STATE OF CALIFORNIA EDMUND G. BROWN JR., *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

F I L E D
09-29-11
03:15 PM

September 29, 2011

TO PARTIES OF RECORD IN INVESTIGATION 10-11-013

This proceeding was filed on November 19, 2010, and is assigned to Commissioner Timothy Alan Simon and Administrative Law Judge (ALJ) John S. Wong. This is the decision of the Presiding Officer, ALJ John S. Wong.

Any party to this adjudicatory proceeding may file and serve an Appeal of the Presiding Officer's Decision within 30 days of the date of issuance (i.e., the date of mailing) of this decision. In addition, any Commissioner may request review of the Presiding Officer's Decision by filing and serving a Request for Review within 30 days of the date of issuance.

Appeals and Requests for Review must set forth specifically the grounds on which the appellant or requestor believes the Presiding Officer's Decision to be unlawful or erroneous. The purpose of an Appeal or Request for Review is to alert the Commission to a potential error, so that the error may be corrected expeditiously by the Commission. Vague assertions as to the record or the law, without citation, may be accorded little weight.

Appeals and Requests for Review must be served on all parties and accompanied by a certificate of service. Any party may file and serve a Response to an Appeal or Request for Review no later than 15 days after the date the Appeal or Request for Review was filed. In cases of multiple Appeals or Requests for Review, the Response may be to all such filings and may be filed 15 days after the last such Appeal or Request for Review was filed. Replies to Responses are not permitted. (See, generally, Rule 14.4 of the Commission's Rules of Practice and Procedure at www.cpuc.ca.gov.)

If no Appeal or Request for Review is filed within 30 days of the date of issuance of the Presiding Officer's Decision, the decision shall become the decision of the Commission. In this event, the Commission will designate a decision number and advise the parties by letter that the Presiding Officer's Decision has become the Commission's decision.

/s/ KAREN V. CLOPTON
Karen V. Clopton, Chief
Administrative Law Judge

KVC:gd2

Attachment

PRESIDING OFFICER'S DECISION (Mailed 9/29/2011)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's Own Motion into the Operations and Practices of Pacific Gas and Electric Company, Regarding the Gas Explosion and Fire on December 24, 2008 in Rancho Cordova, California.	Investigation 10-11-013 (Filed November 19, 2010)

(List of Parties: See Appendix 1)

PRESIDING OFFICER'S DECISION REGARDING JOINT MOTION TO APPROVE THE STIPULATION OF PACIFIC GAS AND ELECTRIC COMPANY AND THE CONSUMER PROTECTION AND SAFETY DIVISION CONCERNING RANCHO CORDOVA AND RELATED STIPULATION

TABLE OF CONTENTS

Title **Page**

PRESIDING OFFICER'S DECISION REGARDING JOINT MOTION TO APPROVE THE STIPULATION OF PACIFIC GAS AND ELECTRIC COMPANY AND THE CONSUMER PROTECTION AND SAFETY DIVISION CONCERNING RANCHO CORDOVA AND RELATED STIPULATION 1

1. Summary 2
2. Procedural Background 3
3. The OII and the Stipulations 6
   - 3.1. Background of the OII 6
   - 3.2. Background of the Rancho Cordova Events 8
     - 3.2.1. December 24, 2008 Events 8
     - 3.2.2. Subsequent Investigations Into Rancho Cordova Pipe 15
     - 3.2.3. 2006 Elk Grove Incident 19
   - 3.3. Pre-Stipulation Positions of CPSD, PG&E, and TURN 23
     - 3.3.1. CPSD Position 23
     - 3.3.2. PG&E Position 24
     - 3.3.3. TURN Position 28
   - 3.4. Summary of the Stipulations 29
     - 3.4.1. PG&E and CPSD Stipulation 29
     - 3.4.2. PG&E and TURN Stipulation 32
4. Discussion 32
   - 4.1. Introduction 32
   - 4.2. OII Allegations and Stipulations 33
   - 4.3. Penalty Amount 35
     - 4.3.1. Severity or Gravity of the Violation 37
     - 4.3.2. PG&E's Conduct to Prevent, Detect, Disclose and to Rectify the Violation 39
     - 4.3.3. Size and Financial Resources of PG&E 40
5. Assignment of Proceeding 44

Findings of Fact 45

Conclusions of Law 47
ORDER 48

APPENDIX 1: List of Parties
APPENDIX 2: Proposed Stipulation Between PG&E and CPSD
APPENDIX 3: Proposed Stipulation Between PG&E and TURN

PRESIDING OFFICER'S DECISION REGARDING JOINT MOTION TO APPROVE THE STIPULATION OF PACIFIC GAS AND ELECTRIC COMPANY AND THE CONSUMER PROTECTION AND SAFETY DIVISION CONCERNING RANCHO CORDOVA AND RELATED STIPULATION

1. Summary

This Order Instituting Investigation was opened to examine the operations and practices of Pacific Gas and Electric Company (PG&E) regarding the natural gas explosion and fire that occurred on December 24, 2008 at 10708 Paiute Way in Rancho Cordova, which resulted in one fatality, other injuries, and property damage.

Following the prehearing conference, and as a result of discussions between PG&E and the Consumer Protection and Safety Division (CPSD) of this Commission, a joint motion was filed on June 20, 2011 by PG&E and CPSD "for approval of stipulation to order resolving investigation." The stipulation was separately filed on June 20, 2011 and is entitled "Stipulation to Order Resolving Investigation" (PG&E and CPSD stipulation), a copy of which is attached as Appendix 2. As part of the PG&E and CPSD stipulation, PG&E proposes to pay a penalty of $26 million to the State's General Fund.

PG&E and The Utility Reform Network (TURN) entered into a separate stipulation, a copy of which is attached as Appendix 3. PG&E and TURN request that in addition to approving the PG&E and CPSD stipulation, that the Commission approve the PG&E and TURN stipulation which provides in part:

> For purposes of its test year forecasts in PG&E's next general rate case, PG&E shall exclude from Account 925 any amounts paid for claims or settlements related to the December 24, 2008 natural gas explosion in Rancho Cordova, California.

Based on the circumstances which led up to the Rancho Cordova explosion and fire, and the CPSD allegations in this investigation, today's decision denies the joint motion for adoption of the PG&E and CPSD stipulation, and the PG&E and TURN stipulation. Pursuant to Rule 12.4 of the Commission's Rules of Practice and Procedure, this decision proposes a $38 million penalty, plus payment of CPSD's investigation and proceeding costs, as being acceptable to this Commission. PG&E, CPSD, and TURN may agree to accept the proposed penalty amount of $38 million by filing a motion accepting this proposed penalty amount. If no motion is filed, a ruling scheduling evidentiary hearings on the underlying issues in this investigation will then be issued.

2. Procedural Background

The Commission opened this proceeding as a result of the December 24, 2008 natural gas explosion that occurred at 10708 Paiute Way in Rancho Cordova. One person died as a result of the explosion, and several persons were injured. The house at 10708 Paiute Way was destroyed, and adjoining houses suffered property damage.

Following the Rancho Cordova explosion and fire, the National Transportation and Safety Board (NTSB) and the Commission's Consumer Protection and Safety Division (CPSD) conducted separate investigations into the cause of the explosion. NTSB adopted its "Pipeline Accident Brief" on May 18, 2010, and CPSD released its "Incident Investigation Report on Rancho Cordova Explosion and Fire" on November 10, 2010. CPSD's report also addressed whether Pacific Gas and Electric Company (PG&E) violated any statutes, Commission decisions, general orders (GOs), other Commission and state regulations or standards, and whether any such violations caused or contributed to the explosion and the injuries and damage.

The Order Instituting Investigation (OII or investigation) into the Rancho Cordova explosion and fire was opened on November 19, 2010. PG&E was directed to submit a report and supporting documents responsive to the directives set forth in the OII. A request by PG&E to extend the submission date for PG&E's report and supporting documents was granted in a December 17, 2010 e-mail ruling and confirmed in a December 23, 2010 written ruling. PG&E served its report and supporting documents on February 17, 2011.[1]

The Commission held a prehearing conference on March 1, 2011 to discuss the scope of issues and the procedural schedule. On April 18, 2011, the scoping memo and ruling was issued, and evidentiary hearings were set for July 18, 2011 through July 29, 2011. The Utility Reform Network (TURN) served its testimony on June 17, 2011.

On June 20, 2011, PG&E and CPSD separately filed their joint motion "for approval of stipulation to order resolving investigation," and their "Stipulation to Order Resolving Investigation" (PG&E and CPSD stipulation). The PG&E and CPSD stipulation was marked for identification as Exhibit 17.[2] The joint motion requests that the Commission approve the PG&E and CPSD stipulation without modification, and that this investigation be closed.

Due to the filing of the joint motion, and the PG&E and CPSD stipulation, an e-mail ruling was issued on June 21, 2011 advising the parties as to when the

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[1] PG&E also provided other supporting documents after February 17, 2011.

[2] As stated at 5 of the Reporter's Transcript (RT) at 5, the exhibits were marked for identification, but have not been admitted into evidence pending the outcome of the joint motion to approve and adopt the PG&E and CPSD stipulation.

comments on the joint motion and the PG&E and CPSD stipulation would be due.[3] The e-mail ruling reserved July 29, 2011 as the date for a possible hearing on contested issues of fact regarding the PG&E and CPSD stipulation, and the remaining evidentiary hearing dates were taken off calendar.

Following the filing of the PG&E and CPSD stipulation, PG&E and TURN entered into their own "Stipulation to Order Resolving Investigation" (PG&E and TURN stipulation). The PG&E and TURN stipulation was attached to the July 20, 2011 "Comment of TURN on Proposed Joint Stipulation Between PG&E and CPSD," which was marked for identification as Exhibit 18. TURN requests that the PG&E and TURN stipulation be incorporated into the Commission decision granting the joint motion to adopt the PG&E and CPSD stipulation.

The parties were notified by e-mail rulings on July 22 and 25, 2011 that the July 29, 2011 evidentiary hearing would be held to have the sponsoring witnesses answer questions regarding the PG&E and CPSD stipulation, and the PG&E and TURN stipulation.

An evidentiary hearing on the two stipulations was held on July 29, 2011. Three witnesses testified regarding the PG&E and CPSD stipulation, and two witnesses testified regarding the PG&E and TURN stipulation. Eighteen documents, including the CPSD and PG&E reports, were marked for identification as exhibits at this hearing. This proceeding was then submitted to address the joint motion of PG&E and CPSD, the PG&E and CPSD stipulation, and the PG&E and TURN stipulation.

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[3] The June 21, 2011 e-mail ruling was subsequently confirmed in a July 7, 2011 written ruling.

3. The OII and the Stipulations

3.1. Background of the OII

The Commission opened the OII to determine whether PG&E "violated any provision or provisions of the California Public Utilities Code [Pub. Util. Code], Commission general orders or decisions, or other applicable rules or requirements in regards to its gas service and facilities, pertaining to a gas explosion and fire that occurred on December 24, 2008 in Rancho Cordova, California." (OII at 1.) The OII provided notice that a hearing would be held to determine whether PG&E violated any statutes or Commission directives, and to determine the penalties or other remedies for any proven violation. The OII also directed PG&E to file a report, respond to certain questions, and to provide the information requested.

The OII is based upon the investigations conducted by the NTSB and CPSD. CPSD's "Incident Investigation Report on Rancho Cordova Explosion and Fire," which was marked for identification as Exhibit 1 at the July 29, 2011 evidentiary hearing, included the NTSB "Pipeline Accident Brief" as Appendix L to CPSD's report.

The NTSB report concluded the following:

> The National Transportation Safety Board determines that the probable cause of the December 24, 2008, release, ignition, and explosion of natural gas in Rancho Cordova, California, was the use of a section of unmarked and out-of-specification polyethylene [PE] pipe with inadequate wall thickness that allowed gas to leak from the mechanical coupling installed on September 21, 2006. Contributing to the accident was the 2-hour 47-minute delay in the arrival at the job site of a Pacific Gas and Electric Company crew that was properly trained and equipped to identify and classify outdoor leaks and to

> begin response activities to ensure the safety of the residents and public. (Ex. 1, App. L.)

The CPSD report stated the following in its conclusion:

> The cause of the gas explosion and fire was the gas leak on the main PE gas pipe located in the front yard of 10708 Paiute Way, Rancho Cordova. The gas leak was caused when a segment of yellow 1¼ IPS [iron pipe size] PE pipe separated from a 1¼ IPS coupling. The 1¼-inch pipeline and coupling were installed on September 21, 2006 to repair a gas leak. The pipeline installed was not approved for gas usage according to [American Society for Testing and Materials] ASTM D 2513 standards. The leaking gas migrated into the house at 10708 Paiute Way, ignited and caused the explosion and fire. CPSD also found that PG&E had inadequate rules or implementation of the rules to timely deal with a gas leak such as occurred in Rancho Cordova, so as to promptly find and assess the leak and to prevent harm to life and property. (Ex. 1 at 24.)

As set forth at 24 to 29 of the CPSD report, CPSD goes on to allege certain "key facts," which CPSD concludes led to PG&E's violation of various provisions of Part 192 of Title 49 of the Code of Federal Regulations and Pub. Util. Code §451.[4] These CPSD allegations of violations were also set forth in the November 19, 2010 OII at 9 to 10, and involve the following provisions:

1. 49 CFR §192.13(c), General; 49 CFR §192.59(a)(1), Plastic Pipe; and Pub. Util. Code §451.

2. 49 CFR §192.13(c); and Pub. Util. Code §451.

[4] Title 49 of the Code of Federal Regulations is hereafter cited as "49 CFR," and the Code of Federal Regulations is cited as "CFR."

3. 49 CFR §192.615(a)(3)(i), (a)(4), (a)(5), (a)(7); and Pub. Util. Code §451.

4. 49 CFR §192.615(a)(2), (a)(5), (a)(7), (a)(8), (b)(2); and Pub. Util. Code §451.

5. 49 CFR §199.105(b), Drug Testing; 49 CFR S199.225(a), Alcohol Testing; Pub. Util. Code §451.

The OII directed PG&E to provide a report identifying "all reasons of law and fact currently known to PG&E to establish that the company has committed none of the violations alleged in CPSD's report." (OII at 11 and 13.)

3.2. Background of the Rancho Cordova Events

The following is a description of the events that occurred on December 24, 2008, and the earlier events which the NTSB and CPSD believed caused the explosion. This chronology of events is based on the various details contained in the CPSD, NTSB, and PG&E reports, as well as the PG&E and CPSD stipulation.

3.2.1. December 24, 2008 Events

On December 24, 2008, a resident of 10716 Paiute Way in Rancho Cordova called PG&E at approximately 9:16 a.m. to report the smell of natural gas outside the house and in the garage. PG&E dispatched a gas service representative at approximately 9:21 a.m., who arrived at 10716 Paiute Way at approximately 10:14 a.m.

The gas service representative was equipped with a Sensit Gold leak detector device, and was trained to identify, classify, and assess indoor leaks. The Sensit Gold device is a combustible gas indicator that takes quantitative readings of the percentage of gas that is present at an indoor or outdoor location. The gas service representative went to the gas meter at 10716 and tested for gas.

The gas service representative detected the presence of gas in the water box in front of the house at 10716 Paiute Way. The gas service representative then performed a clock test on the gas meter at 10716 Paiute Way to determine whether there was excessive gas flow, which there was not. The gas service representative also checked inside 10716 Paiute Way, but did not detect any gas leaks.

Pursuant to PG&E's procedures, at approximately 10:25 a.m., the gas service representative contacted PG&E's Customer Contact Center using PG&E's internal line "to request that a case number be issued to the gas M&C [maintenance & construction] case queue for 10716 Paiute Way and that a leak investigator be dispatched to help determine the source of the gas readings at the water boxes." (Ex. 2 at 11.) The gas service representative called for a leak investigator because the leak investigator is qualified to use a flame ionization (flame pack) device, which is used to find outdoor natural gas leaks.[5] A case ticket for 10716 Paiute Way was created at 10:28 a.m. by the Customer Contact Center.

The gas service representative then made contact with a female occupant at 10712 Paiute Way who also smelled gas. The gas service representative asked this person to call PG&E about the gas odor. The gas service representative then received permission to check the 10712 Paiute Way residence for the odor of natural gas. The gas service representative found and repaired a minor leak at

[5] Up until the time of the Rancho Cordova explosion, outdoor natural gas leaks were investigated by PG&E leak investigators using a flame ionization detection device to conduct a "leak survey" to locate the outdoor gas leak. Following the Rancho Cordova explosion, gas service representatives are now trained, and have the equipment, to conduct both inside and outside gas leak surveys.

the water heater. The gas service representative also smelled the odor of gas in a small room in the garage, and found a trace of gas at the water box located in front of 10712 Paiute Way. The gas service representative then performed a clock test on the gas meter, which was normal.

The gas service representative was then directed by a male occupant of 10712 Paiute Way to a patch of dead grass in the front yard at 10708 Paiute Way as the possible cause of the gas odor.[6] The gas service representative was informed by this person that a leak had previously been repaired at this location. The gas service representative observed a patch of dead grass in the front yard of 10708 Paiute Way, and detected the presence of gas in that area at about 63 percent of the lower explosive limit of natural gas, or about three percent gas-in-air. At about 10:35 a.m., the gas service representative then called dispatch for the outside gas leak at 10712 Paiute Way, and a case ticket was created at 10:42 a.m. by the Customer Contact Center.

After detecting gas in the area near the patch of dead grass, the gas service representative used the leak detector device along the service line toward the house at 10708 Paiute Way. The gas service representative found no indication of gas near the house. The gas service representative also clock tested the meter at 10708 Paiute Way, but found nothing unusual. The gas service representative then knocked on the front door at 10708 Paiute Way, but no one answered. The gas service representative was not equipped by PG&E to place a sign on the door or to place barrier tape on the outside of the house to warn residents that entry

[6] According to the Sacramento County Sheriff Department's report, which is Appendix A to CPSD's report, the male occupant at 10712 Paiute Way asked the gas service representative and the leak investigator about evacuating the area.

could be hazardous. From approximately 11:10 a.m. to 11:17 a.m., the gas service representative made two calls to PG&E dispatch concerning an outdoor gas leak at 10708 Paiute Way. A case ticket for 10708 Paiute Way was created at 11:22 a.m. by the Customer Contact Center.

At approximately 11:00 a.m., the gas service representative called PG&E's Sacramento Maintenance and Construction (M&C) field office on Florin Road to find out when an M&C crew would arrive. The gas service representative was then given the telephone number of the leak investigator who had been dispatched, and called that number. The leak investigator informed the gas service representative that he would be there before noon.

The gas service representative then parked her PG&E truck across the street facing the home at 10708 Paiute Way and waited for the leak investigator to arrive. When the leak investigator did not arrive by noon, the gas service representative called the leak investigator again, who informed the gas service representative that he was coming.

PG&E's Sacramento M&C field office received the first case ticket for a flame pack leak investigator around 10:30 a.m. At approximately 10:42 a.m., the M&C supervisor who was on duty that morning acknowledged the case ticket for 10716 Paiute Way, and called the leak investigator on duty. That person was unable to respond due to another job in Elk Grove. At about 10:45 a.m., the morning M&C supervisor then called to dispatch a second leak investigator, who was completing a job from the previous evening in the Natomas area of Sacramento. This leak investigator was available, and advised the supervisor that he needed to return to the field office to pick up the flame pack, and then would go to Rancho Cordova. The morning M&C supervisor then informed the Sacramento Division Gas Compliance Supervisor (compliance supervisor) that

the leak investigator would report to the site to conduct the leak investigation with the flame pack. The morning M&C supervisor then went home for the day.

The leak investigator completed his work in the Natomas area and then drove to the Sacramento M&C field office to pick up the flame pack and related work papers. On the way to the field office, the leak investigator was apparently delayed on the freeway due to a tanker truck accident. The leak investigator spoke with the gas service representative three times to report his delay, but the leak investigator did not notify his supervisor or PG&E dispatch of the delay. The leak investigator arrived at the Sacramento M&C field office on Florin Road at about 11:30 a.m. to pick up the flame pack, about 45 minutes after his dispatch by the morning M&C supervisor.

After the morning M&C supervisor left work, the afternoon M&C supervisor took over. At approximately 11:26 a.m., the Sacramento M&C field office acknowledged the case ticket for 10708 Paiute Way. Recognizing the need that an outdoor repair might be needed for the three case tickets on Paiute Way, the compliance supervisor dispatched an M&C foreman and an M&C fieldperson to Paiute Way to meet the leak investigator. [7] At around 12:00 to 12:30 p.m., the compliance supervisor saw the leak investigator in the maintenance yard at the Florin Road field office.

Due to a brake problem with the truck the leak investigator had been using when he returned to the Sacramento M&C field office, the leak investigator had to obtain another truck, unhitch the backhoe from the problem truck he had

[7] According to PG&E's report, the foreman and fieldperson came from different locations and drove to Paiute Way in separate vehicles.

been using, and hitch the backhoe to the replacement truck. The leak investigator then left the yard at about 12:42 p.m. to go to Paiute Way.

The PG&E report states:

> The two supervisors on duty that afternoon failed to coordinate a response with each other and with the morning supervisor to ensure that there was an appropriate response to the leak location. One of them could not account for his whereabouts that afternoon and the other took insufficient action to attempt to mitigate the delay being experienced by the dispatched leak investigator. These actions failed to comply with the portion of PG&E's UO Standard S4110 that …required the supervisors to ensure that all repairs were completed in a timely manner. … The failure of the supervisors to act to mitigate the delay encountered by the leak investigator resulted in an unreasonable delay in getting the leak investigator and gas crew to the location of the leak. (Ex. 2 at 15.)

The foreman arrived at Paiute Way at approximately 1:14 p.m. and met with the gas service representative. After the gas service representative informed the foreman about the leak in the yard at 10708 Paiute Way, and that no one had answered the door at that address, the gas service representative left the scene after being relieved by the foreman. At about 1:19 p.m., the leak investigator arrived at Paiute Way with the flame pack. The leak investigator's arrival was two hours and 47 minutes after the gas service representative had first called PG&E dispatch to request a qualified flame pack person. The fieldperson arrived at Paiute Way at about 1:22 p.m.

The foreman observed the area where the repair had been done at 10708 Paiute Way. After the foreman talked to the leak investigator about what the gas service representative had detected, the foreman and the fieldperson

began to mark off the location of the gas main and service lines in front of 10712 and 10708 Paiute Way.

After the leak investigator warmed up the flame pack at his truck, the leak investigator then knocked on the door of 10708 Paiute Way and made contact with the homeowner's granddaughter. She directed the leak investigator to the garage where the leak investigator spoke with the homeowner of the house. The homeowner informed the leak investigator about PG&E's prior repair at the dead patch of grass.[8] The leak investigator did not smell any gas at the front door or in the garage, nor did any of the occupants at 10708 Paiute Way mention any smell of gas inside the house to the leak investigator.

After talking to the homeowner of 10708 Paiute Way, the leak investigator retrieved the flame pack from his truck and began a leak survey along the main in front of 10708 Paiute Way. He obtained natural gas readings of 60,000 parts per million over the gas main at the patch of dead grass, which is just above the lower explosive level range that begins at 45,000 parts per million.[9] As the leak investigator walked toward the house along the service line, the readings dropped to 30,000 parts per million. As the leak investigator turned back toward the dead patch of grass to confirm his readings, the house at 10708 Paiute Way exploded at about 1:36 p.m. The ignition source of the gas explosion appeared to

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[8] According to PG&E's report and the post-accident interviews, the homeowner of 10708 Paiute Way, along with his daughter and granddaughter, returned to the house at about noon. While waiting for the leak investigator, the gas service representative did not see them arrive, nor did the daughter or granddaughter notice the PG&E vehicle parked nearby when they returned to the residence.

[9] At the July 29, 2011 hearing, the CPSD engineer testified that natural gas is explosive within a range of 45,000 to 145,000 parts per million of gas in air. (1 RT 40-41.)

be the granddaughter who was inside 10708 Paiute Way when she used a lighter to light a cigarette.

As a result of the explosion, the homeowner of 10708 Paiute Way died, and his daughter and granddaughter were seriously injured. PG&E personnel and a neighbor also sustained injuries from the explosion. The house at 10708 Paiute Way was destroyed, two adjacent houses had severe damage, and other houses had minor damage.

Prior to the explosion, PG&E had not contacted the fire department, and no houses in the vicinity of 10708 Paiute Way were evacuated. After the explosion, none of PG&E's employees were administered drug and alcohol tests.

3.2.2. Subsequent Investigations Into Rancho Cordova Pipe

On December 29, 2008, during the course of the NTSB and Commission investigation, PG&E excavated the 2-inch plastic main pipeline from the patch of dead grass in the front yard of 10708 Paiute Way. This pipe consisted of a 2-inch to 1 ¼-inch transition (reducer) coupling, a 6-inch section of 1 ¼-inch pipe, and a 1 ¼-inch repair coupling. PG&E pressure tested the main pipeline and service lines separately with air to find the location of the gas leak. During the test, the west end of the repair coupling leaked air excessively, which pinpointed the gas leak to the 6-inch section of the 1 ¼-inch diameter repair pipe (spool pipe) between the Metfit repair coupling and the Metfit reducer coupling.

Sections of this pipe and the couplings were sent to the NTSB's Materials Laboratory, where those items were measured, examined, and tested. NTSB's report stated:

> The examination of the pipe sections from the accident site revealed that the 20-foot-long inserted section of 1 ¼-inch polyethylene pipe met the requirements of ASTM D-2513.

> This section of pipe had an outside diameter of 1.662 inches and a wall thickness range of 0.172 to 0.716 inches, and it was marked in accordance with ASTM D-2513. The proper wall thickness of ASTM D-2513 1 ¼-inch SDR 10 polyethylene pipe is 0.166 to 0.186 inches.
>
> The short, 6-inch piece of 1 ¼-inch spool pipe had no markings at all, an outside diameter of 1.662 inches, and a wall thickness of 0.148 to 0.152 inches, significantly thinner than the minimum wall thickness for ASTM D-2513 SDR 10 pipe. The coupling cannot be tightened with sufficient sealing pressure if the wall thickness of the pipe does not meet the minimum specifications. Marks made by the field installer were found on all of the piping installed by PG&E, and they indicated the proper depth for insertion of the pipe into the coupling. (Ex. 1, Appendix L at 11-12.)

This spool pipe repair at 10708 Paiute Way took place on September 21, 2006, as a result of a gas odor complaint from this address.[10] The PG&E crew that was dispatched on September 15, 2006 determined that the source of the odor was a leak in the 2-inch plastic pipe gas main located in front of 10708 Paiute Way. The homeowner at 10708 Paiute Way did not want PG&E to dig-up the entire lawn to make the repair. According to the NTSB report, the September 21, 2006 repair was performed in the following manner:

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[10] There were five PG&E work orders for 10708 Paiute Way from August 17, 2006 to September 21, 2006. According to CPSD's chronology of the repairs at 10708 Paiute Way, PG&E performed two gas leak repairs. PG&E performed the first gas leak repair on September 5, 2006. PG&E discovered a second gas leak problem on or about September 15, 2006, and repaired it on September 21, 2006. (See Ex. 1 at 13.) NTSB concluded that the September 21, 2006 repair was the cause of the Rancho Cordova leak and subsequent explosion.

> To make the repair at 10708 Paiute Way, PG&E severed the original 2-inch main at two locations about 22 feet apart and inserted a section of 1 ¼-inch polyethylene plastic pipe inside the older 2-inch Aldyl-A plastic pipe across the leak. The repair pipe inserted into the 2-inch main was a 1 ¼-inch iron pipe size polyethylene pipe manufactured by US Poly that also had a maximum allowable operating pressure of 60 psig [pressure per square inch gauge] and a working pressure of about 55 psig. The inserted pipe sections were joined to the original 2-inch main with two US Poly Metfit 1 ¼-inch by 2-inch reducing couplings and one 1 ¼-inch coupling. Specifically, the main was reconnected by installing a 2-inch to 1 ¼-inch Metfit reducing coupling to join one end of the severed 2-inch main to one end of the 256-inch long 1 ¼-inch polyethylene pipe. On the other end, to obtain sufficient movement to complete the repair, the long 1 ¼-inch insert pipe was then joined by a 1 ¼-inch Metfit straight coupling to an about 6-inch-long piece of 1 ¼-inch polyethylene pipe. This short pipe section, or spool piece, was joined to the other severed end of the 2-inch main by a Metfit 1 ¼-inch to 2-inch reducing coupling.

According to PG&E's report, "During the post-accident investigation, PG&E learned that the 6-inch unmarked non-conforming pipe was packing material used by the manufacturer in shipping gas pipe." (Ex. 2 at 21.)

PG&E had a written procedure in place in September 2006 for the installation of polyethylene pipe. That procedure requires all employees involved in the installation of polyethylene pipe to verify the markings on the pipe, the date the pipe was manufactured, and the pipe manufacturer's name. PG&E employees are to document this information on various forms, and supervisors are to review the repair form documents to ensure accuracy and completeness. The PG&E written procedure also requires that the pipe used for

a new installation or for a repair job be pressured tested for a minimum of five minutes, and soap tested for leaks after installation.

The CPSD report states that "the gas crew foreman claims that on September 21, 2006 he had pressure tested the repair at 100 psig for five minutes." (Ex. 1 at 13.) According to the PG&E report, PG&E learned during its investigation that the crew foreman did not properly complete PG&E's "A Form" that was used for the September 2006 repair at 10708 Paiute Way. The A Form did not show that the required pressure test had been performed on all the pipe used in this repair, and "the date recorded for the pipe used did not match what was found in the ground." (Ex. 2 at 21.) PG&E also discovered that the crew "foreman's supervisor failed to follow PG&E's procedures for reviewing the A Form," and may have altered the original A Form. (Ex. 2 at 21-22.)

PG&E's investigation revealed that two supervisors "repeatedly approved improperly completed A Forms and/or improperly added inaccurate information to A Forms." (Ex. 2 at 22.) This investigation led to PG&E's termination of the crew foreman who performed the September 2006 repair at 10708 Paiute Way, and the two supervisors who mishandled the A Forms. According to the PG&E report, these two supervisors are the same supervisors who failed to ensure that PG&E's response on December 24, 2008 was timely.

In February 2009, the CPSD Engineer, Banu Acimis, made a field visit to PG&E's Sacramento M&C field office. In the yard of the field office, the CPSD engineer found two unmarked pieces of polyethylene yellow pipe in a bin

marked "Stub Markers Only."[11] Since the spool pipe repair used at 10708 Paiute Way also involved unmarked polyethylene pipe, this was brought to the attention of the NTSB, and the unmarked pipe from the Sacramento yard, along with two samples from the Fremont Materials Center, was sent to NTSB for testing.[12] The NTSB determined that one of the unmarked pipe samples from the Sacramento yard was not within the specified ASTM D 2513 limits for wall thickness.

3.2.3. 2006 Elk Grove Incident

CPSD's report alleges that the problems that PG&E encountered with respect to the repair at Elk Grove in October 2006, and the subsequent PG&E investigation into the materials used at that site, should have led to the discovery

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[11] According to CPSD's report, "for a significant time period, the Sacramento Division had a practice of using scrap pieces of pile which were stored in Stub Marker Bins to mark the ends of gas service stubs." (Ex. 1 at 16.)

[12] According to the NTSB Report No. 09-021, four pipe sections that had not been placed in service were examined by the NTSB. Two of the four samples were found in the stub marker bin at the Sacramento M&C field office. The other two samples came from the Fremont Materials Yard, and one of the Fremont samples was used to align or stack the rolls of pipe. (Ex. 1, App. 5.) According to the CPSD report, the pipe used to align or stabilize the coils of pipe is referred to in the CPSD report as "packing pipe" or "stack piping." This packing pipe "is made from the same resin and on the same equipment as the plastic pipe approved for gas usage;" is "produced during the start up process before the product achieves the required dimensions;" is produced with no markings in order to make the packaging pipe segments distinguishable from the finished specification pipe product so that they would not be mistakenly installed;" and "is not intended to be used to transport gas because its specifications do not match the ASTM D 2513 standards." (Ex. 1 at 17.) As described in Exhibit 2 at 43 to 46, after the 2008 Rancho Cordova explosion, PG&E took steps to preclude packing pipe from being used for any purpose.

of the September 2006 defective repair at 10708 Paiute Way. The following is a description of the events regarding the Elk Grove repair.

On October 7, 2006, PG&E undertook a repair to a gas main and service line in Elk Grove as a result of a dig-in incident. The pipe that PG&E used for this repair was manufactured for use in providing gas service and had the required markings. The PG&E repair crew also pressure tested the repair pipe before installation. During the course of joining the replaced section to the existing service, the repair piece repeatedly blew out of the Metfit coupling. Different Metfit couplings were used, but the problem reoccurred. Due to this problem, the repair crew completed the repair using a heat fusion technique.

In a belief that the Metfit couplings were defective, PG&E completed its Gas Material Problem Report process for the Metfit couplings from Lot 308420, and removed the fittings with that lot number from further use. PG&E then sent four Metfit couplings, along with pieces of pipe cut from the repair site, to the coupling distributor for analysis. The coupling distributor forwarded the couplings and the pipe pieces to the coupling manufacturer. On November 9, 2006, the coupling manufacturer sent a letter stating that the fittings were manufactured to specification, but the wall thickness of the pipe was out of specification, which explained why the pipe would not stay in the coupling.

CPSD contends that PG&E failed to file a claim with the pipe manufacturer over the pipe that was out of specification. CPSD also contends that PG&E did not excavate any pipe installations between November 2006 and February 2009 in the Sacramento area to investigate whether this out of specification pipe had been used elsewhere. Had PG&E excavated recent

installations, CPSD contends that the installation at 10708 Paiute Way "probably would have been discovered." (Ex. 1 at 25.)

PG&E's report contends that the Elk Grove repair and the Gas Material Problem Report associated with that repair were unrelated and different from the September 2006 repair made at 10708 Paiute Way in Rancho Cordova. Unlike the pipe that was used at 10708 Paiute Way, PG&E states that all of the pipe used in the Elk Grove repair was manufactured for use in providing natural gas service, and had all of the required markings. In addition, PG&E states it pressure tested the Elk Grove repair prior to installation.

After learning from the Metfit coupling manufacturer that the repair pipe was out of specification, PG&E personnel searched the yard and all crew trucks for pipe with the same manufacturing date. PG&E states that it measured all of this pipe and determined it to be within specification. The PG&E evaluator concluded that the out of specification pipe was an isolated incident because no other repairs with pipe of a similar wall thickness had failed. Since the piece of pipe installed at Elk Grove had passed a pressure test prior to installation, the evaluator concluded the Elk Grove repair was safe for use and that repair remained in service until 2009 when it was excavated in connection with the Rancho Cordova explosion as described below. PG&E's report contends that the Elk Grove repair did not warrant excavating the 10708 Paiute Way repair, and nothing about the Elk Grove repair "would have reasonably led anyone to discover the unrelated faulty repair job at 10708 Paiute Way." (Ex. 2 at 24.)

After the explosion and fire at 10708 Paiute Way in Rancho Cordova, PG&E conducted an investigation to determine whether PG&E had installed additional non-conforming gas pipe in the Sacramento area. PG&E's investigation covered a three-year period before and after September 21, 2006.

PG&E knew that the Rancho Cordova repair used 1 ¼-inch plastic pipe and Metfit couplings, that a portion of the repair pipe did not meet specifications for wall thickness, and that there were no markings on the pipe to identify the date of manufacture, plant code, or other identifying data. Based on what PG&E knew about the materials used in the September 2006 repair at 10708 Paiute Way, PG&E identified 664 locations where the utility used 1 ¼-inch plastic pipe and Metfit couplings.[13] Of the 664 locations, 75 were performed in the Sacramento Division. PG&E then leak surveyed all of the locations outside of the Sacramento Division, and excavated 72 of the 75 Sacramento Division locations.[14]

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[13] A discrepancy appears in PG&E's report in Exhibit 2 at 25 to 26, and in Footnote 117, as to whether 664 or 644 locations were identified.

[14] Three of the 75 Sacramento locations were not excavated because PG&E determined from the repair forms that 1-inch pipe had been used at those three locations.

According to PG&E's report, none of the pipes used at the 72 locations had the date markings of the pipe used in the Elk Grove repair. The 2009 excavation at the Elk Grove site did reveal that the pipe used had a wall thickness below specification, and that PG&E should have removed it from service when the Metfit coupling manufacturer reported in November 2006 that the pipe used during the unsuccessful coupling repair at Elk Grove was out of specification.

3.3. Pre-Stipulation Positions of CPSD, PG&E, and TURN

3.3.1. CPSD Position

CPSD takes the position in its report that PG&E violated various provisions of 49 CFR, and Pub. Util. Code §451.[15] These alleged violations are due to the following PG&E actions:

1. The September 21, 2006 installation of a segment of pipe at 10708 Paiute Way in Rancho Cordova did not meet the standards in ASTM D 2513 for use of plastic pipe in supplying natural gas, and PG&E failed to confirm that there were markings on that pipe which would have alerted the installer that the plastic pipe was not authorized for natural gas use.

2. PG&E discovered in November 2006 that it had installed a pipe that did not meet the required plastic pipe specifications for natural gas usage in Elk Grove in October 2006, but PG&E failed to take steps to locate and eliminate hazards from other similar non-conforming pipe that PG&E had already installed. PG&E also failed to take

[15] Each of the provisions that CPSD alleges that PG&E violated are set forth at 21 to 24 of Exhibit 1, and the key facts that CPSD alleges support the violations are described at 24 to 29 of Exhibit 1.

appropriate corrective actions and preventative measures to minimize the risk of similar failures in the future.

3. On December 24, 2008, PG&E failed to take immediate actions to safeguard life and property, as required by PG&E's Work Procedure 6434-01, when an outside hazardous leak was suspected. Also, if PG&E properly secured and placed warning notices at 10708 Paiute Way, the occupants would not have entered the house without being seen.

4. PG&E's emergency response plans, practices, and procedures were inadequate to prevent the December 24, 2008 explosion, and to protect life and property from actual or potential hazards of gas leaks, and PG&E failed to coordinate with the fire department, law enforcement, or other agencies to effectively respond to the emergency.

5. PG&E failed to train the appropriate operating personnel to assure that they are knowledgeable of the emergency procedures and to verify that the training is effective.

6. PG&E did not administer drug and alcohol tests to its employees whose performance either contributed to the Rancho Cordova incident, or whose performance cannot be completely discounted as a contributing factor to the incident.

3.3.2. PG&E Position

PG&E's report acknowledges that the December 24, 2008 explosion and fire in Rancho Cordova "resulted from a series of failures by PG&E employees to follow prescribed procedures, failures for which PG&E takes full responsibility." (Ex. 2 at 1.)

PG&E's Introduction to its report (Exhibit 2) describes three errors that PG&E believes caused or contributed to the Rancho Cordova explosion:

> First, in September 2006, a PG&E employee – contrary to PG&E's express work procedures – used a [6]-inch piece of unapproved plastic pipe to complete a repair on the gas main in the front yard of the house. Had the correct pipe been properly installed in accordance with PG&E's procedures, the subsequent leak and explosion would not have occurred. Had the employee followed procedures, he would have recognized that the [6]-inch piece of pipe was not authorized: (a) he would have noted that the pipe did not have the required line marking; and (b) even if he missed that, had he performed the required pressure test on the pipe itself, [the pipe] would have failed because the wall thickness was not sufficient to hold the 100 psig test pressure.
>
> Second, a supervisor failed to properly review the documentation of the repair. Had these PG&E controls been followed, they would have exposed the use of the unapproved pipe and prevented the gas leak and explosion.
>
> Third, on the day of the accident, two PG&E supervisors failed to act to ensure that PG&E's leak investigator and repair crew arrived timely, resulting in an unreasonable delay in PG&E's response to the hazardous leak identified by its representative on the scene. (Ex. 2 at 1-2.)

PG&E "disputes many of CPSD's other allegations, including that PG&E's Gas Emergency Plan was inadequate and did not comply with the applicable regulations." (Ex. 2 at 2.) Volume II of PG&E's report (Exhibit 3) contains testimony that PG&E's Gas Emergency Plan and procedures that were in effect on December 24, 2008 were reasonable, met industry standards, and complied with the applicable law.

PG&E also disputes CPSD's contention that further investigation of the October 2006 Elk Grove repair should have led to the discovery of the September 2006 defective repair at 10708 Paiute Way. PG&E's report contends that unlike the Rancho Cordova repair, the pipe used to repair the Elk Grove leak had markings on it and the pipe was manufactured for use in gas distribution. PG&E also contends that it followed its Gas Material Problem Report process, and correctly concluded that the materials problem was an isolated incident.

PG&E's report also acknowledges that it took the following actions after the Rancho Cordova explosion.

First, as a result of the facts which came to light following PG&E's investigation, PG&E states it terminated "the crew foreman who performed the faulty repair and two supervisors who failed to adhere to PG&E's system of controls by not properly overseeing the repair at Paiute Way and other locations as well as allowing the unreasonable delay in responding to the gas leak." (Ex. 2 at 2.)

Second, PG&E "strengthened its procedures around gas leak investigation and gas odor response." (Ex. 2 at 2.) As a result, the gas service representatives, who are PG&E's first responders to gas odor complaints, now use upgraded or new gas detection devices that display specific gas concentration readings. The gas service representatives have now been trained to investigate both inside and outdoor gas leaks. The revised procedures "include a more precise definition of what constitutes a potentially hazardous situation…," have "clarified [PG&E's] criteria for the evacuation of customers from potentially unsafe buildings and

implemented the use of warning tape to prevent entrance to such buildings." [16] (Ex. 2 at 2.) According to PG&E's report, "these improvements give PG&E's employees better tools, training and guidance to protect the public in gas leak situations." (Ex. 2 at 35.)

Third, PG&E has "made improvements to processes to prevent the use of unapproved pipe in the field." (Ex. 2 at 3.) Among the changes are revisions to its material inspection processes for incoming pipe shipments, and issuing guidelines to its field employees to reinforce the requirement to use approved materials.

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[16] Under PG&E's updated evacuation procedures, the evacuation criteria is as follows: (1) if the gas service representative obtains an initial continuous reading of 1% or greater gas in air, or greater upon entry into the building, the occupants should be immediately evacuated from the structure, and the gas service representative may continue the investigation without 911 assistance; (2) while in the immediate entry area, if the gas service representative obtains a continuous reading between 1% and 2% gas (readings between 1% and 2% are considered safe for qualified PG&E personnel), the gas service representative should shut off the gas supply, and at the gas representative's discretion, contact and wait for the fire department to assist with initiating ventilation before proceeding with an inside investigation; (3) if the gas service representative obtains any continuous readings between 1% and 2% gas in air in a particular room (probably resulting from an accumulation of gas in the room), the gas service representative should shut off the gas supply and call for 911 assistance and wait for the fire department to assist with initiating ventilation before continuing with the investigation; and (4) if the gas service representative obtains a continuous reading of 2% or greater gas in air inside a structure, or five feet or less from the structure, all employees and first responders must evacuate the structure and contact dispatch to request 911 assistance, and employees will wait for the fire department to assist with initiating ventilation. PG&E's customer service representatives, who are the first persons that customers talk to on the telephone when gas odor complaints are called in, have also been trained on advising customers when they should evacuate a building. (Ex. 2 at 38-41.)

3.3.3. TURN Position

TURN submitted its testimony on June 17, 2011. TURN's testimony recommended that PG&E be ordered to exclude the claims related to the Rancho Cordova explosion that were paid by PG&E in 2009 and 2010 from the recorded costs in Account 925, which is used to set the test year forecast in PG&E's next rate case. TURN's reason for excluding such costs is because PG&E has admitted that its employees acted unreasonably and failed to follow proper procedures, and therefore ratepayers should not be responsible for such costs in the next test year forecast. TURN points out that: "PG&E does not dispute that its employees were negligent in the 1) faulty repair performed on the pipeline at 10708 Paiute Way in September 2006, and 2) lack of timeliness in responding to the odor complaints at 10708 Paiute Way on December 24, 2008;" that PG&E's testimony acknowledges its employees failed to follow company policies and procedures; and that three of its employees were terminated as a result. (Ex. 16 at 2-3.)

TURN's testimony contends that if the Rancho Cordova 2009 and 2010 claims that were paid are recorded to Account 925, and the 2009 and 2010 recorded costs are used to forecast the next test year revenue requirement, that ratepayers will end up paying higher rates as a result of the Rancho Cordova claims that were paid.

TURN's testimony also recommended that the Commission should address the treatment of expenses for third party claims and settlements to ensure that ratemaking treatment does not undermine the utility's attention to safety. TURN contends that if PG&E settles or directly pays a claim before there is any legal finding of negligence or culpability, those costs are usually included in Account 925 and ratepayers ultimately bear the expense in rates. But if a civil lawsuit is litigated, and there is an adverse judgment against PG&E due to its

negligence or culpability, TURN contends that PG&E is less likely to seek future rate recovery based on the judgment amount.

TURN contends that this difference in result may reduce PG&E's attention to public safety because PG&E will be motivated to settle and pay claims, rather than to litigate and perhaps receive a judgment adverse to PG&E. That is, if settlement claims are included in future test year forecasts, PG&E may have less incentive to address underlying problems in its operations, practices, and behavior.

3.4. Summary of the Stipulations

3.4.1. PG&E and CPSD Stipulation

The PG&E and CPSD stipulation consists of "Recitals," a "Stipulation," and a "Stipulation of Facts."[17]

The Recitals describe six events related to the Rancho Cordova explosion. First, the recital summarizes the events that took place on December 24, 2008 which resulted in the Rancho Cordova explosion and fire. Second, it summarizes the NTSB investigation, the issuance of the NTSB's Pipeline Accident Brief, and the NTSB's conclusion regarding the probable cause of the explosion, and that the delay of 2 hours and 47 minutes to begin response activities was a contributing factor. Third, it summarizes CPSD's Incident Investigation Report, and the violations CPSD alleges that PG&E committed. Fourth, the document summarizes that this OII was issued on November 19, 2010. Fifth, it summarizes that PG&E submitted its testimony and exhibits in response to the OII on

[17] The Stipulation of Facts is attached to the PG&E and CPSD stipulation as "Attachment A."

February 17, 2011. And sixth, it summarizes that PG&E and CPSD agree that the PG&E and CPSD stipulation "represents a just and reasonable resolution of all claims, allegations and issues in this investigation." (PG&E and CPSD stipulation at 2.)

The "Stipulation" portion of the PG&E and CPSD stipulation at pages 2 to 5 sets forth 12 agreements and admissions to which PG&E and CPSD have agreed.

- PG&E admits that the September 2006 pipe installation at 10708 Paiute Way was not authorized for gas service in violation of 49 CFR §§192.59(a)(1) and 192.13(c).
- PG&E admits that the pipe used at 10708 Paiute Way in September 2006 was not pressure tested in the manner required by law, prior to reinstating gas service, in violation of 49 CFR §192.503(a)(1).
- PG&E admits that the installation of gas pipe in Elk Grove in October 2006 had a wall thickness that was below specifications and in violation of 49 CFR §192.59(a)(1).
- PG&E admits that it failed to follow internal procedures with respect to its October 2006 discovery of the installation of gas pipe with wall thickness below specifications in Elk Grove, in violation of 49 CFR § 192.13(c).
- PG&E admits that its response to the December 24, 2008 telephone call of an outdoor gas leak odor on Paiute Way "was unreasonably delayed and not effective."
- PG&E "admits that not administering drug and alcohol tests after the Rancho Cordova explosion to all employees" on December 24, 2008, "under the circumstances presented, could not be completely discounted as a contributing factor to the accident," and "was in violation of 49 [CFR §§] 199.105(b) and 199.225(a)."

- PG&E's admissions are for this proceeding only, "and are not an admission with respect to any standard of conduct, state of mind, authorization or any other matter not expressly set forth above or related to any other proceeding or matter. "
- Except as set forth above, "PG&E and CPSD continue to contest all material issues."
- PG&E agrees to pay $26 million as a penalty to the State General Fund within 20 days "of the Commission's approval of this stipulation without modification."
- PG&E agrees to pay CPSD's investigation and proceeding costs within 20 days "of the Commission's approval of this stipulation without modification," or within 20 days "of CPSD providing PG&E with an accounting of such costs, whichever of these two events comes later."[18]
- PG&E agrees "that it will not seek to recover from customers in rates any portion of the penalty or any portion of the funds PG&E pays for CPSD costs."
- PG&E and CPSD agree that the Stipulation of Facts "contains stipulated facts which are sufficient to support the Commission's resolution of this proceeding," and that other than the Stipulation of Facts, "neither PG&E nor CPSD agrees to any other stipulation of fact."

The Stipulation of Facts sets forth a series of facts that PG&E and CPSD have agreed to, many of which have been incorporated into section 3.2 of this decision. The Stipulation of Facts concerns the events which occurred on December 24, 2008 regarding the smell of natural gas on Paiute Way in Rancho

[18] CPSD's investigation and proceeding costs are estimated by CPSD to be less than one million dollars.

Cordova. The Stipulation of Facts also describes the events concerning the September 21, 2006 gas pipe installation at 10708 Paiute Way, and the October 2006 repair that was performed in Elk Grove.

3.4.2. PG&E and TURN Stipulation

After the PG&E and CPSD stipulation was filed, PG&E and TURN entered into a separate stipulation. The PG&E and TURN stipulation provides that any Commission decision adopting the PG&E and CPSD stipulation should contain the following additional ordering paragraph:

> For purposes of its test year forecasts in PG&E's next general rate case, PG&E shall exclude from Account 925 any amounts paid for claims or settlements related to the December 24, 2008 natural gas explosion in Rancho Cordova, California.

The PG&E and TURN stipulation also provides that in PG&E's next general rate case, PG&E will provide to TURN (subject to a confidentiality agreement) the total amount of claims and settlements before removing the Rancho Cordova related claims and settlements, as well as the total amount of Rancho Cordova related claims and settlements. The PG&E and TURN stipulation further states that "TURN agrees that a resolution of the OII that adopts the Stipulation and includes the additional ordering paragraph described in Paragraph 1 of this stipulation represents a just and reasonable resolution of all claims, allegations and issues in this investigation."

4. Discussion

4.1. Introduction

In deciding whether the PG&E and CPSD stipulation and the PG&E and TURN stipulation should be adopted, we are guided by Rule 12.1(d) of the Commission's Rules of Practice and Procedure. That subdivision states: "The

Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with laws, and in the public interest."[19]

4.2. OII Allegations and Stipulations

In determining whether the PG&E and CPSD stipulation and the PG&E and TURN stipulation are reasonable, consistent with the law, and in the public interest, we first examine the violations that have been alleged in this investigation, and the acknowledgements and admissions made by PG&E in its report, and in the PG&E and CPSD stipulation.

CPSD alleges five different instances involving violations of Pub. Util. Code §451 and seven sections of 49 CFR that have been incorporated into GO 112-E.[20]

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[19] Both PG&E and CPSD, and PG&E and TURN, refer to their agreements as a "stipulation" instead of a "settlement." Although they use the term "stipulation," the rules pertaining to "settlements" that are set forth in Rules 12.1 to 12.7 of the Commission's Rules of Practice and Procedure, apply to both the PG&E and CPSD stipulation, and the PG&E and TURN stipulation. Rule 12.1 refers to a "settlement" as "the resolution of any material issue of law or fact or on a mutually agreeable outcome to the proceeding." Formerly, the Commission rules distinguished between a "settlement" and a "stipulation." However, that distinction was eliminated when former Rules 51 through 51.10 were eliminated in D.06-07-006, as initially proposed in the February 16, 2006 Order Instituting Rulemaking 06-02-011.

[20] Pub. Util. Code §451 provides in part that: "Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, … as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public." GO 112-E addresses the Commission's rules governing the design, construction, testing, operation, and maintenance of gas transmission and distribution pipe systems. GO 112-E also incorporates Parts 190, 191, 192, 193, and 199 of 49 CFR, which governs the design, construction, testing, operation, and maintenance of gas pipe systems.

These allegations of CPSD, which frame the issues in this OII, involve PG&E's non-compliance with various gas safety regulations, and failing to operate a safe and reliable gas system in violation of Pub. Util. Code §451.

The PG&E and CPSD stipulation contains admissions that PG&E violated the following seven CFR provisions cited in the OII.

- PG&E admits that the September 2006 pipe installation at 10708 Paiute Way was not authorized for gas service in violation of 49 CFR §§192.59(a)(1) and 192.13(c).
- PG&E admits that the pipe used at 10708 Paiute Way in September 2006 was not pressure tested in the manner required by law, prior to reinstating gas service, in violation of 49 CFR §192.503(a)(1).
- PG&E admits that the installation of gas pipe in Elk Grove in October 2006 had a wall thickness that was below specifications and in violation of 49 CFR §192.59(a)(1).
- PG&E admits that it failed to follow internal procedures with respect to its October 2006 discovery of the installation of gas pipe with wall thickness below specifications in Elk Grove, in violation of 49 CFR § 192.13(c).
- PG&E "admits that not administering drug and alcohol tests after the Rancho Cordova explosion to all employees" on December 24, 2008, "under the circumstances presented, could not be completely discounted as a contributing factor to the accident," and "was in violation of 49 [CFR §§] 199.105(b) and 199.225(a)."

PG&E also admits in the PG&E and CPSD stipulation that its response to the December 24, 2008 telephone call of an outdoor gas leak odor on Paiute Way "was unreasonably delayed and not effective."

We have historically favored settlements and stipulations that are reasonable in light of the record as a whole. In the PG&E and CPSD stipulation, PG&E has stipulated to many of the OII's allegations, but does not admit to any Pub. Util. Code violation. The PG&E and TURN stipulation would resolve the issues that TURN raised. Both the PG&E and CPSD stipulation, and the PG&E and TURN stipulation, avoid protracted litigation and reduces the parties' risk exposure in the event a different result is reached after litigating the issues. Thus, on balance, the resolutions of certain issues in the two stipulations are reasonable in this respect. In addition, the Commission has the authority under Pub. Util. Code §2104.5 to adopt a penalty that is less than what the Commission could have imposed.

However, the key in determining whether the PG&E and CPSD stipulation, and the PG&E and TURN stipulation, are reasonable, consistent with the law, and in the public interest, focuses on an analysis of the penalty amount agreed to in the PG&E and CPSD stipulation. We now turn to that analysis.

4.3. Penalty Amount

In analyzing the proposed penalty amount associated with both the PG&E and CPSD stipulation and the PG&E and TURN stipulation, we are guided by Pub. Util. Code §2104.5 and D.98-12-075.[21] First, §2104.5 provides in part:

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[21] D.98-12-075 (84 CPUC2d 155) addressed the principles that should be applied for imposing a fine for a violation of the affiliate transaction rules. As stated in 84 CPUC2d at 182, "these principles distill the essence of numerous Commission decisions concerning penalties in a wide range of cases…." The principles set forth in D.98-12-075 closely parallel the considerations set forth in Pub. Util. Code §2104.5. (See 84 CPUC2d 155 at 182-184, 188-190.)

> Any penalty for violation of any provision of this act, or of any rule, regulation, general order, or order of the commission, involving safety standards for pipeline facilities or the transportation of gas in the State of California may be compromised by the commission.[22]

Pub. Util. Code § 2104.5 further states in part:

> In determining the amount of such penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation, shall be considered.

These considerations as to what the penalty amount should be, dovetail with the principles the Commission historically uses to set fines as set forth in D.98-12-075, namely, the financial resources of the utility, the severity of the offense, the conduct of the utility to prevent, detect, disclose and rectify the violation, and the totality of the circumstances. (See 84 CPUC2d at 182-184, 193-195.)

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[22] The term "pipeline" as used in Pub. Util. Code §2104.5 is defined in Pub. Util. Code §227, which states: "Pipe line includes all real estate, fixtures, and personal property, owned, controlled, operated, or managed in connection with or to facilitate the transmission, storage, distribution, or delivery of crude oil or other fluid substances except water through pipe lines." In Rancho Cordova, the cause of the explosion was the separation of the polyethylene pipe from the Metfit coupling, which was used by PG&E to deliver natural gas to 10708 Paiute Way.

4.3.1. Severity or Gravity of the Violation

Safety and reliability of the natural gas system are of paramount importance to this Commission and to the public interest, i.e., the PG&E customers who rely on this system for heat, cooking, and for producing electricity. A basic principle of public utility service is for the public utility to provide safe and reliable service. (See D.11-03-005 at 22; D.09-03-025 at 18; D.04-12-015 at 45; D.01-12-021 at 10; Pub. Util. Code §§451, 761.) PG&E's underlying public utility service is to provide safe and reliable gas service, and the safety and reliability of its gas system must be PG&E's primary objective.

Based on PG&E's acknowledgement, its admissions, and the events that took place, PG&E failed to provide safe and reliable service at Rancho Cordova. PG&E acknowledges in its report that the Rancho Cordova explosion and fire "resulted from a series of failures by PG&E employees to follow prescribed procedures, failures for which PG&E takes full responsibility," and that "PG&E has learned from this accident and … has made a number of improvements intended to enhance public safety and prevent this type of accident from occurring again." (Ex. 2 at 1.)[23] PG&E also admits in the PG&E and CPSD stipulation to seven violations of various sections of 49 CFR, and also admits that its response on December 24, 2008 was unreasonably delayed and not effective.

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[23] When the employees of a public utility are blamed for wrong doing, the Commission should "closely scrutinize any attempts" at placing blame, and "Managers will be considered, absent clear evidence to the contrary, to have condoned day-to-day actions by employees and agents under their supervision." (84 CPUC2d at 184, 189.) In addition, Pub. Util. Code §2109 provides in part that "the act, omission, or failure of any officer, agent, or employee of any public utility, acting within the scope of his official duties or employment, shall in every case be the act, omission, or failure of such public

Footnote continued on next page

This Commission has stated that violations which cause "actual physical harm to people or property are generally considered the most severe" type of offense. (84 CPUC2d at 188, 193.) As a result of PG&E's actions at Rancho Cordova, loss of life and physical injuries occurred, as well as property damage. The PG&E and CPSD stipulation that violations of 49 CFR occurred, as well as PG&E's acknowledgement in its report that there were errors or failures by its employees which caused the Rancho Cordova explosion and fire, demonstrate the severity and gravity of the offenses.

Shortcomings at PG&E also demonstrate the severity and gravity of the offenses.[24] These shortcomings are demonstrated by the admissions in the PG&E and CPSD stipulation that:

- The pipe used in the September 2006 repair at 10708 Paiute Way was not authorized for use in providing gas service;
- PG&E did not pressure test the pipe used in the September 2006 repair at 10707 Paiute Way prior to reinstating gas service;
- The pipe used in the October 2006 installation in Elk Grove was below the specifications required by 49 CFR;
- PG&E internal procedures were not followed after discovering that pipe used at Elk Grove had wall thickness below specifications;

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utility." That is, PG&E is ultimately responsible for the actions of its employees, and for any associated penalties.

[24] We note that this decision is only addressing whether or not the two stipulations should be adopted or not. This decision does not prejudge the issues raised by the OII, should this OII be fully litigated. The conclusions that we draw in this decision are from PG&E's own admissions in the PG&E and CPSD stipulation, and from PG&E's acknowledgements in its own report in Exhibit 2.

- PG&E's response to an outdoor gas leak odor on Paiute Way was unreasonably delayed and not effective; and
- PG&E failed to administer alcohol and drug tests to the employees associated with PG&E's response to Rancho Cordova on December 24, 2008.

These shortcomings illustrate deficiencies with PG&E's training, reinforcement of training, and a failure to emphasize to its employees that safety and reliability of its gas system must be of paramount importance.

4.3.2. PG&E's Conduct to Prevent, Detect, Disclose and to Rectify the Violation

As noted in section 3.3.2., PG&E states it took corrective action regarding its employees, procedures, and processes following the Rancho Cordova explosion and fire. Taking corrective action, i.e., a good faith attempt to prevent, detect, disclose, and to rectify a violation, is also one of the considerations in Pub. Util. Code §2104.5 and in D.98-12-075 for assessing the size of the penalty. The corrective action that PG&E took after the Rancho Cordova explosion reveals that PG&E had written procedures and processes in place to ensure safe and reliable service, but which its employees failed to follow. This demonstrates underlying problems with PG&E's training efforts, employee supervision, and promoting a corporate culture of employee awareness of their responsibility for ensuring that PG&E's facilities and operations are safe and reliable.

The October 2006 repair in Elk Grove make us question whether PG&E's efforts to make its gas system safer were done in good faith. For example, CPSD raised the issue that once PG&E learned of the out-of-specification pipe used in the October 2006 repair in Elk Grove, that this should have triggered a PG&E review of all of its repairs using polyethylene pipe, which should have led to the discovery that unauthorized pipe was used to make the September 2006 repair at

10708 Paiute Way. Instead, after learning that one of the pieces of pipe used in the October 2006 repair in Elk Grove did not meet required specifications, PG&E did not excavate the remaining pipe from the October 2006 repair at Elk Grove to measure the size of other pipes used in that repair. The discovery that other pipe used at Elk Grove did not meet specifications did not occur until 2009 when PG&E excavated other polyethylene pipe installations in response to the Rancho Cordova explosion. Whether or not PG&E should have reviewed all of its records and excavated all of its polyethylene pipe installations after learning that out-of-specification pipe had been used at Elk Grove is an issue that will be scrutinized if this proceeding is fully litigated.

4.3.3. Size and Financial Resources of PG&E

In deciding the size of a penalty, the size of the utility and its financial resources are also considered. (See Pub. Util. Code §2104.5 ; 84 CPUC2d at 184, 194-195.) We also compare the proposed penalty amount to PG&E's penalty exposure if the OII were fully litigated, and review past Commission decisions in which large penalties have been imposed on a public utility.

PG&E serves approximately 4.3 million natural gas customers and 5.2 million electric customers in a northern California service territory that covers 43% of the state. PG&E reported 2010 operating revenues of $13.841 billion.

In this OII, CPSD alleges five different instances involving violations of Pub. Util. Code §451 and seven sections of 49 CFR that have been incorporated into GO 112-E. (See OII at 9-10.) If these allegations are fully litigated, and assuming each CPSD allegation is proven and a continuing penalty amount of

$20,000 per day is imposed for each violation of Pub. Util. Code §451 and GO 112-E, PG&E potentially faces $97 million or more in penalties.[25]

The potential penalty exposure of more than $97 million 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. Comparing the potential penalty that PG&E could face, and the proposed penalty amount of $26 million in the PG&E and CPSD stipulation, provides the Commission with a range for deciding whether the proposed penalty is appropriate, reasonable, and in the public interest.

In comparison to other Commission decisions in which large penalties have been imposed on a public utility, the facts and circumstances of Rancho Cordova are distinguishable from those other decisions and justify a higher penalty. For example, (1) a $30 million penalty was imposed on Southern California Edison Company for false reporting of data in connection with its performance based ratemaking mechanism in D.08-09-038; (2) a penalty of $14.35 million imposed on San Diego Gas & Electric Company for wildfires resulting from failures in tree trimming and vegetation management in D.10-04-047; (3) a

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[25] The estimate of the $97 million in penalties is based on the following: violations of both Pub. Util. Code §451 and GO 112-E in each of the five instances set forth in the OII at 9-10; continuing violations from September 21, 2006 to December 24, 2008 for the use of the unmarked pipe in Rancho Cordova; continuing violations from November 9, 2006 to December 24, 2008 for failing to discover the defective Rancho Cordova repair as a result of being notified of the use of defective pipe used in Elk Grove; continuing violations from September 21, 2006 to December 24, 2008 for failing to develop and implement effective gas emergency plans; and $80,000 in penalties for failing to safeguard life and property and failing to administer drug and alcohol tests on December 24, 2008.

penalty of $27 million imposed on Pacific Bell Telephone Company and related companies for billing problems associated with broadband services in D.02-10-073; (4) a $20.34 million penalty imposed on Qwest Communications Corporation for slamming and unauthorized billings in D.02-10-059; and (5) a penalty of $12.14 million imposed on Cingular Wireless for collecting early termination fees in D.04-09-062.

None of these five decisions involved a loss of life, or the failure of the public utility to offer the underlying public utility service in a safe and reliable manner. In this proceeding, CPSD has alleged five instances of where Pub. Util. Code §451 have been violated, and that PG&E failed to follow GO 112-E.

When one considers the appropriate penalty, the gravity and severity of the offenses admitted to in the PG&E and CPSD stipulation, the statutory obligation of PG&E to provide safe and reliable gas service, PG&E's own acknowledgement of its employees' failures to follow procedures, the untimely response by PG&E, the resulting death, other injuries and property damage, and this Commission's and the public interest in ensuring safe and reliable natural gas service, the proposed penalty amount of $26 million agreed to in the PG&E and CPSD stipulation is too low. As a consequence, the PG&E and CPSD stipulation is unreasonable and not in the public interest.

As provided for in Rule 12.4, we propose that a penalty amount acceptable to the Commission for resolving and closing this OII is the amount of $38 million, plus payment of CPSD's investigation and proceeding costs. This proposed penalty amount is appropriate given the allegations in this investigation, PG&E's acknowledgement and admissions, and the gravity and severity of the facts and circumstances of the Rancho Cordova explosion and fire. The proposed penalty amount of $38 million will also avoid protracted litigation

of the issues, and reduce PG&E's risk exposure in the event all of the allegations against PG&E are proven at hearing.

In addition, a proposed penalty amount of $38 million will send a clear message to PG&E that safety and reliability of its natural gas system must be its number one priority. Such a penalty amount will also serve as a financial deterrent to PG&E's lack of action and lack of initiative in ensuring that its natural gas system is safe and reliable. As the Commission stated previously in D.98-12-075:

> The purpose of a fine is to go beyond restitution to the victim and to effectively deter further violations by this perpetrator or others…
>
> Effective deterrence creates an incentive for public utilities to avoid violations. Deterrence is particularly important against violations which could result in public harm, and particularly against those where severe consequences could result. To capture these ideas, the two general factors used by the Commission in setting fines are: (1) severity of the offense and (2) conduct of the utility. These help guide the Commission in setting fines which are proportionate to the violation. (84 CPUC2d 155 at 182, 188.)

For all of the above reasons, the PG&E and CPSD stipulation, as proposed, is neither reasonable nor in the public interest. For the reasons discussed, the joint motion of PG&E and CPSD to adopt the PG&E and CPSD stipulation is denied, and the PG&E and CPSD stipulation is not adopted.

The PG&E and TURN stipulation is predicated on the approval of the PG&E and CPSD stipulation, and the agreed-upon penalty amount of $26 million. If we assume that the higher penalty amount of $38 million is

agreeable to PG&E, CPSD and TURN, we would conclude that the PG&E and TURN stipulation is reasonable and in the public interest because that stipulation precludes PG&E from including in its next general rate case the other claims and related costs that have been resolved in connection with the December 24, 2008 Rancho Cordova explosion and fire, which PG&E admits and acknowledges that it caused. However, since the PG&E and TURN stipulation is based on the approval of the PG&E and CPSD stipulation without any changes, we do not adopt the PG&E and TURN stipulation.

PG&E, CPSD, and TURN shall have 30 days from the date this presiding officer's decision is served to accept the proposed penalty amount of $38 million. If this penalty amount is acceptable, a motion accepting the penalty amount of $38 million shall be filed with the Commission within the 30 days and served on the service list to this proceeding. Any party to this proceeding shall then have 15 days to file a response to such motion.

If such a motion accepting the $38 million penalty is filed, a proposed decision on the $38 million penalty amount will then be issued after the presiding officer's decision becomes final. Alternatively, a modified presiding officer's decision may be prepared, assuming an appeal or request for review of the presiding officer's decision is filed.

If no motion accepting the proposed penalty amount is filed, and once this presiding officer's decision becomes final, the assigned ALJ will issue a ruling scheduling evidentiary hearings on the underlying issues in this OII.

5. Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and John S. Wong is the assigned ALJ in this proceeding. ALJ Wong was designated the presiding officer for this proceeding in the April 18, 2011 joint scoping memo and ruling.

Findings of Fact

1. This OII was opened as a result of the December 24, 2008 natural gas explosion and fire that occurred at 10708 Paiute Way in Rancho Cordova, which resulted in one death, several injuries, and property damage.

2. The NTSB and CPSD conducted investigations into the cause of the explosion, and the NTSB adopted its "Pipeline Accident Brief" on May 18, 2010, and CPSD released its "Incident Investigation Report on Rancho Cordova Explosion and Fire" on November 10, 2010.

3. The OII is based upon the investigations conducted by the NTSB and CPSD, and CPSD's allegations that PG&E violated Pub. Util. Code §451 and various provisions of 49 CFR, which are incorporated in GO 112-E.

4. On June 20, 2011, PG&E and CPSD filed their joint motion for approval of stipulation to order resolving investigation, and to adopt the PG&E and CPSD stipulation.

5. The PG&E and TURN stipulation was entered into following the filing of the PG&E and CPSD stipulation.

6. An evidentiary hearing on the two stipulations was held on July 29, 2011.

7. The PG&E and CPSD stipulation sets forth admissions by PG&E that it violated seven provisions of Part 192 of 49 CFR., and that its response on December 24, 2008 was unreasonably delayed and not effective.

8. As part of the PG&E and CPSD stipulation, PG&E agrees to pay a $26 million penalty, as well as CPSD's investigation and proceeding costs.

9. As part of the PG&E and TURN stipulation, PG&E agrees to exclude from its next general rate case, any amounts paid for claims or settlements related to the December 24, 2008 natural gas explosion in Rancho Cordova.

10. PG&E's report acknowledges that the Rancho Cordova explosion and fire resulted from a series of failures by PG&E's employees to follow prescribed procedures, failures for which PG&E takes full responsibility.

11. Safety and reliability of the natural gas system is of paramount importance to this Commission and to the public interest, i.e., the PG&E customers who rely on this system for gas service.

12. Safety and reliability of its gas system must also be PG&E's primary objective.

13. Based on the admissions and the events that took place, PG&E failed to provide safe and reliable service at Rancho Cordova.

14. Based on the admissions and the events that took place, there are shortcomings with PG&E's training, reinforcement of training, and a failure to emphasize to its employees that safety and reliability of its gas system must be of paramount importance.

15. The corrective action that PG&E took after the Rancho Cordova explosion reveals that the written procedures and processes that were in place, and which PG&E employees were supposed to follow to ensure safe and reliable service, were not adhered to.

16. Based on CPSD's allegations involving violations of Pub. Util. Code §451 and seven sections of 49 CFR that have been incorporated into GO 112-E, PG&E potentially faces $97 million or more in penalties.

17. Comparing the potential penalty that PG&E could face, and the PG&E and CPSD stipulation penalty amount of $26 million, provides the Commission with a range for deciding whether the stipulation penalty amount of $26 million is appropriate, reasonable, and in the public interest.

18. When one considers the gravity and severity of the alleged violations, the statutory obligation that PG&E is to provide safe and reliable gas service, PG&E's own acknowledgement of its employees' failures to follow procedures, the admissions made in the PG&E and CPSD stipulation, the untimely response by PG&E, the resulting death, other injuries and property damage, and this Commission's and the public interest in ensuring safe and reliable natural gas service, the PG&E and CPSD stipulation penalty amount of $26 million is too low.

19. Based on the circumstances, a penalty amount in the amount of $38 million, plus payment of CPSD's investigation and proceeding costs, is acceptable to this Commission for resolving and closing this OII.

Conclusions of Law

1. The Commission will not approve settlements unless the settlement is reasonable in light of the whole record, consistent with the law, and in the public interest.

2. Although the resolution of certain issues in the PG&E and CPSD stipulation is reasonable in light of the record, the key in determining whether the stipulation is reasonable, consistent with the law, and in the public interest focuses on the penalty amount agreed to in the PG&E and CPSD stipulation.

3. Pub. Util. Code §2104.5 allows the Commission to adopt a penalty amount that is less than what the Commission could have imposed.

4. Pub. Util. Code §2104.5 and D.98-12-075 provide guidelines on determining what the size of the penalty amount should be.

5. A basic principle of public utility service is for the public utility to provide safe and reliable service, and PG&E is required to provide such service pursuant to Pub. Util. Code §451.

6. As a public utility, PG&E is ultimately responsible for the actions of its employees, and for any associated penalties.

7. The joint motion of PG&E and CPSD to adopt the PG&E and CPSD stipulation should be denied, and the PG&E and CPSD stipulation as written, and the PG&E and TURN stipulation, should not be adopted.

8. PG&E, CPSD, and TURN may accept the proposed penalty amount of $38 million by filing a motion accepting this penalty amount within 30 days from the date this presiding officer's decision is served, and a proposed decision or a modified presiding officer's decision will be issued if such a motion is filed.

9. If no motion accepting the proposed penalty amount of $38 million is filed, a ruling scheduling evidentiary hearings on the underlying issues will be issued.

O R D E R

IT IS ORDERED that:

1. The June 20, 2011 joint motion of Pacific Gas and Electric Company and the Consumer Protection and Safety Division for approval of stipulation to order resolving investigation is denied.

2. The "Stipulation to Order Resolving Investigation," which was filed by Pacific Gas and Electric Company and the Consumer Protection and Safety Division on June 20, 2011, is not adopted.

3. The "Stipulation to Order Resolving Investigation," dated July 20, 2011, and signed by Pacific Gas and Electric Company and The Utility Reform Network, is not adopted.

4. Pacific Gas and Electric Company, the Consumer Protection and Safety Division (CPSD), and The Utility Reform Network may accept the proposed penalty amount of $38 million, plus payment of CPSD's investigation and

proceeding costs, by filing a motion accepting the $38 million penalty within 30 days from the date this presiding officer's decision is served.

a. If such a motion is filed, a proposed decision will be issued after the presiding officer's decision becomes final to address the $38 million penalty.

b. If an appeal of the presiding officer's decision or a request for review is filed, and a motion accepting the $38 million penalty is filed, a modified presiding officer's decision will be issued.

5. If no motion to accept the proposed penalty amount of $38 million is filed, the assigned Administrative Law Judge is directed to issue a ruling scheduling evidentiary hearings on the underlying issues in this Order Instituting Investigation 10-11-013.

6. Investigation 10-11-013 remains open.

This order is effective today.

Dated _____, at San Francisco, California.