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TO PARTIES OF RECORD IN INVESTIGATION 11-11-009:

Investigation 11-11-009 was filed on November 10, 2011 and is assigned to Commissioner Michael Picker and ALJ Amy Yip-Kikugawa. Enclosed is the Modified Presiding Officer's Decision (Mod-POD) of ALJ Yip-Kikugawa. Because parties have already had an opportunity to file appeals of the Presiding Officer's Decision, and respond to other parties' appeals, no further comments are permitted on the Mod-POD. The Mod-POD will appear on a future Commission Agenda. To confirm when the item will be heard, please see the Business Meeting Agenda, which is published on the Commission Website 10 days before each Commission Business Meeting.

When the Commission considers the Mod-POD, the Commission may act by adopting all or part of the decisions as written, amend or modify the decisions, or set aside and prepare its own decision, so long as the Commission's decision is based on the record developed in the investigation, and if the decision differs from the POD, has a written explanation of the differences. (See Public Utilities Code Section 1701.2(a).) Only when the Commission acts does the decision become binding on the parties.

/s/ KAREN V. CLOPTONKaren V. Clopton, Chief
Administrative Law Judge

KVC:lil

Attachment

Decision **MODIFIED PRESIDING OFFICER'S DECISION OF
ALJ YIP-KIKUGAWA** (Mailed 3/13/2015)

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's Natural Gas Transmission
Pipeline System in Locations with Higher
Population Density.

Investigation 11-11-009
(Filed November 10, 2011)

(See Appendix A for a list of appearances.)

**MODIFIED PRESIDING OFFICER'S DECISION REGARDING ALLEGATIONS
OF PACIFIC GAS AND ELECTRIC COMPANY'S VIOLATION REGARDING
OPERATION OF ITS NATURAL GAS TRANSMISSION PIPELINE SYSTEM IN
LOCATIONS WITH HIGHER POPULATION DENSITY**

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MODIFIED PRESIDING OFFICER'S DECISION REGARDING ALLEGATIONS OF PACIFIC GAS AND ELECTRIC COMPANY'S VIOLATION REGARDING OPERATION OF ITS NATURAL GAS TRANSMISSION PIPELINE SYSTEM IN LOCATIONS WITH HIGHER POPULATION DENSITY

1. Summary

This decision finds that Pacific Gas and Electric Company (PG&E) failed to maintain and operate all segments of its natural gas transmission pipeline system at the proper class location in violation of Title 49 of the Code of Federal Regulations, Section 192. Further, this decision finds that PG&E's failure to comply with the federal safety regulations results in a violation of Pub. Util. Code § 451. We find 2,360 violations, which results in a total of 18,038,359 days in violation.

This proceeding remains open to consider the fines and remedies to be imposed for these violations, as well as any violations found in Investigation (I.) 11-02-016 and I.12-01-007. Further, this proceeding remains open to address a motion filed by the City of San Bruno on January 17, 2014, for an order to show cause on the grounds that PG&E had violated Rules 1.1 and 12.1 of the Commission's Rules of Practice and Procedure.

2. Factual Background

On September 9, 2010, a 30-inch diameter segment of a natural gas transmission pipeline owned and operated by Pacific Gas and Electric Company (PG&E) ruptured in a residential area in San Bruno, California.¹ The fire and explosion caused by the rupture resulted in 8 fatalities, numerous injuries, and

¹ The affected pipeline is also known as Line 132. The segment which ruptured is identified as Segment 180.

destroyed or damaged over 100 homes. Immediately after the incident, the Commission's Consumer Protection & Safety Division (CPSD)² and the National Transportation Safety Board (NTSB) opened separate investigations into the cause of the rupture on Line 132, Segment 180. CPSD's investigations resulted in the opening of the following three separate Order Instituting Investigation (OII) proceedings:

1. On February 24, 2011, the Commission opened Investigation (I.) 11-02-016 to determine whether PG&E violated any provision or provisions of the California Public Utilities Code, Commission general orders or decisions, or other applicable rules or requirements pertaining to safety recordkeeping for its gas service and facilities.
2. On November 10, 2011, the Commission opened this proceeding, I.11-11-009, to determine whether any of PG&E's operations and practices of its natural gas transmission pipeline system in locations with higher population density were in violation of state or federal statutes and regulations or Commission rules, general orders or decisions.
3. On January 12, 2012, the Commission opened I.12-01-007 to determine whether PG&E, and its officers, directors, and managers, violated any provisions of the California Public Utilities Code, Commission General Orders or decisions, or other applicable standards, laws, rules or regulations in connection with the San Bruno fire and explosion on September 9, 2010.

On September 23, 2010, the Commission issued Resolution L-403.

Ordering Paragraph (OP) 18 directed PG&E, among other things, to "review the classification of its natural gas transmission pipelines and determine if those

² As of January 1, 2013, CPSD has been renamed the Safety and Enforcement Division (SED). However, for consistency and to avoid confusion, this Decision continues to refer to SED by its former name, CPSD.

classifications have changed since the initial designation.”³ Ordering Paragraph 19 directed PG&E to “report the results of its review of the classification of its natural gas transmission lines and any subsequent changes to those classifications since PG&E’s initial designation to the Executive Director within 10 days of the date of this Resolution.”⁴ PG&E submitted its response to Resolution L-403 on October 4, 2010. With respect to OP 18, PG&E stated that based on its review of pipelines operating at greater than 60 psig, PG&E “identified 1,057 miles of pipeline where the current classification is different from the initial classification.”⁵ With respect to OP 19, PG&E committed to perform a system-wide verification of pipe class location designations and report the results by June 30, 2011. To complete the requirements of OP 19, PG&E retained Wilbros Engineers, (U.S.), LLC (Wilbros) to perform the system-wide verification.

On January 3, 2011, the NTSB issued Safety Recommendation P-10-2 and -3 (Urgent) and P-10-4. The Safety Recommendation noted that the NTSB’s examination of Segment 180 and PG&E’s records found a discrepancy between what had been installed and PG&E’s as-built drawings and alignment sheets. The NTSB concluded that there was a possibility that there were other “discrepancies between installed pipe and as-built drawings in PG&E’s gas transmission system.”⁶ The NTSB was concerned that inaccuracies in PG&E’s records could result in incorrect maximum allowable operating pressure

³ Resolution L-403, adopted September 23, 2010, OP 18.

⁴ Resolution L-403, OP 19.

⁵ OIL, Attachment 2, PG&E’s Oct. 4, 2010 Letter to the Commission’s Executive Director at 2-3.

⁶ OIL, Attachment 3, Safety Recommendation P-10-2 and -3 (Urgent) and P-10-4 at 2.

(MAOP)⁷ for the pipeline to be safely operated. Consequently, the NTSB recommended that PG&E use "traceable, verifiable, and complete" records to confirm that the MAOP in class 3 and class 4 locations and class 1 and class 2 locations in high consequence areas (HCA) were properly established.⁸

On June 30, 2011, PG&E submitted a report on the results of Wilbros' review of PG&E's system-wide pipeline class location designations, as directed in OP 19 of Resolution L-403. This report, referred to in this decision as the Class Location Report, determined that approximately 550 miles of PG&E's transmission pipeline system had an incorrect class location designation.⁹ Of that number, about 173 miles of pipeline had increased in class designation and, thus, may have an MAOP higher than appropriate for its current class location. In light of the findings in the Class Location Report, the Commission concluded that "PG&E appears to have failed to comply with federal regulations concerning

⁷ MAOP represents the maximum pressure at which a pipeline can be operated safely. It is a fraction (i.e. less than 100%) of the pipe's design pressure and set based on class location, with lower MAOPs in areas with higher population density (i.e., Class 3 and Class 4) or designated as high consequence areas.

⁸ OIL, Attachment 3, Safety Recommendation P-10-2 and -3 (Urgent) and P-10-4 at 3. Pipeline locations are classified pursuant to Title 49 of the Code of Federal Regulations (49 C.F.R) § 192.5(b) and the class location designations reflect population density in the immediate vicinity of the pipeline. For example, a class 1 location is the least densely populated location adjacent to the pipeline while a class 4 location is the most densely populated location adjacent to the pipeline segment. HCAs are specific areas where a release of natural gas could have the most significant adverse consequences. HCAs are part of a pipeline operator's integrity management program and defined in 49 C.F.R. § 192.903. Pipeline segments near more densely populated areas or HCAs require stronger pipe or reduced gas pressure to mitigate the potential dangers to those populated areas.

⁹ OIL, Attachment 5, Class Location Report at 4.

the protection of persons and property in areas with higher concentrations of human occupancy and activity."¹⁰

3. Procedural Background

The Commission opened this OII on November 10, 2011. PG&E filed its initial response to the OII on January 17, 2012. PG&E filed subsequent updates to its initial response on February 2, and April 2, 2012.¹¹ Prehearing conferences were held on February 3 and April 14, 2012. An Assigned Commissioner's Scoping Ruling and Memo (Scoping Memo) was issued on April 26, 2012.

CPSD submitted its investigative report on May 25, 2012.¹² The City and County of San Francisco (CCSF) submitted intervenor testimony on June 25, 2012. PG&E's testimony was served on July 23, 2012, and CPSD's rebuttal testimony was served on August 15, 2012. Evidentiary hearings were set for August 23 - August 31, 2012.

On August 16, 2012, CPSD and PG&E filed a joint stipulation that the issue of PG&E's use of assumed Specified Minimum Yield Strength (SMYS) values in excess of 24,000 pounds per square inch (psi) should be considered in I.12-01-007.¹³ According to PG&E and CPSD, consideration of this issue in a

¹⁰ OII at 5.

¹¹ On July 3, 2013, PG&E filed an amendment to the April 2, 2012 update.

¹² The public version of the Investigative Report is Exhibit CPSD-1; the confidential version is Exhibit CPSD-1C.

¹³ SMYS is set pursuant to 49 C.F.R. § 192.107 and represents the lowest pressure at which steel pipe will experience permanent deformation. Section 192.107 allows an operator to use an assumed SMYS value under certain circumstances but requires that the SMYS be set at 24,000 psi in instances where a pipeline operator lacks pipeline specifications or tensile tests. As explained in greater detail in Section 8 of this decision, the disputed issue regarding assumed SMYS in these two proceedings is whether PG&E complied with 49 C.F.R. § 192.107 when it used an assumed SMYS value above 24,000 psi.

single proceeding would be more efficient and would prevent any inconsistency in deciding this issue.

CPSD and PG&E subsequently filed a motion on August 21, 2012 to cancel hearings and set a briefing schedule. In that motion, CPSD and PG&E stated that the only disputed issue was whether PG&E's use of assumed SMYS values above 24,000 psi was a violation of federal regulations. The motion further stated that, consistent with their joint stipulation, PG&E and CPSD had determined that this issue should be considered in another docket.

A hearing was held on August 23 and 27, 2012 to address the joint stipulation and motion. Based on the discussion, and as confirmed in a subsequent Administrative Law Judge (ALJ) Ruling, issued on September 4, 2012, the issue of assumed SMYS values would be heard in a joint hearing for I.11-11-009 and I.12-01-007 on September 24, 2012. The joint hearing would ensure that there was no duplication of effort by parties in presenting this issue and consistency in the resolution of this disputed issue.¹⁴

On September 7, 2012, CPSD filed two coordinated motions in I.11-11-009, I.12-01-007 and I.11-02-016 (jointly, the "Pipeline OIIs") seeking leave to serve additional prepared testimony regarding PG&E's financial resources and permission to file a single coordinate brief regarding fines and remedies. The

¹⁴ While PG&E and CPSD raised valid concerns regarding consideration of the assumed SMYS values issue in two separate dockets, we remind them that it is the Commission, and not parties, who determines how this concern should be addressed. While parties may propose a certain process, they should never proceed under the assumption that their proposal has been adopted absent express authorization from the Commission.

two motions were granted on September 25, 2012.¹⁵ As a result, this decision only addresses whether PG&E has committed the violations alleged by CPSD. The penalties to be assessed will be considered and addressed in a separate decision.

A joint evidentiary hearing concerning assumed SMYS values was held for I.11-11-009 and I.12-01-007 on September 24, 2012. On October 5, 2012, CPSD filed a non-consolidated motion to suspend all procedural dates and activities for I.11-11-009, I.12-01-007, I.11-02-016 and Rulemaking (R.) 11-02-019¹⁶ in order to facilitate settlement negotiations. CPSD's motion was granted with respect to I.11-11-009, I.12-01-007 and I.11-02-016 on October 11, 2012, but denied with respect to R.11-02-019 on October 12, 2012. As a result of further extensions, opening briefs on violations were filed on November 20, 2012 and reply briefs were filed on December 5, 2012.

4. Standard of Review

It is well settled that the standard of proof in Commission investigation proceedings is by a preponderance of the evidence.¹⁷ This standard is applied in this instance.

¹⁵ *Administrative Law Judges' Ruling Granting Motions of Consumer Protection and Safety Division for Leave to Serve Additional Prepared Testimony and For Permission to File a Single Coordinated Brief Regarding Fines and Remedies and Notice of Hearing*, issued September 25, 2012.

¹⁶ R.11-02-019 is the Commission's rulemaking to adopt new safety and reliability programs for natural gas transmission and distribution pipelines.

¹⁷ See, e.g., *Modified Presiding Officer's Finding Tracfone Wireless, Inc. Acted Unlawfully by Failing to Pay Telecommunication user Fees and Public Purpose Program Surcharges*, Decision (D.) 12-02-032, at 4 (slip op.); *Opinion Ordering Penalties and Reparations [Cingular]*, D.04-09-062, at 13 (slip op.); *Final Decision [Communication Telesystems International]* (1997) 72 CPUC2d 621, 633.

5. The Oil and the Alleged Violations

The Commission opened this OII to determine whether PG&E's natural gas transmission pipeline system was safely operated in areas of greater population density or HCAs pursuant to 49 C.F.R. §§ 192.5 et seq. Second, the OII would review and determine whether PG&E properly reviewed its natural gas transmission pipelines on a regular basis and modified MAOP, replaced pipeline segments with stronger pipe commensurate with the actual class location, and reviewed the physical condition of pipeline segments to reflect changes in population density, as required under federal and state law.

The OII noted that PG&E had indicated in its Class Location Report that 172.1 miles of its natural gas transmission lines were identified as being located in areas of lower population density than was actually the case.¹⁸ The OII made a preliminary finding that the erroneous classification of pipeline segments was a violation of 49 C.F.R. § 192.5.¹⁹ Additionally, the OII made a preliminary finding of the following alleged violations:

1. Title 49 C.F.R. § 192.609 requires that PG&E make a study to determine the actual class location of the pipeline segment "whenever" there is a change in population density. Misclassified pipeline segments may be evidence that PG&E failed to comply with this class study requirement at the time population density actually changed.²⁰
2. Title 49 C.F.R. § 192.611 requires pipeline operators take steps to confirm or revise the MAOP of the pipeline within 24 months of a change in class location. Misclassified pipeline segments requiring a reduction in MAOP gas pressure or a replacement

¹⁸ OII at 7.

¹⁹ Title 49 C.F.R. § 192.5 specifies the criteria for classifying pipeline locations.

²⁰ OII at 9.

with higher strength pipe may have been operating above federally-mandated maximum levels.²¹

3. Title 49 C.F.R. § 192.613 requires pipeline operators to have a procedure for continuing surveillance of their facilities to determine and take appropriate action concerning, among other things, changes in class location. PG&E's misidentification of 172.1 miles of pipeline segments suggests that it lacks a proper procedure for continuing surveillance of its facilities.²²
4. Title 49 C.F.R. § 192.705 requires pipeline operators to have a patrolling program to identify changes in class locations on its general system of natural gas pipelines and the maximum intervals between patrols. The longest interval, for class 1 and class 2 locations that are not at highway or railroad crossings, is "15 months, but at least once per calendar year."²³ The misclassified pipeline identified in the Class Location Report, sometimes two or more classes or levels out-of-class, suggests a possible lack of regular and/or adequate patrolling.²⁴
5. Pub. Util. Code § 451 requires every public utility to "furnish and maintain ... equipment, and facilities ... as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public." PG&E's failure to comply with federal safety regulations for the operation of its natural gas transmission pipeline system may establish a failure to provide Californians in its service territory with safe, healthful, comfortable, and convenient natural gas transmission service, instrumentalities, equipment, and facilities.²⁵

²¹ OII at 8.

²² OII at 11.

²³ 49 C.F.R. § 192.705(b).

²⁴ OII at 10.

²⁵ OII at 11.

CPSD's Investigative Report alleged all the violations identified in the OII.

The report further alleged the following violations:²⁶

1. Title 49 C.F.R. § 192.603 requires PG&E to keep necessary to administer the procedures established under 49 C.F.R. § 192.605.
2. Title 49 C.F.R. § 192.605 requires PG&E to have procedural manuals for operations, maintenance and emergencies for each pipeline.
3. Title 49 C.F.R. § 192.619 prohibits operation of a segment of pipeline above its MAOP and specifies the methodology for determining the MAOP. As a result of misclassified pipeline, segments were operated at pressures greater than allowed for the current class location.
4. Title 49 C.F.R. § 192.709 specifies the records to be maintained for transmission lines and the retention period. Subpart (c) requires that records of patrols be retained for at least five years or until the next patrol, whichever is longer. PG&E could not provide CPSD staff records of patrols for some of the out-of-class pipeline segments under review. This would suggest that PG&E is not in compliance with 49 C.F.R. § 192.709(c).
5. Title 49 C.F.R. § 192.13(c) requires pipeline operators to maintain, modify as appropriate, and follow the plans, procedures, and programs that it is required to establish under Section 192 of Title 49. By failing to properly classify its pipeline segments, PG&E is not complying with its own rules for updating and ensuring appropriate class location changes.
6. 49 C.F.R. § 192.107 specifies the methodology for determining the yield strength for steel pipe. The yield strength value is used to calculate percent SMYS and MAOP for a pipeline segment. CPSD alleges that PG&E's use of an assumed SMYS value above the 24,000 psi for unknown pipe results in MAOP

²⁶ Exhibit CPSD-1 at 57.

exceeding the maximum limits set in 49 C.F.R. § 192.107 and jeopardizes public safety.

CPSD alleges that PG&E's failure to comply with class location requirements has been ongoing. It notes that since 1971, PG&E failed to perform a class location study for 224 segments, as required by 49 C.F.R. § 192.609.²⁷ In addition to alleging violations of federal regulations, CPSD also found in some instances an associated violation of Pub. Util. Code § 451. CPSD's alleged violations are summarized in Table 1 below.

Table 1
CPSD's Summary of Alleged PG&E Violations²⁸

Regulation	Number of Violations	Pre-7/26/1993 Days in Violation	Post-7/26/1993 Days in Violation	Total Days in Violation
49 C.F.R. § 192.107 (b)/P.U. Code § 451 (Assumed SMYS Values)	133	437,784	753,878	1,191,662
49 C.F.R. § 192.13(c) (Not Following Procedures)	843	2,034,251	4,603,039	6,097,290
49 C.F.R. § 192.609 Violations (Required Study)	224	523,961	1,068,420	1,592,381
49 C.F.R. § 192.611 Violations (MAOP Confirmation/Revision)	224	523,961	1,068,420	1,592,381
49 C.F.R. § 192.613 Violations (Continuing Surveillance)	677	1,665,053	3,269,307	4,934,360
49 C.F.R. § 192.619 Violations (Non-Commensurate SMYS)	63	147,924	332,994	480,918
49 C.F.R. § 192.603, 49 C.F.R. § 192.605, 49 C.F.R. § 192.709(c) (Recordkeeping)	898	N/A	N/A	N/a
TOTAL	3,062	5,332,934	10,556,057	15,888,990

²⁷ Exhibit CPSD-1 at 50, Table 10.

²⁸ Exhibit CPSD-1 at 58.

6. Issues in Dispute

The factual issues in this proceeding are, for the most part, not in dispute. PG&E does not dispute the facts presented by CPSD and has acknowledged that it has not maintained nor operated all segments of its transmission pipeline system at the proper class location.²⁹ Although PG&E has argued that the failure to maintain the proper class location did not necessarily present a serious risk to public safety, this does not take away from the fact that PG&E did not comply with the applicable provisions of Section 192 of Title 49. Based on PG&E's acknowledgement that it is responsible for maintaining complete, up-to-date class locations for its entire gas transmission system, and that that it has failed to do so, we find that PG&E has violated 49 C.F.R. §§ 192.13(c), 192.609, 192.611, 192.613, and 192.619.^{30 31}

The remainder of this decision addresses the following disputed issues.

1. How should the Commission count the number of violations associated with PG&E's failure to maintain accurate class location designations?
2. Did PG&E's procedure for establishing an assumed SMYS value above 24,000 psi violate 49 C.F.R. § 192.107(b)?

²⁹ See, e.g., Exhibit PG&E-1 at 1-1- 1-2 (Testimony of Jane K. Yura); PG&E Opening Brief, filed November 20, 2013, at 1.

³⁰ We take PG&E's acknowledgement that it has not operated all segments of its gas transmission pipeline system at the proper class location as an admission of non-compliance with the federal regulations. Failure to comply with the mandatory requirements of Title 49 C.F.R provisions relating to class location, patrolling and continuing surveillance are violations of those provisions.

The issue of whether PG&E's use of assumed SMYS values above 24,000 psi violated 49 C.F.R. § 192.107(b) and Pub. Util. Code § 451 are considered separately, in Section 8 below.

³¹ The recordkeeping violations alleged in this proceeding are considered in the Recordkeeping OII (I.11-02-016).

3. Did PG&E violate Pub. Util. Code § 451 in those instances where the assumed SMYS values resulted in inappropriately high MAOPs?

7. Number of Violations

7.1. Parties' Positions

7.1.1. CPSD

CPSD alleges that PG&E's failure to maintain accurate class location designations violate various provisions of 49 C.F.R. § 192 and Pub. Util. Code § 451. It maintains that, based on the language in 49 C.F.R., the number of violations should be considered on a segment-by-segment basis.³² In support of this conclusion, CPSD notes that the general provision of Title 49, Subpart L (Operations) states "No person may operate a segment of pipeline unless it is operated in accordance with this subpart."³³ Similarly, the general provision of Title 49, Subpart M (Maintenance) provides "No person may operate a segment of pipeline, unless it is maintained in accordance with this subpart."³⁴ CPSD further identifies language in the various regulations listed in Table 1 that specifically refer to a "segment" of pipeline.³⁵

CPSD interprets the language in 49 C.F.R. to mean that there is a violation in every instance where an individual pipeline segment fails to:

1. comply with PG&E's own safety rules and procedures;

³² Opening Brief of the Consumer Protection and Safety Division (CPSD Opening Brief), filed November 20, 2013 at 6-7; Reply Brief of the Consumer Protection and Safety Division (CPSD Reply Brief), filed December 5, 2012, at 6.

³³ CPSD Opening Brief at 3 (citing 49 C.F.R. § 192.603(a)).

³⁴ CPSD Opening Brief at 5 (citing 49 C.F.R. § 192.703(a)).

³⁵ CPSD Opening Brief at 3-5.

2. have adequate records;
3. have a class study when increased population density that might result in a class change;
4. have confirmation or revision of MAOP when a class location change required it;
5. have been provided adequate continuing surveillance to discover a potential class change;
6. have been operated above the MAOP for its actual class location; or
7. have patrol records for a period of at least five years or more.³⁶

CPSD notes that the segments used to calculate the violations are based on those identified in the Class Location Report. It contends that the Commission should disregard any arguments by PG&E that the number of segments used in calculating violations are overstated or incorrect since “the segments used by CPSD were provided by PG&E. Those identifications were the best available and, in fact, the only ones available to PG&E and CPSD in April through July 2012 . . . ”³⁷ CPSD further notes that a single misclassified segment of pipeline may violate various provisions of the C.F.R.³⁸ However, it believes that result serves to highlight the significant consequences of misclassification, and does not constitute a “layering” of violations.³⁹ CPSD also discusses the risks

³⁶ CPSD Opening Brief at 8.

³⁷ CPSD Opening Brief at 7.

³⁸ See, CPSD Reply Brief at 6, where CPSD noted that the effect of misclassifying Line 300B, Segment 350 resulted in three distinct violations of 49 C.F.R.

³⁹ CPSD Reply Brief at 4-5.

associated with not complying with the federal regulations and concludes that the violations result in substantial risks to public safety.⁴⁰

CPSD disagrees with PG&E's contention that various violations should be considered a "single course of action" that could be categorized generally as a breakdown in PG&E's ability to effectively implement its patrol, class location and continuing surveillance process. CPSD first contends that, contrary to PG&E's belief, the number of violations is discrete and can be easily quantified. CPSD notes that PG&E's rules and procedures identify portions of its transmission pipeline system as segments, and the Class Location Report identifies these portions on a segment-by-segment basis.⁴¹ It maintains that the cases relied on by PG&E are not applicable to this proceeding, since the underlying facts were not similar.⁴²

CPSD further argues that continuing surveillance should not be considered a subset of class location requirements. It believes that continuing surveillance "encompasses all aspects of updating population, employment, and construction activity surrounding PG&E's transmission pipelines."⁴³ Additionally, CPSD asserts that any penalties imposed as a result of PG&E's violations should serve to deter the utility from committing those violations again.⁴⁴ Finally, CPSD maintains that whether or not PG&E's patrolling or

⁴⁰ CPSD Opening Brief at 9-12.

⁴¹ CPSD Reply Brief at 5.

⁴² CPSD Reply Brief at 7-8.

⁴³ CPSD Reply Brief at 2.

⁴⁴ CPSD Opening Brief at 8.

continuing surveillance processes are effective should be considered and corrected for purposes of public safety.

7.1.2. PG&E

PG&E states: “PG&E had procedures and standards in place that should have resulted in class locations being accurately and timely identified and updated when necessary, but the [Class Location Report] showed these procedures were not consistently followed and, thus, were not effective.”⁴⁵ As such, PG&E believes that it is this “breakdown” in its processes that constitutes CPSD’s alleged violation. Additionally, PG&E does not believe it is appropriate to consider multiple code violations associated with a single pipeline segment individually, as it considers this method of measurement to overstate the number of “violation days.”⁴⁶

PG&E advances various arguments why it is inappropriate to measure violations on a per segment basis. It notes that since some of its pipeline segments are only a few feet in length, a single change in population density (e.g., construction of a building) could affect multiple segments. Moreover, PG&E attributes 20% of the differences in class location designation to the application of more conservative criteria than required under federal regulations.⁴⁷

PG&E additionally notes there is no standard definition for the term “segment.” PG&E defines this term to identify “a continuous length of pipe with

⁴⁵ Pacific Gas and Electric Company’s Response to Order Instituting Investigation (PG&E Initial Response), dated January 17, 2012, at 2.

⁴⁶ PG&E Opening Brief at 5-6.

similar characteristics (pipeline specifications, class location, etc.).”⁴⁸ Based on its definition, PG&E states that the number of segments at any given point in time will change. It notes “pipeline replacement jobs, maintenance activities, and the installation one new components and equipment, including compressors and valves, all potentially impact the total number of segments.”⁴⁹ Thus, the actual number of misclassified segments has changed during the course of this proceeding.

PG&E believes that as a result of the constant change in the number of pipeline segments affected, the alleged violations are not discrete or easily quantified. It further contends that the Commission is not required to perform a segment-by-segment, day-by-day computation of violations. As such, PG&E recommends that the Commission consider the single core issue – PG&E’s failure to properly maintain its class location designations due to problems in its patrol, class location and continuing surveillance processes – as the sole violation in this proceeding.⁵⁰ As support, PG&E cites to *Utility Consumers’ Action Network v. SBC Communications (UCAN)*, (D.08-08-017) 2008 Cal. PUC LEXIS 302 and *Pacific Gas and Electric Company* (D.99-06-080) 1999 Cal PUC LEXIS 430.

PG&E further disputes CPSD’s conclusion that the misclassified pipeline segments presented an immediate safety threat to Californians. It notes that “[t]he majority of PG&E’s transmission pipeline system operates at a much lower

⁴⁷ Pacific Gas and Electric Company’s Response to Order Instituting Investigation (PG&E Initial Response), filed January 17, 2012, at 3.

⁴⁸ PG&E Opening Brief at 6.

⁴⁹ PG&E Opening Brief at 6.

⁵⁰ PG&E Opening Brief at 7-8.

percentage of SMYS than the maximum permissible under the Code
Consequently, an increase in the class location designation does not necessarily mean the pipeline segment is operating at too high a pressure.”⁵¹

7.1.3. CCSF

CCSF supports CPSD’s conclusion that each instance where PG&E has failed to identify a change in class location constitutes a violation of one, or multiple, federal regulations. CCSF states that the requirement for operators to maintain and operate their pipeline commensurate with the surrounding population density has been in effect since 1955.⁵² CCSF notes that the 1955 ASA B.31.1.8 standard included provisions establishing the population-based class location system and the calculation of MAOP to ensure that the pressure for pipeline was operated in a manner commensurate with the class location. This ASA B.31.1.8 provision was subsequently incorporated into GO 112 and 49 C.F.R.⁵³ CCSF believes that since PG&E has not yet determined when changes

⁵¹ PG&E Initial Response at 18.

⁵² Opening Comments of the City and County of San Francisco (CCSF Opening Brief), filed November 20, 2012, at 4.

⁵³ In 1960, the Commission adopted General Order (GO) 112, “Governing the Design, Construction, testing, Operation and Maintenance of Gas Gathering, Transmission, and Distribution Piping Systems.” GO 112 established the minimum safety standards for pipeline operators, incorporating in large part the American Society of Mechanical engineers standard B31.1.8, “Standard Code for Gas Transmission and Distribution Piping Systems.” Over the years, GO 112 was revised to incorporate federal safety standards. Following the passage of Federal pipeline safety regulations in 1970, GO 112 was modified to “automatically incorporate all revisions to the Federal Pipeline Safety Regulations, 49 C.F.R. Parts 190, 191, 192, 193 and 199 with the effective date being the date of the final order as published in the Federal Register.” (GO 112-E § 104.)

in class location actually occurred, the violations identified by CPSD could have persisted for a significant period of time.⁵⁴

7.2. Discussion

As discussed above, the number of violations range from over 15 million (as alleged by CPSD) to 1 (as proposed by PG&E). Regardless of how the violations are counted, the facts remain the same:

1. PG&E misclassified 173 miles of its transmission pipeline system, in some instances by more than 1 class.
2. PG&E failed to patrol and conduct continuing surveillance of its transmission pipeline system.
3. PG&E failed to comply with its own rules and procedures for classifying its transmission pipeline system.
4. PG&E operated pipelines at MAOP that was not commensurate with their class location and, possibly, their specifications.
5. PG&E's Geographic Information System (GIS) contained erroneous pipeline specification information for multiple segments of pipeline.
6. Many of the errors in class location designation occurred many years ago. Indeed, approximately 25% of the errors occurred prior to 1980.⁵⁵

As PG&E notes, we have on prior occasion determined that it is more appropriate to categorize violations, rather than count them individually, due to the large number or complexity of the violations. However, our decision to do so occurred at the time we considered the appropriate penalties to be imposed for

⁵⁴ CCSF Opening Brief at 11.

⁵⁵ PG&E Initial Response at 4, 16; Pacific Gas and Electric Company's Second Update to Response to Order Instituting Investigation (PG&E Second Response), filed April 2, 2012, at 5.

the violations.⁵⁶ This decision does not address the penalties to be imposed. That determination, which will be made in a separate decision, will take into consideration “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.”⁵⁷ Our finding of the number of violations here will reflect the severity of the offense, one of the factors we will consider when determining the appropriate penalty.

PG&E’s proposal to characterize the alleged violations solely as a breakdown in PG&E’s ability to effectively implement its patrol, class location and continuing surveillance process is not appropriate. The federal regulations impose specific requirements based on population density and class location. A pipeline segment’s class location determines, among other things, % SMYS limits (49 C.F.R. § 192.611), the frequency of patrols (49 C.F.R. § 192.705) and record retention periods (49 C.F.R. § 192.709). Additionally, as CPSD notes, the continuing surveillance requirement under 49 C.F.R. § 192.613 requires appropriate action be taken concerning not only changes in class location, but also “failure, leakage history, corrosion, substantial changes in cathodic protection requirements, and other unusual operating and maintenance conditions.” Moreover, the federal regulations, as well as PG&E’s own standards, require that certain actions be taken whenever there is a change in

⁵⁶ See, e.g., *Utility Consumers’ Action Network v. SBC Communications (UCAN)*, (D.08-08-017) 2008 Cal. PUC LEXIS 302 and *Pacific Gas and Electric Company* (D.99-06-080) 1999 Cal PUC LEXIS 430.

⁵⁷ D.11-11-001 at 36 (slip op.); see also, Pub. Util. Code § 2104.5.

class location.⁵⁸ To categorize these multiple requirements as a single process, as proposed by PG&E, would render specific regulations meaningless and prevent this Commission and other regulatory agencies from identifying specific areas where an operator has failed to comply with federal or state regulations and imposing penalties to deter future violations.

We agree with CPSD and CCSF that violations should be counted on a segment-by-segment basis. As CPSD notes, the regulations refer specifically to “segments” of pipeline. Moreover, PG&E’s Class Location Report identifies misclassifications by segment. We are not persuaded by PG&E’s arguments that violations cannot be counted on a segment-by-segment basis because (1) there is no definition of that term in the federal regulations and (2) segments are not fixed. Regardless of whether the term “segment” is defined in the federal regulations, PG&E has defined this term for purposes of classification and reporting. Once it has established how it has interpreted and implemented the federal regulations, PG&E cannot now argue that its interpretation cannot be used to ensure compliance with the regulations. More importantly, CPSD relied on the information provided in the Class Location Report to determine potential violations. Since PG&E identified these segments, it cannot now argue that there is no violation simply because previously identified segments have changed or no longer exist.

⁵⁸ See, e.g., 49 C.F.R. §§ 192.609 (required study), 192.611 (confirmation or revision of MAOP); Exhibit CPSD-1, Attachment 7 (PG&E’s California Gas Transmission Standard 4127 (Revision 2)).

Based on these considerations, we use the segments identified by PG&E in the Class Location Report, and relied upon by CPSD, as the basis for determining violations.

8. Assumed SMYS

8.1. Parties' Positions

8.1.1. CPSD

As part of its investigation, CPSD found that 133 of the 224 segments that moved to a higher class designation had an assumed SMYS value above 24,000 psi.⁵⁹ CPSD argues that PG&E cannot use an assumed SMYS value above 24,000 psi unless there are traceable, verifiable, and complete specification records or a tensile test record to support the higher assumed SMYS value.⁶⁰ First, it notes that the Commission's January 3, 2011 letter directed PG&E to locate traceable, verifiable and complete records related to its natural gas transmission lines for class 3 and class 4 locations and class 1 and class 2 HCAs for those pipelines whose MAOP was not previously established through prior hydrostatic testing.⁶¹ CPSD contends that this requirement is supported by OP #1 of D.11-06-017 which allows for "engineering assumptions for pipeline components lacking complete records" provided that "such assumptions must be clearly identified, based on sound engineering principles, and where ambiguities arise, the assumption allowing the greatest safety margin must be adopted."⁶² Based on the language in OP #1, CPSD maintains that the "greatest

⁵⁹ Exhibit CPSD-1 at 50, fn. 85.

⁶⁰ CPSD Opening Brief at 12.

⁶¹ CPSD Opening Brief at 13.

⁶² CPSD Opening Brief at 13-14.

safety margin” for those pipeline segments without complete records and hydro testing records would be an assumed SMYS value of 24,000 psi.⁶³

Next, CPSD contends that in those instances where pipe specifications or tensile strength records are not available, it is not reasonable to impute specifications based on pipe purchased at about the time the unknown pipe segments were installed.⁶⁴ CPSD notes, that since PG&E installed salvaged pipe, there was no assurance that the installed pipe would have the same specifications as contemporaneously purchased pipe. Further, CPSD asserts that it is unreasonable to rely on data in PG&E’s Geographic Information System (GIS) since that system contained inaccuracies regarding pipe specifications.⁶⁵

CPSD concedes that “if a company can demonstrate via exhaustive research that they have uncovered every type of pipe purchased that could have been used on the subject installation (this includes new and used pipe of an older vintage), then CPSD would agree that using the lowest quality material procurement specification during the time frames in question would reflect all of the possible pipe that could have been place in service for the specific segments in question.”⁶⁶ However,

the evidence demonstrates that PG&E did not fully research all of its records of procurement specifications; thus there cannot be any certainty about what was the lowest quality/strength pipe it bought at any given time. PG&E is, therefore, required to default to the Part 192.107(b) value of

⁶³ CPSD Opening Brief at 14.

⁶⁴ CPSD Reply Brief at 4.

⁶⁵ CPSD Reply Brief at 4.

⁶⁶ Exhibit CPSD-4 at 2:25-30.

24,000 psi for the yield strength for unknown pipe yield strength.⁶⁷

CPSD further maintains that regardless of common industry practice, there is an overarching requirement that inferring SMYS values above 24,000 psi requires sufficient records to permit an operator to conclude that it could safely use an assumed value above the maximum specified in 49 C.F.R. § 192.107. Therefore, CPSD contends that PG&E witness Zurcher's testimony regarding the common practices of other pipeline operators to use assumed SMYS values above 24,000 psi "does not relieve PG&E of its burden of establishing what records were used and on which pipe segments."⁶⁸ Moreover, CPSD notes that Zurcher's testimony does not address whether using higher assumed SMYS values is approved when applied to segments with "unknown class location designations."⁶⁹

Finally, CPSD asserts that the wording of 49 C.F.R. § 192.107 requires the use of assumed SMYS values no greater than 24,000 psi if the operator does not have the specification records of the pipe segment or has not tensile tested the segment.⁷⁰ Consequently, CPSD concludes that in those instances where PG&E inferred a SMYS value above 24,000 psi without sufficient records, PG&E has violated the terms of 49 C.F.R. § 192.107(b)(2).⁷¹

⁶⁷ Exhibit CPSD-5 at 2:10-14.

⁶⁸ CPSD Opening Brief at 14.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ CPSD Reply Brief at 4.

8.1.2. PG&E

PG&E disputes CPSD's conclusion that a violation occurs in every instance where an out-of-class pipeline segment has an assumed SMYS value above 24,000 psi. PG&E contends that it uses conservative assumed SMYS values and that any instances where it has used an assumed value above 24,000 psi is appropriate.

As an initial matter, PG&E states that CPSD can only establish a violation by proving for each of the 133 segments that the pipe was not manufactured in accordance with specifications listed in 49 C.F.R. § 192.107(a), that the pipe specifications and tensile properties were unknown and that there were no records to support an assumed SMYS value other than 24,000 psi as required by 49 C.F.R. § 192.107(b)(1).⁷² By failing to do so, PG&E asserts CPSD has not met its burden of proof.⁷³ Further, PG&E disagrees with CPSD's assertion that PG&E has the burden to prove that it has not violated 49 C.F.R. § 192.107(b).

PG&E raises various arguments why 49 C.F.R. § 192.107(b) is not applicable. First, PG&E contends that the design formula specified in 49 C.F.R. § 192.105, and consequently the methodology for determine yield strength specified in 49 C.F.R. § 192.107, would only apply to pipeline segments installed after November 1970. It asserts that pipe installed before that date would have their MAOP set under the "grandfather clause" of 49 C.F.R. § 192.619(c).⁷⁴

Next, PG&E notes that 49 C.F.R. § 192.107(a) provides

⁷² PG&E Opening Brief at 2-3; Reply Brief at 7.

⁷³ PG&E Opening Brief at 3; PG&E Reply Brief at 7.

⁷⁴ PG&E Opening Brief at 3.

For pipe that is manufactured in accordance with a specification listed in section I of appendix B of this part, the yield strength to be used in the design formula in § 192.105 is the SMYS stated in the listed specification, if that value is known.

PG&E states that in those instances where it did not have specific documentation establishing SMYS for a segment of pipeline, it used the lowest SMYS value from material procurement specifications at the time period in which the pipe segment was installed.⁷⁵ PG&E contends that this is consistent with common industry practice.⁷⁶ PG&E further notes that most of its pipeline was procured in accordance with API 5L specification, which provided for a SMYS value above 24,000 psi. Consequently, PG&E maintains that it could reasonably use an assumed SMYS value above 24,000 psi for certain segments of pipe.

PG&E additionally notes that its methodology for setting assumed SMYS values is supported by D.11-06-017.⁷⁷ It notes that OP 1 of that decision states, in relevant part:

Pacific Gas and Electric Company must complete its Maximum Allowable Operating Pressure determination based on pipeline features and may use engineering-based assumptions for pipeline components where complete records are not available. Such assumptions must be clearly identified, based on sound engineering principles, and, where

⁷⁵ PG&E Opening Brief at 4.

⁷⁶ PG&E Opening Brief at 3-4; see also, Exhibit PG&E-1 at 2-5 - 2-6 (Zurcher); Reporter's Transcript, Joint Evidentiary Hearing (Joint RT), Vol. 1 at 41:21-25 (PG&E Witness Zurcher, who stated: "If I know the year of manufacture, I know who the manufacturer was and I know what type of pipe they produced, yes, I can make a reasonable assumption [of the SMYS value].")

⁷⁷ PG&E Reply Brief at 10.

ambiguities arise, the assumption allowing the greatest safety margin must be adopted.

PG&E argues that applying a “traceable, verifiable and complete records” requirement would prevent the use of “engineering-based assumptions” and effectively delete OP 1.⁷⁸

Finally, PG&E states that the criteria that “traceable, verifiable and complete” records be used to establish MAOP was not in effect until January 3, 2011. As such, PG&E contends that it could not have violated this requirement prior to that date.⁷⁹ PG&E further asserts that even if this were an existing requirement, CPSD has failed to demonstrate that PG&E’s use of assumed SMYS values above 24,000 psi is not based on records meeting this standard.⁸⁰

8.1.3. CCSF

CCSF maintains that it would be unreasonable for PG&E to use an assumed SMYS value above 24,000 psi based on information in the GIS system.⁸¹ It contends that since the GIS system does not distinguish between date of manufacture, date of installation for new pipe and date of installation for reconditioned pipe, PG&E could not reasonably conclude that pipe installed at any given time would have the same specifications as pipeline acquired during that same period. CCSF believes this is especially true since PG&E is unable to track all instances where reconditioned pipe was used.⁸² Additionally, CCSF

⁷⁸ PG&E Reply Brief at 11.

⁷⁹ PG&E Reply Brief at 9-10.

⁸⁰ PG&E Reply Brief at 10.

⁸¹ CCSF Opening Brief at 7-8.

⁸² CCSF notes that in the 1920s and 1930s, PG&E used A.O. Smith pipe, which did not support SMYS values above 24,000 psig, in its transmission system. Since PG&E does not track the type

Footnote continued on next page

notes that PG&E has admitted that 898 segments of its gas transmission pipelines changed in class designation due to errors in key pipeline specifications contained in the GIS system, resulting in the majority of those segments going up in class designation.⁸³ Moreover, CCSF points out that PG&E does not have the ability to track where it has used reconditioned pipe in its system and that both the NTSB and the Commission have expressed concern over the accuracy and quality of its records.⁸⁴ Consequently, CCSF maintains that an assumed SMYS value based on information in the GIS system cannot be considered reliable.

CCSF further discounts PG&E's arguments that pipe lacking complete records documenting SMYS, but installed prior to November 1970, did not require new tensile strength tests or an assumed SMYS value of 24,000 psig. CCSF notes that the federal regulations adopted in November 1970 incorporated the requirements of ASA B.31.1.8.⁸⁵ It further argues "Section 192.611 states that when there is a change in class location, the operator must confirm or revise the pipeline's MAOP."⁸⁶ Additionally, CCSF contends that a pipeline operator cannot confirm or revise the pipeline's MAOP without first knowing the appropriate SMYS value.

Finally, CCSF contends that no weight should be given to PG&E's arguments that it was common industry practice to infer a conservative SMYS

of pipe installed, CCSF concludes that PG&E "cannot be sure that pipeline segments installed at later dates are not in fact comprised of older A.O. Smith pipe." (CCSF Opening Brief at 10.)

⁸³ CCSF Opening Brief at 7-8. CCSF also notes that one of the errors in GIS was an incorrect SMYS value.

⁸⁴ CCSF Opening Brief at 7-8.

⁸⁵ CCSF Opening Brief at 4-5.

value based on reasonable, conservative assumptions. CCSF first notes that even if other operators were out of compliance with federal regulations, this did not excuse PG&E from compliance.⁸⁷ Moreover, CCSF states:

The degree of conservatism in any assumption is largely dependent upon the operator's maintenance and operational practices. In other words, an operator must have some foundation upon which it can make a conservative assumption.⁸⁸

8.2. Discussion

There is no disagreement that reasonable assumptions of SMYS value can be made if there are sufficient records to support the assumed value. Thus, the issue to be considered here is not whether PG&E may use an assumed SMYS value, but rather whether PG&E had sufficient records to support the use of assumed SMYS values above 24,000 psi for the 133 segments that moved to a higher class designation.

Due to the inherently dangerous nature of natural gas, the NTSB has set guidelines to ensure that pipelines are operated in a safe manner. Among other things, the guidelines establish the maximum pressure at which a pipeline can be operated (MAOP) taking into consideration population density (i.e., class location). The MAOP is based on the formula for calculating the design pressure for steel pipe.⁸⁹ One of the elements in the design formula, "S", is the SMYS for the steel pipe. The SMYS is set at or lower than the lowest pressure at which the

⁸⁶ Reply Brief of the City and County of San Francisco (CCSF Reply Brief), filed December 5, 2012, at 2.

⁸⁷ CCSF Opening Brief at 6.

⁸⁸ CCSF Opening Brief at 7.

pipe will experience permanent deformation. SMYS is determined pursuant to 49 C.F.R. § 192.107, which provides:

(a) For pipe that is manufactured in accordance with a specification listed in section I of appendix B of this part, the yield strength to be used in the design formula in § 192.105 is the SMYS stated in the listed specification, if that value is known.

(b) For pipe that is manufactured in accordance with a specification not listed in section I of appendix B to this part or whose specification or tensile properties are unknown, the yield strength to be used in the design formula in § 192.105 is one of the following:

(1) If the pipe is tensile tested in accordance with section II-D of appendix B to this part, the lower of the following:

(i) 80 percent of the average yield strength determined by the tensile tests.

(ii) The lowest yield strength determined by the tensile tests.

(2) If the pipe is not tensile tested as provided in paragraph (b)(1) of this section, 24,000 p.s.i. (165 MPa).

As shown in Table 11 of the CPSD Investigative Report, the higher the SMYS value, the higher the MAOP.⁹⁰ The higher the pressure in a pipeline segment, the greater the potential for damage to property and harm to persons in the event the pipeline segment ruptures. Consequently, as established in 49 C.F.R. § 192.611, MAOP is set at a lower %SMYS in class 3 and 4 locations and in HCAs to provide a greater factor of safety.

⁸⁹ See 49 C.F.R. § 192.105.

⁹⁰ CPSD Investigative Report at 52.

Under 49 C.F.R. § 192.107, the SMYS value is based on pipeline specifications or tensile tests. Absent such information, the SMYS is set at 24,000 psi. As stated by PG&E witness Zurcher, it is common industry practice to assume conservative specification values in the event pipeline segments have missing specification records. For pipeline with a missing SMYS value, “If I know the year of manufacture, I know who the manufacturer was and I know what type of pipe they produced, yes, I can make a reasonable assumption.”⁹¹

Testimony in this proceeding suggests that pipeline operators will make every effort to not have “unknown” pipeline, as unknown pipe would require the operator to use the most conservative operating values. When questioned regarding when pipe would be considered “unknown,” and thus warranting an assumed SMYS value of 24,000 psi, Zurcher responded:

2 Q And truly unknown would be if none
3 of the three areas, the year manufactured,
4 the name of the manufacturer, or the type of
5 pipe, is available, is that truly unknown?

6 A That would be truly unknown, in
7 addition to the fact that they have no pipe
8 specification, no material purchase order,
9 and no as-built drawing or a mill
10 certification in addition to those things.⁹²

As Zurcher further testified, pipeline operators will “attempt to find something to legitimize the assumed value they are going to use.”⁹³

⁹¹ Joint RT, Vol. 1 at 41:21-25.

⁹² Joint RT at 58:2-10.

Based on the evidence presented, we are persuaded that, to the extent PG&E has inferred a SMYS value based on the date of installation of the pipe or information in GIS, it has violated 49 C.F.R. § 192.107. Unlike other pipe specification information, the date a pipeline segment is installed does not provide information about the physical characteristics of the pipe. However, PG&E's methodology that equates date of installation of a pipeline segment with the date of manufacture does that. This methodology fails to take into account the fact that the pipeline segment that is installed may be re-used or reconditioned, and thus of a different vintage. In fact, PG&E witness Zurcher's testimony supports a conclusion that PG&E's methodology is not common industry practice.⁹⁴

In addition, PG&E has acknowledged that its GIS system contained erroneous values for certain pipe specifications, including SMYS values. Absent confirmation that the information is correct and supported by other documentation, it would be unreasonable to rely solely on GIS data to "legitimize" an assumed value. Moreover, PG&E has acknowledged that not all of the pipe segments in its transmission system have the same specifications⁹⁵ and that it was unable to find written policies to track salvaged or re-used pipe.⁹⁶ Furthermore, PG&E appears to have both reconditioned and new gas transmission pipe and gas pipeline rated material in its general inventory.⁹⁷ As

⁹³ Joint RT at 57:26-27.

⁹⁴ See, Joint RT at 58:2-10.

⁹⁵ See, e.g., PG&E Opening Brief at 5.

⁹⁶ Exh. Joint-3.

⁹⁷ Exh. Joint-2 at 2.

such, pipeline missing documentation to provide some of the critical information needed to calculate SMYS cannot be assumed to have “known” specifications based on the date it was installed or information in GIS. Therefore, we find that absent records that contain specifications of the pipe being installed that would allow a higher assumed SMYS value, PG&E could not assume a SMYS value over 24,000 psi based on date of installation.

We do not believe our determination here is contrary to, or deletes, OP #1 of D.11-06-017. We agree with CPSD that “engineering based assumptions” must be supported by information directly related to the physical specifications of the pipeline, such as date of manufacture.

We disagree with PG&E’s assertion that the requirement for “traceable verifiable and complete records” was only in effect after January 3, 2011. PG&E witness Zurcher testified that pipeline operators would look for “something to legitimize the assumed value” and provided various examples of documents that could be used to support a higher SMYS value. The documents he identified – pipe specification, material purchase order, as-built drawings and mill certifications – pertain to the manufacture or testing of the pipeline and would all be considered traceable and verifiable. The requirement that pipeline operators have this type of documentation is not new and, to the extent that PG&E did not have these types of documents to support an assumed SMYS value above 24,000 psi is a violation. As noted above, the installation date does not reflect whether the pipe segment is new or reconditioned pipe at the time of installation or any information on the pipe characteristics (e.g., date of manufacture or seam type). Moreover, as acknowledged by PG&E, 140 miles of pipeline had incorrect

MAOPs due to errors in GIS.⁹⁸ Accordingly, we find that PG&E's reliance on installation date and GIS data, rather than actual documentation relating to the physical specifications of a pipeline, to establish assumed SMYS values to be contrary to the requirements of 49 C.F.R. § 192.107.

We also disagree with PG&E's assertion that CPSD can only establish a violation of 49 C.F.R. § 192.107(b)(2) by proving that each of the 133 pipeline segments having an assumed SMYS above 24,000 psi that moved to a higher class designation did not meet the requirements of 49 C.F.R. § 192.107(a) or (b)(1). PG&E has a legal requirement to maintain various documents, including documents pertaining to design, operation, and maintenance, for its pipeline system. While CPSD bears the burden of proving a violation, it cannot do so given the state of PG&E's current records. As CPSD notes, PG&E has missing records in job files and inaccuracies in GIS. Given that PG&E is responsible for maintaining records to demonstrate that it is operating and maintaining its pipeline system in a safe manner, it would be unreasonable to conclude that CPSD has not met its burden of proof because it could not present documents demonstrating PG&E's non-compliance with 49 C.F.R. § 192.107(a) or (b)(1). PG&E failed to maintain records that it had a duty to maintain, and it should not now be able to benefit from that same failure. The effect of the missing evidence on this proceeding is fundamentally identical to the effect of spoliation of evidence on a court proceeding, so it is reasonable to apply the traditional

⁹⁸ PG&E Initial Response at 2.

remedy for spoliation in this instance, and we will draw an adverse inference concerning these 133 segments.⁹⁹

Accordingly, we infer that every instance where there is an assumed SMYS value above 24,000 psi is a violation of 49 C.F.R. § 192.107. PG&E could have rebutted this inference by providing documentation demonstrating that the pipeline segment in question either was manufactured in accordance with a specification listed in section I of appendix B of 49 C.F.R. § 192¹⁰⁰ or has been tensile tested¹⁰¹ to support the higher assumed SMYS value.

9. Section 451

CPSD contends that by operating transmission pipeline segments at an MAOP above those permitted under federal regulations, PG&E “irrefutably risks potential rupture, explosion, and fire.”¹⁰² Consequently, it asserts that the 133 pipeline segments with assumed SMYS values above 24,000 psi¹⁰³ and the 63 pipeline segments with MAOP exceeding hoop stress limits¹⁰⁴ violated Pub. Util. Code § 451.¹⁰⁵

⁹⁹ See, e.g., *Reeves v. MV Transportation* (2010) 186 Cal. App. 4th 666, *Cedars-Sinai Medical Center v. Superior Court* (1998) 18 Cal. 4th 1.

¹⁰⁰ 49 C.F.R. § 192.107(a).

¹⁰¹ 49 C.F.R. § 192.107(b)(1).

¹⁰² CPSD Opening Brief at 15.

¹⁰³ Violation of 49 C.F.R. § 192.107(b)(1).

¹⁰⁴ Violation of 49 C.F.R. § 192.619. Hoop stress is defined in ASME B.31.8, Section 805.32 as “the stress in a pipe wall, acting circumferentially in a plane perpendicular to the longitudinal axis of the pipe and produced by the pressure of the fluid in the pipe.” In other words, hoop stress is the internal pressure of the natural gas pushing against the circumference of the pipe.

¹⁰⁵ See, CPSD’s Investigative Report at 55.

PG&E contends that Pub. Util. Code § 451 cannot support the alleged violations on various grounds. First, it notes that while CPSD alleges a violation of 49 C.F.R. § 192.107, it also concedes that the resulting excessive MAOPs were not above the allowable maximums under federal regulations. Thus, PG&E asserts that CPSD cannot apply Pub. Util. Code § 451 “to create a violation for conduct that is expressly allowed” by federal regulation.¹⁰⁶ Additionally, PG&E states that Pub. Util. Code § 451 concerns rates, not pipeline safety. PG&E argues that interpreting Pub. Util. Code § 451 as a “free-floating source of pipeline safety rules” would render other code sections and regulations superfluous.¹⁰⁷ Further, PG&E raises a due process argument, arguing that the Commission and CPSD had never put PG&E on notice of the safety requirements contained in Pub. Util. Code § 451.

PG&E’s arguments are without merit. With respect to its first argument, PG&E appears to believe that even if it used an assumed SMYS value higher than permissible under 49 C.F.R. § 192.107, there would not be a violation of Pub. Util. Code § 451 because the resulting MAOP was still below the allowable maximum under the federal regulations. This argument, however, assumes that there are no risks associated with operating a pipeline segment at a higher MAOP. That is simply not correct. As CPSD notes, inappropriately high MAOPs “increase the risk to areas with higher population density and reduce the pipeline’s margin of safety.”¹⁰⁸ This is true even if the inappropriately high

¹⁰⁶ PG&E Reply Brief at 11-12.

¹⁰⁷ PG&E Reply Brief at 12.

¹⁰⁸ CPSD’s Investigative Report at 55.

MAOPs are not above allowable maximums under federal regulations.¹⁰⁹ As a pipeline operator, PG&E was well aware that operating a pipeline segment at a higher MAOP than permissible for the pipeline segment would reduce the safety margin in areas with higher population density and locations designated as HCA, even if the MAOP is not above the allowable maximums under federal regulations. Therefore, PG&E's argument that it has not violated Pub. Util. Code § 451 because it operated those pipeline segments below allowable maximums under federal regulations is without merit.

PG&E's assertion that Section 451 is a ratemaking provision that cannot serve as a "free-floating" source of pipeline safety requirements is equally unavailing. Section 451 provides, in relevant part:

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.

Under PG&E's interpretation, Section 451 requires a balancing of various factors to determine whether a utility has provided the proper level of service in exchange for the rates it receives from ratepayers. However, even if that were the case, there is nothing to suggest that safety is not an absolute duty under Section 451. Indeed, Chapter 3 of the Public Utilities Code, where Section 451 resides, is entitled "Rights and Obligations of Public Utilities." Thus, it is entirely consistent to find a safety obligation in this Chapter, as well as more specific safety-related requirements in other parts. The fact that the safety

¹⁰⁹ As an analogy, it is unsafe to drive a car at 55 miles per hour (mph) if its tires are rated for speeds not to exceed 50 mph, even when the speed limit for the road is 60 mph.

obligation appears in an article entitled “Rates” does not diminish the significance of that obligation.

We also disagree that interpreting Section 451 as including an overarching safety obligation would render other code sections and regulations superfluous. For example, when the Commission adopted GO 112, it recognized that utilities had a pre-existing and continuing responsibility to the public to provide safe service that goes beyond GO 112 because no code of safety rules can cover every conceivable situation:

7. Public utilities serving or transmitting gas bear a great responsibility to the public respecting the safety of their facilities and operating practices.

8. It is recognized that no code of safety rules, no matter how carefully and well prepared can be relied upon to guarantee complete freedom from accidents. Moreover, the promulgation of precautionary safety rules does not remove or minimize the primary obligation and responsibility of respondents to provide safe service and facilities in their gas operations. Officers and employees of the respondents must continue to be ever conscious of the importance of safe operating practices and facilities and of their obligation to the public in that respect.¹¹⁰

Moreover, GO 112 makes clear that Section 451 applies separately and independently of the new rules by specifying in Section 104.4 that “[c]ompliance with these rules is not intended to relieve a utility from any statutory requirement.” The Commission clearly intended that the new rules would be complementary to the utilities’ primary safety obligation and not redundant. This intent was most recently reaffirmed in D.12-12-030, where the Commission

¹¹⁰ D.61269 at 431 (1960); 58 CPUC 413, 420.

explained the relationship between the Section 451 obligation and other regulations as follows:

We require our natural gas transmission system operators to exercise initiative and responsible safety engineering in all aspects of pipeline management. Simply because a regulation would not prohibit particular conduct does not excuse a natural gas system operator from recognizing that such conduct is not appropriate or safe under certain circumstances.¹¹¹

Finally, we reject PG&E's contention that it was denied due process because it did not have fair notice of the safety requirements subject to Section 451. The OII put PG&E on notice that failure to comply with federal safety regulations for the operation of its natural gas transmission pipeline system may establish a failure to provide "safe, healthful, comfortable, and convenient natural gas transmission service, instrumentalities, equipment, and facilities" and, thus, constitute a violation of Section 451.¹¹² The OII also included examples of what would constitute violations of Section 451.

PG&E also relies on *F.C.C. v. Fox TV Stations, Inc.* (2012) 132 S. Ct. 2307, for the proposition that it was not provided fair notice because the alleged violations under § 451 were vague or applied in an arbitrary or discriminatory way. We disagree. As a pipeline operator, PG&E should be well aware that the higher the MAOP, the greater the potential risk of injury to persons and damage to property in the event of a rupture. Indeed, even a person of ordinary intelligence

¹¹¹ D.12-12-030 at 95.

¹¹² OII at 11.

(the standard articulated in *Fox TV*) would realize that inappropriately high operating pressures would present safety concerns.

We also do not find CPSD's allegations to be arbitrary or discriminatory. CPSD identifies the specific incidents that constitute violations of § 451 and explains the basis for its allegations. Additionally, CPSD's engineers are qualified, licensed, expert engineers, qualified to form expert opinions about pipeline safety. It is appropriate for CPSD's engineers to have opinions about what constitutes a safe practice, and these opinions are grounded in the standards of the pipeline industry and established regulations.

For the reasons discussed above, we find that, in addition to violating 49 C.F.R. § 192.107 and § 192.619, the 133 pipeline segments with assumed SMYS values above 24,000 psi and the 63 pipeline segments with MAOP exceeding hoop stress limits also violated Pub. Util. Code § 451. These violations are separate and distinct from the violations of the federal regulations and should be counted as such.¹¹³

10. Summary of Violations

In determining the number of violations, Pub. Util. Code § 2108 states that for a continuing violation, each day would be considered a separate and distinct offense. CPSD contends that all of its alleged violations are continuing violations. We agree.

Under 49 C.F.R. § 192, PG&E is required to regularly review and study changes in population density that would affect the design, construction, maintenance, and operation of its natural gas transmission pipeline system.

¹¹³ See, e.g., *Pacific Bell Wireless, LLC v. Public Utilities Com.* (2006) 140 Cal. App. 4th 718, 743.

Further, PG&E is required to maintain records that demonstrate that it has properly reviewed and tested the physical condition of its pipeline system. Based on the requirement to regularly patrol its natural gas pipeline system,¹¹⁴ PG&E should have determined the need to update the class designation of its pipeline segments in response to changes in population density. This would have, in turn, required PG&E to confirm or revise the MAOP of the affected pipeline segment. As a result of PG&E's failure to comply with the requirement for regular patrolling, it did not identify the need to update the class locations over a significant period of time. Such a failure would constitute a continuing offense.

CPSD provides its calculations of the number of days in violation for each violation in Attachments 11 - 16 of the Investigative Report.¹¹⁵ These attachments identify the specific segments in violation, as well as the start date for the violation. These start dates are based on available information in PG&E's records and data responses. Where there was no information available to establish the start date, CPSD estimated the start date as July 1 of the applicable year. As discussed above, the status of PG&E's records makes it difficult, if not impossible, to determine accurately the start date of the violations for each segment. However, as part of its review of the cause for changes in class location, Wilbros determined the most likely year of change for those segments that increased in class designation due to errors.¹¹⁶ Thus, where a specific start

¹¹⁴ 49 C.F.R. § 192.709.

¹¹⁵ Exh. CPSD-1.

¹¹⁶ *Pacific Gas and Electric Company's Response to Order Instituting Investigation* (PG&E January 17 Response), filed January 17, 2012, at 16; *Pacific Gas and Electric Company's Second Update to Response to Order Instituting Investigation* (PG&E April 2 Response), filed April 2, 2012, at 5.

date is not known, we find CPSD's estimated mid-year start date to be reasonable.

Although not specifically stated, it appears that CPSD assumes all violations ended on June 30, 2011, the date PG&E submitted the Class Location Report.¹¹⁷ We do not find this end date to be reasonable, as there is no evidence to conclude that these violations had been cured by the time the report was submitted. PG&E's January 17, 2012 response to the OII notes that many of the errors identified in the Class Location Report had been corrected after June 30, 2011.¹¹⁸ PG&E further stated that it had not yet completed review of all short pieces of pipe coming off a main line to determine whether they had the proper class designation.¹¹⁹ PG&E filed two updates to its January 17 response, which demonstrate that the majority of the violations have either been cured or will be cured in a short period of time.¹²⁰ Based on the information contained in these three responses, we find that the appropriate end date for the violations should be set as January 17, 2012, as at that time, PG&E had cured many of the violations identified in the Class Location Report and had set in place actions to be taken to address those violations yet to be cured.

CPSD separates the number of days in violation as occurring either before or after July 26, 1993, but does not explain the significance of that date. We suspect that this date may be associated with the date Senate Bill (SB) 485 (Stats.

¹¹⁷ This assumption is based on adding the number of days (6,548) to July 26, 1993. (See, e.g., Exh. CPSD-1, Attachment 11.)

¹¹⁸ *PG&E January 17 Response* at 2 & 12 - 14.

¹¹⁹ *PG&E January 17 Response* at 14 - 15.

¹²⁰ *Pacific Gas and Electric Company's Update to Response to Order Instituting Investigation*, filed February 2, 2012, at 2; *PG&E April 2 Response* at 6 - 7.

1993, ch. 222) was signed. This bill increased the maximum penalty under Pub. Util. Code § 2107 from \$2,000 to \$20,000 per violation. However, SB 485 was not an urgency bill, so the change in maximum penalty became effective on January 1, 1994. While this proceeding only determines the number of violations, the date of the violation occurred will be relevant at the time we consider penalties. Therefore, we have separated the number of days in violation as occurring either before January 1, 1994, or on or after January 1, 1994.

Based on our findings in this Decision and our discussion above, we find that PG&E committed 2,640 violations that continued for years, for a total of 18,038,359 days in violation. The *Table of Violations and Offenses* set forth in Appendix B compiles the violations we have determined in the foregoing discussion. Pursuant to Section 2108, each day's continuance of a violation is a separate and distinct offense. Accordingly, for each violation, the table indicates the date when the violation began. As discussed above, we set January 17, 2012 as the end date for determining the total number of offenses committed by PG&E.

11. Rulings on Motions

As expected from a proceeding of this complexity and high level of contention, parties have made numerous requests and filed a large number of motions. The assigned ALJ has issued filed, electronic and oral rulings in response to these motions. This decision confirms all rulings.

On January 17, 2014 the City of San Bruno filed *Motion of The City of San Bruno For An Order To Show Cause Why Pacific Gas And Electric Company Should Not Be Held In Violation of Commission Rules Of Practice And Procedure 1.1 and 12.1 or In the Alternative, In Contempt of Commission, and for Sanctions and Fees as Appropriate*. In the motion, San Bruno alleges that PG&E failed to notify the

assigned ALJ and parties of an attempted settlement or partial settlement of this proceeding as part of its payment of a citation issued by CPSD. On July 28, 2014, San Bruno filed *Motion of the City of San Bruno For An Order To Show Cause Why Pacific Gas And Electric Company Should Not Be Held In Violation of Commission Rule of Practice And Procedure 8.3(b) (Rule Against Ex Parte Communications) and for Sanctions and Fees*.¹²¹ In its motion, San Bruno alleges 41 separate instances where PG&E communicated with Commissioner Peevey concerning the level of the penalty to be imposed in the Pipeline OIIs. On November 10, 2014, San Bruno filed *Motion for Evidentiary Hearing on City of San Bruno's Motion for an Order to Show Cause as to Why Pacific Gas and Electric Company Should Not Be Held in Violation of Commission Rule of Practice And Procedure 8.3(B) and for Sanctions and Fees*.¹²²

All the above motions were opposed by PG&E. Due to seriousness of the allegations raised by the City of San Bruno in these motions, the assigned ALJ shall determine whether further action is warranted.

On October 15, 2014, CPSD filed *Motion of the Consumer Protection and Safety Division To Strike Extra-Record Material from Pacific Gas and Electric Company Appeals of Presiding Officers' Decisions*.¹²³ This motion was opposed by PG&E and supported by San Bruno. CPSD's motion, however, only concerns statements made in PG&E's appeals of the Presiding Officer's Decision (POD) on Fines and Remedies and the PODs on violations in I.11-02-016 and I.12-01-007. As such, we do not need to address the motion here.

¹²¹ This motion was also filed in I.11-02-016 and I.12-01-007.

¹²² This motion was also filed in I.11-02-016 and I.12-01-007.

¹²³ Both of these motions were also filed in I.11-02-016 and I.12-01-007.

On the same day, CPSD also filed *Motion of the Consumer Protection and Safety Division for an Order to Show Cause as to why Pacific Gas and Electric Company Should not be Held in Contempt, or Fines Imposed*. This motion was opposed by PG&E and supported by San Bruno. This motion alleges PG&E had violated a June 3, 2013 Ruling prohibiting references to extra-record evidence regarding alleged PG&E shareholder funding. As with CPSD's October 15, 2014 motion to strike, this motion relates to statements made in PG&E's appeals of the POD on Fines and Remedies and the PODs on violations in I.11-02-016 and I.12-01-007. As such, we do not need to address the motion here.

On November 14, 2014, San Bruno filed *Motion to Strike Extra-Record Material from Pacific Gas and Electric Company's Response to Appeals and Requests for Review of the Presiding Offices' Decision on Fine and Remedies*.¹²⁴ The motion concerns a footnote in the POD on Fines and Remedies and will, therefore, will not be addressed here.

On December 15, 2014, San Bruno filed *City of San Bruno's Motion to Compel Pacific Gas and Electric Company to Respond to Data Request Seeking Production of Documents and to Appoint a Special Discovery Master, or in the Alternative, to Set Aside Submission and Reopen the Record; Declaration of Britt K. Strotzman in Support of City of San Bruno's Motion to Compel Pacific Gas and Electric Company to Respond to Data Request Seeking Production of Documents and to Appoint a Special Discovery Master, or in the Alternative, to Set Aside Submission and Reopen the Record; Proposed Ruling Granting Motion of the City of San Bruno to Compel Discovery and Appointing a Special Discovery Master*.¹²⁵ This motion, concerning 65,000 e-mail

¹²⁴ This motion was also filed in I.11-02-016 and I.12-01-007.

¹²⁵ This motion was also filed in I.11-02-016 and I.12-01-007.

communications between PG&E and the Commission, is essentially the same as a motion filed in Application (A.) 13-12-012. In a January 13, 2015 ALJ Ruling issued in A.13-12-012, San Bruno's motion to compel was granted in part and denied in part. As such, San Bruno's motion in this proceeding is rendered moot. Unless specifically discussed in this section, all outstanding motions that have not yet been ruled on are hereby denied.

12. Appeals of POD

PG&E and CPSD filed appeals of the Presiding Officer's Decision on October 2, 2014. CPSD filed its response on October 27, 2014. The grounds of the appeals are discussed below. Where noted, the POD has been revised in response to the appeals. In all other respects, the appeals are denied.

12.1. Total Number of Segment Violations

CPSD's appeal notes that the first column in Appendix B of the POD contains an arithmetical error – the total number of segments (violations) should be 2,360, not 3,643.¹²⁶ It recommends changes to the body of the POD to correct this error. We agree that the total number of segments (violations) should be 2,360. While the total in that column was added incorrectly, the calculations in the other columns are correct and remain unchanged. The final decision corrects this error in both the body of the decision and in Appendix B.

PG&E argues that the POD errs in counting violations on a per segment basis and by finding multiple violations for each segment.¹²⁷ While it

¹²⁶ *Consumer Protection and Safety Division's Appeal of Presiding Officer's Decision*, filed October 2, 2014, at 2. PG&E also identifies this error in Table B.

¹²⁷ *Pacific Gas and Electric Company's Appeal of the Presiding Officer's Decision (PG&E Appeal)*, filed October 2, 2014, at 1.

acknowledges that it uses segmentation for “internal record keeping purposes,” PG&E contends that the segments identified in the Class Location Report cannot serve as the basis for assessing violations and penalties.¹²⁸ From PG&E’s perspective, calculating violations on a per segment basis, rather than considering the violations as stemming from a single course of conduct – “the implementation of PG&E’s patrol, class location and continuing surveillance processes” – “artificially elevate[s] the significance of the offense.”¹²⁹

We have already considered and rejected PG&E’s arguments on this issue in Section 7.2 of the POD. We further disagree with PG&E’s arguments that the POD has artificially elevated the severity of the offense by determining that the same segment of pipeline may have violated more than one federal regulation. As discussed in the POD, each segment of pipeline must comply with multiple federal regulations. Violation of each regulation is a separate and distinct offense. Applying PG&E’s argument would lead to an absurd result.¹³⁰

¹²⁸ PG&E Appeal at 3.

¹²⁹ PG&E Appeal at 4-5.

¹³⁰ Consider the following hypothetical: Albert is in a club and takes a speedball (heroin and cocaine). He decides to leave, but he doesn't have a car, because his license has been suspended for a prior drug DUI that he is still on probation for. He steals the car keys of one of his companions and takes their car. As he drives off, Albert hits another car but keeps going until he crashes into a light pole. The police come and arrest him. Albert is charged with: 1) driving with a suspended license (Vehicle Code § 14601); 2) driving under the influence of drugs (Vehicle Code § 23152(e)); 3) being under the influence of a controlled substance (Health and Safety Code § 11550(a)); 4) driving or taking a vehicle that is not his own (Vehicle Code § 10851); 5) hit-and-run (Vehicle Code § 20002); and 6) a probation revocation (and resulting penalties) on his prior drug DUI. Under PG&E's "fundamental principle" theory, Albert could only be charged with one count of a drug DUI, as he really only did one thing wrong (driving while under the influence of drugs). Or, to take PG&E's argument to its logical extreme, the only thing Albert really did wrong was taking the drugs (the rest flowing from that one course of conduct), so he could only be charged with one count of being under the influence of a controlled substance.

Accordingly, PG&E can and should be held responsible for multiple violations of different laws, even if these violations all occurred at the same location.

We disagree with PG&E's arguments that counting violations on per segment basis is contrary to our determinations in *UCAN*. In *UCAN*, the Commission noted that the violations were the result of an ongoing corporate policy and the Commission could not "determine the total number of persons harmed."¹³¹ In this proceeding, PG&E identified the segments that were not in maintained and operated at the proper class location. Thus, unlike *UCAN*, the number of segments in violation is both identifiable and quantifiable. Further, as discussed in Section 7.2 above, PG&E engaged in a number of courses of discreet actions, not a single course of action.

Finally, PG&E contends that the construction of a single building or one well-defined area could "affect the class location of multiple segments, as can a single error in applying the 'cluster rule' or in analyzing a class location."¹³² PG&E asserts that this results in inflating the number of violations. This argument, however, ignores the fact that many of the errors in classification have been ongoing for many years, or even decades. As part of its review of the cause for changes in class location, Wilbros determined the most likely year of change for those segments that increased in class designation due to errors.¹³³ These years are presented below:

¹³¹ *UCAN* [D.08-08-017] 2008 Cal.PUC LEXIS at *44.

¹³² PG&E Appeal at 3.

¹³³ Wilbros categorized these errors as: application of the cluster rule; other (different structure used for clustering); expansion (development caused class change); well-defined area not previously identified; and shorts (decision to make shorts match the class location designation of their source route. (*Pacific Gas and Electric Company's Second Update to Response to Order Instituting Investigation (PG&E April 2 Update)*, filed April 2, 2012, at 3.)

Approximate Date of Class Location Change¹³⁴

<u>Date</u>	<u>Miles</u>	<u>% of Miles</u>	<u>Segments</u>
By 1971	22.4	16%	162
1972-1979	12.1	9%	71
1980-1989	28.2	20%	164
1990-1999	34.1	24%	198
2000-2008	41.4	29%	264
2009-2011	2.3	2%	39
Total	140.4	100.0%	898

Thus, even if we were to accept PG&E's argument (which we do not), it would not explain PG&E's failure to identify and correct the class designation for segments of pipe for years, and in many cases decades. Given the requirements for continuing surveillance and frequency of patrols, this can only be attributed to violation of the Federal regulations.

12.2. Continuing Violations

PG&E contends that many violations are a one-time event and, thus, the POD incorrectly concludes that the violations are continuing.¹³⁵ It maintains that Pub. Util. Code § 2108 "applies only to violations that continue over time, not to the subsequent consequences of finite events that themselves constitute a violation"¹³⁶ and cites to *People ex rel. Younger v. Superior Court (Younger)* (1976) 16 Cal. 3d 30 as support.

PG&E's reliance on *Younger* is based on its misplaced belief that its conduct should be characterized as a one-time event – a "breakdown in PG&E's ability to effectively implement its patrol, class location and continuing

¹³⁴ PG&E April 2 Update at 5.

¹³⁵ PG&E Appeal at 5-6.

¹³⁶ PG&E Appeal at 6.

surveillance process.” However, the POD considered and rejected this argument. Among other things, PG&E is required to patrol its pipeline system on a regular basis, perform continuing surveillance and monitor changes in population density. All of these activities are ongoing obligations, not one-time occurrences. Thus, each day PG&E fails to perform these required activities constitutes a violation.

This conclusion is further supported by *Younger*, where the California Supreme Court stated:

It appears that the Legislature by enacting section 13340, subdivision (a) (3) [of the Water Code], was concerned with persons who caused oil spills day after day – in other words, with persons who intentionally or negligently caused oil to be deposited regularly or over a period of time. By imposing an additional penalty for each day that the person continues to deposit the oil in the waters, the Legislature provides an effective deterrent to continuous or chronic violations.¹³⁷

Similarly, PG&E intentionally or negligently did not patrol its pipeline system on a regular basis, perform continuing surveillance and monitor changes in population density as required by the Federal regulations – for some pipeline segments, this lasted for over 40 years. Accordingly, these violations are properly considered continuing pursuant to Pub. Util. Code § 2108.

12.3. Spoliation

PG&E argues that the POD misapplies the spoliation doctrine.¹³⁸ It contends “[s]poliation is ‘the destruction or significant alteration of evidence, or the failure to preserve property for another's use as evidence in pending or

¹³⁷ *Younger, supra*, 16 Cal. 3d at p. 44.

¹³⁸ PG&E Appeal at 7.

reasonably foreseeable litigation.”¹³⁹ According to PG&E, “The duty to preserve documents only arises when a party ‘reasonably should know that evidence may be relevant to anticipated litigation.’”¹⁴⁰ Thus, it contends there must be more than the “mere existence of a potential claim or the distant possibility of litigation.”¹⁴¹

In short, PG&E acknowledges that if there is a duty to preserve documents, failure to preserve those documents would result in spoliation. However, PG&E narrows the spoliation doctrine in arguing that the duty to preserve documents only arises if there is “pending or reasonably foreseeable litigation.” The real question is not the artificially narrow one of whether PG&E reasonably foresaw or anticipated litigation, but a broader question of whether PG&E had a duty or obligation to preserve the documents in question. As *Reeves* stated: “In order for an adverse inference to arise from the destruction of evidence, the party having control over the evidence must have had an obligation to preserve it at the time it was destroyed.”¹⁴²

For a typical company which may or may not face litigation at any given time, the focus on whether litigation is reasonably foreseeable is generally an appropriate standard. The relationship of a regulated utility to its regulator, however, is different than the relationship of a company to the courts. A company may become subject to the authority of the courts in the context of litigation, or it may not. A regulated utility is always under the authority of its

¹³⁹ PG&E Appeal at 7.

¹⁴⁰ PG&E Appeal at 7-8.

¹⁴¹ PG&E Appeal at 8.

¹⁴² *Reeves, supra*, 186 Cal.App.4th at p.681 (citing *Kronish v. U.S. (2d Cir., 1998)* 150 F.3d 112, 126).

regulatory agency. Thus, it is entirely foreseeable that the records of the installation, testing and maintenance of PG&E's gas transmission pipeline system would be the routine subject of administrative proceedings and necessary to ensure the safe operation of its system and the safety of the public.

More significantly, utilities such as PG&E have a statutory duty to maintain records under Pub. Util. Code §§ 313 and 314. These provisions would be rendered meaningless if PG&E could destroy or discard any records at its discretion. In addition, 49 C.F.R. § 192 requires PG&E to maintain and retain records concerning the design, installation, maintenance and operation of its gas transmission pipeline system.¹⁴³ In other words, PG&E is always under a duty to maintain records relevant to the safe and reliable operation of its natural gas transmission pipeline system.

Courts have held that destruction of evidence in violation of a regulation that requires its retention can give rise to an inference of spoliation. (See, e.g., *Byrnie v. Town of Cromwell*, 243 F.3d 95, 108-109 (2nd Cir. 2001); *Hicks v. Gates Rubber Co.*, 833 F.2d 1406, 1409 (10th Cir. 1987).)

Contrary to PG&E's framing of the issue, it does not have an indefinite duty to preserve documents in anticipation of potential litigation or face the "threat" of adverse inferences.¹⁴⁴ Rather, because PG&E has a legal obligation and duty to maintain records of its gas transmission pipeline system, its failure to preserve these records, whether intentional or inadvertent, can give rise to the application of the spoliation doctrine.

¹⁴³ See, e.g., 49 C.F.R. § 192.709, which specifies the record to be maintained for transmission lines and the retention period.

¹⁴⁴ PG&E Appeal at 8.

While the record and the law support a determination that PG&E engaged in spoliation of evidence, that determination is not necessary for us to craft an appropriate remedy for PG&E's failure to maintain adequate records of the design, installation, maintenance and operation of its gas transmission pipeline system. It is clear here that the records that PG&E cannot produce are relevant to this investigation. Nonetheless, PG&E argues that unless CPSD can produce those missing records, there is no evidence to support the POD's conclusions that PG&E's records are inadequate.¹⁴⁵

At its heart, PG&E is arguing that it cannot be held responsible for the missing records because there is no evidence that PG&E intentionally destroyed or discarded those records; in fact, PG&E implies that it may not have ever created the records at issue, or if it did create such records, it lost them without knowing it had lost them. "This application also would allow for a finding that a party improperly 'destroyed' materials when the party had no improper intent and did not know the documents were lost. Indeed, it would allow such a finding even when the documents never existed in the first instance."¹⁴⁶

Whether PG&E had evil intent or was merely incompetent, the result is the same: relevant evidence is missing. Regardless of whether or not this meets the specific criteria that a court would apply in finding spoliation, we must address this issue and craft an appropriate remedy. It would not be fair for PG&E to benefit in this litigation as a result of the absence of records that PG&E was under a duty to maintain, whether that absence is the result of intentional destruction, inadvertent loss, or failure to create those records.

¹⁴⁵ PG&E Appeal at 9.

¹⁴⁶ PG&E Appeal at 8.

The effect of the missing evidence on this proceeding is fundamentally identical to the effect of spoliation on a court proceeding. There are a number of potential remedies that are available under such circumstances.¹⁴⁷ Thus, we properly exercised our discretion in determining that the application of the traditional remedy for spoliation would be appropriate and applied an adverse inference to the lack of evidence that PG&E was under a duty to maintain.

12.4. Hindsight

PG&E maintains that the POD “improperly bases a number of violations on facts that were not and could not have been known to PG&E at the time.”¹⁴⁸ In particular, PG&E asserts that the POD errs in finding violations of 49 C.F.R. § 192.107(b) and Pub. Util. Code § 451 regarding assumed SMYS values; 49 C.F.R. § 192.609 regarding class location study; 49 C.F.R. § 192.611 regarding MAOP confirmation and revision; 49 C.F.R. § 192.613 regarding continuing surveillance; and 49 C.F.R. § 192.613 and Pub Util. Code § 451 regarding non-commensurate SMYS.

As an example, PG&E states that it did not know that it had violated 49 C.F.R. § 192.107 when it assigned a higher yield strength than for “unknown” pipe segments because it had not classified those pipe segments as “unknown.”¹⁴⁹ However, as discussed in Section 8.2, PG&E knew it was missing documents regarding the physical specifications of the pipe segments and that its GIS database contained erroneous values for certain pipe specifications. Further,

¹⁴⁷ See, *Cedars-Sinai Medical Center v. Superior Court* (1998) 18 Cal.4th 1, 11-13 (listing remedies for spoliation of evidence).

¹⁴⁸ PG&E Appeal at 9.

¹⁴⁹ PG&E Appeal at 10.

PG&E was aware that it was required under federal and state laws and regulations to retain records for the design, installation, maintenance and operation of its transmission pipeline system. Yet, despite knowing these facts and the law, PG&E had adopted assumed values rather than classify the segments as “unknown.” Consequently, it is unclear how PG&E could not have known that its conduct was contrary to the Federal regulations, and therefore, unlawful.

Aside from the example above, PG&E fails to provide any explanation to support its other allegations that the POD found violations based on facts that were not and could not have been known to PG&E. Therefore, we give these allegations little weight.¹⁵⁰

12.5. Ending Date of Violations

PG&E asserts that by determining that the end date of the class location violations was January 17, 2012, rather than the June 30, 2011 date proposed by CPSD, the Commission violated PG&E’s Due Process rights because PG&E had “no notice of, or opportunity to respond” to the new end dates.¹⁵¹ This assertion, however, ignores the fact that both the *PG&E January 17 Response* and the *PG&E April 2 Response* noted that many of the errors identified in the Class Location Report were corrected after June 30, 2011.

Both the OII and the CPSD Investigative Report had put PG&E on notice that it could be subject to continuing violations under Pub. Util. Code § 2108. As amply demonstrated in its briefs, PG&E understood that Pub. Util. Code § 2108

¹⁵⁰ See, Commission Rules of Practice and Procedure, Rule 14.4(c).

¹⁵¹ PG&E Appeal at 12.

would apply to violations over time. CPSD had alleged continuing violations and based the end dates on the date of PG&E's Class Location Report. However, because PG&E then provided evidence of later end dates, the POD corrected the end dates used by CPSD. This correction, based on PG&E's own evidence, can hardly be considered a surprise.

Finally, PG&E contends that it "responded to CPSD's charges with written testimony and prepared its defense based on the violations CPSD asserted in the May 25, 2012 report."¹⁵² The POD does not find any violations other than those contained in the CPSD Investigative Report. Further, other than arguing that the alleged violations should not be considered continuing violations, PG&E did not include any discussion of the end date for violations contained in CPSD's Investigative Report in its written testimony and as part of its defense. Moreover, even if we were to consider a June 30, 2011 end date, the total number of days in violation would decrease by less than 3%. Since our decision on Fines and Remedies (D.15-___-___) imposes a penalty which is significantly less than the potential penalty associated with the total days in violation found in our decisions on violation in this proceeding, as well as in I.11-02-016 and I.12-01-007, any decrease in the total number of days in violation in this proceeding is unlikely to have any impact on the fines and remedies imposed.

12.6. Pub Util. Code § 451

PG&E challenges the POD's determination that Pub. Util. Code § 451 serves as a separate and individual basis for finding safety violations.¹⁵³ Many of

¹⁵² PG&E Appeal at 12.

¹⁵³ PG&E Appeal at 12-19.

PG&E's arguments have already been considered and rejected in Section 9 of this decision, as well as in prior Commission decisions and Court orders.¹⁵⁴ We have also considered and rejected similar arguments raised by PG&E in our companion decisions on Violations issued today in I.11-02-016 (D.15-__-__) and I.12-01-007 (D.15-__-__), as well as our decision on Fines and Remedies (D.15-__-__).

PG&E notes Pub. Util. Code § 451 is contained in Article 1 of the Public Utilities Code, which is entitled "Rates." It maintains that under the rules of statutory construction, "a specific provision prevails over a more general provision."¹⁵⁵ As such, it argues that the statutory heading of Article 1, "Rates", should be controlling, and Pub Util. Code § 451 cannot be interpreted as anything other than a ratemaking provision.¹⁵⁶ According to PG&E, Pub. Util. Code § 451 "requires a balancing of rates against the proper level of service."¹⁵⁷

PG&E's statutory construction argument is contradicted by *Gay Law Students Ass'n v. Pac. Tel & Tel. Co. (Gay Law Students Ass'n)* (1979) 24 Cal.3d 458. In *Gay Law Students Ass'n*, the California Supreme Court addressed a complaint alleging in part that PT&T illegally practiced discrimination against homosexuals in the hiring, firing and promotion of employees. The complainant sought declaratory and injunctive relief to prevent PT&T from continuing such

¹⁵⁴ See, e.g., *Langly v. Pacific Gas and Electric Co.* (1953) 41 Cal.2d 655, 660-661; *PacBellWireless v. P.U.C. (Cingular)* (2006) 140, Cal.App.4th 718, 742-743; *Carey v. Pacific Gas and Electric Co.* [D.99-04-029] (1988) 85 Cal.P.U.C.2d 682, 689; *Decision Mandating Pipeline Safety Implementation Plan, Disallowing Costs, Allocating Risk of Inefficient Construction Management to Shareholders, and Requiring Ongoing Improvement in Safety Engineering (PSEP Decision)* [D.12-12-030].

¹⁵⁵ PG&E Appeal at 13, fn 53 (citation omitted).

¹⁵⁶ PG&E Appeal at 13, fn. 53.

¹⁵⁷ PG&E Appeal at 14.

practices. The Court rejected PT&T's argument that Pub. Util. Code § 453(a) was "limited only to a prohibition of rate or service-oriented discrimination."¹⁵⁸ Rather, the Court found that Pub. Util. Code § 453(a) "prohibits a public utility from engaging in arbitrary employment discrimination."¹⁵⁹ As relevant here, Pub. Util. Code § 453 is also within Article 1 of the Public Utilities Code. Thus, just as the California Supreme Court held that Pub. Util. Code § 453 is not limited as a ratemaking provision, Pub. Util. Code § 451 cannot be limited in that way either. Finally, PG&E fails to recognize Pub. Util. Code § 6 which states: "Division, part, chapter, article, and section headings do not in any manner affect the scope, meaning, or intent of the provisions of this code." PG&E's reliance on the heading of an article in its attempt to undermine Pub. Util. Code § 451's safety obligation is contrary to § 6 and we therefore reject it.

PG&E's attempt to frame Pub. Util. Code § 451 as a balancing of rates and service is equally unavailing. In *Cingular*, the California Court of Appeal upheld the Commission's imposition of a fine on a wireless carrier under Pub. Util. Code § 451 even though the court found that the Commission was preempted by federal law from regulating rates of wireless carriers. In other words, the court held that the Commission may find violations under the second paragraph of Pub. Util. Code § 451, even where the first paragraph is inapplicable and no balancing of rates and service is at issue.¹⁶⁰ Moreover, even under the construct described by PG&E, i.e., that Pub. Util. Code § 451 provides for a balancing of rates and other considerations that include safety, there is nothing to suggest that

¹⁵⁸ *Gay Law Students Ass'n v. Pac. Tel & Tel. Co.*, 24 Cal.3d at p. 478.

¹⁵⁹ *Gay Law Students Ass'n v. Pac. Tel & Tel. Co.*, 24 Cal.3d at p. 475.

¹⁶⁰ *Pacific Bell Wireless (Cingular) v. PUC*, *supra*, 140 Cal.App. 4th at p. 723.

safety is not an absolute duty under Pub. Util. Code § 451. The fact that the safety obligation appears in an article entitled “Rates” does not diminish the significance of that obligation.

13. Assignment of Proceeding

Michael Picker is the assigned Commissioner¹⁶¹ and Amy C. Yip-Kikugawa is the assigned ALJ in this proceeding.

Findings of Fact

1. Ordering Paragraph 18 of Resolution L-403 directed PG&E to “review the classification of its natural gas transmission pipelines and determine if those classifications have changed since the initial designation.”

2. Ordering Paragraph 19 of Resolution L-403 directed PG&E to “report the results of its review of the classification of its natural gas transmission lines and any subsequent changes to those classifications since PG&E’s initial designation to the Executive Director within 10 days of the date of this Resolution.”

3. In PG&E’s October 4, 2010 letter to the Commission in response to Resolution L-403, PG&E identified 1,057 miles of pipeline operating at pressures greater than 60 psig where the current classification is different from the initial classification.

4. The NTSB’s Safety Recommendation P-10-2 and -3 (Urgent) and P-10-4 directed PG&E to use “traceable, verifiable, and complete” records to confirm that the MAOP in class 3 and class 4 locations and class 1 and class 2 locations in HCAs were properly established.

¹⁶¹ Michel Peter Florio had previously been the assigned Commissioner. Commissioner Florio recused himself from further participation in the Pipeline OIIs on October 15, 2014. This proceeding was reassigned to Commissioner Picker on October 16, 2014.

5. PG&E's Class Location Report, provided on June 30, 2011 determined that approximately 550 miles of PG&E's transmission pipeline system had an incorrect class location designation.

6. CPSD submitted its Investigative Report on May 25, 2012.

7. In an Administrative Law Judge's Ruling issued on September 25, 2012, the issue of penalties resulting from any violations found in this Decision would be considered and addressed in coordination with I.11-02-016 and I.12-01-007.

8. PG&E does not dispute the facts presented by CPSD and has acknowledged that it has not maintained nor operated all segments of its transmission pipeline system at the proper class location.

9. PG&E acknowledges that it is responsible for maintaining complete, up-to-date class locations for its entire gas transmission system.

10. As a result of PG&E's failure to comply with the requirement of regular patrolling, it did not identify the need to update the class locations over a significant period of time.

11. Title 49 C.F.R. § 192 specifically refers to segments of pipeline.

12. The number of violations is related to our determination of the severity of an offense.

13. PG&E's Class Location Report identifies misclassification by segment of pipeline.

14. PG&E has a definition of "segment" for purposes of classification of pipeline segments and reporting.

15. The MAOP for a pipeline segment takes into consideration population density.

16. SMYS is one of the elements in the design formula used to calculate MAOP.

17. The SMYS is set at or lower than the pressure at which the pipe will experience permanent deformation.
18. The higher the SMYS value, the higher the MAOP and the greater the potential for damage to property and harm to persons in the event the pipeline segment ruptures.
19. 40 C.F.R. § 192.107 establishes the methodology for determining SMYS.
20. Where PG&E does not have documentation on the SMYS value of a pipe segment, it has inferred the SMYS value based on the date of installation of the pipe or information in GIS.
21. Pipeline operators will make every effort to not have “unknown” pipeline, as that would require the operator to use the most conservative operating values.
22. PG&E utilizes reconditioned pipe in its transmission pipeline system.
23. PG&E does not track a pipe’s manufacture date in GIS.
24. PG&E’s GIS system contained erroneous pipeline specification information, including MAOP, for multiple segments of pipeline.
25. D.11-06-017 allows PG&E to use engineering-based assumptions for pipeline components where complete records are not available.
26. PG&E has a legal requirement to maintain various documents on its pipeline system, including documents pertaining to design, operation, and maintenance.
27. Pursuant to Pub. Util. Code § 451, every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, as necessary to promote safety, health, comfort, and convenience of its patrons, employees, and the public.
28. Chapter 3 of the Pub. Util. Code § 451 resides, is entitled “Rights and Obligations of Public Utilities.”

29. The OII put PG&E on notice that failure to comply with federal safety regulations for the operation of its natural gas transmission pipeline system may establish a failure to provide “safe, healthy, comfortable, and convenient natural gas transmission services, instrumentalities, equipment, and facilities” and, thus, constitute a violation of Pub. Util. Code § 451.

30. SB 485 increased the maximum penalty under Pub. Util. Code § 2107 from \$2,000 to \$20,000 per offense effective January 1, 1994.

31. There is no evidence to conclude that PG&E had cured the violations alleged in the CPSD Investigative Report at the time PG&E had submitted the Class Location Report on June 30, 2011.

32. PG&E’s January 17, 2012 response to the OII notes that many of the errors identified in the Class Location Report had been corrected after June 30, 2011.

Conclusions of Law

1. The standard of proof in Commission investigation proceedings is by a preponderance of the evidence.

2. PG&E’s acknowledgement that it has not operated all segments of its gas transmission pipeline system at the proper class location should be considered an admission of non-compliance.

3. Based on PG&E’s acknowledgement that it is responsible for maintaining complete, up-to-date class locations for its entire gas transmission system, and that that it has failed to do so, PG&E violated its own internal rules by failing to identify 843 segments with increased population density. This constitutes a violation of 49 CFR § 192.13(c).

4. Based on PG&E’s acknowledgement that it is responsible for maintaining complete, up-to-date class locations for its entire gas transmission system, and that that it has failed to do so, PG&E failed to identify changes in population

density and misclassified 224 pipeline segments. As a result, PG&E failed to conduct a study to determine the actual class location of these pipeline segments in violation of 49 C.F.R. § 192.609.

5. Due to misclassification of 224 pipeline segments, PG&E did not confirm or revise the MAOP of segments with changed class designations within 24 months of the change in class location. This failure is a violation of 49 C.F.R. § 192.611.

6. Based on PG&E's acknowledgement that it is responsible for maintaining complete, up-to-date class locations for its entire gas transmission system, and that that it has failed to do so, PG&E violated 49 C.F.R. § 192.613 by not having a procedure for continuing surveillance of its facilities to determine and take appropriate action concerning, among other things, changes in class location, for 677 segments.

7. Based on PG&E's acknowledgement that it is responsible for maintaining complete, up-to-date class locations for its entire gas transmission system, and that that it has failed to do so, PG&E violated 49 C.F.R. § 192.619 by operating 63 pipe segments at pressures greater than allowed for the current class location.

8. PG&E's definition of the term "segment" for classification and reporting purposes should be used to identify violations of federal and state statutes and regulations.

9. It is not reasonable to consider violations of multiple statutory requirements as a single process, as that would prevent the Commission and other regulatory agencies from identifying specific areas where it has failed to comply with regulations.

10. Because PG&E uses reconditioned pipe in its pipeline system, it is unreasonable to equate installation date as manufacture date for purposes of establishing assumed SMYS values.

11. Determining MAOP through engineering-based assumptions cannot be accomplished without some information regarding the physical specifications of the pipeline segment.

12. It would be a violation of 49 C.F.R. § 192.107 to assume a SMYS value above 24,000 psi unless it is supported by documents containing pipeline specifications or tensile test results.

13. Since PG&E is responsible for creating and maintaining pipeline design, maintenance, operation and testing documents, it would be reasonable to draw a negative inference that PG&E has violated 49 C.F.R. § 192.107 if it has used an assumed value of more than 24,000 psi without the required documents.

14. It would be reasonable to draw a negative inference against PG&E concerning its use of assumed SMYS values above 24,000 psi for the 133 segments that moved to a higher class designation.

15. The requirement for “traceable, verifiable and complete records” is not a new requirement.

16. PG&E violated 49 C.F.R. § 192.107 by using an assumed SMYS value above 24,000 psi for 133 segments of pipe that moved to a higher class designation when those segments did not have sufficient known pipe attributes to support an assumed value over 24,000 psi.

17. Pub. Util. Code § 451 imposes a separate and distinct obligation on pipeline operators to operate their pipelines safely.

18. By operating 63 pipe segments at pressures greater than allowed for the current class designation and 133 segments with an assumed SMYS value above

24,000 psi, PG&E subjected pipelines to higher stresses and lower safety margins than allowed by federal and state safety regulations. PG&E's operation of these pipeline segments at excessive MAOPs constitutes unsafe operations and is a violation of Pub. Util. Code § 451.

19. All violations found in this decision should be considered continuing violations.

20. The termination date of the violations should be January 17, 2012, as by that date, PG&E had cured many of the violations identified in the Class Location Report and had set in place actions to be taken to address those violations yet to be cured.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company has violated Pub. Util. Code § 451 and regulations set forth in Title 49 of the Code of Federal Regulations § 192 for failing to maintain and operate all segments of its natural gas transmission pipeline system at the proper class location. The fines and remedies to be imposed as a result of the violations found in this decision shall be considered in coordination with Investigations 11-02-016 and 12-01-007.

2. Investigation 11-11-009 remains open.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A

***** PARTIES *****

Traci Bone
Legal Division
RM. 5027
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2048
tbo@cpuc.ca.gov
For: ORA

Connie Jackson
City Manager
CITY OF SAN BRUNO
567 EL CAMINO REAL
SAN BRUNO CA 94066-4299
(650) 616-7056
cjackson@ci.sanbruno.ca.us
For: City of San Bruno

Harvey Y. Morris
Legal Division
RM. 5036
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1086
hym@cpuc.ca.gov
For: SED

Theresa L. Mueller
Chief Energy & Telecom. Deputy
OFFICE OF THE CITY ATTY. DENNIS HERRERA
CITY HALL
1 DR. CARLTON B. GOODLETT PL., RM. 234
SAN FRANCISCO CA 94102
(415) 554-4640
theresa.mueller@sfgov.org
For: City and County of San Francisco

Joseph Malkin
ORRICK, HERRINGTON & SUTCLIFFE LLP
THE ORRICK BUILDING
405 HOWARD STREET
SAN FRANCISCO CA 94105
(415) 773-5505
JMalkin@orrick.com
For: Pacific Gas & Electric Company

Thomas J. Long
Legal Dir.
THE UTILITY REFORM NETWORK
785 MARKET ST., STE. 1400
SAN FRANCISCO CA 94103
(415) 929-8876 X303
TLong@turn.org
For: The Utility Reform Network

***** STATE EMPLOYEE *****

Niki Bawa
Executive Division
RM. 5038
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2049
nb2@cpuc.ca.gov

Kenneth Bruno
Safety and Enforcement Division
AREA 2-D
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-5265
kab@cpuc.ca.gov

Maryam Ebke
CPUC - ALJ DIV.
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 703-5112
meb@cpuc.ca.gov

Christine Hammond
CPUC - LEGAL
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 703-2682
Christine.hammond@cpuc.ca.gov

Michael Minkus
Legislative Liaison
CPUC - OFFICE OF GOV'T AFFAIRS
EMAIL ONLY
EMAIL ONLY CA 00000
(916) 905-7364
michael.minkus@cpuc.ca.gov

Elizabeth Dorman
Legal Division
RM. 4300
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-5884
edd@cpuc.ca.gov

Julie A. Fitch
Executive Division
RM. 5214
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-3134
jf2@cpuc.ca.gov

Travis Foss
Legal Division
RM. 5026
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1998
tff@cpuc.ca.gov
For: SED

Sepideh Khosrowjah
Executive Division
RM. 5201
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1190
skh@cpuc.ca.gov

Michele Kito
Energy Division
AREA 4-A
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2197
mk1@cpuc.ca.gov

Andrew Kotch
Executive Division
RM. 5301
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1072
ako@cpuc.ca.gov

Kelly C. Lee
Office of Ratepayer Advocates
RM. 4108
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1795
kcl@cpuc.ca.gov

Richard A. Myers
Energy Division
AREA 4-A
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1228
ram@cpuc.ca.gov

David Peck
Office of Ratepayer Advocates
RM. 4108
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1213
dbp@cpuc.ca.gov

Amy C. Yip-Kikugawa
Administrative Law Judge Division
RM. 5024
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-5256
ayk@cpuc.ca.gov

***** INFORMATION ONLY *****

Jamie L. Mauldin
ADAMS BROADWELL JOSEPH & CARDOZO, PC
EMAIL ONLY
EMAIL ONLY CA 00000
(650) 589-1660
jmauldin@adamsbroadwell.com

Marc D. Joseph
Attorney
ADAMS BROADWELL JOSEPH & CORDOZO
601 GATEWAY BLVD., STE. 1000
SOUTH SAN FRANCISCO CA 94080
(650) 589-1660
mdjoseph@adamsbroadwell.com

Rachael Koss
ADAMS BROADWELL JOSEPH & CORDOZO
601 GATEWAY BLVD., STE. 1000
SOUTH SAN FRANCISCO CA 94080
(650) 589-1660
rkoss@adamsbroadwell.com

Randall Li
Analyst
AEGEAN OIL USA, LLC
20 SIGNAL RD
STAMFORD CT 06902-7909
(664) 722-2007
randall@nexusamllc.com

John McIntyre
ALCANTAR & KAHL
33 NEW MONTGOMERY STREET, SUITE 1850
SAN FRANCISCO CA 94105
(415) 421-4143 X-109
jfm@a-klaw.com

Nora Sheriff
ALCANTAR & KAHL LLP
33 NEW MONTGOMERY ST., STE. 1850
SAN FRANCISCO CA 94105
(415) 421-4143
nes@a-klaw.com

Mike Cade
ALCANTAR & KAHL, LLP
EMAIL ONLY
EMAIL ONLY OR 00000
(503) 402-8711
wmc@a-klaw.com

Mark Chediak
Energy Reporter
BLOOMBERG NEWS
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 617-7233
mchediak@bloomberg.net

Patrick S. Berdge
Legal Division
RM. 4300
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1519
psb@cpuc.ca.gov

Andrew Greenberg
CADWALADER WICKERSHAM & TAFT LLP
ONE WORLD FINANCIAL CENTER
NEW YORK NY 10281
(212) 504-6077
andrew.greenberg@cwt.com

Kenneth W. Irvin
CADWALADER WICKERSHAM & TAFT LLP
700 SIXTH STREET, N.W.
WASHINGTON DC 20001
(202) 862-2315
ken.irvin@cwt.com

Terence T. Healey
CADWALADER WICKERSHAM & TAFT LLP
700 ISXTH ST., N.W.
WASHINGTON DC 20001
(202) 862-2335
terence.healey@cwt.com

Hillary Corrigan
CALIFORNIA ENERGY MARKETS
425 DIVISADERO ST. STE 303
SAN FRANCISCO CA 94117-2242
(415) 963-4439
cem@newsdata.com

Jack D'Angelo
CATAPULT CAPITAL MANAGEMENT LLC
666 5TH AVENUE, 9TH FLOOR
NEW YORK NY 10019
(212) 320-1059
jdangelo@catapult-llc.com

Melissa Kasnitz
Attorney
CENTER FOR ACCESSIBLE TECHNOLOGY
3075 ADELIN STREET, STE. 220
BERKELEY CA 94703
(510) 841-3224 X2019
service@cforat.org

Sophie Karp
CITIGROUP
388 GREENWICH ST.
NEW YORK NY 10013
(212) 816-3366
sophie.karp@citi.com

Austin M. Yang
Deputy City Attorney
CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF CITY ATTORNEY DENNIS J.HERRERA
1 DR. CARLTON B. GOODLETT PL, RM 234
SAN FRANCISCO CA 94102-4682
(415) 554-6761
Austin.yang@sfgov.org

Grant Kolling
Senior Assistant City Attorney
CITY OF PALO ALTO
PO BOX 10250
PALO ALTO CA 94303
(650) 329-2171
grant.kolling@cityofpaloalto.org

Jessica Mullan
Senior Deputy City Attorney
CITY OF PALO ALTO
PO BOX 10250
PALO ALTO CA 94303
(650) 329-2577
jessica.mullan@cityofpaloalto.org

Kevin Prior, Cfa
Research Associate
CRT CAPITAL GROUP LLC
262 HARBOR DRIVE
STAMFORD CT 06902
(203) 569-4375
KPrior@crtllc.com

Sarah Grossman-Swenson
DAVIS COWELL & BOWE, LLP
595 MARKET STREET, STE. 1400
SAN FRANCISCO CA 94105
(415) 497-7200
sgs@dcbsf.com

Ann L. Trowbridge
DAY CARTER & MURPHY LLP
3620 AMERICAN RIVER DRIVE, SUITE 205
SACRAMENTO CA 95864
(916) 570-2500 X 103
atrowbridge@daycartermurphy.com

Scott Senchak
DECADE CAPITAL
666 - 5TH AVENUE
NEW YORK NY 10103
(212) 320-1933
scott.senchak@decade-llc.com

Jonathan Arnold
DEUTSCHE BANK
60 WALL STREET
NEW YORK NY 10005
(212) 250-3182
jonathan.arnold@db.com

Lauren Duke
DEUTSCHE BANK SECURITIES INC.
60 WALL STREET
NEW YORK NY 10005
(212) 250-8204
lauren.duke@db.com

Adam Miller
DRW
540 W. MADISON , STE. 2600
CHICAGO IL 60661
(312) 542-3478
filings@drw.com

Andrew B. Brown
Attorney At Law
ELLISON SCHNEIDER & HARRIS, LLP
2600 CAPITAL AVENUE, SUITE 400
SACRAMENTO CA 95816-5905
(916) 447-2166
abb@eslawfirm.com

Dave A. Weber
GILL RANCH STORAGE
220 NW 2ND AVENUE
PORTLAND OR 97209
(503) 220-2405
dweber.nwngs@nwnatural.com

Brian Cragg
Attorney
GOODIN, MACBRIDE, SQUERI, DAY & LAMPREY
505 SANSOME STREET, SUITE 900
SAN FRANCISCO CA 94111
(415) 392-7900
BCragg@GoodinMacbride.com

Megan Somogyi
Attorney
GOODIN, MACBRIDE, SQUERI, DAY & LAMPREY
505 SANSOME ST., STE. 900
SAN FRANCISCO CA 94111
(415) 392-7900
MSomogyi@GoodinMacBride.com

Norman A. Pedersen, Esq.
Attorney At Law
HANNA AND MORTON, LLP
444 SOUTH FLOWER STREET, STE. 1500
LOS ANGELES CA 90071-2916
(213) 430-2510
npedersen@hanmor.com

Charlyn A. Hook
Legal Division
RM. 5131
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-3050
chh@cpuc.ca.gov

Christopher Turnure
J.P. MORGAN CHASE SECURITIES
383 MADISON AVENUE, FLOOR 34
NEW YORK NY 10179
(212) 622-5696
Christopher.Turnure@JPMorgan.com

Anthony Crowdell
Equity Research - Electric Utilities
JEFFERIES LLC
520 MADISON AVENUE, 13TH FL.
NEW YORK NY 10022
(212) 284-2563
acrowdell@jefferies.com

Eric Selmon
JEMZAR CORP.
EMAIL ONLY
EMAIL ONLY IS 000 000
ISRAEL
(646) 843-7200
ESelmon@Jemzar.com

C. Susie Berlin
LAW OFFICES OF SUSIE BERLIN
1346 THE ALAMEDA, STE. 7, NO. 141
SAN JOSE CA 95126
(408) 778-8478
berlin@susieberlinlaw.com
For: Northern California Generation Coalition (NCGC)

Brendan Naeve
LEVIN CAPITAL STRATEGIES
595 MADISON AVENUE, 17TH FLR
NEW YORK NY 10022
(212) 259-0841
bnaeve@levincap.com

Michael Goldenberg
LUMINUS MANAGEMENT
1700 BROADWAY, 38TH FLOOR
NEW YORK NY 10019
(212) 615-3427
mgoldenberg@luminusgmt.com

David Marcus
EMAIL ONLY
EMAIL ONLY CA 00000
(510) 528-0728
dmarcus2@sbcglobal.net

Britt K. Strottman
MEYERS NAVE
555 12TH STREET, STE. 1500
OAKLAND CA 94607
(510) 808-2083
bstrottman@meyersnave.com

Susan Griffin
Paralegal
MEYERS NAVE
555 12TH STREET, STE. 1500
OAKLAND CA 94607
(510) 808-2000
sgriffin@meyersnave.com

Emilie E. De La Motte
Attorney At Law
MEYERS NAVE RIBACK SILVER & WILSON
555 12TH STREET, STE. 1500
OAKLAND CA 94607
(510) 808-2000
edelamotte@meyersnave.com

Steven R. Meyers
Principal
MEYERS, NAVE, RIBACK, SILVER & WILSON
555 12TH STREET, STE. 1500
OAKLAND CA 94607
(510) 808-2000
smeyers@meyersnave.com
For: City of San Bruno

Gregory Reiss
MILLENNIUM MANAGEMENT LLC
666 FIFTH AVENUE, 8TH FLOOR
NEW YORK NY 10103
(212) 320-1036
Gregory.Reiss@mlp.com

James (Jim) Von Riesenmann
MIZUHO SECURITIES USA, INC.
320 PARK AVENUE, 12TH FLOOR
NEW YORK NY 10022
(212) 205-7857
James.vonRiesenmann@us.mizuho-sc.com

MRW & ASSOCIATES, LLC
EMAIL ONLY
EMAIL ONLY CA 00000
(510) 834-1999
mrw@mrwassoc.com

Ray Welch
Associate Director
NAVIGANT CONSULTING, INC.
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 399-2176
ray.welch@navigantconsulting.com

Jasmin Anes
PACIFIC GAS & ELECTRIC COMPANY
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 973-8225
jjav@pge.com

Laura Doll
PACIFIC GAS & ELECTRIC COMPANY
77 BEALE STREET, RM. 1075
SAN FRANCISCO CA 94105

Stephen Garber
Attorney
PACIFIC GAS & ELECTRIC COMPANY
77 BEALE STREET, RM. 3177
SAN FRANCISCO CA 94105
(415) 973-8003
slg0@pge.com

Alejandro Vallejo
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MC B30A
SAN FRANCISCO CA 94105
(415) 973-1611
axvu@pge.com

Case Coordination
PACIFIC GAS AND ELECTRIC COMPANY
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 973-2776
RegRelCPUCcases@pge.com

Jonathan Pendleton
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, B30A
SAN FRANCISCO CA 94105
(415) 973-2916
jlpc@pge.com

Karen Paull
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 703-2630
karenppaull@gmail.com

Henry W. Pielage, P.E.
Ratepayer Advocate
2860 GLEN CANYON ROAD
SANTA CRUZ CA 95060
henrypielage@comcast.net

Edward Heyn
POINTSTATE CAPITAL
40 WEST 57TH STREET, 25TH FL.
NEW YORK NY 10019
(212) 830-7061
ted@PointState.com

Mark Gall
SACRAMENTO MUNICIPAL UTILITY DISTRICT
PO BOX 15830
SACRAMENTO CA 95852-1830
(916) 732-5926
Mark.Gall@smud.org

William W. Westerfield Iii
Sr. Attorney - Off. Of Gen. Counsel
SACRAMENTO MUNICIPAL UTILITY DISTRICT
6201 S STREET, M.S. B402
SACRAMENTO CA 95817
(916) 732-6123
wwester@smud.org

Hugh Wynne
SANFORD C. BERNSTEIN & CO.
1345 AVENUE OF THE AMERICAS, 15TH FLR
NEW YORK NY 10105
(212) 823-2692
hugh.wynne@bernstein.com

Paul Schaafsma
Attorney At Law
521 WEST SUPERIOR STREET, UNIT 221
CHICAGO IL 60654
(312) 664-0906
paulschaafsma@yahoo.com

Chris King
SIEMENS SMART GRID SOLUTIONS
4000 E. THIRD AVE., STE. 400
FOSTER CITY CA 94404
(650) 227-7770 X-187
chris_king@siemens.com

Kevin Fallon
SIR CAPITAL MANAGEMENT
620 EIGHTH AVENUE, 22ND FLR.
NEW YORK NY 10018
(212) 993-7104
kfallon@sirfunds.com

Shirley Amrany
Regulatory Case Manage 1
SO. CAL. GAS COMPANY / SAN DIEGO GAS CO
555 WEST 5TH STREET, GT14-D6
LOS ANGELES CA 90013
(213) 244-4845
samrany@semprautilities.com

Angelica Morales
Attorney
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE / PO BOX 800
ROSEMEAD CA 91770
(626) 302-6160
angelica.morales@sce.com

Douglas Porter
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE./PO BOX 800
ROSEMEAD CA 91770
(626) 302-3964
douglas.porter@sce.com

Frank A. McNulty
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE. / PO BOX 800
ROSEMEAD CA 91770
(626) 302-1499
Francis.McNulty@sce.com

Deana Ng
SOUTHERN CALIFORNIA GAS COMPANY
555 W. FIFTH ST., GT14E7
LOS ANGELES CA 90013
dng@semprautilities.com

Jeff Salazar
SOUTHERN CALIFORNIA GAS COMPANY
555 W. FIFTH STREET, GT14D6
LOS ANGELES CA 90013
JLSalazar@SempraUtilities.com

Michael Franco
Regulatory Case Mgr
SOUTHERN CALIFORNIA GAS COMPANY
555 WEST FIFTH STREET, GT14D6
LOS ANGELES CA 90013-1011
(213) 244-5839
MFranco@SempraUtilities.com

Rasha Prince
Director, Regulatory Affairs
SOUTHERN CALIFORNIA GAS COMPANY
555 WEST 5TH STREET, GT14D6
LOS ANGELES CA 90013-1034
(213) 244-5141
RPrince@SempraUtilities.com

Sharon Tomkins
SOUTHERN CALIFORNIA GAS COMPANY
555 W. FIFTH ST., GT14E7
LOS ANGELES CA 90013
stomkins@semprautilities.com

Steven Hruby
SOUTHERN CALIFORNIA GAS COMPANY
555 W. FIFTH ST., GT14D6
LOS ANGELES CA 90013
SHruby@SempraUtilities.com

Catherine Mazzeo
Assistant General Counsel
SOUTHWEST GAS CORPORATION
5241 SPRING MOUNTAIN ROAD
LAS VEGAS NV 89150-0002
(702) 876-7250
catherine.mazzeo@swgas.com
For: Southwest Gas Corporation

Daniel D. Van Hoogstraten
Legal Admin Assistant
STINSON MORRISON HECKER LLP
EMAIL ONLY
EMAIL ONLY DC 00000-0000
(202) 572-9919
dvanhoogstraten@stinson.com

Kelly Daly
STINSON MORRISON HECKER LLP
1775 PENNSYLVANIA AVE., NW, STE. 800
WASHINGTON DC 20006-4605
(202) 728-3011
kdaly@stinson.com
For: Sacramento Municipal Utility District (SMUD)

Matt Fallon
TALON CAPITAL
1001 FARMINGTON AVENUE
WEST HARTFORD CT 06107
(860) 920-1000
mfallon@taloncap.com

Garance Burke
Reporter
THE ASSOCIATED PRESS
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 495-1708
gburke@ap.org

Marcel Hawiger
Staff Attorney
THE UTILITY REFORM NETWORK
785 MARKET ST., STE. 1400
SAN FRANCISCO CA 94103
(415) 929-8876 X311
marcel@turn.org

Nina Suetake
Staff Attorney
THE UTILITY REFORM NETWORK
EMAIL ONLY
EMAIL ONLY CA 00000
(415) 929-8876 X 308
nsuetake@turn.org

Alex Kania
WOLFE RESEARCH
420 LEXINGTON AVENUE, SUITE 648
NEW YORK NY 10170
(646) 582-9244
akania@wolferesearch.com

David Paz
WOLFE RESEARCH
420 LEXINGTON AVE., STE. 648
NEW YORK NY 10170
(646) 582-9242
dpaz@wolferesearch.com

Steve Fleishman
WOLFE RESEARCH
420 LEXINGTON AVENUE, SUITE 648
NEW YORK NY 10170
(646) 582-9241
sfleishman@wolferesearch.com

(END OF APPENDIX A)