

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE CALIFORNIA



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Order Instituting Investigation on the Commission's Own Motion into the Operations and Practices of Pacific Gas and Electric Company to Determine Violations of Public Utilities Code Section 451, General Order 112, and Other Applicable Standards, Laws, Rules and Regulations in Connection with the San Bruno Explosion and Fire on September 9, 2010.

I.12-01-007
(Filed January 12, 2012)
(Not Consolidated)

Order Instituting Investigation on the Commission's Own Motion into the Operations and Practices of Pacific Gas and Electric Company with Respect to Facilities Records for its Natural Gas Transmission System Pipelines.

I.11-02-016
(Filed February 24, 2011)
(Not Consolidated)

Order Instituting Investigation on the Commission's Own Motion into the Operations and Practices of Pacific Gas and Electric Company's Natural Gas Transmission Pipeline System in Locations with Higher Population Density.

I.11-11-009
(Filed November 10, 2011)
(Not Consolidated)

**CONSUMER PROTECTION AND SAFETY DIVISION'S
APPEAL OF PRESIDING OFFICERS' DECISION**

Pursuant to Rule 14.4 of the Commission's Rules of Practice and Procedure, the Consumer Protection and Safety Division ("CPSD")¹ now files its appeal of the Presiding Officers' Decision ("POD") on Fines and Remedies ("Fines and Remedies POD"), mailed

¹ On January 1, 2013, CPSD officially changed its name to the Safety and Enforcement Division ("SED"). However, for the sake of convenience, we will continue to refer to SED as "CPSD" in this appeal and through the remainder of this proceeding.

September 2, 2014. The Fines and Remedies POD pertains to the above-captioned proceedings, which are investigations of the safety of the operations and practices of Pacific Gas and Electric Company (PG&E).

Although the Fines and Remedies POD does not penalize PG&E by \$1.8 billion, it is based upon separate POD's for each of the three proceedings mentioned above. Each of these three PODs adopt much of CPSD's position, and each is amply supported by the record. Therefore, CPSD generally supports the Fines and Remedies POD. However, CPSD raises several technical or legal errors in its appeal of the Fines and Remedies POD, which are immaterial in terms of the results reached by the PODs. Each of the errors is identified in Sections I and II below, and then suggested corrections are provided in Appendix A.

I. THERE IS AN INCORRECT STATEMENT OF COMMISSION AUTHORITY

The Fines and Remedies POD commits an immaterial legal error in identifying the legal authority under which the Commission's General Order 112 was originally adopted.

The Fines and Remedies POD, p. 24, notes that, in accordance with its certification pursuant to 49 U.S.C. §60105 and resulting authority to enforce the Department of Transportation's ("DOT") minimum federal safety standards, the Commission adopted General Order 112 governing natural gas pipeline safety.² However, General Order 112 was made effective in 1961,³ before 49 U.S.C. §60105 was enacted in 1968.⁴ The jurisdictional basis pursuant to which the Commission adopted General Order 112 was section 768 of the California Public Utilities Code.⁵ The first two sentences under the heading entitled "Legal Framework for Fines and Remedies" should be revised to state:

² See Fines and Remedies POD, p. 24, under heading entitled "Legal Framework for Fines and Remedies."

³ See Commission Decision (D.) 61269 (1960), 59 CPUC 413, and General Order 112.

⁴ 49 U.S.C. §60105, is a provision in the Natural Gas Pipeline Safety Act of 1968, which was enacted on August 12, 1968.

⁵ See D.61269, 59 CPUC *supra* at 414.

“The Commission adopted General Order (GO) 112 pursuant to state law to establish certain state pipeline safety standards during the 1960’s. Subsequently, the Commission has been certificated pursuant to 49 U.S.C. § 60105 to enforce the Department of Transportation’s minimum federal safety standards for gas pipeline facilities.”

This proposed correction is included in the attached Corrections Appendix. The reason this legal error is immaterial is that it only involves the legal background, and by 1971, the Commission had adopted GO 112-C, and became certificated under the Pipeline Safety Act, 49 U.S.C. §60105.

II. WITHIN THE FINES AND REMEDIES POD, THE TOTAL NUMBER OF SEGMENTS VIOLATIONS PERTAINING TO THE CLASS LOCATION POD IS INCORRECT

The Fines and Remedies POD Appendix D provides a table of violations and offenses for I.11-11-009 (the Class Location OII). In this table, the column entitled Number of Segments (Violations) provides a total number of 3,643. However, by CPSD’s count, the total number of segments (violations) should instead be 2,360.⁶ Nonetheless, the other numbers in Appendix B appear to be correct.

To ensure this correction is reflected throughout the Fines and Remedies POD, SED recommends the following additional changes: First, on page 19 under Section 3.3, change the first sentence to read,⁷ “In the *Class Location Violations Decision*, we found that PG&E committed ~~3,643~~ **2,360** violations that continued for years, for a total of 18,038,359 days in violation.” Second, on page 157, amend finding of fact number 6 to read, “The *Class Location Violations Decision* found PG&E had committed ~~3,643~~ **2,360** violations, many of them continuing for years, and a total of 18,038,359 separate offenses.”

⁶ CPSD arrives at this number by adding up all of the other numbers of violations shown in this column. In other words, 133 + 133 + 843 + 224 + 224+ 677 + 63 + 63 = 2,360.

⁷ Suggested deletions are stricken through and suggested additions are in italics and bold.

III. CONCLUSION

Based on the record evidence and the law, CPSD respectfully requests that the Commission modify the Fines and Remedies POD to correct the errors identified in this appeal.

Respectfully submitted,

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APPENDIX A

PROPOSED CORRECTIONS

FINES & REMEDIES POD

1. Page 24 – As discussed in section I of this appeal, the jurisdictional basis pursuant to which the Commission adopted General Order 112 was section 768 of the California Public Utilities Code, therefore the first two sentences in the first full paragraph on page 24 should be revised as follows:

“The Commission adopted General Order (GO) 112 pursuant to state law to establish certain state pipeline safety standards during the 1960’s. Subsequently, the Commission has been certificated pursuant to 49 U.S.C. § 60105 to enforce the Department of Transportation’s minimum federal safety standards for gas pipeline facilities.”

2. Appendix D, page 19, and page 157 finding of fact number 6 – As discussed in section II of this appeal, the total number of Class Location OII segments (violations) is shown as 3,643, but should instead be 2,360. To address this error, the following corrections should be made:

- In Appendix D, at the bottom of the column entitled “Number of Segments (Violations)”, the number should be changed from 3,643 to 2,360.
- On page 19, under Section 3.3, the first sentence should be amended to read as follows:

“In the *Class Location Violations Decision*, we found that PG&E committed ~~3,643~~ 2,360 violations that continued for years, for a total of 18,038,359 days in violation.”

- On page 157 finding of fact number 6 should be modified to say as follows:

“The *Class Location Violations Decision* found PG&E had committed 3,643 2,360 violations, many of them continuing for years, and a total of 18,038,359 separate offenses.”