Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion to Adopt New Safety and Reliability Regulations for Natural Gas Transmission and Distribution Pipelines and Related Ratemaking Mechanisms.	Rulemaking 11-02-019 (Filed February 24, 2011)

ORDER TO SHOW CAUSE WHY PACIFIC GAS AND ELECTRIC COMPANY SHOULD NOT BE FOUND IN CONTEMPT, AND WHY PENALTIES SHOULD NOT BE IMPOSED, FOR FAILURE TO COMPLY WITH COMMISSION ORDER

1. Summary

This decision finds that Pacific Gas and Electric Company (PG&E) appears to have failed to comply with Commission Resolution L-410 and Rulemaking 11-02-019. PG&E is ordered to appear at a hearing and show cause why it should not be found in contempt and fined for failing to comply with a Commission order.

2. Background

On January 13, 2011, in Resolution L-410, the Commission ratified a directive to Pacific Gas and Electric Company (PG&E) contained in a letter dated January 3, 2011, from the Commission's Executive Director. The January 3 letter directed PG&E to comply with certain National Transportation Safety Board

(NTSB) Safety Recommendations.[1] The NTSB's Safety Recommendations were based on its findings that PG&E's actual installed pipe in Line 132, the line that ruptured in San Bruno on September 9, 2010, was not consistent with its as-built drawings for Line 132. The NTSB observed that other "discrepancies between installed pipe and as-built drawings" may exist in PG&E's system, and that accurate records are "critical" to setting a valid Maximum Allowable Operating Pressure (MAOP).[2]

The Commission ordered PG&E to comply with NTSB's Safety Recommendations P-10-2 (Urgent) and P-10-3 (Urgent). The Commission also granted PG&E's request to extend the due date for filing the response to the NTSB recommendations from February 1, 2011, to March 15, 2011. In its decision initiating this rulemaking, the Commission directed PG&E to file and serve the report on "its record review in compliance with the National Transportation Safety Board's recommendation" on all parties to this proceeding. [3]

On March 15, 2011, PG&E filed and served a document entitled "Report of Pacific Gas and Electric Company on Records and Maximum Allowable Operating Pressure Validation." PG&E characterized its submission as a "status report on the first phase of its efforts to validate gas transmission records and the maximum allowable operating pressure of each of its gas transmission pipelines."[4]

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[1] Commission Resolution L-410, January 13, 2011.

[2] NTSB Letter to Christopher Johns, President, PG&E, dated January 3, 2011, at 2.

[3] R.11-02-019 at Ordering Paragraph 3.

[4] Report of Pacific Gas and Electric Company on Records and Maximum Allowable Operating Pressure Validation, ("PG&E Report") at 1.

On its face, PG&E's March 15 submission appears to fail to comply with the two-step document review and MAOP calculation process recommended by the NTSB and ordered by the Commission. Rather than produce "traceable, verifiable, and complete records," as ordered, and then, on the basis of such records, "determine the valid maximum allowable operating pressure" for the affected pipeline segments, as required by this Commission on the recommendation of the NTSB, PG&E appears to have attempted merely to justify the practice of setting MAOP for pre-1970 pipelines based entirely on historical high operating pressure. As discussed in more detail below, PG&E's MAOP documents do not appear responsive to the Commission's order to comply with the NTSB directives to compare installed pipe to as-built drawings and calculate MAOP based on the weakest section of the pipeline or component.

Accordingly, today's decision directs PG&E to show cause why it should not be found in contempt and punished pursuant to the Commission's powers under the California Constitution, Article XII, § 6, and its statutory authority under Public Utilities Code[5] § 2113 , as well as why the Commission should not impose penalties pursuant to §§ 2107 and 2108 for PG&E's failure to comply with a Commission order.

3. Commission Orders Based on NTSB Safety Recommendations

On January 3, 2011, the NTSB issued Safety Recommendations to PG&E, this Commission and the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration. All three Safety Recommendations included substantially the same descriptions of findings by

[5] All citations are to the California Public Utilities Code unless otherwise indicated.

NTSB as a result of the initial stages of its investigation of the San Bruno pipeline rupture and fire. The NTSB first explained that PG&E's as-built drawings and alignment sheets showed Line 132 was constructed using 30-inch-diameter seamless steel pipe, but the ruptured pipe segment was in fact constructed with longitudinally seam-welded pipe. The NTSB further explained that accurate pipeline records are critical to establish a valid MAOP below which the pipeline can be safely operated. Although recognizing hydrostatic and spike testing, the NTSB concluded that it was preferable to use available design, construction, inspection, testing and other related records to calculate a valid MAOP.

In the letter to PG&E, the NTSB made the following recommendations, with similar recommendations for this Commission and the federal agency to oversee PG&E's compliance:

1. Aggressively and diligently search for all as-built drawings, alignment sheets, and specifications, and all design, construction, inspection, testing, maintenance, and other related records, including those records in locations controlled by personnel or firms other than Pacific Gas and Electric Company, relating to pipeline system components, such as pipe segments, valves, fittings, and weld seams for Pacific Gas and Electric Company natural gas transmission lines in class 3 and class 4 locations and class 1 and class 2 high consequence areas that have not had a maximum allowable operating pressure established through prior hydrostatic testing. These records should be traceable, verifiable, and complete. (P-10-2) (Urgent)
2. Use the traceable, verifiable, and complete records located by implementation of Safety Recommendation P-10-2 (Urgent) to determine the valid maximum allowable operating pressure, based on the weakest section of the pipeline or component to ensure safe operation, of Pacific Gas and Electric Company natural gas transmission lines in class 3 and class 4 locations and class 1 and class 2 high consequence

> areas that have not had a maximum allowable operating pressure established through prior hydrostatic testing. (P-10-3) (Urgent)

The Commission's Executive Director, in a letter dated January 3, 2011 (the same date as the NTSB's Safety Recommendations), advised PG&E of the NTSB's Safety Recommendations, and ordered PG&E to complete compliance with the recommendations by February 1, 2011. On January 7, 2011, PG&E responded to the Executive Director's January 3, 2011 letter, indicating that the utility could not comply with the February 1, 2011 date in obtaining all of the requested records, but that it would provide those records by March 15, 2011. The Commission ratified the Executive Director's order on January 13, 2011, in Resolution L-410, and extended PG&E's date for the compliance report filing to March 15, 2011. Thereafter, in Ordering Paragraph 3 of Rulemaking (R.) 11-02-019, the Commission directed PG&E to file and serve its compliance report on all parties to this proceeding when initiating this rulemaking on February 24, 2011.

The purpose and "urgent" nature of the NTSB's Safety Recommendations were made clear in a public speech by NTSB Chairman Deborah Hersman on January 26, 2011, before the Transportation Research Board in Washington, D.C. The speech was widely covered in the press, and a copy has been posted on the NTSB's website since January. In discussing the San Bruno pipeline eruption, Chairman Hersman said:

> Our investigators were told that the pipe involved in the explosion was a seamless factory manufactured pipe. But even a layperson could see the patchwork of welds marking the pipe. This misinformation was not a minor record-keeping oversight. In the years since the pipe was put into service, decisions regarding inspections, operating pressures, and risk management plans were all based on facts that were just plain wrong.

> While the investigation is still ongoing, earlier this month the NTSB issued urgent recommendations calling for hydrostatic pressure testing to establish the safe maximum operating pressure of the pipeline. Some of you may know that requirements for hydrostatic testing already exist – requirements established in 1970. Ironically, the San Bruno pipeline was exempted because it was installed in 1956, so it was grandfathered from the testing requirements. The operator has not been able to produce documentation on the origins of the pipe, the installation of the pipe, or the early inspection of the pipe.
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> But no one realized this until after the pipeline exploded. And then it was just too late.

4. PG&E's March 15 Submission

On March 15, 2011, PG&E filed and served a report it characterized as a "status report on the first phase of its efforts to validate its gas transmission records and the maximum allowable operating pressure of each of its gas transmission pipelines."[6] PG&E stated that Phase 1 of its MAOP validation effort was focused on collecting and reviewing pipeline records to determine whether PG&E possesses records that demonstrate MAOP by either:

1. pressure tests, or
2. For pipelines installed prior to 1970 where MAOP was set pursuant to 49 CFR § 192.619(c), the pipeline's highest actual operating pressure from July 1, 1965, through June 30, 1970.[7]

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[6] PG&E Report at 1.

[7] PG&E Report at 7.

Specifically, on page 7 of its March 15 Report, PG&E stated as follows:

> Neither the NTSB nor the Commission defined "traceable, verifiable and complete." Nor is that phrase contained in the applicable regulations. PG&E understands the intent to be to identify reliable records confirming the performance of a pressure test *or the determination of MAOP based on the historical high operating pressure*.

(PG&E March 15 submission, at 7 (emphasis added).)

In keeping with this purported "understanding" of the Commission's order and the NTSB's safety recommendation, PG&E stated that of the total 1,805 miles of transmission pipeline, 455 miles had MAOP determined by highest operating pressure from 1965 to 1970.[8] Of those 455 miles, PG&E has located records to support the highest historical operating pressure for about 95% or 432 miles. PG&E stated that it plans to continue its MAOP verification efforts in Phase 2 where it will complete the verification of the documents supporting the 619(c) MAOP determinations, which may include excavations and field testing of pipeline systems "as appropriate."[9] PG&E intends to complete Phase 2 by the end of 2011.

As a result of its record review, PG&E identified 152 miles of pipeline for which it has not located pressure testing records and the segments contain either pre-1962 24 to 36 inch double submerged arc welded pipe or pre-1974 seamless pipe greater than 24 inches in diameter. PG&E explained that it selected pipeline with these characteristics due to similarities to the ruptured segment of Line 132

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[8] Pipeline with MAOP set via subsection 619(c) is often referred to as "grandfathered" pipeline because it is exempted from MAOP regulations adopted after 1970.

[9] PG&E Report at 12.

in San Bruno. PG&E stated that it intended to either hydro test or replace this pipeline during 2011.

PG&E's Report showed that it had pressure test records or historical maximum pressure data to support its MAOP for 92% of its pre-1970 pipeline and 93% of its post-1970 pipeline. PG&E's Report raises additional questions because PG&E is unable to locate records to support the MAOP it is using for 8% of its pipeline installed prior to July 1, 1970, and even more troublingly for 7% of its pipeline installed after that date. In sum, after a multi-month search effort, PG&E is currently operating 8% of its natural gas transmission system without documents supporting the purported MAOP. Further, undermining confidence in the Strength Test Pressure Reports that it has found, PG&E admits that for 270 miles out of 1,018 miles it claims to have complete pressure test records, the Strength Test Pressure Report footage tested does not correspond to the pipeline High Consequence footage.[10] Again, the lack of consistency between these data raises additional questions.

5. Evaluation of PG&E's Report Against NTSB Urgent Safety Recommendations and this Commission's Orders

As described above, PG&E states that it is engaged in a "Phased MAOP Validation" effort to determine whether it has records of pressure tests on High Consequence Area transmission pipelines and, for pre-1970 pipelines with MAOP set by historical high pressure, records of actual highest operating pressure between 1965 and 1970 as required by 49 CFR § 619(c).

[10] PG&E Report at 13.

As an initial matter, we note that PG&E appears to be in compliance with the Commission's directive to identify pipeline that has been subject to hydrostatic testing. PG&E's Report shows that it has some type of pressure test record for 1,210 miles out of the total 1,805 miles of pipeline in High Consequence Areas. Accordingly, the Commission is not including the requirement to identify pipeline that has been pressure tested within this Order to Show Cause.

This Order to Show Cause is directed at PG&E compliance with the portion of its order regarding the pipeline segments for which pressure test records can not be located.

In its order based on the NTSB's Safety Recommendations, the Commission directed PG&E, for pipelines without pressure test records, to:

1. "aggressively and diligently search for all as-built drawings, alignment sheets, specifications, and all design construction, inspection, testing, maintenance, and other related records" relating to pipeline system components, and based on those records; and

2. "determine the valid maximum allowable operating pressure, based on the weakest section of the pipeline or component to ensure safe operation."[11]

Based on these directives, the Commission ordered PG&E to locate and provide the Commission with as-built drawings or other documents showing pipeline components, followed by an analysis of each pipeline MAOP determination based on the weakest portion of the pipeline.

[11] Resolution L-410 at 2 – 3.

Rather than follow the ordered two-step, pipeline-component specific analysis, it appears that PG&E has instead opted to rely on the historical highest operating pressure. PG&E contends that its understanding of the Commission's intent was to provide valid pressure test records or "the determination of MAOP based on the historical high operating pressure."[12] In its Report, PG&E provides no citation in support of its understanding that the Commission authorized the use of historical high operating pressure to validate MAOP, and the plain words of the Commission's order and the NTSB Safety Recommendations appear inconsistent with PG&E's interpretation.

The NTSB, alarmed at the discrepancies in PG&E's as-built drawings, issued urgent Safety Recommendations directed at review of "traceable, verifiable, and complete" as-built drawings and pipeline system components and, based on the reliable pipeline specifications, a determination of the valid MAOP. The Commission then adopted these Safety Recommendations and ordered PG&E to comply.

In light of this history, it appears that PG&E's interpretation is contrary to the NTSB Safety Recommendations and the Commission's order because PG&E relies on historical highest operating pressure as a substitute for actual pipeline component analysis.[13] PG&E has provided no evidence that these historical pressure levels are the functional equivalents of the two-step process

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[12] PG&E Report at 7.

[13] The NTSB in its Safety Recommendation P-10-4 indicates that should PG&E be unable to comply with Safety Recommendations P-10-2(Urgent) and P-10-3(Urgent), then PG&E should "determine the maximum allowable operating pressure with a spike test followed by hydrostatic pressure test." PG&E's report contains no references to performing spike tests.

recommended by the NTSB. Similarly, PG&E's Report shows no evidence that it conducted an "aggressive and diligent search for as-built drawings" or that it attempted to determine a valid maximum allowable operating pressure based on the weakest component in each pipeline segment.

Therefore, we conclude that PG&E appears to have materially failed to comply with Commission Resolution L-410 and R.11-02-019.

6. Penalties and Other Sanctions

Pursuant to Article XII, § 6 of the California Constitution, the Commission is authorized to "punish for contempt," and, as set forth in § 2113, "every public utility…which fails to comply with any part of any order…of the Commission or any Commissioner is in contempt of the Commission."

In addition, the Commission may impose a penalty of up to $20,000 per offense on a public utility that "fails or neglects to comply with any part or provision of any order…of the Commission" as provided in § 2107. Each day of continuing offense is a separate and distinct offense, as provided in § 2108.

7. Order to Show Cause

Pacific Gas and Electric Company is ordered to show cause why it should not be fined for contempt as provided in Article XII, § 6 of the California Constitution and Public Utilities Code § 2113, and fined for failing to comply with the Commission decision as set forth in Public Utilities Code §§ 2107 and 2108.

Pacific Gas and Electric Company shall appear and show cause why it should not be fined at the following evidentiary hearing:[14]

Monday, March 28, 2011
10:00 am
Commission Hearing Rooms
505 Van Ness Avenue
San Francisco, CA

At the hearing on March 28, Pacific Gas and Electric Company shall cause to appear the most senior executive in charge of its March 15, 2011, submission to the Commission and the professional engineer responsible for the technical analysis in the submission, as well as any other officers, employees, or agents necessary to explain the March 15 submission. Such witnesses shall be placed under oath and subject to cross-examination. Pacific Gas and Electric Company may provide other competent witnesses to provide relevant testimony.

8. Scope of the Hearing

The scope of March 28, 2011, hearing will be strictly limited to whether PG&E's March 15, 2011 filing failed to comply with Commission Resolution L-410 and R.11-02-019 relating to the pipeline for which pressure test records could not be located. The appropriate penalties for any violations are also within the scope of this hearing. Other issues related to this rulemaking are specifically excluded from the scope of this Order to Show Cause.

9. Ex Parte Prohibition

As provided in Rules 1.3(a) and 8.2(b) of the Commission's Rules of Practice and Procedure, the Show Cause portion of this proceeding is categorized

[14] This matter relates to public safety and the public interest requires that it be held with less than 10 days notice.

as adjudicatory and ex parte communications are prohibited. The determination as to category is appealable pursuant to Rule 7.6 of the Commission's Rules of Practice and Procedure.

10. Findings of Fact

1. In Resolution L-410 and R.11-02-019, the Commission ordered PG&E to:

    a. Aggressively and diligently search for all as-built drawings, alignment sheets, and specifications, and all design, construction, inspection, testing, maintenance, and other related records, including those records in locations controlled by personnel or firms other than Pacific Gas and Electric Company, relating to pipeline system components, such as pipe segments, valves, fittings, and weld seams for Pacific Gas and Electric Company natural gas transmission lines in class 3 and class 4 locations and class 1 and class 2 high consequence areas that have not had a maximum allowable operating pressure established through prior hydrostatic testing. These records should be traceable, verifiable, and complete. (P-10-2) (Urgent)

    b. Use the traceable, verifiable, and complete records located by implementation of Safety Recommendation P-10-2 (Urgent) to determine the valid maximum allowable operating pressure, based on the weakest section of the pipeline or component to ensure safe operation, of Pacific Gas and Electric Company natural gas transmission lines in class 3 and class 4 locations and class 1 and class 2 high consequence areas that have not had a maximum allowable operating pressure established through prior hydrostatic testing. (P-10-3) (Urgent)

2. In R.11-02-019, the Commission ordered PG&E to file its report complying with Resolution L-410 in this proceeding.

3. PG&E presented substantial evidence that it searched for and obtained records of pressure testing for 1,210 miles of pipeline.

4. It appears that PG&E presented no evidence that it aggressively and diligently searched as-built drawings and other records to obtain traceable, verifiable, and complete pipeline records upon which to determine a valid maximum allowable operating pressure for pipeline without records of pressure testing.

5. PG&E's March 15, 2011 Report filed with the Commission does not appear to comply with the Commission's directives in Finding of Fact 1 of Resolution L-410.

6. The public interest requires that the hearing in this matter be held on less than 10 days notice.

7. There is a need to take immediate action on this matter and that need for action came to the attention of the Commission subsequent to the agenda being posted as specified in California Government Code § 11125. 3(a)(2).

11. Conclusions of Law

1. The Commission has authority to punish for contempt and to impose fines for failing to comply with Commission orders.

2. PG&E should be ordered to show cause why it should not be found in contempt of the Commission for failing to comply with Resolution L-410 and R.11-02-019 as regards pipeline for which records of pressure testing can not be located.

O R D E R

Therefore, **IT IS ORDERED** that:

1. Pacific Gas and Electric Company is named as Respondent to this Order to Show Cause and shall appear at the hearing on March 28, 2011 at 10:00 am scheduled above and shall show cause why it should not be fined or otherwise punished for contempt as provided in Article XII, § 6 of the California Constitution and § 2113, and fined as set forth in Public Utilities Code §§ 2107 and 2108 for failing to comply with the Commission Resolution L-410 and Rulemaking 11-02-019 as regards pipeline for which records of pressure testing can not be located.

2. This portion of the proceeding is categorized as adjudicatory and ex parte contacts are prohibited. The determination as to category is appealable pursuant to Rule 7.6 of the Commission's Rules of Practice and Procedure.

3. For good cause shown, the assigned Commissioner or Administrative Law Judge has the authority to change the date set forth in this order.

4. The Executive Director shall cause a copy of this Order to be served electronically and by mail on the Respondent, PG&E, at:

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5. This Order to Show Cause shall be served on the mailing list for the order initiating this proceeding, pending the adoption of an Official Service List.

This order is effective today.

Dated _____, at San Francisco, California.