be made accessible to PG&E employees and contractors working in the field via mobile tablets and laptops.³⁰ These mobile tools also enable field personnel to create and submit electronic information, such as mapping corrections or leak repair forms, in near real time as they perform their work, allowing for faster and more accurate updating of PG&E’s records.³¹

B. PG&E’s Gas Distribution Control Center and Corrective Action Program Allow PG&E to Monitor Its Distribution System for Issues Affecting Safety.

PG&E’s Gas Distribution Control Center (GDCC), which PWA identified as an industry “best practice,” went live in 2013.³² The GDCC serves as PG&E’s around-the-clock nerve

²⁶ 1/19/16 Tr. at 31:13 to 33:12 (SED/PWA); Ex. 1 at 59 tbl.9 (PWA Report).

²⁷ Ex. 4 at 2-18:26 to 2-21:3 (PG&E Reply Testimony, Singh).

²⁸ *Id.*; *id.* at 3-6:27 to 3-7:21 (PG&E Reply Testimony, Higgins).

²⁹ *Id.* at 2-20:3-13 (PG&E Reply Testimony, Singh); *id.* at 3-6:27 to 3-7:21 (PG&E Reply Testimony, Higgins); *id.* at 4-15:16 to 4-16:17 (PG&E Reply Testimony, Trevino); *see also* Ex. 1 at 61 tbl.9 (PWA Report) (acknowledging this measure as an “innovative practice”).

³⁰ PG&E OB at 20-21; Ex. 4 at 2-15:24 to 2-16:17, 2-20:14-18, 2-22:10-26, 5-36:10 to 5-37:2 (PG&E Reply Testimony, Singh); *id.* at 3-12:11 to 3-13:12 (PG&E Reply Testimony, Higgins); *see also* Ex. 1 at 62 tbl.9 (PWA Report) (recognizing that providing crews with mobile access is a “best practice”).

³¹ *Id.* PG&E’s electronic systems can also automatically monitor workflow, for instance by tracking the speed with which maps are updated following installation work. Ex. 4 at 4-11:29 to 4-12:28 (PG&E Reply Testimony, Trevino). In part due to this enhanced monitoring capability, the time for updating maps with the results of capital job orders improved from about 75 days on average in 2011 to fewer than 30 days on average in 2014. *Id.*

³² PG&E OB at 21-22; Ex. 1 at 66 tbl.9 (PWA Report); Ex. 4 at 5-2:11 to 5-3:23 (PG&E Reply Testimony, Singh).

center, monitoring all aspects of its gas system.³³ With hundreds of electronic monitors constantly tracking the flow of gas throughout PG&E's system, GDCC staff can learn about operating conditions that require attention in real time and coordinate PG&E's response.³⁴ The staff also oversees the Gas Distribution Clearance Process, a centralized review of all work that will affect the flow of gas in PG&E's distribution mains.³⁵

PG&E has also created the Corrective Action Program (CAP), which PWA also describes as an "innovative practice."³⁶ CAP is a real-time repository of issues reported on PG&E's gas system, ranging from a dig-in to a suggestion for improving a work process.³⁷ Mapping corrections are submitted and tracked through CAP.³⁸ A designated team systematically reviews these inputs, allowing PG&E to prioritize the most urgent items, monitor issues to resolution, and trend recurring issues and analyze their causes and consequences.³⁹

C. PG&E Is Pioneering New Approaches to the Way Gas Operations Works.

PG&E has adopted creative new approaches and technologies that allow leak surveillance, construction, and maintenance work to be performed more efficiently and effectively. In the leak detection and repair process called "Super Crew," the leak management personnel work together in a single, coordinated process with the state-of-the-art Picarro Surveyor™ leak detection device to find gas leaks.⁴⁰ The Picarro Surveyor™ is approximately

³³ *Id.*

³⁴ *Id.*

³⁵ Ex. 4 at 5-4:10 to 5-5:14 (PG&E Reply Testimony, Singh).

³⁶ PG&E OB at 22-24; Ex. 1 at 63 tbl.9 (PWA Report); Ex. 4 at 4-5:22 to 4-6:15 (PG&E Reply Testimony, Trevino); *id.* at 5-22:24 to 5-27:22 (PG&E Reply Testimony, Singh).

³⁷ PG&E employees can make a CAP report using a paper form, an email, a toll-free number, the PG&E website, or a Smartphone app. Ex. 4 at 5-22:22-28 (PG&E Reply Testimony, Singh).

³⁸ Ex. 1 at 63 tbl.9 (PWA Report); Ex. 4 at 4-5:22 to 4-6:15 (PG&E Reply Testimony, Trevino); *id.* at 5-22:22 to 5-27:22 (PG&E Reply Testimony, Singh).

³⁹ Ex. 4 at 4-11:29 to 4-12:28 (PG&E Reply Testimony, Trevino).

⁴⁰ PG&E OB at 24; Ex. 4 at 3-5:25 to 3-7:21 (PG&E Reply Testimony, Higgins).

1,000 times more sensitive to natural gas detection than other commercially available leak detection instruments.⁴¹ It does not depend on maps to find leaks and can discover leaks even in places where records might not necessarily reflect assets.⁴² The Super Crew then targets the neighborhood scanned by the Picarro Surveyor™ to repair the required discovered leaks all at one time.⁴³ As determined during the pilot phase, this process identifies up to 80% more leaks than traditional methods and repairs leaks about 40% faster.⁴⁴ Every time a leak is fixed, updated asset information is recorded and becomes viewable in GD GIS, thereby continuously improving records accessibility and accuracy.⁴⁵

D. PG&E Is Proactively Addressing Risks to Its System as They Are Identified.

After the Carmel incident, PG&E identified and implemented a set of robust corrective actions to address the potential risks posed by unmapped plastic inserts.⁴⁶ PG&E adopted the Gas Carrier Pipe Checklist, a series of formal steps that every crew follows to search for any sign of an inserted plastic pipe before welding or tapping.⁴⁷ PWA agrees that the Checklist appears to be an “effective” backstop measure.⁴⁸ In the event a crew is unable to conclusively rule out the possibility of an inserted line, PG&E has also introduced the Bolt-On Saddle Punch Tee, a tap fitting designed to prevent plastic inserts from being melted or breached during the welding and

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ PG&E OB at 54; Ex. 36 (Letter from S. Singh to M. Robertson (Apr. 4, 2014)).

⁴⁷ Ex. 5, Attachment W015 (Notification of Abnormal or Emergency Operating Conditions, Rev. 1, Gas Operations JSSA & Tailboard Briefing) (incorporating Gas Carrier Pipe Checklist); *see* Ex. 4 at 3-28:14 to 3-29:13 (PG&E Reply Testimony, Higgins); *id.* at 5-8:21 to 5-9:10 (PG&E Reply Testimony, Singh).

⁴⁸ Ex. 1 at 65 tbl.9 (PWA Report).

tapping process.⁴⁹ PWA describes the Tee as a “very useful” backstop measure for unmapped inserts.⁵⁰

PG&E has also launched an effort to specifically compare its leak repair records with information in GD GIS to confirm the mapping of plastic inserts.⁵¹ By making this comparison, PG&E can identify any instances where plastic inserts were used as the repair method, but do not appear on the GD GIS maps.⁵² PG&E is also collaborating with a technology company to research new tools for detecting plastic pipe in steel lines, such as by analyzing sound wave patterns.⁵³ These initiatives should continue to reduce the potential risk of incidents, such as those in Carmel and Mountain View, related to unmapped plastic inserts.

E. PG&E Has Enhanced Its Recordkeeping Processes, Procedures, and Training.

In 2011, Gas Operations established a Quality Management (QM) group that reviews a variety of work activities and individual records to verify that employees are adhering to PG&E’s procedures and to identify areas for improvement,⁵⁴ a measure that PWA described as an industry “best practice.”⁵⁵ The QM group has conducted quality assurance reviews of over 25,000 records for gas distribution operations and maintenance activities, which have prompted modifications to records-related processes and trainings.⁵⁶ In 2014, the last full year for which metrics were available in the record, 98% of the Gas Operations workforce received records and

⁴⁹ Ex. 4 at 5-10:12-16 (PG&E Reply Testimony, Singh).

⁵⁰ Ex. 1 at 68:1-16 (PWA Report).

⁵¹ PG&E OB at 18-20; Ex. 4 at 2-20:3-13 (PG&E Reply Testimony, Singh); *id.* at 4-15:16 to 4-16:17 (PG&E Reply Testimony, Trevino).

⁵² PG&E OB at 56; Ex. 4 at 4-15:16 to 4-16:17 (PG&E Reply Testimony, Trevino).

⁵³ Ex. 4 at 5-11:25 to 5-12:13 (PG&E Reply Testimony, Singh).

⁵⁴ PG&E OB at 26-27; Ex. 4 at 5-32:6 to 5-33:30 (PG&E Reply Testimony, Singh).

⁵⁵ Ex. 1 at 64-65 tbl.9 (PWA Report).

⁵⁶ Ex. 4 at 3-16:31 to 3-17:22 (PG&E Reply Testimony, Higgins); *id.* at 5-33:12-30 (PG&E Reply Testimony, Singh).

information management training.⁵⁷ PG&E has also introduced an enhanced training and development program for all new and existing mappers, and is in the process of creating a revised mapping procedures manual.⁵⁸ Together with PG&E's new electronic means for tracking workflow, these improvements have also significantly increased the speed with which PG&E's maps are updated.⁵⁹

F. Expert Third Parties Have Validated the Quality of PG&E's Efforts.

PG&E's commitment to continuous improvement in records management and safety practices is based on standards published by industry organizations to guide operational improvements inside and outside of the gas industry. PG&E's compliance with those standards has been validated by independent third-party auditors.⁶⁰

PG&E has aligned its records and information management program with two international standards for asset management, Publicly Available Specification (PAS) 55 and International Organization for Standardization (ISO) 55001.⁶¹ Lloyd's Register, a recognized third-party accreditation firm, conducted a multi-phase audit of PG&E's implementation of these standards and awarded PG&E best practice asset management certifications under both standards, making it the first operator in North America with both certifications.⁶² PWA assessed PG&E's achievement of these certifications as an "innovative practice."⁶³ PG&E has also been an industry leader in implementing the American Petroleum Institute's (API) Recommended Practice 1173, developed in conjunction with PHMSA and other gas operators,

⁵⁷ *Id.* at 2-6:15 to 2-7:25 (PG&E Reply Testimony, Singh).

⁵⁸ *Id.* at 4-8:23 to 4-9:2, 4-10:13 to 4-12:28 (PG&E Reply Testimony, Trevino).

⁵⁹ *Id.*

⁶⁰ PG&E OB at 28-29; Ex. 4 at 1-21:5 to 1-22:19 (PG&E Reply Testimony, Howe).

⁶¹ Ex. 4 at 1-21:5-31 (PG&E Reply Testimony, Howe).

⁶² *Id.* at 1-21:32 to 1-22:19 (PG&E Reply Testimony, Howe); *id.* at 2-7:28 to 2-8:25 (PG&E Reply Testimony, Singh).

⁶³ Ex. 1 at 64 tbl.9 (PWA Report).

which provides a framework to pipeline operators for developing and maintaining a safety management system.⁶⁴ PG&E obtained a letter of compliance with API 1173 in 2015, one of the first pipeline operators in the nation to do so.⁶⁵ These independent assessments provide objective validation of PG&E's commitment to improving the quality of its recordkeeping and the safety of its system overall.

IV. OBJECTIVE INDUSTRY METRICS SUPPORT THE POD'S CONCLUSION THAT PG&E'S GAS DISTRIBUTION SYSTEM GENERALLY COMPLIES WITH LAWS AND REGULATIONS.

Any decision regarding fines assessed in this proceeding should consider whether PG&E's gas distribution recordkeeping is, as the POD stated, generally in compliance with the regulations—that is, operating safely overall.⁶⁶ As explained below, the gas industry uses locate and mark data as a proxy for the health of a company's asset records and safety performance. It is undisputed that, as the POD said, PG&E has “an accuracy rate for locating and marking its facilities that is well over 99%.”⁶⁷ It is important to the Commission's evaluation of the ordered fines—and SED's and Carmel's challenges to them—to understand the evidentiary basis for the POD's conclusion.

Excavation damage has long been recognized by the industry as the most significant threat to distribution pipeline safety.⁶⁸ Significantly, SED agreed with PG&E's experts that an operator's ability to avoid excavation damage is the key indicator not just of system safety

⁶⁴ 1/19/16 Tr. at 36:26 to 37:6 (SED/PWA); Ex. 4 at 1-18:10 to 1-19:15 (PG&E Reply Testimony, Howe).

⁶⁵ *Id.*; 1/20/16 Tr. at 183:22 to 184:13 (PG&E/Howe); Ex. 12 (Lloyd's Register Pipeline Safety Management System Certificate of Compliance with API RP 1173: 2015 (Nov. 30, 2015)).

⁶⁶ POD at 45.

⁶⁷ *Id.*; *see also* PG&E OB at 10; Ex. 4 at 3-40:21-23 (PG&E Reply Testimony, Higgins).

⁶⁸ PG&E OB at 11-12; Ex. 4 at 8-16 (PG&E Reply Testimony, Paskett).

generally, but also of the accuracy and completeness of its maps and records.⁶⁹ PG&E closely tracks the frequency of excavation damage on its system, as well as “at-fault dig-ins,” which are instances when the damage is PG&E’s fault.⁷⁰ In the first half of 2015, the most recent data in the record, PG&E responded to hundreds of thousands of requests to mark underground facilities for excavation work, and PG&E’s at-fault dig-in rate during that period was approximately 0.02%.⁷¹ In other words, PG&E accurately marked approximately 99.98% of the excavation requests on which it worked.⁷² The 0.02% figure includes dig-ins that resulted from factors other than imperfect maps or records, such as changed field conditions, or locate and mark operational errors unrelated to records.⁷³ Accordingly, at-fault dig-ins due to incorrect maps and records constitute a fraction of 0.02% of total dig-ins.⁷⁴

Since 2010, PHMSA has required gas distribution operators to submit metrics on excavation damage annually.⁷⁵ The totals reported by PHMSA show that PG&E has the lowest rate of excavation damage in California and is near the top performance quartile compared to the averages for operators in each of the other states—a noteworthy fact, given that PHMSA assesses California as lacking an effective excavation damage enforcement program.⁷⁶ SED’s experts did not dispute these statistics or the conclusions that PG&E’s experts drew about their

⁶⁹ 1/19/16 Tr. at 49:22 to 50:8 (SED/PWA); Ex. 4 at 8-4, 8-16, 8-17 (PG&E Reply Testimony, Paskett).

⁷⁰ PG&E OB at 11-12; Ex. 4 at 1-16:1 to 1-17:10 (PG&E Reply Testimony, Howe).

⁷¹ 1/20/16 Tr. at 329:2-10 (PG&E/Higgins); Ex. 4 at 3-40:21-23 (PG&E Reply Testimony, Higgins); *id.* at 7-Ex. 2 (PG&E Reply Testimony, Huriaux).

⁷² *Id.*

⁷³ 1/21/16 Tr. at 374:9-22 (PG&E/Thierry).

⁷⁴ *Id.*

⁷⁵ PG&E OB at 13; Ex. 4 at 8-5 (PG&E Reply Testimony, Paskett).

⁷⁶ Ex. 4 at 3-20:6-8 (PG&E Reply Testimony, Higgins); *id.* at 7-17 (PG&E Reply Testimony, Huriaux); *id.* at 8-20 to 8-21, 8-23 tbl.6 (PG&E Reply Testimony, Paskett); Ex. 10 at 8-22 & tbl.5 (PG&E Errata to Reply Testimony, Paskett).

implications for the safety of PG&E's system.⁷⁷ It was therefore appropriate for the POD to acknowledge and consider this evidence in the context of assessing fines.

SED and Carmel argue that, although the metrics may be accurate, sporadic anecdotal evidence of records imperfections suggests that PG&E's system is nevertheless unsafe.⁷⁸ SED and Carmel also mischaracterize the role that these statistics played in the POD's analysis, which never suggested that PG&E's overall performance excused any particular violation or diminished PG&E's responsibility to continue to pursue its aggressive improvement efforts.⁷⁹

A. Anecdotal Evidence of Imperfections in PG&E's Gas Distribution System Do Not Undermine the Conclusion That the System Is Operating Safely Overall.

SED and Carmel argue that isolated instances of imperfections in PG&E's records mean that its system cannot be generally in compliance with safety regulations.⁸⁰ These arguments are contrary to the acknowledgment by SED's experts 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 a small number of observations.⁸¹ A closer look at the evidence cited by SED and Carmel demonstrates that PWA's characterization was appropriate.

Mapping Corrections: SED and Carmel point to a PG&E report that identifies 390 "mapping error corrections" across PG&E's entire distribution system over a six-month period.⁸² On a distribution system of PG&E's size, this volume of mapping changes does not

⁷⁷ 1/19/16 Tr. at 49:22 to 50:8, 51:22 to 54:16 (SED/PWA).

⁷⁸ SED AB at 1-3; Carmel AB at 2-4; *see also* SED RB at 7-8; Carmel RB at 2-3.

⁷⁹ *See* POD at 45 (stating that although "[a] system that works over 99% of the time is not a *system* in need of improvement[, . . .] isolated failures . . . must draw consequences to create incentives for constant improvement in execution").

⁸⁰ SED AB at 1-3; Carmel AB at 2-4; *see also* SED OB at 7-17; Carmel RB at 2-3.

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

⁸² SED AB at 2; Carmel AB at 2; *see also* SED OB at 7-8. Carmel also cites PG&E witness testimony that Carmel claims indicates that PG&E processed "close to 5,000 mapping corrections" over a two-year period. Carmel AB at 2-3 (citing Carmel RB at 2-3). Carmel's claim is not a fair representation of the

come close to establishing endemic recordkeeping problems. First, fewer than half of these “mapping corrections” involve correcting an actual “error” on a map rather than, for example, an update based on new information that had not been previously captured on PG&E’s maps.⁸³ 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, even though no error has occurred.⁸⁴ Moreover, PG&E’s distribution maps have approximately 60 million data fields.⁸⁵ The number of mapping corrections identified by SED and Carmel reflect less than 1/1,000 of 1% of the mapping entries for PG&E’s system—a miniscule fraction.⁸⁶ SED’s and Carmel’s focus on isolated examples ignores the evidence of PG&E’s overall performance.

CAP Item Regarding At-Fault Dig-Ins: SED also proffers a 2014 CAP item that identifies an “adverse trend” in at-fault dig-ins.⁸⁷ However, as the CAP item notes, only a small fraction of these dig-ins were related to recordkeeping errors.⁸⁸ Moreover, a reported “trend” is meaningless without considering the context. For example, if, hypothetically, at-fault dig-ins were to go from five to ten in a given year, that would represent a 100% increase—an “adverse trend”—but the number of dig-ins in relation to the number of PG&E construction jobs during the same period would be miniscule. Thus, this single report must be evaluated in the context of

record. This assertion is based on the cross-examination testimony of a PG&E witness who estimated that the total number of CAP items submitted from October 2013 through the end of 2015—a period of about 27 months—was “about” 14,500 and who further testified that he “believe[d] about a third” of those were associated with mapping corrections, without any further specificity about the nature of these CAP items. *See* 1/21/16 Tr. at 539:5 to 541:10 (PG&E/Singh).

⁸³ PG&E RB at 44 & n.221; 1/21/16 Tr. at 418:14 to 420:6 (PG&E/Trevino); *id.* at 540:22 to 541:10 (PG&E/Singh).

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ SED AB at 2; *see also* SED OB at 9-10.

⁸⁸ Ex. 30 (Gas CAP Notification No. 7005503); *see also* 1/20/16 Tr. at 329:2-10 (PG&E/Higgins); 1/21/16 Tr. at 397:4-8 (PG&E/Thierry).

the evidence demonstrating PG&E's excavation damage performance overall.⁸⁹ PG&E does not consider any dig-in acceptable. But far from raising doubts about the overall safety of PG&E's system, this CAP item is consistent with PG&E's commitment to driving down the rate of dig-ins and improving safety.⁹⁰ CAP leverages inputs from PG&E's employees to identify and track issues throughout its system and, in many cases, formulate solutions.⁹¹ PG&E hopes the Commission views this CAP item—and CAP more generally—as an example of how PG&E has harnessed technology to enhance the safety of its gas distribution operations.

Plastic Pipe Without Locating Wire: SED points to a 2012 PG&E internal audit that identifies plastic pipe installed without locating wire, and claims that this undermines the reliability of PG&E's excavation damage metric.⁹² Not only is this not a recordkeeping issue, but the numbers in the audit do not support drawing any systemwide conclusions. The audit identifies locating wire issues as the cause of 17 dig-ins over the previous two years.⁹³ If the dig-in numbers for 2010 to 2012 (which are not in the record) were similar to those for 2013 and 2014, tracer wire issues would have caused less than 0.5% of total dig-ins.⁹⁴ The audit does not indicate a systemwide failure; it merely identifies an acknowledged risk that PG&E is addressing through revised procedures and enhanced training of locate and mark personnel.⁹⁵

⁸⁹ PG&E RB at 44; Ex. 4 at 8-5, 8-23 tbl.6 (PG&E Reply Testimony, Paskett); Ex. 10 at 8-22 & tbl.5 (PG&E Errata to Reply Testimony, Paskett).

⁹⁰ 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 (Gas CAP Notification No. 7005503).

⁹¹ Ex. 4 at 5-23:8-16, 5-26:31 to 5-27:8 (PG&E Reply Testimony, Singh).

⁹² SED OB at 11-12.

⁹³ Ex. 32 (Internal Auditing Memo Re: Audit of Gas Damage Prevention Program (Feb. 10, 2012)).

⁹⁴ PG&E RB at 45; Ex. 4 at 7-Ex. 2 (PG&E Reply Testimony, Huriaux).

⁹⁵ See, e.g., Ex. 4 at 3-15:7-20 (PG&E Reply Testimony, Higgins); Ex. 6, Attachment W026 (Job Aid TD-5811P-103-JA01, Rev. 0, Troubleshooting Difficult to Locate).

Analysis of Dig-Ins Caused by Records: SED claims that one cannot conclude that PG&E’s gas distribution system is “99% safe” because there has been no analysis of the risk that “erroneous maps have contributed to at-fault dig-ins.”⁹⁶ SED bases this assertion on the cross-examination testimony of one PG&E employee who was unaware of such an analysis.⁹⁷ On the contrary, as PG&E has explained, it both analyzes the reasons for at-fault dig-ins on an ongoing basis, and evaluates the effectiveness of the corrective actions the Company has initiated to reduce dig-ins stemming from records issues.⁹⁸

Existence of Serious Incidents: Carmel argues that the POD must have ignored the incidents in Rancho Cordova in 2008 and in San Bruno in 2010 in reaching the conclusion that PG&E’s system generally complies with safety regulations today.⁹⁹ There is no basis for this accusation. The incidents and their consequences inform PG&E’s operations to this day. Extensive and undisputed evidence was presented in this proceeding about the numerous improvement initiatives that PG&E implemented after those incidents occurred to enhance the accuracy of its records and the safety of its system. Carmel fails to explain how the fact that those incidents occurred undermines a conclusion that PG&E operates a safe system today.

PG&E recognizes that some of those improvements to its system were being implemented or were in place at the time of the Carmel incident, and regrets the impact that the incident had on Carmel and its citizens. The safety of the public and PG&E’s employees are its top priority. As explained in sections above, PG&E has taken significant actions to implement

⁹⁶ SED AB at 2 (citing SED RB at 7). Neither PG&E nor the POD have characterized the gas distribution system as “99% safe.” Rather, as the record demonstrates, key national data indicates PG&E is performing near the top quartile nationally based on important safety metrics.

⁹⁷ SED RB at 7 (citing 1/21/16 Tr. at 374:23 to 375:9 (PG&E/Thierry)).

⁹⁸ PG&E RB at 54; Ex. 4 at 5-13:10-16, 5-32:24 to 5-33:30 (PG&E Reply Testimony, Singh); Ex. 6, Attachment W072 at W072.002 (PG&E’s Response to SED Data Request No. 88, Supp. 1).

⁹⁹ Carmel AB at 3.

lessons learned from the unfortunate accidents, which SED’s experts described as “very useful” and “effective.”¹⁰⁰ While PG&E does not believe that any serious safety incident is acceptable, it respectfully disagrees that the occurrence of a serious incident undermines a conclusion that its distribution system is generally in compliance with safety regulations.¹⁰¹

B. There Is No Evidence That PG&E’s Excavation Damage Metrics Are “Misleading.”

SED suggests that the comparisons PHMSA makes among operators regarding the rate of excavation damage might be “misleading” because the metrics include both at-fault dig-ins, as well as those for which the operator is not at fault.¹⁰² First, this is speculation, as there is no evidence or even reasoned basis to conclude that separating out at-fault and third-party dig-ins would make PG&E’s performance comparatively worse. Second, this is PHMSA’s methodology, not PG&E’s. A PHMSA working group concluded that total excavation damage normalized by number of tickets would be among the “most useful” performance measures for monitoring the effectiveness of an operator’s integrity management program.¹⁰³ SED has provided no basis to conclude that PG&E’s use of these statistics to establish the identical point is misleading.

In contrast, comparing—as SED and Carmel propose—the rate of excavation damage on PG&E’s system with the rate of fatalities in the aviation industry misrepresents the nature of excavation damage and the risk it poses to PG&E’s system. Carmel quotes statistics that the

¹⁰⁰ PG&E OB at 55; Ex. 1 at 65 tbl.9, 68:1-16 (PWA Report).

¹⁰¹ PG&E OB at 10; Ex. 4 at 3-1:8-20 (PG&E Reply Testimony, Higgins); *id.* at 6-3:9-13 (PG&E Reply Testimony, Thierry).

¹⁰² SED AB at 1-2.

¹⁰³ Ex. 9, Attachment E019 at E019.020, E019.040 (Pipeline & Hazardous Materials Safety Admin., et al. *Integrity Management for Gas Distribution Report of Phase I Investigations* (Dec. 2005)); *see also* Pipeline & Hazardous Materials Safety Admin., *Distribution Integrity Management Frequently Asked Questions* § C.4.e.1 (Aug. 2, 2010), <https://primis.phmsa.dot.gov/dimp/docsf/faq.pdf> (last revised July 1, 2015).

odds of a fatality on a single airline flight are 1 in 29.4 million.¹⁰⁴ While this extra-record statistic may or may not be correct, contrasting the odds of a fatality for a single airline flight to the safety of the nation’s distribution pipeline infrastructure is a flawed and misleading comparison.¹⁰⁵

In reality, natural gas distribution pipelines have an excellent safety record. Nationwide, over 10,000 cases of gas leaks are caused by excavation damage every year.¹⁰⁶ Yet, from 2010 through 2014, an average of six cases of excavation damage per year—or approximately 9/1,000 of 1%—were described by PHMSA as “serious” incidents.¹⁰⁷ And, even this relatively small number of “serious” incidents nationwide do not usually involve a fatality.¹⁰⁸ While PG&E takes all excavation damage seriously and is committed to driving its numbers down even further, SED’s and Carmel’s comparison of excavation damage with fatalities reflects a lack of understanding of the safety metric they are challenging.

¹⁰⁴ Carmel AB at 3-4. While SED does not use the word “fatality,” it compares PG&E’s rate of avoiding excavation damage to a commercial airline with a “99% flight success rate.” SED AB at 2. Aside from the fact that this analogy juxtaposes two things that are not remotely comparable, it vastly understates PG&E’s success rate in locating and marking. The 99.98% accuracy metric represents a failure rate of two out of 10,000, not one out of 100—a difference of nearly two orders of magnitude.

¹⁰⁵ A single airline flight is a one-time event that may last several hours over a 24-hour period. By comparison, the gas distribution system is in service 24 hours per day, seven days per week, 365 days a year. A more appropriate comparison would be with the consequences of “an incident on a single gas service line on a single day.” Using PHMSA’s 2015 national gas distribution safety metrics, *the calculated odds of a fatality due to a gas incident on a single gas service line on a given day is approximately 1 in 8.22 billion*. If distribution mains are also considered, the odds become nearly *1 in 17.3 billion*. Pipeline & Hazardous Materials Safety Admin., *Significant Incidents*, http://opsweb.phmsa.dot.gov/primis_pdm/significant_inc_trend.asp (reporting 3 natural gas distribution fatalities in 2015); Pipeline & Hazardous Materials Safety Admin., *Annual Report Mileage for Gas Distribution Systems*, <http://www.phmsa.dot.gov/pipeline/library/data-stats/annual-report-mileage-for-gas-distribution-systems> (reporting 1,276,388 miles of distribution mains and 67.6 million services in 2015).

¹⁰⁶ Ex. 4 at 8-18 (PG&E Reply Testimony, Paskett).

¹⁰⁷ *Id.* at 8-19 (PG&E Reply Testimony, Paskett).

¹⁰⁸ *Id.* at 8-17 (PG&E Reply Testimony, Paskett).

C. SED and Carmel Mischaracterize the Conclusions Reached in the POD.

1. The POD Did Not Assert That a 99.98% Accuracy Rate Is “Acceptable.”

SED claims that the POD committed error by “suggest[ing] that 99% safety is acceptable.”¹⁰⁹ That is not the case. The POD expressly “reject[ed]” any suggestion “that some level of compliance failure is acceptable.”¹¹⁰ Carmel similarly claims that the POD considered PG&E’s general compliance with the regulations when deciding whether PG&E had violated particular regulations.¹¹¹ The POD rejected this position as well: “There is no acceptable level of failure to comply with applicable law and regulations; each failure is a violation.”¹¹² The POD considered PG&E’s general compliance with safety regulations only in assessing the amount of the fine for the violations it identified.¹¹³ This consideration is required by the standards for assessing fines set forth in Public Utilities Code section 2104.5 and D. 98-12-075.¹¹⁴

2. The POD Did Not Conclude That a 99.98% Accuracy Rate Eliminates the Need for Further Improvement.

Contrary to SED’s assertion, the POD did not conclude, based on PG&E’s excavation damage performance, that PG&E does not need to further improve its recordkeeping.¹¹⁵ In fact, the POD repeatedly emphasized the importance of continuous improvement in PG&E’s operations.¹¹⁶ On the same page cited by SED for this point, the POD explained that PG&E must

¹⁰⁹ SED AB at 1.

¹¹⁰ POD at 25.

¹¹¹ Carmel AB at 3.

¹¹² POD at 56.

¹¹³ *Id.* at 25.

¹¹⁴ Cal. Pub. Util. Code § 2104.5; *Re Standards of Conduct Governing Relationships Between Energy Utils. & Their Affiliates*, D. 98-12-075, 1998 Cal. PUC LEXIS 1018, at *9-10.

¹¹⁵ SED AB at 2.

¹¹⁶ POD at 17, 25.

be penalized for failures in order “to create incentives for constant improvement in execution.”¹¹⁷ And the POD ordered the parties to meet and confer regarding a compliance plan that includes “all feasible and cost-effective measures necessary to improve PG&E’s natural gas distribution system recordkeeping.”¹¹⁸ Furthermore, there can be no question that PG&E is committed to continuous improvement, as the POD and PWA both acknowledge.¹¹⁹ Throughout this proceeding, PG&E welcomed PWA’s input on ways to further improve recordkeeping quality and agreed to implement or investigate many of PWA’s recommendations.¹²⁰

V. THE PENALTY ASSESSMENT

SED and Carmel continue to advocate for penalties that do not take into account PG&E’s measurable and significant strides in improving the quality of its records management practices and implementing industry-leading safety measures described above¹²¹ and the undisputed evidence that PG&E’s distribution system safety performance is near the top quartile of gas distribution operators nationally.¹²² Moreover, PG&E maintains that SED did not meet its burden of proving that PG&E violated pipeline safety regulations related to recordkeeping and

¹¹⁷ *Id.* at 25.

¹¹⁸ *Id.* at 54.

¹¹⁹ *Id.* at 17; Ex. 1 at 59-67 tbl.9 (PWA Report); Ex. 2 at 43-44 tbl.2 (PWA Rebuttal) (stating that “PG&E’s current efforts to improve its operation are extensive, and in many cases appear to represent best or innovative practices.”).

¹²⁰ Ex. 4 at 1-6:17 to 1-8:1 (PG&E Reply Testimony, Howe); *id.* at 5-6:7-17, 5-8:15-17, 5-11:25 to 5-12:13 (PG&E Reply Testimony, Singh); *id.* at 6-15:17 to 6-16:8 (PG&E Reply Testimony, Thierry); *see also* PG&E OB at 16-17 (discussing damage prevention measures); *id.* at 54-56 (discussing measures taken after Mountain View and Carmel incidents). Furthermore, though this issue does not implicate recordkeeping, PG&E also agreed to consider a policy to more aggressively eliminate mapped stubs on its system, even though PG&E already has a policy in place to remove mapped stubs, which PWA has described as “proactive.” PG&E OB at 30; Ex. 1 at 59 tbl.9, 75:37 to 76:2 (PWA Report); Ex. 4 at 5-6:7-10 (PG&E Reply Testimony, Singh); Ex. 7, Attachment W095 at W095.007 (SED’s First Responses to PG&E’s Data Requests Sets 2 and 3).

¹²¹ *See supra* pp. 5-12.

¹²² 1/19/16 Tr. at 51:22 to 54:15 (SED/PWA) (noting that PWA has not done an analysis of the publicly available PHMSA data set forth in Mr. Paskett’s report, but that PWA has no reason to doubt the data or conclusion presented by Mr. Paskett); *see* PG&E OB at 13-15.

that those violations led to the operation of an unsafe gas distribution system.¹²³ For these reasons, PG&E maintained throughout this proceeding that no penalty was warranted.¹²⁴

Although continuing to advocate that position in its post-hearing briefing, PG&E nevertheless also explained that the penalties imposed, if any, should be no greater than \$33.636 million, which, it submitted, was the maximum amount that should be levied under the relevant statutes and Commission precedent.¹²⁵ In its appeal, SED suggests that PG&E endorsed this “maximum” amount.¹²⁶ This argument misstates PG&E’s position. At no point did PG&E suggest that these “maximum” penalty amounts were warranted. Rather, it said that if the Commission disagreed with PG&E and concluded that violations had occurred, no penalties beyond these amounts were justified.¹²⁷ PG&E nevertheless does not contest the POD’s penalty assessment and submits that any fine should be directed to excavation damage prevention, rather than payable to the General Fund, so as to further the important objectives pursued in this proceeding.¹²⁸ Below, PG&E explains why the challenges to the imposed fine raised by SED and Carmel are without merit.¹²⁹

¹²³ *Investigation of TracFone Wireless, Inc.*, D. 15-05-032, 2014 Cal. PUC LEXIS 700, at *24; *Investigation of Qwest Commc’ns Corp.*, D. 03-01-087, 2003 Cal. PUC LEXIS 67, at *12-13, n.5 (citing *Investigation of Commc’ns Telesystems Int’l*, D. 97-10-063, 1997 Cal. PUC LEXIS 912, at *4 n.3).

¹²⁴ PG&E OB at 41-48; PG&E RB at A-1.

¹²⁵ PG&E RB at 7-11. 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.

¹²⁶ SED AB at 3-4, 10-11, 20-21, 23-25.

¹²⁷ PG&E RB at 7-8.

¹²⁸ Public Utilities Code section 2107 does not require that a penalty be paid to the General Fund. Cal. Pub. Util. Code § 2107. All customers in PG&E’s service territory would benefit from ordered investments in a safer gas distribution pipeline system paid for by PG&E.

¹²⁹ *See, e.g., Investigation of Pac. Bell Wireless*, D. 04-09-062, 2004 Cal. PUC LEXIS 453, at *19-20; *Greenlining Inst., Latino Issues Forum v. Pac. Bell*, D. 01-04-037, 2001 Cal. PUC LEXIS 384, at *34.

A. The Total Fine of \$24.31 Million, in Addition to the \$10.8 Million Levied for the Carmel Citation, Is Consistent With the Traditional Factors Considered by the Commission in Setting Fines.

The Commission looks to Public Utilities Code section 2104.5 and D. 98-12-075 for the factors to be considered in determining an appropriate penalty.¹³⁰ When assessing a penalty, the Commission is required, among other things, to “address previously issued decisions involving sanctions, including ones with the most reasonably comparable facts.”¹³¹ The analysis should account for any “substantial differences in outcome.”¹³² PG&E respectfully submits that a meaningful evaluation of “reasonably comparable” 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) the nature of the 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-injury incidents with some evidence of property damage, customer inconvenience, and/or recordkeeping issues.

As discussed in PG&E’s post-hearing briefs, past Commission penalties imposed for the Carmel Citation, Leak Survey Incident, and the Rancho Cordova incident suggest a “reasonably comparable” range for any penalty imposed in this proceeding. The bottom end of the range is suggested by the Commission’s \$10.85 million fine in connection with the citation issued to

¹³⁰ 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. Cal. Pub. Util. Code § 2104.5; D. 98-12-075, 1998 Cal. PUC LEXIS 1018, at *9-10, *70-77.

¹³¹ 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 *27-28.

¹³² D. 98-12-075, 1998 Cal. PUC LEXIS 1018, at *60.

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.¹³³ 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 penalty associated with the Leak Survey Incident is most relevant to the Commission's inquiry.¹³⁴ 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.¹³⁵ Upon discovery of this oversight, PG&E notified the Commission and, among other things, immediately leak surveyed all of the affected mains and services.¹³⁶ The leak surveys identified 23 leaks, the most serious one of which was immediately repaired.¹³⁷ Based on those facts, the Commission found 838 violations of 49 C.F.R. § 192.723(b)(2).¹³⁸ 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.¹³⁹

The facts of the Leak Survey Incident are both similar yet also, in some ways, of greater magnitude than the incidents in this OII (with the exception of Carmel). Similar, in that the incident occurred on the gas distribution system and the violations resulted from an inaccurate record, in that case, the incomplete leak survey schedule. Following the missed leak surveys, PG&E discovered 23 gas leaks, which is roughly equivalent to the number of gas leaks caused

¹³³ Resolution ALJ-323, *Resolves the Appeal of Pac. Gas & Elec. Co. from Citation ALJ-274 2014-11-001 Issued by the Safety & Enft Div.*, 2015 Cal. PUC LEXIS 757, at *1-2, 6-7.

¹³⁴ POD at 22-23; PG&E RB at 23.

¹³⁵ Resolution ALJ-277, 2012 Cal. PUC LEXIS 629, at *2.

¹³⁶ *Id.* at *3.

¹³⁷ *Id.*

¹³⁸ *Id.* at *4-6, 10.

¹³⁹ *Id.* at *13-14.

by the dig-ins and construction work at issue in this case.¹⁴⁰ Different, in that the potential harm in that case extended to a much larger geographic area, as PG&E had not timely leak surveyed significant portions of seven East Bay cities.¹⁴¹ The Leak Survey Incident also involved over some 1,200 gas distribution services and over *14 miles* of distribution mains.¹⁴² The incidents in this OII at issue collectively involved 19 mains and services. As the POD acknowledged, the fine in this proceeding, after the \$10.85 million penalty levied for the Carmel incident is taken into account, is more than twice the penalty imposed for the Leak Survey Incident.

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.¹⁴³ That tragic accident was caused by the improper use of “packing pipe” to repair the pipeline and a failure to perform a pressure test.¹⁴⁴ The Commission ordered PG&E to pay a \$38 million penalty.¹⁴⁵ Unlike Rancho Cordova, the incidents here involved no loss of life or serious bodily injury.¹⁴⁶

¹⁴⁰ 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 (PWA Report).

¹⁴¹ Resolution ALJ-277, 2012 Cal. PUC LEXIS 629, at *2 (listing the Contra Costa County cities of Antioch, Brentwood, Byron, Concord, Danville, Discovery Bay, and Pittsburg).

¹⁴² *Id.* (noting that 1,242 services and 13.83 miles of mains were involved).

¹⁴³ *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 *1, 8-9.

¹⁴⁴ *Id.* at *24-28, 28 n.12.

¹⁴⁵ *Id.* at *62.

¹⁴⁶ PG&E and SED appear to agree that the San Bruno proceeding is not a relevant precedent. SED continues to argue that the Rancho Cordova incident and the Malibu Canyon fire are comparable cases. SED AB at 5-8; SED OB at 93-94. But the consequences resulting from those incidents were far more severe than the incidents at issue in this proceeding or the missing leak survey case. The property damage identified in SED’s Opening Brief totals approximately \$423,000, and, aside from the Carmel incident, the damage here is largely limited to PG&E’s pipelines and the immediate ground coverings. *See* SED OB at 73. In sharp contrast, the Rancho Cordova incident involved a fatality and significant injuries to two other persons, and the Malibu Canyon fire resulted in \$14.5 million in property damage, including numerous burned buildings and vehicles. *See* D. 11-11-001, 2011 Cal. PUC LEXIS 509, at *1, 8-9; *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; POD at 23; PG&E RB at 20-21.

In sum, there is no Commission precedent for the fines proposed by SED and Carmel. The \$33.636 million maximum penalty described above by PG&E is near the high end of this range and is more appropriate than the fines proposed by SED and Carmel in light of the balancing of the traditional factors considered by the Commission.¹⁴⁷

B. Penalties Imposed for Specific Violations

1. The Incidents Do Not Demonstrate a Systemic Issue.

PG&E's undisputed overall excavation damage performance record, described above, demonstrates that PG&E's gas distribution system is safe and that PG&E continues to reduce risk on its system.¹⁴⁸ PG&E takes any incident that occurs on its system, including the incident such as the one in Carmel, very seriously, and reducing the risk of harm to people or property is PG&E's highest priority. Although incidents are never acceptable, some degree of risk will always be present in transporting natural gas under pressure¹⁴⁹—as PWA acknowledges, “absolute safety” could only be achieved at an “infinite cost.”¹⁵⁰ However, SED has focused only on 19 isolated incidents that occurred on 42,000 miles of distribution mains and 3.3 million services over a six-year period.¹⁵¹ SED's experts admit that no general conclusions about the safety of PG&E's gas distribution system or the quality of its recordkeeping as a whole can be drawn from such a small sampling of PG&E's operations.¹⁵²

¹⁴⁷ SED is correct that PG&E meant to refer to the \$28.1 million included in the Malibu Fire penalty that was not considered a fine but was instead allocated for remedial measures. SED AB at 7. PG&E's point was that the entire \$63.5 million figure should not be a precedent for the imposition of a fine in this case, only the \$35.4 million payable to the General Fund. PG&E RB at 21. But because the Malibu Canyon fire was not comparable factually, the allocation of the settlement in that case is irrelevant and cannot have led to any legal error. POD at 22-23.

¹⁴⁸ *See supra* pp. 12-14.

¹⁴⁹ PG&E OB at 10; Ex. 4 at 1-15:11-21 (PG&E Reply Testimony, Howe).

¹⁵⁰ Ex. 2 at 32 tbl.2 (PWA Rebuttal) (“PWA's report does not require or propose ‘absolute safety’ since this can only be achieved at infinite cost”).

¹⁵¹ Ex. 4 at 6-3:9-13 (PG&E Reply Testimony, Thierry).

¹⁵² 1/19/16 Tr. at 81:6 to 82:14 (SED/PWA).

SED disputes the characterization of these incidents as “isolated failures” and cites to a section of D. 98-12-075 that explains that a “series of temporally distinct violations can suggest an ongoing compliance deficiency which the public utility should have addressed after the first instance.”¹⁵³ But these incidents occurred over a six-year period during which PG&E marked well over two million USA tickets.¹⁵⁴ Nineteen incidents out of more than two million tickets worked—or 0.001%—is a minute fraction, a fact that SED’s experts acknowledged.¹⁵⁵ PWA admitted that it did not draw any conclusions about the quality of PG&E’s recordkeeping or safety by extrapolating from these 19 incidents to PG&E’s system as a whole.¹⁵⁶ Nor could any legitimate conclusions about PG&E’s system as a whole be based on such limited observations.

2. SED’s and Carmel’s Proposed Alternative Penalties Ignore the Necessary Fact-Specific Inquiry for Each Incident and Are Based on Mistaken Premises.

SED’s and Carmel’s proposed fines fail to take into account the factors for assessing the severity of harm and the conduct of the utility, as required by D. 98-12-075.¹⁵⁷ SED proposes that a fine at the highest end of the range permitted by section 2108 should be imposed for each of the three violations for each incident, regardless of the factual variations among them.¹⁵⁸ Carmel agrees and further argues that each of these three violations “must” be deemed a

¹⁵³ SED AB at 22 n.74 (citing D. 98-12-075, 1998 Cal. PUC LEXIS 1018, at *56).

¹⁵⁴ 1/19/16 Tr. at 77:9 to 80:19 (SED/PWA).

¹⁵⁵ *Id.* at 80:1-19 (SED/PWA).

¹⁵⁶ *Id.* at 81:6 to 82:14 (SED/PWA).

¹⁵⁷ SED AB at 16-29; Carmel AB at 8-9; *see* D. 98-12-075, 1998 Cal. PUC LEXIS 1018, at *54.

¹⁵⁸ In its post-hearing brief, SED made the opposite mistake by recommending fines for the specific incidents that, as the POD described them, “vary significantly for substantially similar conduct.” POD at 45. According to the POD, the obligation to provide a “reasoned basis” for assessing fines was part of the reason the total fine amounts are substantially lower than those proposed by the SED. POD at 45 n.41. SED interprets this statement as somehow suggesting that the Presiding Officer felt constrained from imposing higher fines by SED’s proposed penalty. SED AB at 16. Nothing in the POD suggests that the Presiding Officer believed a higher fine was appropriate but felt so constrained.

continuing violation for which daily fines must also be imposed.¹⁵⁹ Both propose a strictly mechanical imposition of fines that ignores the fact-specific inquiry required by D. 98-12-075, which the POD conducted.¹⁶⁰ As a result, these proposals cannot be reconciled with the POD's conclusions regarding the severity of these incidents as well as other mitigating factors, such as PG&E's overall safety performance and demonstrated commitment to continuous improvement.

SED and Carmel also criticize the POD's distinction based on whether a PG&E crew or third-party crew contributed to the damage. But their criticism stems, in part, from the fact that they misunderstand the distinction made between "PG&E crews" and "contractors." Contrary to SED's claim, the POD does not suggest that "PG&E's use of a contractor mitigates PG&E's violations."¹⁶¹ The POD treats incidents involving PG&E crews and independent contractors *hired by PG&E* equally.¹⁶² Instead, the POD distinguishes between PG&E crews and PG&E contractors, on the one hand, and *excavators hired by a third party*, such as the water utility or a private party, on the other.¹⁶³ Carmel claims that this distinction is "of no consequence" because in each case PG&E had an inaccurate or incomplete record.¹⁶⁴ But it is reasonable to conclude

¹⁵⁹ Carmel suggests that the Commission "must" impose a fine for every regulatory violation it identifies. Carmel AB at 4-5, 7, 13. Carmel's position is directly contradicted by the only authority it cites, D. 15-04-024 in the San Bruno Transmission Recordkeeping OII. In that decision, the Commission conducted the calculation that Carmel claims is mandated by the Public Utilities Code and concluded that, because this "mechanical imposition of a penalty" would result in an "excessive" fine, it would "reduce the fine to a reasonable level" well outside the range that Carmel claims is required by the Code. *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 § 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 *62-63; *see also Order Instituting Investigation Into S. Cal. Edison Co.'s Elec. Line Constr., Operation, & Maint. Practices*, D. 04-04-065, 2004 Cal. PUC LEXIS 207, at *27-28 (finding that Commission has "discretion in determining whether and how much to penalize [an operator] for uncured violations").

¹⁶⁰ D. 98-12-075, 1998 Cal. PUC LEXIS 1018, at *9-10, *19.

¹⁶¹ SED AB at 17-18.

¹⁶² POD at 49.

¹⁶³ *Id.*

¹⁶⁴ Carmel AB at 7-8.

that PG&E has greater culpability for an incident in which it directly caused the excavation damage as opposed to one in which a third party's excavator contributed to the dig-in,¹⁶⁵ even though third parties also have obligations to dig safely and should be incentivized to do so.¹⁶⁶

3. The Cumulative \$21.6 Million Fine for the Carmel Incident Is Substantial.

SED argues that the POD committed legal error by failing to impose a \$20.73 million fine for the recordkeeping error associated with the Carmel incident,¹⁶⁷ in addition to the \$10.8 million fine imposed by the POD in connection with that incident, and the \$10.85 million fine imposed by the Commission in 2015 for operational errors occurring on the day of the incident.¹⁶⁸ Thus, SED proposes that the Commission impose a total of \$42.38 million in fines for the Carmel incident.

Such a penalty would be disproportionate to the harm that resulted and would be of an unprecedented size for such an incident. By way of comparison, the fine imposed on PG&E for the Rancho Cordova incident, which involved one fatality and serious bodily injury to two others, was \$38 million.¹⁶⁹ PG&E regarded the Carmel incident as a matter of very serious concern and responded aggressively to address the risks that led to it, adopting a number of measures that PWA viewed favorably.¹⁷⁰ In light of this response and the relative severity of the

¹⁶⁵ POD at 49 (“PG&E’s crews should be held to a higher standard because they are experts in natural gas systems.”).

¹⁶⁶ See Ex. 10 at 8-22 (Errata to PG&E Reply Testimony, Paskett) (“PG&E’s excavation damage prevention program is effective due to the Company’s aggressive efforts to address the threat of excavation damage and in spite of the challenges of operating in a state without an effective damage prevention program”).

¹⁶⁷ SED AB at 21-22.

¹⁶⁸ POD at 30-31.

¹⁶⁹ D. 11-11-001, 2011 Cal. PUC LEXIS 509, at *61-65.

¹⁷⁰ In fact, since the Carmel incident, PG&E has not encountered any unmapped plastic inserts as a result of using the Gas Carrier Pipe Checklist. See 1/20/16 Tr. at 306:2-8 (PG&E/Higgins).

harm caused by the incident compared to prior cases, PG&E submits that no fine beyond the \$21.6 million already imposed would be appropriate.

4. A Higher Fine for the Milpitas I Incident Would Not Be Proportional.

The POD imposed a fine of \$1.974 million for the Milpitas I incident for a violation of Public Utilities Code section 451 because the incident involved the interruption of gas service to 987 customers,¹⁷¹ despite acknowledging that there were no related “injuries or documented economic losses.”¹⁷² SED claims that Milpitas I also involved two separate violations of 49 C.F.R. § 192.605(b)(3) and argues that PG&E should accordingly be fined an additional \$100,000 in connection with that incident.¹⁷³ Imposing a penalty on this basis would be inconsistent with the factual findings and the evidentiary record. Section 192.605(b)(3) addresses an operator’s procedures for “making construction records, maps, and operating history available to appropriate operating personnel.”¹⁷⁴ However, the POD concluded that the relevant Milpitas I “records were correct,” and there is no suggestion that records were not provided to field personnel.¹⁷⁵ Moreover, increasing the POD’s \$1.974 million would be at odds with the instruction in D. 98-12-075 to take into account the severity of harm when imposing fines—given that Milpitas I caused no injuries, no significant property damage, and no unplanned release of gas.¹⁷⁶

¹⁷¹ POD at 50-51.

¹⁷² *Id.* at 50.

¹⁷³ SED AB at 25.

¹⁷⁴ POD at 47. The POD notes that there was a recordkeeping-related failure in that the field conditions were inconsistent with the map, but its statement that the “records were correct” is an acknowledgement that PG&E’s mistake was operational—a failure to leave a valve open—not a failure to update or maintain a map or record. *Id.* at 49-50.

¹⁷⁵ POD at 49.

¹⁷⁶ D. 98-12-075, 1998 Cal. PUC LEXIS 1018, at *54-55.

5. The Alameda, Alamo, Antioch, Lafayette, San Francisco, and San Jose I Incidents Do Not Warrant Penalties.

SED argues that the POD erred in failing to find any violations for the Alameda, Alamo, Antioch, Lafayette, San Francisco, and San Jose I incidents. All but one of the alleged violations are unrelated to recordkeeping and are therefore outside the scope of this proceeding.¹⁷⁷ In Commission proceedings, the scoping memo defines and limits the “issues to be addressed,”¹⁷⁸ and the scoping memo in this proceeding defines the question before the Commission as whether PG&E violated any applicable laws, regulations, or rules by its “*recordkeeping policies and practices* with respect to maintaining safe operation of its gas distribution system.”¹⁷⁹

PWA agreed that they took an over-inclusive approach to identifying purported violations by including many regulations that do not address recordkeeping requirements.¹⁸⁰ For each of these six incidents, SED alleged that PG&E violated 49 C.F.R. § 192.614(c)(5) or California Government Code § 4216.3(a)(1), both of which contain operational standards for locating and marking underground facilities and are unrelated to recordkeeping.¹⁸¹ As the POD noted with respect to section 4216.3(a)(1), it “does not require the operator to maintain accurate records.”¹⁸² Similarly, SED asserted a violation of section 192.727(b) in connection with the Lafayette incident, but that section addresses the deactivation of abandoned mains and also does not relate to recordkeeping.¹⁸³

¹⁷⁷ Scoping Memo at 3; PG&E OB at 41-42, B-2 to B-7; PG&E RB at A-12 to A-14.

¹⁷⁸ Cal. Pub. Utils. Comm’n, Rules of Practice & Procedure, Rule 7.3(a); *S. Cal. Edison Co. v. Pub. Utils. Comm’n*, 140 Cal. App. 4th 1085, 1091 (2006).

¹⁷⁹ Scoping Memo at 3 (emphasis added).

¹⁸⁰ PG&E OB at 42; Ex. 1 at 25-26 (PWA Report).

¹⁸¹ SED OB at 85-86.

¹⁸² POD at 46.

¹⁸³ SED OB at 63-64.

SED also alleged violations of section 192.605(a) for the Alameda, Antioch, Lafayette, and San Jose I incidents,¹⁸⁴ but the POD declined to find PG&E in violation of that regulation in connection with any incident.¹⁸⁵ SED argues in the alternative that the Commission should find that PG&E violated section 451 in connection with these six incidents,¹⁸⁶ but SED never alleged such a violation for any of these incidents except for Alamo, and the alleged deficiency in that case was unrelated to recordkeeping.¹⁸⁷ Rather, the locator was unable to precisely locate a pipe due to flooding in the excavation area, which reduced his instrument's capabilities.¹⁸⁸

C. The Penalty for the Missing De Anza Records

In connection with its investigation into the Mountain View incident, PG&E learned that paper copies of the 1979-1991 leak repair records for the De Anza Division, which includes Mountain View, were missing.¹⁸⁹ At the hearing, SED and Carmel attempted to create a linkage between this fact and the Mountain View incident.¹⁹⁰ There is no evidence whatsoever that these missing paper records contributed to the Mountain View incident or any other incident at issue in this proceeding.¹⁹¹ In fact, the information in these leak repair records, or A Forms, was routinely entered into and preserved in an electronic database,¹⁹² so the fact that the paper records are missing does not interfere with PG&E's ability to operate its system safely.¹⁹³

¹⁸⁴ SED OB at 87-89.

¹⁸⁵ POD at 47-48 (only finding PG&E in violation of sections 192.603(b), 192.605(b)(3), and 451).

¹⁸⁶ SED AB at 21-22.

¹⁸⁷ SED OB at 28-29.

¹⁸⁸ PG&E RB at B-15.

¹⁸⁹ PG&E OB at 47 n.292, 51; PG&E RB at 33-34.

¹⁹⁰ 1/21/16 Tr. at 473:18-28, 479:9-16, 481:20-27 (PG&E/Singh).

¹⁹¹ PG&E OB at 52; PG&E RB at 33-34.

¹⁹² POD at 34; 1/21/16 Tr. at 437:23 to 439:17 (PG&E/Trevino); *id.* at 485:1-25 (PG&E/Singh); Ex. 4 at 6-6:29-32 (PG&E Reply Testimony, Thierry); Ex. 33 (PG&E's Supplemental Response No. 1 to SED Data Request No. 25).

¹⁹³ PG&E OB at 51-52.

Nevertheless, the POD fined PG&E \$10.786 million for not “promptly and comprehensively” assessing the consequences of the issue when it was first discovered.¹⁹⁴ The POD based this \$10.786 million figure on a daily calculation of \$834.95 from January 1, 1979, the earliest possible date of a missing A Form, until December 31, 2011, the approximate date that PG&E first discovered they were missing. Carmel challenges this \$834.95 amount on the basis that it is “strange” and that the POD contains “no discussion of the threat of harm” caused by the missing A Forms.¹⁹⁵ On the contrary, the POD explained that the “severity of the harm,” if any, is quite limited” because the information PG&E needs to operate its system safely is preserved in its electronic leak repair database.¹⁹⁶ Therefore, Commission precedent requires that a fine at the lower end of the statutory range be imposed.¹⁹⁷

SED argues that a different end date for the calculation of the fine should be used. However, the alternative end dates that SED proposes are at odds with the basis for the violation—failure to conduct a risk analysis. SED proposes that June 12, 2015 should be used, which is the date PG&E reported the missing records to SED,¹⁹⁸ but this would suggest that PG&E had an obligation to report this issue sooner, an assumption for which there is no basis in the record.¹⁹⁹ In the alternative, SED suggests that the Commission use the date in 2014 on

¹⁹⁴ POD at 37-41.

¹⁹⁵ Carmel AB at 8-9.

¹⁹⁶ POD at 37-39. While not directly challenging this figure, SED proposes a “simpler \$1,000” daily fine. SED AB at 15. SED does not explain why this figure is “simpler” or why this upward adjustment of the daily fine amount would be justified under the POD’s analysis. *Id.*

¹⁹⁷ POD at 37-39.

¹⁹⁸ SED AB at 13.

¹⁹⁹ *Id.* at 11-16. In a footnote, SED also challenges the POD’s finding that PG&E had no obligation to report this issue to SED sooner. *Id.* at 13 n.44. PG&E reported this issue in June 2015, when it responded to SED’s data request—which, as the POD noted, provided SED with ample time for it to prepare this issue for this proceeding—and had no obligation to do so earlier. POD at 40. SED argued below that PG&E should have included this issue in its Initial Report in response to the OII. SED OB at 48. As the POD found, the OII instructed PG&E to identify in its Initial Report only the incorrect factual contentions from the SED Incident Investigation Reports for the incidents that prompted the OII.

which SED claims PG&E management learned of the missing records, rather than the approximate date lower-level personnel learned of the issue in 2011.²⁰⁰ According to SED, using the 2011 end date could “signal[] to PG&E personnel to not report such deficiencies to PG&E management.”²⁰¹ First, SED did not allege (and the POD did not find) that there was any failure by PG&E personnel to report this issue to management promptly. Second, the POD imposed a fine of \$10.786 million for a failure to “promptly” assess the consequences of this issue.²⁰² It is highly unlikely that this could be interpreted as a signal not to timely report such issues.

D. There Was No Violation in Connection with PG&E’s Method for Setting Maximum Allowable Operating Pressure.

While unrelated to any of the incidents that prompted this OII, SED also challenged in this proceeding the method that PG&E used to set the maximum allowable operating pressure (MAOP) on approximately 243 of its distribution systems.²⁰³ The parties have referred to this as the “alternative method.”²⁰⁴ While there is no dispute that PG&E’s alternative method does not pose any safety risk, SED nevertheless alleged that its use is a violation of 49 C.F.R. § 192.619(c).²⁰⁵ In response, PG&E explained that the alternative method is consistent with multiple pieces of PHMSA guidance regarding the application of section 192.619(c) dating back to at least 1986.²⁰⁶ PG&E also submitted evidence that, not only had this policy been repeatedly disclosed to Commission staff over the years without their raising any objections, but SED had provided express written approval for its use in connection with a specified distribution system in

OII at 9. SED has never attempted to identify a fact in any of the SED Incident Investigation Reports that relates to the missing A Forms, and there is none. SED OB at 47-48.

²⁰⁰ SED AB at 12.

²⁰¹ *Id.*

²⁰² POD at 38-39.

²⁰³ SED OB at 67-71; Ex. 1 at 49-54 (PWA Report); *see also* PG&E OB at 56-62.

²⁰⁴ PG&E OB at 61; Ex. 1 at 106 (PWA Report).

²⁰⁵ Ex. 2 at 29 tbl.2 (PWA Rebuttal); *see also* PG&E OB at 56-62.

²⁰⁶ Ex. 4 at 5-15:20-25, 5-16:10 to 5-17:17 (PG&E Reply Testimony, Singh).

a letter to PG&E in 2013.²⁰⁷ Based on these facts, PG&E argued that it should not be sanctioned for a longstanding policy that is consistent with regulatory guidance and has been recently approved by SED.²⁰⁸ The POD agreed, and found that SED had not carried its burden of proving this alleged violation.²⁰⁹

On appeal, SED contends that this finding is in error because PG&E had previously admitted that its alternative method violates section 192.619, an assertion SED had not made before in this proceeding.²¹⁰ PG&E made no such admission. SED's claim is based on a mischaracterization of a letter PG&E sent SED in 2010.²¹¹ In that letter, PG&E acknowledged that it "could not locate any MAOP documentation" for a particular system in Colusa, which PG&E stated constituted a violation of section 192.619.²¹² The admitted violation in that instance was for a missing record, not for the use of the alternative procedure, which requires the creation and maintenance of MAOP records such as leak survey and pressure log documentation and employee certifications.²¹³ Removing any doubt that the admitted violation in Colusa was not related to the violation alleged in this proceeding, PG&E explained to SED just a few lines later in the same letter that it would address the admitted violation by *using* the alternative

²⁰⁷ Ex. 8, Attachment W131 (Letter from Michael Robertson, SED to Jane Yura, PG&E (July 2, 2013)).

²⁰⁸ PG&E OB at 62.

²⁰⁹ POD at 31-34.

²¹⁰ SED AB at 8-9.

²¹¹ Ex. 7, Attachment W106 (Letter from Glen Carter, PG&E to Banu Acimis, Cal. Pub. Utils. Comm'n).

²¹² *Id.* at W106.013.

²¹³ *Id.*; *see also* Ex. 4 at 5-15:14-28 (PG&E Reply Testimony, Singh); Ex. 7, Attachment W098 at W098.002 (Utility Procedure TD-4125P-01, Rev. 0, Establishing and Maintaining Distribution MAOP Records).

method.²¹⁴ PG&E even attached the PG&E procedure that describes this method as further clarification of the approach it would take.²¹⁵

In response to this letter, SED requested documentation demonstrating that PG&E had in fact established the MAOP for the system in Colusa using the alternative method and, once PG&E provided it, informed PG&E that it had “determined to officially close [this] probable violation.”²¹⁶ SED further explained to PG&E that it “accepts PG&E’s explanation and corrective action to re-establish the MAOP documentation” in Colusa²¹⁷—thereby expressly accepting PG&E’s use of the very method that SED claims is a violation in this proceeding. None of this evidence has been contested.

In conclusory fashion, SED states that “there is no difference in principle between the missing Colusa records” and the violations based on the use of the alternative method alleged here.²¹⁸ But if there were no difference, how could PG&E (with SED’s acknowledgement and approval) have resolved the admitted violation in Colusa by using the alternative method? PG&E’s Vice President for Gas Asset and Risk Management explained all of this in his written testimony, a small portion of which SED excerpts in its Appeal.²¹⁹ But SED omits the substance

²¹⁴ Ex. 7, Attachment W106 at W106.013 (Letter from Glen Carter, PG&E to Banu Acimis, Cal. Pub. Utils. Comm’n); *see also* PG&E OB at 56-62.

²¹⁵ Ex. 7, Attachment W106 at W106.013 (Letter from Glen Carter, PG&E to Banu Acimis, Cal. Pub. Utils. Comm’n); *see also* PWA Report at 53 tbl.7.

²¹⁶ Ex. 8, Attachment W129 (Email between Banu Acimis, SED and Lawrence Berg, PG&E re: Data Requests and Responses for 2010 Sacramento Division Audit (June 11-14, 2012)); *id.*, Attachment W130 (“MAOP-178.pdf” produced to SED (June 14, 2012)); *see also* PG&E OB at 56-62.

²¹⁷ Ex. 8, Attachment W131 at W131.003 (Letter from Michael Robertson, SED to Jane Yura, PG&E (July 2, 2013)).

²¹⁸ SED AB at 9.

²¹⁹ *Id.* at 8; Ex. 4 at 5-19:13 to 5-20:17 (PG&E Reply Testimony, Singh).

of his testimony and does not attempt to explain how its allegations can be reconciled with the record it describes.²²⁰

Attempting to challenge the POD's legal findings on this issue, SED cites a Commission ratesetting decision that it characterizes as "emphasiz[ing] the importance of recordkeeping to comply with the requirements of 192.619."²²¹ No party disputes the importance of recordkeeping. What PG&E has stated is that, under the circumstances that existed here, a written certification of operating pressure by a knowledgeable employee may be used in lieu of a pressure log or similar record to satisfy the requirements of that regulation.²²² Based on its interpretation of section 192.619(c) and its review of multiple pieces of related PHMSA guidance, the POD agreed that this is permitted.²²³ The decision cited by SED does nothing to undermine this conclusion. SED has therefore failed to establish that the POD was in error when it concluded that SED has failed to prove a violation of section 192.619(c).

VI. CARMEL'S PROCEDURAL CHALLENGES SHOULD BE REJECTED.

Finally, Carmel raises a number of procedural challenges to the POD.²²⁴ PG&E agrees that it would be appropriate for the Commission to leave this proceeding open, as Carmel suggests, so that the Presiding Officer may assess the plan for remedial measures produced through the ordered meet-and-confer process.²²⁵ Otherwise, PG&E respectfully disagrees with Carmel's arguments.

²²⁰ SED AB at 8.

²²¹ *Id.* at 9 (citing *Order Instituting Rulemaking on the Comm'n's Own Motion to Adopt New Safety & Reliability Regulations for Nat. Gas Transmission & Distrib. Pipelines & Related Rulemaking Mechanisms*, D. 12-12-030, 2012 Cal. PUC LEXIS 600, at *168-69).

²²² PG&E OB at 58-59.

²²³ POD at 31-34.

²²⁴ Carmel AB at 9-12.

²²⁵ *Id.* at 11-12.

First, Carmel is mistaken when it asserts that the POD failed to address whether PG&E’s shareholders or ratepayers are responsible for the penalty payable to the General Fund.²²⁶ There is no dispute that PG&E shareholders are responsible for any penalty payments.²²⁷ The Scoping Memo states that this proceeding should determine whether PG&E can seek ratemaking recovery “to the extent any remedial safety measures are ordered.”²²⁸ No such measures have been ordered yet, but PG&E proposes that the parties incorporate into their meet-and-confer process and proposed compliance plan a discussion of whether shareholders or ratepayers will pay for any particular recommended remedial measure.

Second, the POD does not leave open the question of whether Carmel may participate in this meet-and-confer process.²²⁹ The POD repeatedly states that all “parties to this proceeding,” as well as to PG&E’s most recent General Rate Case and the 2011 Transmission Recordkeeping OII, are invited.²³⁰

Third, PG&E disagrees with Carmel’s position that the POD’s meet-and-confer instructions are too vague to be implemented.²³¹ The POD ordered PG&E to convene a process that would “begin” with a review of the proposed remedial measures ordered in the transmission recordkeeping investigation, but should also consider any remedial measures necessary “to address the issues identified in today’s decision.”²³² The POD further ordered that the proposed

²²⁶ *Id.* at 9-10.

²²⁷ Resolution ALJ-274, *Establishes Citation Procedures for the Enf’t of Safety Regulations by the Consumer Prot. & Safety Div. Staff for Violations by Gas Corps. of Gen. Order 112-E & Code of Fed. Regulations, Title 49, Parts 190, 191, 192, 193, & 199*, 2011 WL 6278266, Cal. P.U.C., at *1 (stating that penalty payments for violations of GO 112-E and 49 C.F.R. pts. 190-193 and 199 are the responsibility of shareholders).

²²⁸ Scoping Memo at 3.

²²⁹ Carmel AB at 11-12.

²³⁰ POD at 54, 62.

²³¹ Carmel AB at 11-12.

²³² POD at 54.

compliance plan produced as a result of the meet and confer process is to include disagreements that any party has with any aspect of the plan, “including any omission, along with alternative recommendations and supporting rationale.”²³³ For the reasons PG&E explains in the attached Appendix B, all of the remedial measures proposed by Carmel are either being addressed in other proceedings, such as the pending Safety Culture OII, or do not relate to recordkeeping, and therefore are outside the scope of this OII.²³⁴

Fourth, the order that the parties meet and confer regarding the proposed remedial measures was not a “hastily prepared afterthought.”²³⁵ That is an unfair characterization. In fact, this instruction was necessitated by the fact that neither SED, Carmel, nor TURN proposed any of the remedial measures at issue until after the close of evidence, at which point there was no opportunity to develop a factual record or present evidence on their efficacy or feasibility. Moreover, as PG&E pointed out in its Reply Brief and in Appendix B, many of these proposed remedial measures were either unclear or unworkable on their face, but appeared to contain concepts that PG&E believes are appropriate, aspects of which PG&E is currently implementing. As a result, PG&E is optimistic that a collaborative meet-and-confer process should reduce the scope of the parties’ disputes regarding the proper remedial measures and result in further actions to improve system safety.

VII. CONCLUSION

PG&E has an unwavering commitment to continuously improving not only its gas distribution system recordkeeping practices but also the safety of its distribution system, and complying with all applicable rules, regulations, and statutes. PG&E is also committed to

²³³ *Id.*

²³⁴ PG&E RB at 57-61.

²³⁵ Carmel AB at 11.

continuing to work with the Commission to pursue these important goals. 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. PG&E intends to continue doing exactly what it has been doing—focusing on safety, finding and fixing issues as they arise, and searching for innovative, effective, and technologically advanced solutions to the challenges that remain.

For the reasons stated above, PG&E submits that the arguments advanced on appeal by SED and Carmel for increasing the penalties imposed in the POD are unsupported by or contrary to the evidence of record, inconsistent with the governing legal standards, and accordingly should be rejected by the Commission. PG&E looks forward to working cooperatively with SED and the Intervenors in the meet-and-confer process to identify and consider further opportunities to continue improving its recordkeeping and other practices to better serve the public and promote the safety of its system.

Respectfully submitted,

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