BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company Proposing Cost of Service and Rates for Gas Transmission and Storage Services for the Period 2015 - 2017 (U39G).	Application 13-12-012 (Filed December 19, 2013)
And Related Matter.	Investigation 14-06-016 (Filed June 26, 2014)

MOTION OF THE OFFICE OF RATEPAYER ADVOCATES FOR AN ORDER TO SHOW CAUSE WHY PACIFIC GAS AND ELECTRIC COMPANY SHOULD NOT BE SANCTIONED FOR INTENTIONAL MISREPRESENTATIONS REGARDING ITS COMPLIANCE WITH GAS SAFETY REGULATIONS AND FOR FAILURE TO HAVE IN PLACE A COMPREHENSIVE GAS PIPELINE "TEST AND REPLACE" PLAN AS REQUIRED BY CALIFORNIA PUBLIC UTLITIES CODE § 958

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I. EXECUTIVE SUMMARY

Pursuant to Rule 11.1 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure (Rules), the Office of Ratepayer Advocates (ORA) hereby moves for an Order to Show Cause (OSC) why Pacific Gas and Electric Company (PG&E) should not be sanctioned $163 million for intentional misrepresentations regarding its compliance with gas safety regulations, and for failure to have a comprehensive gas pipeline "test and replace" plan in place as required by California Public Utilities Code § 958.

On November 5, 2015, the Commission's Safety and Enforcement Division (SED) issued a directive to PG&E to correct "errors" in Annual Reports PG&E has submitted to both this Commission and the Pipeline and Hazardous Materials Safety Administration (PHMSA) (SED Directive).[1] As the SED Directive explains, PG&E represents in its Annual Reports[2] that it is calculating the maximum allowable operating pressure (MAOP) for its entire system under just one section of the federal regulations, 49 Code of Regulations (CFR) § 192.619(a). However, as the SED Directive observed, PG&E cannot calculate MAOP under § 192.619(a) unless it has each kind of record required by the regulations in a traceable, verifiable and complete format. Because PG&E does not

[1] The SED directive is Attachment A hereto. The SED Directive identified PG&E's Gas Transmission & Storage (GT&S) Safety Report No. 2015-01 submitted to the service list in this proceeding on September 1, 2015 (Safety Report) as including one of the Annual Reports containing "errors." Because PG&E's Safety Report is not readily available on the internet, or filed in the docket of this proceeding, it is Attachment B hereto. The misrepresentations referred to here are found in Appendix C to that Safety Report, at page C-9, which is page 9 of PG&E's 2014 Annual Report, also known as PHMSA Form 7100.2-1. For convenience of comparison, page 9 from PG&E's 2012 and 2013 Annual Reports (PHMSA Form 7100.2-1) are Attachments C and D hereto. PHMSA did not require this information in Part Q prior to the 2012 Annual Report. *See, e.g.,* the PHMSA directive available at https://www.federalregister.gov/articles/2012/05/07/2012-10866/pipeline-safety-verification-of-records ("On January 3, 2012, President Obama signed the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (Act), which requires PHMSA to direct each owner or operator of a gas transmission pipeline and associated facilities to provide verification that their records accurately reflect MAOP of their pipelines within Class 3 and Class 4 locations and in Class 1 and Class 2 locations in High Consequence Areas (HCAs). Beginning in 2013 [for the 2012 Annual Report], PHMSA intends to require operators to submit data regarding verification of records in these class locations via the Gas Transmission and Gathering Systems Annual Report.").

[2] The "Annual Reports" referred to in the SED Directive are PHMSA Form 7100.2-1, which are included in PG&E's semi-annual GT&S "Safety Report" submissions to this Commission.

have reliable pressure test records for approximately 1,000 miles of its system,[3] it is, as the SED Directive observes, "not possible" for PG&E to be calculating the MAOP for all of its lines under subsection (a) of the federal regulations. The SED Directive also observes that the Annual Reports "fail to identify where records are missing, as is required on PHMSA Form 7100.2-1." The SED Directive orders PG&E to correct these "errors," and any others, no later than December 31, 2015.

The "errors" identified in the SED Directive are not an isolated incident, nor are they unintentional. This Motion shows that PG&E has intentionally provided confusing, contradictory, and incomplete explanations of how it is applying the federal MAOP regulations in order to handicap the regulatory process and turn attention away from its inability to comply with those regulations.[4] Specifically, this Motion identifies multiple instances where PG&E has misrepresented how it is calculating the MAOP of its gas pipelines and/or how the MAOP regulations are applied, including misrepresentations in three years of Annual Reports, in testimony in this and other proceedings, in written communications to this Commission, and in Commission workshops.

This Motion also shows that PG&E has ignored state law requirements to have a comprehensive pressure testing and replacement plan in place for those segments of its gas transmission system that are missing records.[5] Together, these violations show how PG&E has made it nearly impossible for this Commission to determine – more than five years after the San Bruno explosion – whether PG&E's currently established MAOPs are

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[3] Specifically, PG&E's sworn testimony in the current GT&S proceeding explains:

> …[O]nce PG&E completes the hydrostatic testing in its PSEP program at the end of 2014, PG&E estimates there will be 1,500 miles of transmission pipeline operating at greater than 20 percent of SMYS that will still need to be addressed. About 1,000 miles either has no strength test record, or the strength test record is missing or does not meet PG&E's documentation requirements. The other approximately 500 miles has a valid test record that met code at the time of test, but the test does not meet current requirements."

Ex. PGE-1, page 4A-33, lines 7-11.

[4] ORA is not the first entity to make this observation. *See* Footnote 50 below.

[5] *See* California Public Utilities Code § 958.

consistent with the Minimum Federal Safety Standards,[6] or to determine whether PG&E is pursuing the appropriate work priorities on its gas transmission system.[7]

PG&E's chronic misrepresentations and MAOP violations raise larger issues that impact public safety, both now and for the future. Among other things, PG&E's misrepresentations regarding its MAOP calculations may be masking safety threats that will materialize in the shorter term. For example, MAOP calculations based on assumptions more aggressive than permitted under the federal regulations pose imminent safety threats and may lead PG&E to de-prioritize testing or replacement of segments relying upon those assumptions.

PG&E may seek to minimize the effects of its noncompliance. However, the Minimum Federal Safety Standards exist for a reason; Congress and federal regulators have determined that they are necessary to promote safety, and violations of those standards ultimately put public safety at risk. The same concern for public safety drove the California Legislature and Governor to enact Public Utilities Code Sections 958 and 958.5, requiring PG&E to have a "comprehensive" test and replace plan in place, and requiring SED to ensure that PG&E's test and replace priorities are appropriate and to bring problems to the Commission's "immediate attention."

PG&E should be required to comply with the letter of all of these laws and regulations; there can be no public safety when a gas operator picks and chooses for itself the regulations it believes are important, and those which it can ignore – as PG&E has done here. For all of these reasons, as described further below, PG&E's misrepresentations must be taken seriously by this Commission. PG&E should be sanctioned to the fullest extent available, and the Commission should ensure that the audits ordered in the San Bruno Fines and Remedies Decision[8] identify the full extent of PG&E's non-compliance with federal MAOP regulations. Only once the Commission understands the full extent of PG&E's compliance (or lack thereof) with state and federal

[6] The Federal Minimum Safety Standards are codified at 49 CFR Part 192.

[7] *See* California Public Utilities Code § 958.5.

[8] D.15-04-024, Ordering Paragraphs 18 and 19.

MAOP regulations can the Commission make a reasoned decision regarding the pressure testing and replacement priorities that PG&E is proposing in this proceeding.

II. LEGAL BACKGROUND REGARDING CALCULATION OF MAOP

The Commission is certified, pursuant to federal law, to enforce the Minimum Federal Safety Standards and other federal gas safety regulations.[9] As a result of this certification, it is the Commission's duty, not PHMSA's, to ensure that California natural gas pipeline operators comply with those federal regulations. As part of enforcing those regulations, the Commission must enforce standards consistent with *or more stringent than* the safety standards in the federal safety regulations.[10] *Federal law prohibits the Commission from adopting standards lower than the minimum federal standards*.[11] Where a gas operator cannot comply with the Minimum Federal Safety Standards, it is required to seek a waiver pursuant to 49 U.S.C. § 60118.[12]

MAOP is defined in the Minimum Federal Safety Standards as "the maximum pressure at which a pipeline or segment of a pipeline may be operated under this part [192]."[13] A gas transmission operator's MAOP calculations must be performed consistent with federal regulations, with the primary regulation for the calculation of MAOP for gas transmission lines set forth at 49 CFR § 192.619 – "Maximum allowable operating pressure: Steel or plastic pipelines." MAOP is typically calculated pursuant to subsection (a) or (c) of that regulation.

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[9] *See, e.g.*, 49 USC § 60105(a). This is reflected in the Commission's General Order 112, and there is a state law enforcement obligation as well in Public Utilities Code § 2101.

[10] 49 USC § 60104(c): "Preemption. A State authority that has submitted a current certification under section 60105(a) of this title may adopt additional or more stringent safety standards for intrastate pipeline facilities and intrastate pipeline transportation only if those standards are compatible with the minimum standards prescribed under this chapter. …" See also, 49 USC 60121(c): "State Violations As Violations Of This Chapter. In this section, a violation of a safety standard or practice of a State is deemed to be a violation of this chapter or a regulation prescribed or order issued under this chapter only to the extent the standard or practice is not more stringent than a comparable minimum safety standard prescribed under this chapter.

[11] *Id.*

[12] The waiver process is also codified in the federal regulations as a "Special Permit" at 49 CFR § 190.341.

[13] 49 CFR § 192.3.

Subsection (a) – what ORA refers to here as "the four part test" – requires that MAOP be set at the *lowest* of four values: (1) the design pressure of the weakest element in the segment; (2) the pressure obtained by dividing the post-construction pressure test by a factor tied to the segment's class location; (3) the highest actual operating pressure to which the segment was subjected between July 1, 1965 and June 30, 1970; or (4) the pressure determined by the operator to be the maximum safe pressure after considering the history of the segment, particularly known corrosion and the actual operating pressure.[14] While the regulation does not explicitly require a valid pressure test record to calculate MAOP under this subsection, it is implicit that actual test results be available in the requirement that the MAOP be set at the lesser of four values, one being the results of a pressure test adjusted for class location. PHMSA representatives made the need for a pressure test record to calculate MAOP under subsection (a) clear at the SED-sponsored MAOP Workshops held on May 11 and 12, 2015 at the Commission's San Francisco offices.[15]

Subsection (c) – also known as the "Grandfather Clause" – may only be used for segments installed before July 1, 1970, and permits them to be operated at historic

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[14] PG&E Letter, p. 2. See also 49 CFR § 192.619(a).

[15] The workshops were held on May 11 and 12, 2015, in R.11-02-019 to provide instruction on the calculation of MAOP under the federal regulations. PHMSA representatives participated on both days, making presentations and asking and answering questions. The SED Directive (Attachment A) confirms that PHMSA's attorney clearly stated that records are required to operate under 49 C.F.R. § 192.619(a). *See also,* PHMSA January 23, 2015 Letter of Interpretation, p. 3 (Attachment G hereto):

> If an operator uses§ 192.619(a) to determine the pipeline segment MAOP, the operator must have records to substantiate the calculations required in paragraphs (a)(1)- (a)(4), including the properties of pipe and pipeline components. Paragraph (a)(l) requires that the pipeline design pressure be determined in accordance with Subparts C and D, including§ 192.105 which states that the pipeline design pressure must be based upon the current class location design factor and the *actual pipe properties* which include yield strength (grade), wall thickness, longitudinal joint factor (seam type), maximum operating temperature and pipe' diameter. If the pipeline segment contains pipeline components such as bends, fittings, flanges or valves, the operator would need to determine the design pressure of these pipeline components in accordance with applicable sections of Subparts C and D of Part 192.

Emphases added. See also, PHMSA presentation entitled "Calculating MAOP for pre-1970 pipe" slide 28, "Examples of a Probable Violation" (Attachment H hereto) and PHMSA presentation entitled "Calculating MAOP When There Are Insufficient Records To Comply With Federal Regulations - What Is The Process For Moving Towards Compliance?" (Attachment I hereto).

operating pressures provided that the segment is "found to be in satisfactory condition, considering its operating and maintenance history." The regulation is not explicit regarding the documentation required to establish the condition of the segment for purposes of compliance with this regulation. However, at a minimum, the operator must have a valid record establishing that the line operated at the historic MAOP between July 1, 1965 and June 30, 1970.[16] Further, in a Letter of Interpretation to ORA PHMSA described the types of records required to operate under the Grandfather Clause, and confirmed that pipes experiencing a change in class location may not take advantage of the Grandfather Clause:

> If an operator uses the Grandfather Clause in § 192.619(c) to establish the MAOP, the operator must have documentation of the pipeline segment's condition and operating and maintenance history, including historical pressure records for the maximum operating pressure to which the entire pipeline segment was subjected during the five years prior to July 1, 1970. The Grandfather Clause in § 192.619(c) cannot be used to determine the MAOP after a change in class location.[17]

In the wake of the San Bruno explosion, upon learning that PG&E was claiming to operate a significant portion of its gas transmission system under the Grandfather Clause, and that in many instances it lacked reliable records to support those operations, the Commission issued D.11-06-017 ordering all California gas operators, including PG&E,

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[16] *See* 49 CFR § 192.619(c) and PHMSA January 23, 2015 Letter of Interpretation, p. 3 (Attachment G hereto) ("If an operator uses the Grandfather Clause in§ 192.619(c) to establish the MAOP, the operator must have documentation of the pipeline segment's condition and operating and maintenance history, including historical pressure records for the maximum operating pressure to which the entire pipeline segment was subjected during the five years prior to July 1, 1970."). *See also,* PHMSA advisory bulletin available at https://www.federalregister.gov/articles/2012/05/07/2012-10866/pipeline-safety-verification-of-records; SED February 13, 2015 memo to Commissioners, Attachment J hereto ("PG&E should provide evidence of a historic operating pressure record from the applicable 1965-1970 era as its basis while operating Line 147 under 49 CFR § 192.619(c) at 400 psig."); PG&E February 2, 2015 Letter, Attachment F hereto, p. 3 (Regarding Line 147: "PG&E did not possess the records required to establish MAOP under § 192.619(a). PG&E therefore followed § 192.619(c) in accordance with the federal regulations and determined Line 147's MAOP at the historic operating maximum pressure of 400 psig, *as established by operating records*." (emphases added)); D.11-06-017, p. 2 ("The NTSB further explained that accurate pipeline records are critical to establish a valid Maximum Allowable Operating Pressure (MAOP) up to which the pipeline can normally be safely operated."); and SED Directive, p. 2 ("…the operator can operate a pipeline segment installed before July 1, 1970 under 49 CFR § 192.619(c) at the highest actual operating pressure to which the segment was subjected between 1965 and 1970 if it can produce a complete operating pressure record showing that actual operating pressure during that time.").

[17] PHMSA January 23, 2015 Letter of Interpretation, p. 3 (Attachment G hereto).

to pressure test or replace *every* segment lacking valid pressure test records, including those PG&E claimed to be operating under the Grandfather Clause. In making this determination, D.11-06-017 relied on NTSB findings regarding the importance of records: "The NTSB further explained that accurate pipeline records are critical to establish a valid Maximum Allowable Operating Pressure (MAOP) up to which the pipeline can normally be safely operated."[18]

As the Minimum Federal Safety Standards had exempted segments operating under the Grandfather Clause from pressure test requirements, D.11-06-017 properly and *legally* imposed a more stringent standard for compliance with the Grandfather Clause than that required by the federal regulations – it required those pipes to be pressure tested or replaced. However, notable here, and contrary to recent PG&E assertions in this proceeding,[19] D.11-06-017 did not *eliminate* PG&E's ability to rely on the Grandfather Clause – it only imposed a more stringent requirement for reliance on that section by eliminating the pressure test exemption provided under the federal regulations.

PG&E's own attorney testified to this interpretation of what the Commission ordered in D.11-06-017 in the Line 147 proceedings. He did not argue that PG&E could only establish MAOP pursuant to § 619(a) – the four part test. Rather, he explicitly stated that the Commission *did not* intend that PG&E could only calculate MAOP pursuant to 49 CFR § 192.619(a):

> The Commission could have in that decision but *did not say* that we're changing the rules. We're not only saying you can't establish -- rely solely on the historic operating pressure, but you can't use that at all. You have to go back and apply 619(a) as if there were a brand new pipeline.[20]

Recognizing that gas operators would not be able to immediately comply with the new test or replace requirements, D.11-06-017 permitted gas operators to, among other

[18] *See, e.g.,* D.11-06-017, p. 2.

[19] A.13-12-012, 16 RT 1602-1604 (PG&E/Singh), quoted in Section III.A herein.

[20] R.11-02-019, 18 RT 2727 (Malkin/PG&E) (*emphases added*).

things, rely upon certain engineering assumptions during the interim period while they were pursuing compliance with the new test or replace requirement.[21]

This authorization to use engineering assumptions has led to further PG&E misinterpretations of the regulations. In addition to misinterpreting what is required to calculate MAOP under 49 CFR § 192.619 (a) (the four part test) and (c) (the Grandfather Clause), PG&E has conflated the authorization to use engineering judgment in lieu of missing or incomplete records to apply *wherever it is missing records*, and not just for those segments which have been Grandfathered.[22] Thus, it has most recently represented to this Commission that it is only calculating MAOP pursuant to subsection (a), and that it is relying upon engineering judgment where it is missing records, consistent with the authorizations provided in D.11-06-017 and Public Utilities Code § 958.[23]

As PG&E well knows, less stringent standards are preempted by federal law, even if only in effect for an "interim" period.[24] Thus, while it is true that Commission decisions and state law permit gas operators to rely on engineering assumptions where records are missing,[25] to avoid preemption, those decisions and laws must be read to

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[21] D.11-06-017, p. 30, Ordering Paragraph 1 ("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 ambiguities arise, the assumption allowing the greatest safety margin must be adopted. The calculated values must be used for interim pressure reductions and to prioritize segments for subsequent pressure testing.").

[22] *See, e.g.,* PG&E letter from Sumeet Singh to ORA Acting Director Joe Como, transmitted via email on February 2, 2015, Attachment F hereto (without attachments) ("PG&E February 2, 2015 Letter"), p. 4 ("…[A]s an interim measure and to help prioritize the testing and replacement schedule, the Commission ordered PG&E to complete its MAOP determination based on calculations using engineering-based conservative assumptions for pipeline components where complete strength test records were not available. The Commission stated: "PG&E explained that it intends to use the lower of the calculated MAOP or historical operating pressure. ***We approve using the calculated MAOP to lower operating pressure as an interim measure pending replacement or testing***." (*emphases in original*)).

[23] *Id. See also,* A.13-12-012, 16 RT 1602-1604 (PG&E/Singh) and PG&E Data Response to ORA dated June 14, 2015, Response 6452.03 (Attachment L hereto).

[24] *See* Footnote 10 above. Further, given that PG&E has testified in this proceeding that its testing and replacement program will not be concluded until approximately 2023-2026, PG&E's reliance on "engineering-based assumptions" pursuant to Commission decision or state law can hardly be characterized as an "interim" solution. *See* PG&E Opening Brief, A.13-12-012, April 29, 2015, p. 7-24.

[25] Public Utilities Code § 958(b) provides:

apply *only* where an operator is in the midst of efforts to comply with the new, more stringent state-imposed requirement in D.11-06-017 and Public Utilities Code § 958 to pressure test or replace *Grandfathered* segments. Such a reading of D.11-06-017 and the statute is consistent with rules of statutory construction, which require, where possible, to construe a statute to avoid preemption. Such a reading of D.11-06-017 and state law permits gas operators to take advantage of the federal regulations which allow Grandfathering, until such time as they can meet the state's more stringent test or replace standard for compliance with the Grandfather Clause.

However, where an operator is missing records required to calculate MAOP consistent with federal regulations – such as missing a valid pressure test record to calculate MAOP under Subsection (a) or missing a 1965-1970 operating pressure record to calculate MAOP under § 619(c) – it may *not* rely upon engineering assumptions for an "interim" period. It is *required* to seek a waiver pursuant to 49 U.S.C. § 60118. It may seek a waiver from the Secretary of the Department of Transportation (DOT Secretary), or this Commission may grant a waiver provided it gives the DOT Secretary at least 60 days' notice before the waiver's effective date, with opportunity to object.[26]

Thus, when read in harmony with the federal scheme, nothing in D.11-06-017 or Public Utilities Code § 958 permits an operator to make engineering assumptions when certain key records are missing; nor do they obviate the need for a waiver under federal law.[27]

Engineering-based assumptions may be used to determine maximum allowable operating pressure in the absence of complete records, but only as an interim measure until such time as all the lines have been tested or replaced, in order to allow the gas system to continue to operate. D.11-06-017, pp. 1-2 provides:

> In the interim, PG&E should continue to work on its determination of Maximum Allowable Operating Pressure through pipeline features analysis and should use the result of that analysis to impose further pressure reductions as necessary pending replacement or testing. PG&E may use engineering-based assumptions for this analysis where required due to missing records.

[26] 49 U.S.C. § 60118(c) and (d).

[27] *See also* PHMSA presentation entitled "Calculating MAOP When There Are Insufficient Records To Comply With Federal Regulations - What Is The Process For Moving Towards Compliance?," Attachment I hereto, which clearly identifies the need for a waiver when an operator cannot comply with

The waiver process, which PG&E has thus far avoided through its misrepresentations, is not a meaningless ministerial act. Rather, it plays a critical role in the federal compliance process. Among other things, the waiver process requires specific and transparent identification of non-compliance, permits both state and federal regulators to confirm that the utility is taking appropriate safety steps in the interim, and provides a transparent mechanism to track the utility's progress toward compliance. All of these elements are missing from PG&E's current compliance scheme.

III. PG&E MISREPRESENTATIONS[28]

A. What PG&E Has Said About Calculation of MAOPs

In November 2013, in the wake of PG&E misrepresentations about the proper operating pressure of Line 147, the Commission held the Line 147 pressure restoration proceedings in its Gas Safety Rulemaking, R.11-02-019. In those proceedings, PG&E explained that while it proposed a 330 psig operating pressure for Line 147, it could "legally" operate the line at 400 psig.[29] Confused by this PG&E claim, PG&E's refusal to explain the legal basis for this claim, and PG&E's assertion that § 619(a) of the federal regulations could not be applied to pre-1970 lines because it was not "retroactive,"[30] ORA sought PHMSA guidance on how the regulations applied.[31] On January 23, 2015,

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the regulation, and provides examples of waivers provided by other states, consistent with the federal requirements,

[28] The following discussion identifies the most obvious PG&E misrepresentations made regarding its MAOP calculations. It is *not* intended to be a complete listing.

[29] PG&E's witnesses repeatedly stated that PG&E could legally request an MAOP of 400 psig for Line 147. See R.11-02-019, 18 RT 2837: 1-7; 2839: 18-20; 2841: 8-13; 2861:1-5 (Johnson/PG&E).

[30] See R.11-02-019, 18 RT 2726-2729: 22-15 (Malkin/PG&E). *See also* SED February 13, 2015 memo, p. 2 ("PG&E incorrectly states that 49 CFR § 192.619(a) is only forward looking as Subpart L – Operations is retroactive."); *see also* 49 CFR § 192.619(a)(3), which refers to pipes operating before adoption of the standards, and therefore contemplates establishment of the MAOP for these pipes pursuant to Subsection (a).

[31] PHMSA guidance was also required because the Commission's decisions authorizing PG&E to set the operating pressure of its lines have also failed to consider how or whether PG&E was complying with the federal code. *See* Footnotes 39 and 40 below.

PHMSA responded with a Letter of Interpretation.[32] In order to bring the import of PHMSA's determinations to the Commission's attention, ORA's Acting Director, Joseph Como, sent a letter to the Commissioners.[33]

In response to ORA's letter to the Commissioners, PG&E made an unanticipated about-face regarding its representations in the Line 147 proceedings.[34] Among other things, despite the fact that its attorney had clearly stated in the Line 147 proceedings that the Grandfather Clause was still available to calculate MAOPs,[35] and that other PG&E witnesses claimed that § 192.619(a) could not be applied to pre-1970 lines,[36] PG&E stated that it was establishing the MAOP for *all* of its pipeline segments pursuant to subsection (a) (the four part test):

> Indeed, PG&E's documents used to establish a pipeline's MAOP follow the requirements of § 192.619(a). **As part of every MAOP Validation Report, PG&E follows the requirements of § 192.619(a) and Commission's [sic] Orders**.[37]

In response to ORA's request that PG&E be required to provide records for segments where it relied upon the Grandfather Clause, PG&E stated for the second time in the same letter that it was relying upon § 619(a) and that it was in compliance with that regulation:

> Lastly, ORA argues that PG&E needs to produce records related to the Grandfather Clause or come into compliance with § 192.619(a). **As stated above, PG&E is in compliance with § 192.619(a).**[38]

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[32] A copy of the January 23, 2015 Regulatory Interpretation Letter (Interpretation 14-0005) is Attachment G hereto ("PHMSA LOI") and is also available on PHMSA's website at http://phmsa.dot.gov/vgn-ext-templating/v/index.jsp?vgnextoid=4bf8588a7ab1b410VgnVCM100000d2c97898RCRD&vgnextchannel=2b9b34d513f95410VgnVCM100000d2c97898RCRD&vgnextfmt=print

[33] The January 30, 2015 ORA letter to the Commissioners is Attachment K, hereto.

[34] ORA only learned shortly after issuance of the SED Directive that PG&E had made similar misrepresentations in its Annual Reports in both 2012 and 2013.

[35] R.11-02-019, 18 RT 2727 (Malkin/PG&E) (*emphases added*).

[36] *See* Footnote 30 above.

[37] PG&E February 2, 2015 Letter, p. 3, Attachment F hereto (*emphases added*).

[38] PG&E February 2, 2015 Letter, p. 5 (*emphases added*).

PG&E concluded its letter by chastising ORA: "ORA continues to misinterpret state and federal regulations related to MAOP, misunderstands PG&E's MAOP methodologies and has failed to raise its concerns via the proper regulatory channels."[39]

Admittedly, there is confusion regarding how the federal MAOP regulations apply; however, it has been caused by PG&E's refusal to provide straightforward answers to basic questions, its routinely changing misinterpretation of the regulations, and its heretofore successful efforts to avoid ORA requests that it demonstrate how it is complying with state and federal MAOP requirements.[40]

Because of the cost and safety issues raised by PG&E's assertion that it is calculating MAOP solely under subsection (a) of the federal regulations – and the evident impossibility of PG&E's compliance with subsection (a) given its missing records – ORA sought clarification of PG&E's position in this GT&S proceeding. Sumeet Singh, PG&E's Vice President of Asset and Risk Management affirmed on cross examination

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[39] PG&E February 2, 2015 Letter, p. 6. PG&E also made the following claim: "As the Commission has found on numerous occasions, PG&E's methodology for establishing the Maximum Allowable Operating Pressure (MAOP) of its pipelines is consistent with the Commission's Orders and federal regulations." PG&E Letter, p. 1. This statement is false. A review of the Commission's decisions setting the MAOPs for other PG&E gas lines confirm that the Commission has not previously considered whether or not PG&E's proposed MAOPs complied with Subpart L of the code, which govern how MAOP is established. *See, e.g.,* D.12-09-003, D.11-12-048, and D.11-10-010. See also D.11-09-006, pp. 4-6, 11-12, 17-18, which explains the showing PG&E must make to establish the restored pressure for a segment; see also D.13-12-042, pp. 2-3, which reiterates the showing PG&E must make pursuant to D.11-09-006. Neither of these lists make any reference to the relevant federal regulations which establish the rules for calculating the MAOP of a line, which are in subpart L of the code. There is one reference to subpart J of the code in item G(b) on page 18 of the D.11-09-006 list. However, subpart J does not address the establishment of MAOP. It addresses the requirements for performing a proper pressure test. Recognizing this shortcoming of the Commission's decision in the Line 147 proceeding, ORA sought rehearing on the Line 147 determinations in D.13-12-042 on the basis that the Commission had not, in fact, made any determination regarding whether PG&E's MAOP calculations for Line 147 complied with federal regulations. The ALJ in that proceeding explicitly rejected ORA's request that the Commission determine whether or not PG&E's proposed MAOP for Line 147 was established consistent with the federal regulations. *See* City Of San Carlos' And Office Of Ratepayer Advocates' Joint Application For Rehearing Of Decision No. 13-12-042 Establishing Maximum Operating Pressure For Pacific Gas And Electric Company's Natural Gas Transmission Line 147, R.11-02-019, January 23, 2014 (ORA & San Carlos 1st Line 147 AFR), pp. 17-19.

[40] The ALJ in the Line 147 proceeding explicitly rejected ORA's request that the Commission determine whether or not PG&E's proposed MAOP for Line 147 was established consistent with the federal regulations. *See* City Of San Carlos' And Office Of Ratepayer Advocates' Joint Application For Rehearing Of Decision No. 13-12-042 Establishing Maximum Operating Pressure For Pacific Gas And Electric Company's Natural Gas Transmission Line 147, R.11-02-019, January 23, 2014 (ORA & San Carlos 1st Line 147 AFR), pp. 17-19 and note 63 in that Application for Rehearing.

PG&E's representations in the February 2, 2015 Letter regarding its compliance with § 619(a). He also explained that PG&E could not rely on the Grandfather Clause because the Commission had eliminated this option:

> Q. [W]ithin a year of the San Bruno incident, do you know what percentage of PG&E's system was relying upon the grandfather clause to establish MAOP?
>
> A. So as you may recall, in June of 2011 the decision that's been referenced several times in this proceeding, Decision 11-06-017, is the decision that we're operating under as a California operator, which is ***we don't rely on the grandfather clause to establish the MAOP. It's very clear not only in that decision but Public Utility Code Section 958 that talks about the requirement for California operators to do a strength test where a prior strength test was not completed. And that's the regulation we currently follow.***
>
> Q. Okay. That's helpful. Thank you, Mr. Singh. ***So yesterday Mr. Soto stated that the Commission has led the nation on eliminating the grandfather clause***. I can give you the transcript cite if you want that. Do you need that?
>
> A. Subject to check, I'll take your word.
>
> Q. Okay. ***And so I'm wondering what does eliminating the grandfather clause mean to you?*** I've heard you state that because of … Decision 11-06-017, you now pressure test your lines. ***Does that mean that once you pressure tested the line it will validate the pressure you were operating under under the grandfather clause, or does it mean that you are now operating under Subsection (a) of the federal regulations?***[41]

The following transcript excerpt shows that Mr. Singh would not identify what federal regulation it was relying upon to establish MAOP until he was asked by the presiding Administrative Law Judge (ALJ):

> Q … ***I recently re-read Decision 11-06-017. And the trouble with that decision is that it doesn't say where or how MAOP should be established, whether it should be done, whether PG&E's pressure testing of its lines is simply validating the historic operating***

[41] See A.13-12-012, 16 RT 1600-1601 (PG&E/Singh) (*emphases added*).

> ***pressure so that it can continue to operate under Subsection (c), or whether PG&E is then expected to come into compliance with 619 Subsection (a).*** ... And part of the reason that I think we've been going back and forth in all of our different proceedings is that every time I ask PG&E what code section are you relying upon to operate your system, I don't get an answer. So I'm wondering, are you going to give me an answer today?
>
> [Objection from PG&E's attorney, Ms. Jordan]
>
> MS. BONE: … [T]he real point is that I need PG&E to tell me how is it operating its system. Is it doing it under Subsection (a) or Subsection (c)? ***We don't know today how PG&E is setting MAOP.*** And that is relevant to this case. It is relevant to many other cases. And for some reason I can't seem to get an answer out of them.
>
> MS. JORDAN: And I believe Mr. Singh has answered the question.
>
> ALJ YIP-KIKUGAWA: **Okay. Which subsection is it, (a) or (c)?**
>
> THE WITNESS: ***Section (c) doesn't apply to regulators or operators in California. So it's Section (a). 619(a). And that was clear in the letter that was circulated earlier this week as well***.[42]

To be clear, PG&E is not purporting, as it could, to calculate MAOP for each segment pursuant to the most applicable subsection of the federal regulations, either (a) (the four part test) or (c) (the Grandfather Clause), depending upon circumstances.[43] Mr. Singh stated unequivocally on cross examination that California regulations do not permit it to calculate MAOP under the Grandfather Clause and "[s]o it's Section (a)." In response to PG&E's February 2, 2015 letter, and seven days after Mr. Singh's testimony

[42] A.13-12-012, 16 RT 1602-1604 (PG&E/Singh) (emphases added). The witness was referring to the PG&E February 2, 2015 Letter discussed above, and Attachment F hereto.

[43] To be clear, ORA does not agree with PG&E's interpretation of what the Commission has determined regarding the Grandfather Clause. It is ORA's understanding that D.11-06-017 permits operators to continue to operate pursuant to the Grandfather Clause, so long as they have a valid pressure test record. Therefore, PG&E could legally calculate MAOPs under either subsection (a) or (c) provided it has adequate records to meet the regulation it is relying upon. Given the lack of clarity in the Commission's decisions, ORA originally believed, as shown by its comments in the proceeding to revise GO 112-E and the statement to PHMSA in the Interpretation request, that the Commission *had* eliminated the ability to rely on the Grandfather Clause.

on this issue, SED issued a memorandum to the Commissioners explaining that it was SED's opinion that the Commission did *not* eliminate PG&E's ability to rely upon the Grandfather Clause:

> In our opinion the CPUC did not eliminate 49 CFR § 192.619(c), also known as the grandfathering provision, however, [it] did require PG&E and other operators to pressure test or replace every transmission pipeline that did not have a 49 CFR Part 192 Subpart J test or had pressure test records that were incomplete.[44]

On May 12, 2015 at an SED-sponsored workshop in R.11-02-019 to discuss how MAOP should be calculated, PG&E again represented that it was calculating the MAOP for every segment in its system pursuant to § 619(a).[45]

PG&E has made similar representations regarding its reliance on § 619(a) in at least two other instances since Mr. Singh's testimony. On August 5, 2015, PG&E reiterated this position in response to an ORA data request issued after the MAOP workshop. When asked to identify how many miles of segments have MAOP established pursuant to 49 CFR 192.619(c), PG&E replied: "0 miles as PG&E is not establishing MAOP solely based on 49 CFR 192.619(c)."[46]

Most recently, on September 1, 2015, PG&E filed in this proceeding its GT&S Safety Report No. 2015-01 for the reporting period January 1 through June 30, 2015 (Safety Report). This Safety Report, Attachment B hereto, was required to be submitted in this proceeding pursuant to the decision approving the settlement of its prior Gas Transmission and Storage (GT&S) rate case.[47] Among other things, the Safety Report contains PG&E's PHMSA Form 7100.2-1 Annual Report for 2014, dated March 13, 2015 – what the SED Directive refers to as an "Annual Report."[48] In "Part Q" of the

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[44] SED February 13, 2015 memorandum, p. 6 (Attachment J hereto).

[45] These representations were made by Vincent Tanguay, Manager of Integrity Management Data Delivery and Analysis.

[46] PG&E Data Response 6452.02(e) to ORA dated August 5, 2015.

[47] D.11-04-031, p. 2 and Ordering Paragraph 5.

[48] See Safety Report filed by PG&E on September 1, 2015 in this proceeding.

form, PHMSA requires operators to identify what provision of § 192.619 they are relying upon to calculate MAOP for the pipes in their systems. At page 9 of the PHMSA form (page C-9 of the Safety Report) PG&E represents to PHMSA (and to this Commission by submitting the form as part of its Safety Report) that it is relying entirely on subpart (a) to calculate the MAOP of every mile of its system, and that it is not relying upon the Grandfather Clause. PG&E also represents in this Annual Report that it has no incomplete records for any of the 5,733 miles of its pipeline reported in this table.

It would be disingenuous, given PG&E's prior representations, for PG&E to now claim that it has "mistakenly" filled out its Annual Report incorrectly. The intent of the form is clear, and the PHMSA instructions provide additional guidance regarding missing or incomplete records, explaining:

> For each combination of class location and HCA, except Classes 1 and 2 outside HCAs, report the transmission miles for which the operator lacks complete records to verify the MAOP determination method in the "Incomplete Records" column. The value in the "Incomplete Records" column must be less than or equal to the value in the "Total" column for each combination of class location and HCA. For the purpose of this part, **"verification records" can include traceable, verifiable, and complete records demonstrating that the criteria of the MAOP determination have been met. For 619(a)(1), the "verification records" can include pipe mill tests (mechanical and chemical properties), as-built drawings, alignment sheets, specifications, and design, construction, inspection, , and maintenance documents. For 619(a)(2), the "verification records" are pressure test records. For miles of transmission pipeline for which the operator has not completed the records review, include these miles in the "Incomplete Records" column.** (*Emphases added*).[49]

Regarding the Grandfather Clause, the PHMSA instructions explain: "For pipeline systems placed in operation before July 1, 1970, the situation is more complicated.

[49] Instructions (rev 10-2014) for Form PHMSA F 7100.2-1 (rev 10-2014) are available at http://www.phmsa.dot.gov/pv_obj_cache/pv_obj_id_F0EAD833F3BD6E8BCF46D2188A1EE61708CC0200/filename/GT_GG_Annual_Instructions_PHMSA_F_7100.2_1_(rev10_2014).pdf.

Operators could either implement 619(c) or determine a pressure under each of the 619(a) options and choose the lowest value as MAOP."

B. PG&E's Statements Regarding The Calculation Of Its MAOPs Are False And Misleading And Are Intended To Divert Regulators From Pursuing Enforcement Action

This Motion identifies at least three significant PG&E misrepresentations: (1) it represents that it has established the MAOP of all of its gas transmission pipes in compliance with § 619(a) of the federal regulations; (2) when questioned about its reliance on subsection (a), it represents that it has made appropriate engineering assumptions despite the fact records are missing; and (3) it represents that it has no incomplete records for any of its pipeline segments. A review of the established facts and law demonstrate that these representations are patently false, suggesting that PG&E has made them to create confusion and deter enforcement actions against it.[50]

[50] ORA is not the first entity to reach the conclusion that PG&E has intentionally misinterpreted the federal gas regulations to divert regulatory resources. Interviews of National Transportation Safety Board (NTSB) investigators recently disclosed in the PG&E criminal case paint a picture of a utility that actively impeded the NTSB's investigation of the causes for the San Bruno explosion, including misrepresentations regarding MAOP and Maximum Operating Pressure (MOP). PG&E's actions led at least one NTSB investigator to conclude that PG&E adopted "creative interpretations" of the regulations to intentionally mislead NTSB's investigation of the San Bruno explosion and to "divert attention" away from PG&E. *See United States v. Pacific Gas and Electric Co.,* Defendant's Motion to Dismiss for Failure to State An Offense, Count One, U.S. District Court, N.D., CA, San Francisco Division, Case No. CR-14-00175-TEH, filed September 7, 2015, Exhibit 6, "Memorandum of Activity," dated July 23, 2014, reporting on an interview of Mr. Robert Hall, NTSB Pipeline Investigator, *et seq.* ("The principle issue was in the way PG&E had interpreted the regulation. PG&E interpreted it as a way to preserve its MAOP/MOP, but Hall felt it was an incorrect interpretation. … PG&E was very sloppy and had a number of creative interpretations. PG&E was trying to stretch the regulations. Hall commented, 'Every rock you would turn over, you would find more problems.' …. Hall recalled an 'annoying' issue surrounding the INGAA Report. Hall felt PG&E tried to mislead the NTSB's investigation and push them into a different direction with that report. The NTSB spent a significant amount of resources to discredit the INGAA report. Hall felt it was a way for PG&E to divert attention off of them"). *See also,* Exhibit 3, "Memorandum of Activity," dated July 10, 2014, reporting on an interview with Ravi Chhatre, NTSB Investigator-In-Charge ("PG&E played games with the MOP/MAOP terminology. The NTSB was confused with PG&E's use of MOP vs MAOP. …. PG&E was being shady. … We continued to notice more and more issues and discrepancies dealing with PG&E. …. Chhatre recalled PG&E employees were giggling, laughing and were sarcastic in interviews conducted by the NTSB in January 2011. Chhatre felt as if they were mocking him.") and Exhibit 5, "Witness Interview," dated November 3, 2014, reporting on an interview with Matthew Nicholson, NTSB Pipeline Accident Investigator ("Nicholson told us that PG&E was 'defensive,' 'condescending,' 'sarcastic,' and it was a 'toxic atmosphere.' He felt as though the PG&E attorneys were trying to stop things and the NTSB was not getting real information from them. He added that in other investigations conducted by the NTSB the involved parties have been

1. An Operator May Not "Assume" The Existence of a Pressure Test Record To Calculate MAOP Under § 192.619(a)

As observed in the SED Directive, there is no way for PG&E to establish the MAOP of its pipelines under § 619(a) where the pipeline is missing certain records. [51] Specifically, § 619(a) requires an operator to set the MAOP at the lowest of four factors – with one of the factors based on the results of a post-construction pressure test. Absent the results of such a test, PG&E has no way of ascertaining which of the four factors is lowest, and the federal regulations do not permit PG&E to "assume" the existence of a pressure test record. PG&E's own evidence in this case shows that PG&E has approximately 1,000 miles of pipeline segments for which it does not have a valid pressure test record.[52] Consequently, PG&E cannot legally establish the MAOP for its entire gas transmission system under § 619(a).

If PG&E's assertions that it is calculating MAOP under subsection (a) are taken at face value, the facts show that approximately 1,000 miles of its system do not comply with the Minimum Federal Safety Standards, and it has no waiver from this Commission or PHMSA to address that non-compliance.[53] Thus, approximately 1,000 miles of PG&E's system is not in compliance with federal MAOP regulations.

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tough but in this case there appeared to be a problem with the culture at PG&E."). All three NTSB investigator interviews are included in Attachment E hereto.

[51] SED Directive, page 1 (Attachment A hereto):

> PG&E is currently reporting to both this Commission and DOT's Pipeline and Hazardous Materials Safety Administration (PHMSA) that all of its pipeline transmission system has its Maximum Allowable Operating Pressure (MAOP) established under Title 49, Code of Federal Regulations (49 CFR) § 192.619(a). SED believes that this is not possible, given PG&E's admissions that it lacks records for a significant portion of its natural gas transmission system. PG&E's current reports also fail to identify where records are missing, as is required on PHMSA Form 7100.2-1.

[52] *See* Footnote 3 above.

[53] *See* 49 U.S.C. § 60118.

2. An Operator's Assumptions Must Be Consistent With Federal Regulations - The CPUC Is Preempted From Authorizing Less Stringent Assumptions

PG&E reiterated its claim that it was calculating MAOP for every segment in its system pursuant to § 619(a) during the SED-sponsored MAOP Workshops in May 2015. Aware that PG&E is still missing pressure test records for a significant portion of its system, PHMSA staff attending the workshop asked PG&E how it could calculate MAOP under 49 CFR § 192.619(a) without a pressure test record. PG&E responded that Commission decisions permitted it to make assumptions where information was missing. PG&E did not respond when asked whether it was suggesting that the Commission could allow less stringent requirements than those provided in the federal regulations.

As discussed in Section II above, federal law is clear that a state is prohibited from adopting less stringent requirements than those set forth in the Minimum Federal Safety Standards, even for an interim period. Nevertheless, in response to an ORA data request, PG&E affirmed its position that Commission decisions and directives, as well as state law, permit it to calculate MAOP in compliance with 49 CFR § 192.619(a) using "engineering-based calculations on an interim basis":

> **QUESTION 6452.03:** Please explain how PG&E can establish the MAOP of a pipe segment in compliance with 49 CFR 192.619(a) if PG&E does not have a pressure test record for the pipe segment.
>
> **RESPONSE 6452.03:** As PG&E has explained in various proceedings, workshops, and correspondence, PG&E relies on the CPUC's decisions (*e.g.,* D.11-06-017, D.14-11-023, D.13-12-042) and directives (e.g., attachment "*3-16-2011_Clanon_Letter.pdf*"), Public Utilities Code Section 958(b), and 49 CFR §192.619(a) to validate the MAOP of its transmission pipelines. Accordingly, the MAOP of pipelines without a pressure test record is calculated using engineering-based calculations on an interim basis pending strength test, consistent with the PSEP, GT&S and related filings and proceedings.[54]

PG&E's representations regarding its ability to use "engineering-based calculations on an interim basis" in lieu of an actual pressure test record reflect a

[54] PG&E Data Response to ORA dated June 14, 2015, Response 6452.03 (Attachment L hereto).

fundamental and willful misrepresentation of the law regarding how MAOP must be calculated. PG&E improperly applies the authorizations provided in D.11-06-017 and Public Utilities Code § 958(b) to use engineering-based assumptions to calculate the MAOP for *any* segment in its system and to make assumptions in lieu of *any* type of missing or incomplete record, notwithstanding the fact that, as it well knows, provisions less stringent that those required by the federal regulations are preempted.[55]

While the federal regulations permit assumptions in some instances, for example, in calculating the design pressure of a pipe under 49 CFR § 192.619(a)(1), there is no legitimate debate regarding whether assumptions can be used in place of valid pressure test results to calculate MAOP under § 619(a). They may not, contrary to PG&E representations that Commission decisions, state law, and the NTSB authorize such assumptions.[56]

In addition to assuming pressure test results that do not exist, there is evidence suggesting that where the federal regulations allow assumptions, PG&E's assumptions are more liberal than those permitted under the regulations, particularly regarding yield strength assumptions. Consequently, all of PG&E's assumptions, and their compliance with federal regulations, should be audited as part of the SED MAOP Validation Audit planned for 2016

In sum, to the extent that PG&E is using engineering-based assumptions in lieu of a pressure test or other critical missing records to calculate an MAOP pursuant to § 192.619(a), it is in violation of federal regulations and must bring its system into compliance or seek a waiver pursuant to federal law. PG&E is also in violation of federal regulations wherever it has made assumptions more liberal than those permitted under the

[55] *See* 49 U.S.C. § 60104(c).

[56] For example, in the PG&E Data Response to ORA dated June 14, 2015, Response 6452.03 (Attachment L hereto), PG&E included language from a September 19, 2014 NTSB communication to the CPUC regarding the NTSB's closure of one of its safety recommendations. The document PG&E quotes expressly states in the first bullet that NTSB understands that MAOP "was established and supported by complete pressure test records…" However, PG&E ignores that language and misleadingly relies upon later language in that communication to support its claim that the NTSB approved of the use of engineering assumptions. This is a misrepresentation of that NTSB communication.

regulations. PG&E may not rely upon Commission decisions or state law to adopt more liberal assumptions than those permitted under federal regulations.

C. PG&E Misrepresents The Status Of Its Missing And Incomplete Records In Its Annual Reports – Misrepresentations Regarding Such A Fundamental Issue Is Evidence Of PG&E's Intention To Create Confusion And Deter Enforcement Actions

PG&E's representation in its 2014 Annual Report that it has "zero" incomplete records is not an error or "oversight." Like PG&E's misrepresentations to NTSB investigators at the beginning of the San Bruno investigation, PG&E's decision to misrepresent such a fundamental and established fact is evidence that PG&E has intentionally withheld this information in order to confuse regulators and to deter proactive enforcement of the MAOP regulations.[57]

Where an operator has missing or incomplete records, it must make assumptions. By failing to disclose the scope of its missing and incomplete records, PG&E also fails to disclose the scope of the assumptions it is relying upon to calculate MAOP. By stating it has "zero" incomplete records, PG&E thus directs attention away from the fact that it is making assumptions to establish MAOP for a significant portion of its system, and the fact that in many instances, those assumptions are not consistent with the federal regulations.

ORA has only begun to explore the impact of PG&E's assumptions, but what it has discovered thus far is troubling.[58] Among other things, it appears that in order to calculate the design pressure of a segment pursuant to § 192.619(a)(1), PG&E is assuming two critical elements for over 128 miles of its system – the outside diameter of

[57] *See* Footnote 50 above.

[58] In an attempt to quantify the extent of PG&E's violations of the federal MAOP regulations, ORA has conducted discovery over the course of 2015, with minimal success. ORA's first data request, issued on May 22, 2015 was not fully answered until August 5, 2015, a period of nearly two and a half months. ORA's second data request issued August 21, 2015 was not fully answered until September 30, 2015, a period of over a month. Further, given the need to examine the records underlying many of PG&E's MAOP calculations, the only way to accurately identify the full extent of PG&E's violations is through a hands on audit of PG&E's system, as is contemplated in D.15-04-024.

the pipe and the nominal wall thickness.[59] Given that PG&E's assumptions about one or both of these factors have been shown to be wrong on several occasions – for example, PG&E had the wrong diameter for the Line 132 segment that resulted in the San Bruno explosion and for the Line 147 segment at issue in R.11-02-019 – regulators must understand the full scope of PG&E's assumptions.

In response to an ORA data request, PG&E has confirmed the following facts regarding its system. Several of these admitted facts demonstrate violations of the federal regulations regarding the calculation of MAOP, necessitating waivers under federal law:[60]

1) There are 38.6 miles of pipeline installed *after* November 11, 1970, for which PG&E does not have a traceable, verifiable, and complete pressure test record, which federal law requires;
2) There are 52.3 miles of pipeline installed between July 1, 1961 and November 12, 1970, for which PG&E does not have a traceable, verifiable, and complete pressure test record, which state law requires;
3) There are 129.5 miles of pipeline in class 3 locations for which PG&E does not have a traceable, verifiable, and complete pressure test record, which are required to have been reported as "incomplete records" on PHMSA Form 7100.2-1 due to their class location and PG&E's statement of using 49 CFR 192.619(a) to determine MAOP;
4) There are 987 miles of pipeline with lengths greater than or equal to 250 feet for which PG&E does not have a traceable, verifiable, and complete pressure test record;
5) There are 325 miles of pipeline which rely on engineering assumptions about the yield strength of the pipeline, as of December 31, 2014; and
6) There are 128.5 miles of pipeline where the yield strength is assumed above the federal minimum yield strength of 24,000

[59] *See, e.g.,* 49 CFR § 192.105(a) regarding what is required to calculate the design pressure of a steel pipe.

[60] Note that numbers will not total due to varying state and federal requirements and dates.

psig and where PG&E does not know both the wall thickness and joint efficiency factor of the pipe.[61]

All of these facts should be of interest to a proactive safety regulator seeking to ensure that a gas pipeline operator has properly calculated its MAOPs. Among other things, the segments implicated in PG&E's first admission violate federal regulations. Contrary to its prior claims, and as discussed in Section II above, PG&E may not rely upon state authorizations to make engineering assumptions less stringent than those permitted under federal regulations for an "interim period" until these segments are tested or replaced. It must apply for waivers consistent with federal law.

It is also possible that the segments implicated in PG&E's sixth admission also violate federal regulations. More information is required.

In sum, PG&E's intentional withholding of the scope of its missing and incomplete records in its Annual Reports facilitates PG&E's goal to avoid inquiries into the scope of its inability to comply with the federal regulations. Five years after the San Bruno explosion, the evidence shows that PG&E continues to fail to comply with the Minimum Federal Safety Standards. Instead of focusing its resources and efforts on compliance, PG&E falsifies its Annual Reports and misconstrues the federal regulations so that it can pursue its own plan for the testing and replacement of its system – free of transparent regulatory oversight.

IV. THE IMPACT TO THIS PROCEEDING OF PG&E'S MISREPRESENTATIONS AND ITS NON-COMPLIANCE WITH FEDERAL REGULATIONS

While PG&E's misrepresentations regarding how it calculates the MAOP of its pipes have not been limited to this proceeding, ORA has filed this Motion for an Order to Show Cause in this proceeding because PG&E's misrepresentations were made most recently in its "Safety Report" submission in this proceeding and because, ultimately, the

[61] PG&E Data Response to ORA dated September 30, 2015, Responses 6757.01 to 6757.12 (Attachment O hereto).

costs of PG&E's compliance efforts (or failures), will be addressed in gas transmission rate cases like this one.

In this proceeding, PG&E seeks Commission endorsement of its decision to abandon its Pipeline Safety and Enhancement Plan (PSEP) work authorized in D.12-12-030, and instead pursue its own test and replacement priorities.[62] The question of whether PG&E should be permitted to set its own test and replace priorities, inconsistent with its PSEP, and inconsistent with the need for a compliance plan under Public Utilities Code § 958, will therefore be addressed in this proceeding.

Any decision regarding the appropriate test and replace priorities for PG&E's system should be informed by the fact that PG&E's system is not compliant with federal regulations, and that there is currently no pathway in place to ensure it is brought into compliance. To be clear, ORA's assertion that PG&E is not compliant with federal regulations is not speculative. While only an audit will identify the full extent of PG&E's non-compliance, the likelihood of a significant amount of non-compliance is high given the state of PG&E's records.

For example, taking at face value PG&E's representations that it is calculating MAOP pursuant to subsection (a) – the four part test – over 1,000 miles of PG&E's system cannot be compliant with federal regulations because PG&E does not have a

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[62] The Commission adopted pipeline test and replace priorities for PG&E in the Pipeline Safety and Enhancement Plan (PSEP) Decision, D.12-12-030. That work was not completed by PG&E. Instead, Starting in 2015, PG&E abandoned the bulk of its remaining Phase 1 PSEP work and proceeded to implement different test and replace programs proposed in this proceeding. *See, e.g.,* A.13-12-012, 18 RT 1847-1848 (Barnes/PG&E). PG&E's GT&S work begun in 2015 is based on new priorities not yet authorized by this Commission, and not endorsed by SED. SED recognized PG&E's abandonment of the PSEP work in the "Final Staff Report" in this GT&S proceeding: "….PG&E's GT&S Application proposes a new decision-making framework to determine pressure testing and replacement activity priorities for untested pipeline segments that differs from the one previously approved under PSEP in 2012." Safety and Enforcement Division Final Staff Report, Pacific Gas & Electric Company Proposal for Cost of Service and Rates for Gas Transmission and Storage for 2015-2017 Application 13-12-012, submitted September 11, 2014, p. 28 (SED Report). The SED Report did not endorse PG&E's new approach: "From SED's limited review, PG&E's modified approach in this GT&S application is not exactly "improved" or more "conservative" as it relates to continuation of the PSEP-specific pressure testing mandates." SED Report, p. 45. It observed that PG&E's GT&S plans were "no longer intended to address the mandate to replace or pressure test all untested transmission pipeline" (SED Report, p. 40) and noted the conflict between PG&E's plans and "California's pressure testing mandates, [which] have established a completion date that is 'as soon as practicable'." SED Report, p. 45.

traceable, verifiable, and complete pressure test for those miles.[63] PG&E could change its position and argue that those pipes without pressure tests that were installed before June 1, 1970 have their MAOPs established pursuant to subsection (c) – the Grandfather Clause. However, the likely complication is that some portion of those pipes may not be eligible for operation under the Grandfather Clause, either because PG&E does not have adequate operating pressure records, or because the pipe has experienced a change in class location. As PHMSA clarified in its Letter of Interpretation: "[t]he Grandfather Clause in § 192.619(c) cannot be used to determine the MAOP after a change in class location."[64]

This is just one scenario that results in a significant number of MAOP violations. For PG&E pipes that have been pressure tested, PG&E compliance under subsection (a) is similarly suspect. In many cases, PG&E is likely to be missing critical design records, such that it cannot legally calculate the MAOP under that regulation. Further, where such records are missing, PG&E has made "engineering assumptions," claiming authorization pursuant to Commission decisions and state law. However, as explained in Sections II and III.B.2, those Commission decisions and state law cannot provide for less stringent standards than what is required under the federal regulations, and thus do not authorize PG&E's assumptions.

Consider also that PG&E is required, pursuant to California Public Utilities Code § 958, to have a "comprehensive" test and replace plan in place. When ORA requested a copy of PG&E's plan to comply with this statute, PG&E responded that its plan consisted of its PSEP, and the test and replace work proposed in this proceeding.[65] However, as is

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[63] Ex. PGE-1, page 4A-33, lines 7-11.

[64] PHMSA Letter of Interpretation, Attachment G, page 3.

[65] PG&E Data Response 6452.07 to ORA dated June 5, 2015(Attachment M hereto):

> **QUESTION 6452.07:** Please provide a copy of PG&E's plan intended to comply with California Public Utilities Code §958, or provide identifying information if ORA is already in possession of the plan.
>
> **RESPONSE 6452.07:** Refer to the filings and materials in the PSEP proceeding and PG&E's 2015 GT&S rate case.

clear from the record of this proceeding, PG&E is no longer pursuing the PSEP painstakingly litigated and approved in D.12-12-030,[66] and PG&E has no "comprehensive" plan to test or replace every segment with missing records in its system. For example, PG&E's witness in this case confirmed on cross examination that PG&E does not even have specific plans to replace segments missing records and previously prioritized for replacement in PSEP Phase I:

> Q … And are the Group 1 or 2 deferrals in the second and third boxes [of Figure 4A-8 on page 4A-82 of Ex. PG&E39], are those in PG&E's replacement plans for 2015?
>
> A. They are not.
>
> Q. Are they going to be replaced at any time during the GT&S time frame that we're looking at here 2015 to 2017?
>
> A. Based on the interactive threat risk analysis, they are not in that time frame.
>
> Q. **So to be clear, does PG&E have any plans to identify a specific time frame for these segments to be replaced?**
>
> A. **No.**
>
> Q. So these are segments that would have been priority segments for replacement in PSEP, correct?
>
> A. Yes.
>
> Q. But they are no longer priority under PG&E's new testing and replacement plan?
>
> A. Correct.[67]

Instead, PG&E proposes a piecemeal plan which does not extend beyond the rate case period. Among other things, in lieu of replacing segments missing records (as required by Public Utilities Code § 958) or those prioritized by the PSEP Decision Tree in D.12-12-030, PG&E is instead replacing vintage pipes located in areas subject to the threat of slow land movement.[68] Notably, as documented in ORA's Reply Brief in this

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[66] This is confirmed by the SED Report submitted in this proceeding. *See* Footnote 62 above.

[67] A.13-12-012, 18 RT 1847-1848 (Barnes/PG&E) (emphases added).

[68] *See, e.g.,* A.13-12-012, Ex. PG&E 1, pp. 4A-51 to 4A-59.

case, PG&E has flip-flopped on the value of such replacements, rejecting ORA attempts to have such pipes prioritized in the PSEP proceeding.[69]

In sum, PG&E is not in compliance with Minimum Federal Safety Standards, and the evidence in this proceeding shows that PG&E has no "comprehensive" plan as required by Public Utilities Code § 958 to test or replace every pipe in its system. A Commission decision in this proceeding approving PG&E's proposed test and replace plans will serve as an endorsement of PG&E's new approach, and approval of PG&E's failure to have the plan required by § 958, or a plan that complies with federal regulations.[70] Consequently, this proceeding is the proper forum to determine what should be done to address PG&E's misrepresentations, including developing a plan to ensure PG&E's compliance with federal regulations and state law going forward.

V. CALCULATION OF THE RANGE OF FINES TO BE IMPOSED ON PG&E

A. There Is No Question That PG&E's Misrepresentations Were Intentional

Rule 1.1 (Ethics) prohibits misrepresentations to this Commission or its staff:

> Any person who … transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, … and never to mislead the Commission or its staff by an artifice or false statement of fact or law.

If PG&E's misrepresentations were actually "errors," as characterized by the SED Directive, Rule 1.1 would still apply, as "intent" need not be demonstrated.[71] Rather, the level of intent informs the level of the penalty.[72] However, given the facts and law

[69] A.13-12-012, ORA Reply Brief, pp. 53-60.

[70] For example, PG&E views the Commission's prior determinations as proof that it is complying with federal regulations. *See, e.g.* Footnote 39 above.

[71] Intent is not a required element of a Rule 1.1 violation, but does go to the proper amount of the fine. *Pacific Gas and Electric Co. v. CPUC*, 237 Cal. App. 4th 812 (2015); *see also* D.01-08-019 (*Sprint PCS*), p. 9 (intent is an aggravating factor in determining the range of the fine).

[72] *Id.*

presented above, and given that it was "not possible" for PG&E to calculate the MAOP for its entire system under section 619(a) due to its incomplete records, PG&E must explain how it did not knowingly and intentionally misrepresent its MAOP compliance to either this Commission or PHMSA. Similarly, PG&E is well aware that it has incomplete records for a significant portion of its system, yet it reported "zero" in its Annual Reports. These were intentional misrepresentations by PG&E.

Also intentional were PG&E's: (1) reversals of position on how the Grandfather Clause applies; (2) ignorance of federal preemption to advance its claim that Commission orders and state law permit assumptions where none are allowed under federal regulations, or permit more aggressive assumptions than allowed under federal regulations; and (3) repeated claims that the Commission had already confirmed its compliance with federal regulations.

Given PG&E's repeated and emphatic insistence that the rules and regulations, including what the Commission intended regarding the Grandfather Clause, were clear,[73] PG&E cannot now claim that it was "confused" or "mistaken" when it reversed its declarations on that issue, ignored the effect of federal preemption as it applies to the Commission's decisions and state laws, or claimed that the Commission had already confirmed its compliance with federal regulations. On this basis, there is good reason to conclude that all of PG&E's misrepresentations were *intended* to confuse and mislead its

[73] Faced with ORA requests for clarity on these issues, PG&E objected at least twice, and in no uncertain terms, that ORA was confused and clarity was "not needed." *See* January 30, 2015 ORA letter to the Commissioners, Attachment K, page 3, wherein ORA asks, among other things, that the Commission "[c]larify whether pipeline operators in California may still use the Grandfather Clause. As demonstrated during the Order to Show Cause discussion on Line 147, there is significant uncertainty among parties about the precise intent and applicability of stricter California standards in place of Federal regulations." *See also* Comments of the Office of Ratepayer Advocates Regarding Revised Proposed Changes to General Order 112-E, filed in R.11-02-019, July 18, 2014. *Compare* those requests to PG&E's responses. *See* PG&E Reply Comments on the Proposed Decision Adopting Revised General Order 112-F, R.11-02-019, February 17, 2015, p. 4 and Sumeet Singh Letter to Joe Como, transmitted February 4, 2015, Attachment F hereto, without attachments (PG&E February 4, 2015 Letter), *et seq.*: "ORA's allegations of PG&E's non-compliance are incorrect, and ORA's overreaching recommendations purport to undo years of rigorous proceedings that the Commission has already completed, while ignoring extensive regulatory reviews by SED. … In conclusion, ORA continues to misinterpret state and federal regulations related to MAOP, misunderstands PG&E's MAOP methodologies and has failed to raise its concerns via the proper regulatory channels. As a result, ORA's recommendations are unnecessary."

regulators, and that its insistence that the rules were clear was intended to dissuade this Commission from clarifying the rules in order to perpetuate that confusion.

B. Quantification Of The Range Of Fines Associated With The Most Obvious PG&E Violations

For the convenience of the Commission, and to provide a sense of the scope of PG&E's violations, ORA identifies in the following list the primary misrepresentations PG&E has made in violation of Rule 1.1, as well as its Public Utilities Code § 958 violation, and attempts to quantify the range of potential fines for these violations consistent with Public Utilities Code § 2107 (requiring penalties of no less than $500 and no more than $50,000 for each offense), and § 2108 (finding that each offense is subject to daily penalties):

- PG&E represents that it is calculating MAOP solely pursuant to 49 CFR § 192.619(a). As identified below, this misrepresentation was made at least seven times starting no later than August 30, 2013. Based on these seven occurrences, and counting to the day the SED Directive was issued on November 5, 2015, PG&E should be subject to penalties ranging from approximately $1.16 million to $116 million.[74]

    - In its Safety Report containing its 2012 Annual Report submitted pursuant to D.11-04-031 on August 30, 2013.[75]
    - In its Safety Report containing its 2013 Annual Report submitted pursuant to D.11-04-031 on March 29, 2014.[76]
    - In its Safety Report containing its 2014 Annual Report submitted pursuant to D.11-04-031 on September 1, 2015.[77]
    - In the PG&E February 2, 2015 Letter.[78]
    - In cross examination in this proceeding on February 6, 2015.[79]

[74] *See* Attachment N hereto, which is an Excel spreadsheet showing how the proposed penalties were calculated.

[75] *See* Attachment C hereto.

[76] *See* Attachment D hereto.

[77] *See* Attachment B hereto.

[78] *See* Attachment F hereto.

[79] *See* 16 RT 1600-1604 (PG&E/Singh).

- In the MAOP Workshops on May 12, 2015.
- In a data response to ORA on June 14, 2015.[80]

- PG&E represents in its 2013 and 2014 Annual Reports that it has zero incomplete records. As identified below, this misrepresentation was made at least two times starting no later than August 29, 2014. Based on these two occurrences, and counting to the day the SED Directive was issued on November 5, 2015, PG&E should be subject to penalties ranging from approximately $325,500 to $32.55 million:

  - In its Safety Report containing its 2013 Annual Report submitted pursuant to D.11-04-031 on March 29, 2014.[81]
  - In its Safety Report containing its 2014 Annual Report submitted pursuant to D.11-04-031 on September 1, 2015.[82]

- PG&E is in violation of § 958 because it does not have a comprehensive test and replace plan in place. This obligation presumably commenced upon the effective date of the statute. Assuming that PG&E's PSEP met this requirement – which ORA does not concede – PG&E became non-compliant when it abandoned its PSEP and commenced the work proposed under its GT&S Application, presumably on January 1, 2015. This violation is directly related to this proceeding, in which PG&E should have proposed a § 958 compliant plan. Consequently, PG&E should be subject to penalties ranging from $154,000 to $15.4 million, with penalties continuing to accrue until a § 958 compliant plan is provided in this proceeding.

For the violations identified above, PG&E is liable for total penalties between $1.638 million and $163.8 million. However, this is clearly not a comprehensive listing of the misrepresentations or other violations identified in this Motion, or the only way of counting the violations PG&E has committed.

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[80] *See* Attachment L hereto.

[81] *See* Attachment D hereto. Note that PG&E admitted in its 2012 Annual Report that it had incomplete records for calculating MAOP pursuant to 49 CFR § 192.619(a)(1) (based on design pressure) but claimed zero incomplete records for calculating MAOP pursuant to 49 CFR § 192.619(a)(2) (based on pressure test results), presumably reflecting those miles of its system for which it had traceable, verifiable, and complete pressure test records which established a lower MAOP than the other 3 factors required to be considered pursuant to 49 CFR § 192.619(a). *See* the 2012 Annual Report, Attachment C hereto. This demonstrates, among other things, that PG&E had the capacity, at least at some point, to identify where it was relying upon incomplete records to calculate MAOP.

[82] *See* Attachment B hereto.

For example, as noted in Section III.C above, PG&E admits in a data response to ORA (Attachment O hereto) that it has 38.6 miles of pipes installed after November 11, 1970 for which it does not have the required pressure test records. This is a clear violation of the federal regulations, which ORA does not list in this Section to, among other things, avoid litigation over whether these violations were addressed by the fine imposed in the San Bruno investigations – which ORA does not concede.[83] The Commission may *sua sponte* decide to pursue such penalties as part of the Order to Show Cause requested in this Motion; at a minimum, however, PG&E should be ordered to immediately seek a waiver pursuant to 49 U.S.C. § 60118 for that non-compliance.

Moreover, further review of the facts disclosed in this Motion,[84] counting the violations on a per line (or other) basis, ending the accrual of fines upon correction of the violation (instead of November 5, 2015 as ORA has calculated),[85] or conducting further inquiry into related circumstances (such as an audit specifically identifying where PG&E has not properly calculated MAOP), would all result in the identification of many additional misrepresentations, and other violations, and a larger range of penalties.

VI. THE COMMISSION MUST TAKE PROACTIVE AND TRANSPARENT STEPS TO ENSURE DEVELOPMENT OF A PG&E COMPLIANCE PLAN WITH APPROPRIATE PRIORITIES, INCLUDING COMPLIANCE WITH FEDERAL MAOP REGULATIONS

In addition to issuing an Order to Show Cause to consider the imposition of fines on PG&E for its Rule 1.1 and Public Utilities Code § 958 violations, it is imperative that the Commission take prompt and focused action to redress the harm that PG&E has

[83] Among other things, the violations continue today and PG&E has no waiver from the Commission, as required by federal law, for the violations to persist.

[84] For example, PG&E's February 2, 2015 Letter to Joe Como (Attachment F) is filled with so many misrepresentations that it is difficult to count them all. PG&E claimed at least three times in that letter that the Commission "has found on numerous occasions" that its MAOP methodology "is consistent with …. federal regulations." *See* PG&E February 2, 2015 Letter, pp. 1 and 4. PG&E provided no citations in its letter to support this assertion, nor could it, since it is not true. *See* Footnote 39, above.

[85] Consider, for example, that PG&E will not be in compliance with Public Utilities Code § 958 until it submits a compliant plan. However, ORA has only calculated the penalties from the period when PG&E failed to comply until the date the SED Directive was issued, November 5, 2015.

caused to the regulatory process. To this end, in no event can PG&E's misinterpretations of the federal regulations regarding the calculation of MAOP, and how those are reconciled with Commission decisions and state law, be allowed to persist. It is critical to future enforcement activities – including the SED MAOP Validation Audit planned for 2016[86] – that the Commission clearly state in one place what state law, Commission decisions, and federal regulations require regarding the calculation of MAOP.[87] Such a statement should include, without limitation:

(1) What the Commission intended with regard to the Grandfather Clause and how its determination comports with state law and federal law and regulations;
(2) Where complete records are required to calculate MAOP and the types of records required; and
(3) Identification of where assumptions may be made in lieu of records to calculate MAOP and how this is consistent with federal regulations.

Ideally, this statement would be codified in General Order 112.[88] In any event, without such a clear statement, SED's ability to successfully perform the audit will be compromised.

The Commission should also clearly specify the goals of the SED Audit, including requiring that the audit identify the full scope of PG&E's MAOP violations, and that the audit identify the requirements for any plan to bring PG&E's system into compliance with federal and state requirements including the need for waivers pursuant to federal law, and compliance with Public Utilities Code § 958.

Only through timely and transparent regulatory action to identify the full nature and scope of PG&E's MAOP violations, and to develop a compliance plan, can the Commission hope to ensure the future safety of PG&E's pipeline system.

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[86] SED will be conducting an MAOP Validation audit in 2016 to "measure the extent to which PG&E utilizes traceable, verifiable and complete records required to validate the MAOPs of its pipelines by determining actual pipe specifications where records were previously missing." *See* Safety And Enforcement Division Compliance Filing Required By Commission Decision 15-04-024, I.11-02-016, June 8, 2015, pp. 2-3.

[87] A similar request for clarification is also pending in the ORA and City of San Carlos Joint Application for Rehearing of D.15-06-034 filed July 13, 2015 in R.11-02-019.

[88] *See* ORA Application for Rehearing of Decision No. 15-06-044 Adopting Revised General Order 112-F, R.11-02-019, July 29, 2015.

VII. CONCLUSION

For all of the reasons set forth above, the Commission should issue an Order to Show Cause why PG&E should not be sanctioned $163 million or more for misrepresentations to this Commission and PHMSA regarding how it is calculating the MAOP of its pipelines and the extent of its incomplete records, and for failure to have a comprehensive test and replace plan as required by Public Utilities Code § 958.

Additionally, in order to facilitate future enforcement actions, including SED's 2016 MAOP Validation audit of PG&E's system, the Commission should, as soon as practicable, end PG&E's ability to perpetuate misunderstandings of the regulations by providing a clear statement of its understanding of the federal regulations regarding calculation of MAOP and how Commission orders and state law regarding the Grandfather Clause and the use of engineering-based assumptions interact with those requirements.

Finally, following an SED audit of PG&E's compliance with the federal MAOP regulations, PG&E should be ordered to prepare a compliance plan to bring its system into compliance with state and federal MAOP regulations and Public Utilities Code § 958. Any plan should identify where waivers are required, pursuant to federal law.

Respectfully submitted,

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