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)

REPLY OF THE OFFICE OF RATEPAYER ADVOCATES TO PACIFIC GAS AND ELECTRIC COMPANY'S RESPONSE TO THE OFFICE OF RATEPAYER ADVOCATE'S DECEMBER 16, 2015 MOTION FOR AN ORDER TO SHOW CAUSE

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I. EXECUTIVE SUMMARY

Pursuant to Rule 11.1(f) of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure (Rules), the Office of Ratepayer Advocates (ORA) hereby files this Reply to Pacific Gas and Electric Company's (PG&E) Response (PG&E's Response) to ORA's Motion for an Order to Show Cause (OSC) why 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 (ORA Motion). On December 31, 2015, pursuant to an email communication, Administrative Law Judge (ALJ) Yip-Kikugawa authorized ORA to file this Reply on January 11, 2016.

Instead of focusing on the issue of its misrepresentations and non-compliance with federal regulations regarding the calculation of Maximum Allowable Operating Pressure (MAOP), PG&E's Response retells the history of how the current MAOP procedures were developed in the aftermath of the San Bruno explosion. ORA agrees with much of what PG&E says. PG&E has been clear that it is missing many records.[1] PG&E has been clear that it is using assumptions and engineering judgment to calculate MAOP in lieu of missing records.[2] And "PG&E's process for validating MAOP has been the subject of numerous public proceedings."[3] These facts are not in dispute.

But these facts are not the issue.

The gravamen of ORA's Motion is that – regardless of this history – in making "engineering assumptions" to calculate the MAOP for nearly 1,000 miles of its system missing pressure test records, PG&E is in violation of the Federal Minimum Safety Standards.[4] While ORA has suspected that PG&E was not complying with these federal

[1] PG&E Response, p. 9.

[2] PG&E Response, p. 9.

[3] PG&E Response, p. 10.

[4] These standards are codified at 49 CFR Part 192.

regulations since its November 2013 participation in the Line 147 proceedings in R.11-02-019, the proof of violations did not become demonstrably evident until ORA became aware of PG&E's misrepresentations in its Annual Reports to this Commission and the Pipeline Hazardous Materials and Safety Administration (PHMSA). It is now clear, based on PG&E's misrepresentations in those Reports, that PG&E is not only making assumptions for those lines in its system which it can legally operate without certain records under the Grandfather Clause (49 CFR § 192.619(c)), but that PG&E is making assumptions in lieu of missing records – such as pressure test records – for *all* of its system, and that federal regulations do not permit such assumptions.[5]

What PG&E's Response does *not* say affirms ORA's assertion that PG&E is in violation of federal regulations. PG&E does *not* claim that it is in compliance with the Federal Minimum Safety Standards. Instead, PG&E says that it "has complied with applicable regulatory requirements."[6] Apparently, to PG&E's way of thinking, those "applicable regulatory requirements" do not include the Federal Minimum Safety Standards because it believes that this Commission and state law allow it to ignore those standards, and instead use "engineering assumptions" to calculate MAOP.

PG&E's argument that it is permitted to use "engineering assumptions" to calculate MAOP *wherever* it is missing records on its system permits PG&E to substitute its judgement for the determinations reflected in the Minimum Federal Safety Standards. No "applicable regulatory requirements" permit PG&E to do so. PG&E's argument is also preempted by federal law because it presumes PG&E can comply with a standard less stringent than what is required in the federal regulations.[7]

PG&E is substituting its own judgment for what federal regulations require – and PG&E believes it is entitled to do so. For example, PG&E claims that there was no misrepresentation in its Annual Reports because it is properly calculating the MAOP for

[5] While ORA's Motion requested sanctions for state law and Rule 1.1 violations, it is also evident that PG&E should be sanctioned for violations of the federal MAOP regulations. However, determination of the extent of those violations requires further examination.

[6] PG&E Response, p. 1.

[7] 49 USC § 60104(c).

its system pursuant to the four part test of 49 CFR § 192.619(a).[8] The four part test in subsection (a) requires a pressure test to calculate MAOP. PG&E does not expressly argue that it may make "engineering assumptions" regarding the likely outcome of a non-existent pressure test to calculate MAOP under (a). However, that is exactly what it must do in order to calculate MAOP under subsection (a) without a pressure test. And that is precisely what subsection (a) does not permit.

A pressure test must exist to calculate MAOP under the four part test of subsection (a). The Directive that the Commission's Safety and Enforcement Division (SED) issued to PG&E on November 5, 2015 (SED Directive) stated that PG&E cannot calculate MAOP under § 619(a) without a valid pressure test.[9] PHMSA representatives confirmed the same thing during the May 2015 SED-sponsored workshops on MAOP calculation methodology.[10]

The Minimum Federal Safety Standards exist for a reason – to protect public safety. States are prohibited from allowing less stringent standards – also to protect public safety. Nevertheless, PG&E is operating its pipeline system without complying with the Minimum Federal Safety Standards, and with no plan in place to bring itself into compliance with those regulations. Among other things, a plan consistent with federal law would include requesting a waiver for the period of non-compliance, consistent with 49 U.S.C. § 60118.

The federal government takes compliance seriously. PG&E faces criminal prosecution for failure to comply with the federal regulations,[11] failures which continue today. For all of these reasons, ORA's request for an Order to Show Cause should be

[8] PG&E Response, p. 14.

[9] The SED Directive is Attachment A to the ORA Motion filed December 16, 2015.

[10] *See* ORA Motion, p. 5 at footnote 15.

[11] *See, e.g.,* 49 CFR § 190.291(a): "Any person who willfully and knowingly violates a provision of 49 U.S.C. 60101 *et seq.* or any regulation or order issued thereunder will upon conviction be subject to a fine under title 18, United States Code, and imprisonment for not more than five years, or both, for each offense."

granted, and the scope should include a line by line examination of PG&E's current compliance with the federal MAOP regulations.

II. PG&E KNOWS IT CANNOT COMPLY WITH FEDERAL MAOP REGULATIONS AND THEREFORE ITS RESPONSE IGNORES THEM

PG&E's Response to ORA's Motion is noteworthy for what it fails to address. Instead of showing *how* PG&E complies with the Federal Minimum Safety Standards – by perhaps quoting the relevant regulation and then explaining step by step how it complies – PG&E asserts that it "has complied with applicable regulatory requirements when calculating the maximum allowable operating pressure (MAOP) of its natural gas transmission system."[12] PG&E then asserts at least twice that this issue has been "fully litigated" in R.11-02-019[13] and proposes that this issue be moved to that proceeding.

PG&E's Response does not accurately reflect PG&E's current practices. PG&E has *not* "complied with applicable regulatory requirements" because the federal MAOP regulations apply, and PG&E is not in compliance with them. Further, as PG&E acknowledges several times in its Response, this issue has not been "fully litigated" in *any* Commission proceeding.[14] The record in R.11-02-019 shows that ORA motions to address the issue of PG&E's compliance with federal MAOP regulations were expressly denied.

[12] PG&E Response, p. 1.

[13] PG&E Response, pp. 2 and 19.

[14] *See* PG&E Response, p. 12, Footnote 27 and p. 15 *quoting with approval* ORA's observation that "[the] ALJ in the Line 147 proceeding [in R.11-02-019] 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."

A. Contrary To PG&E's Claims, PG&E Has Not "Complied With Applicable Regulatory Requirements" – PG&E Intentionally Ignores The Rule That Any Stand*ard Less Stringent Than The Minimum Federal Safety Standards* Is Preempted.

Federal law is clear that any state operating standards, such as the rules for calculating MAOP, can be no less stringent than what is permitted under the federal regulations:

> Preemption. A State authority … 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. ...*[15]

PG&E's claim that it has "complied with applicable regulatory requirements" is grounded in the argument that what it considers to be the "applicable regulatory requirements" – namely D.11-06-017 and Public Utilities Code § 958 – permit it to use "engineering-based assumptions" as an "interim measure."[16] PG&E intentionally fails to acknowledge what it well knows, that reading these authorizations as less stringent than federal regulations is inconsistent with federal law, and is preempted.[17]

As the ORA Motion explains, to avoid the possibility of preemption, the authorizations in D.11-06-017 and § 958 to use "engineering assumptions" should be read narrowly. Commission decisions and § 958 can only legally permit PG&E to use such assumptions when establishing the MAOP for grandfathered pipes[18] that have not yet met

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[15] 49 USC § 60104(c) (*emphases added*).

[16] Public Utilities Code § 958(b) provides: "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."

[17] PG&E's self-serving regulatory interpretations were similarly observed by the National Transportation Safety Board (NTSB) investigators in their interview summaries provided at Attachment E to ORA's Motion.

[18] In otherwords, pipes for which the MAOP is calculated under 49 CFR § 192.619(c).

the more stringent pressure test requirement imposed by D.11-06-017 and Public Utilities Code § 958.[19]

If the Commission determines that such a narrow reading of its decisions and Public Utilities Code § 958 – to apply only to Grandfathered pipes – cannot be supported, then it faces a quandary. The California Constitution precludes the Commission from finding that Public Utilities Code § 958 is preempted, or unconstitutional, under the Supremacy Clause of the United States Constitution.[20] Thus, the Commission could be in the "Catch 22" position of upholding § 958 while failing to meet its obligations to enforce federal pipeline safety laws and regulations. Thus, § 958 would have the unintended consequence of *reducing* gas safety standards, rather than increasing them.

Under this broad reading of the law, only a change in the law, or an appellate court determination that the law is preempted, would permit the Commission to meet its obligation to enforce the federal regulations regarding the calculation of MAOPs.

Given the well-understood preemption provision in the federal legislation – which is expressly acknowledged at least twice in the public law adopting § 958[21] – it is

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[19] ORA Motion, Section II, "Legal Background Regarding Calculation of MAOP," pp. 4-10.

[20] The California State Constitution Art. III, § 3.5 provides:

> An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:
>
> (a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;
>
> (b) To declare a statute unconstitutional;
>
> (c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations.

[21] *See* AB 56, States. 2011, Ch. 519, Sec. 3, effective January 1, 2012. The Legislative Digest explains:

> Existing law authorizes a state authority that has submitted a current certification to 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 by PHMSA.

Additionally, Public Utilities Code § 957, adopted in the same bill, expressly contemplates that the provision may not be enforceable given the federal preemption provisions. It provides at the outset: "(a) (1) Unless the commission determines that it is prohibited from doing so by subdivision (c) of Section

surprising that potentially preempted provisions made their way into Commission decisions and state law intended to enhance, rather than diminish, gas safety regulations. Regardless, if the Commission reaches the conclusion that its ability to enforce the federal regulations is constrained by § 958 and its own prior decisions, the interests of public safety require it to take immediate steps to address the situation.

B. Contrary To PG&E's Claims, This Commission Has Not Addressed Whether PG&E's MAOP Calculations Comply With Federal Regulations.

PG&E claims at least twice in its Response that the issue of its compliance with federal MAOP regulations has been "fully litigated."[22] In the alternative, it proposes to submit the issue for consideration in R.11-02-019. Contrary to PG&E's assertions, the issue has not been "fully litigated," because ORA's requests to examine the issue in R.11-02-019 were denied.

ORA did not become aware of the possibility that PG&E was not properly calculating the MAOP of its system consistent with the Federal Minimum Safety Standards until the Line 147 proceedings in November of 2013. Contrary to PG&E's assertion that ORA was an "active participant" in all of the MAOP proceedings,[23] ORA deferred to SED's expertise on MAOP issues until the Line 147 proceedings.[24]

A portion of the Line 147 proceedings was devoted to "restoring" PG&E's Line 147 MAOP to the appropriate level. When ORA realized that the Commission had not considered the issue of whether MAOP was being calculated consistent with the relevant federal regulations in this and prior "pressure restoration" proceedings, it moved for PG&E to be required to show how it was complying with the federal MAOP regulations. Those motions were unequivocally denied on the bases that: (1) the Commission had been calculating MAOP for two years in the manner PG&E proposed in the Line 147

60104 of Title 49 of the United States Code, the commission shall require the installation of automatic shutoff or remote controlled sectionalized block valves on both of the following facilities …"

[22] PG&E Response, pp. 2 and 19.

[23] PG&E Response, p. 2.

[24] At the time, SED was known as the Consumer Protection and Safety Division, or "CPSD."

proceeding (without considering compliance with federal MAOP regulations); (2) any such inquiry should be done in a generic manner that would apply to all gas operators;[25] and (3) such an inquiry could not be pursued in the Line 147 MAOP proceedings because the Commission decision regarding the establishment of MAOP, D.11-09-006, did not permit such an inquiry.[26]

The rationales provided to deny a relevant request by ORA to examine whether PG&E was properly calculating the MAOP of Line 147 consistent with federal regulations were legally flawed. No law requires the Commission to continue to follow prior practice when legitimate questions regarding PG&E's compliance with federal safety regulations have been raised. Similarly, there is nothing that requires an inquiry into a gas operator's

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[25] *See* PG&E Response, p. 12, Footnote 27, for quotations to the Line 147 proceeding transcript that shows that ORA's motion to examine whether PG&E was setting the MAOP consistent with federal regulations was denied on the basis that the Commission had been doing the same thing for two years and that the issue needed to be addressed in an "overall perspective" in the proceeding, but not with regard to how PG&E was establishing the MAOP for Line 147.

[26] The following transcript excerpt from R.11-02-019, 18 RT 2768:3-2769:8 shows that ORA's request in the Line 147 proceeding to examine whether PG&E was setting the MAOP consistent with the federal regulations was also denied on the basis that the Commission had been doing the same thing for two years and that prior Commission decisions precluded such an inquiry.

> ORA: What's concerning about this list [of what PG&E must show to raise the MAOP of a pipe that is contained in D.11-09-006] is it actually has a very significant omission which is the issue that we're raising here today, which is that PG&E is not required to show how it calculates the MAOP based on the pressure test readings consistent with 192.619. And that is the problem that we have with PG&E's showing today, or one of them. And that is what is missing from this decision and is a very significant error.
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> ALJ: This decision was issued on September 8 of 2011.
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> ORA: That may be. And what it sadly means is that the Commission has been doing this wrong for the last two years.
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> ALJ: Well, that is the process that the Commission has engaged in. This is the Commission's decision. And until it's changed, it's the decision that I need to apply in this proceeding.
>
> ORA: I understand that that's your position, that's it's not an issue here, that the Commission has not complied -- insured that PG&E's MAOP calculation complies with federal regulations. We understand that that is your position, that we should not explore that issue here.
>
> ALJ: Right. It is – the Commission issued a decision two years ago. There's a list of things that are required for PG&E to present and we are -- and I'm bound to apply this decision until the Commission changes it.

See also, R.11-02-019, 18 RT 2748-2750: 20-25 and 18 RT 2864-2865: 6–26.

compliance with federal regulations be reserved for a proceeding of general applicability. This is especially so in this instance, where the motion was made in the proceeding intended to set the MAOP of Line 147 – with attendant public safety implications. Finally, there is nothing that prevents a later Commission decision from deviating from a prior decision provided notice consistent with the requirements in Public Utilities Code § 1708.

ORA sought rehearing of the Commission's decision not to consider PG&E's compliance with federal safety regulations.[27] The only rehearing order issued thus far ignored the issue, concluding, with no citations or supporting discussion, that compliance with the federal regulations was "implicit" in prior decisions, notwithstanding the fact that the record in R.11-02-019 shows that the issue was never substantively addressed.[28]

ORA also sought, in R.11-02-019, to have the Commission develop a rule of general applicability, to be codified in General Order 112, that would explain how MAOP must be calculated consistent with Commission decisions and federal regulations. These efforts were dismissed in the final decision revising General Order 112, and remain pending on rehearing.[29]

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[27] *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); City Of San Carlos' And Office Of Ratepayer Advocates' Application For Rehearing Of Decision No. 15-06-034 Modifying Decision No. 13-12-042 And Denying Rehearing, As Modified, R.11-02-019, July 13, 2015 (ORA & San Carlos 2nd Line 147 AFR); and ORA Application for Rehearing of Decision No. 15-06-044 Adopting Revised General Order 112-F, R.11-02-019, July 29, 2015.

[28] In disposing of the ORA and San Carlos Application for Rehearing requesting that the Commission consider whether PG&E's proposed MAOP for Line 147 complied with federal regulations, and noting that the Commission had failed to address this issue in any of its MAOP proceedings, this Commission could only find that its determination about compliance with the Federal MAOP regulations was "implicit" in prior decisions: "Implicit in these directives is the concept that operators determine the proper MAOP based on the applicable federal regulations." D.15-06-034, p. 11. This Commission's decision on rehearing did not identify any decision where such a finding was express, and that is because there are no such decisions. *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).

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

In summary, to ORA's knowledge, there is no Commission decision that addresses in any substantive manner how or whether PG&E's MAOP calculations comply with the federal regulations.

III. PG&E MUST BE REQUIRED TO DEVELOP A COMPLIANCE PLAN CONSISTENT WITH FEDERAL REQUIREMENTS AND THE INTENT OF PUBLIC UTILITIES CODE § 958

A. PG&E Does Not Have A Comprehensive Test Or Replace Plan As Required By § 958.

Public Utilities Code § 958 requires PG&E to have in place a "comprehensive" plan to test or replace every line in its system that is missing records. In response to ORA observations that PG&E does not have § 958 plan, PG&E repeats the history of its PSEP and its MAOP validation program. Never once does PG&E assert that this work is, in fact, a plan compliant with § 958, nor could it.

Public Utilities Code § 958 is clear. It requires a "comprehensive" plan that "shall provide for testing or replacing ***all*** interstate transmission lines ***as soon as practicable***." (Emphases added). The plan "shall include a timeline for completion that is as soon as practicable."[30] Merriam Webster defines "comprehensive" as "covering completely or broadly."

The ORA Motion quoted PG&E testimony confirming that PG&E's test and replace plan extends only to 2017, the length of this rate case.[31] Further, PG&E has no plan in place that covers all of its pipes, or even a plan in place to address work that qualified as high priority work in PSEP Phase 1.[32] As such, whatever PG&E's plan is, it clearly does not meet the requirements of § 958.

[30] Unlike the provisions of § 958 permitting PG&E to use engineering assumptions, the "plan" provisions of the law do not conflict with federal regulations.

[31] ORA Motion, pp. 25-26.

[32] ORA Motion, pp. 25-26.

B. Requiring PG&E To Comply With Federal Regulations, Including A Waiver Request, Would Result In A Comprehensive Compliance Plan That Would Facilitate Future Monitoring And Enforcement Efforts.

PG&E is not in compliance with federal MAOP regulations and it is unlikely it will be able to bring its system into compliance for many years given that it is still missing critical records for nearly 1,000 miles, or more, of its approximately 6,000 mile system. To begin the process of bringing PG&E into compliance, PG&E should be ordered to request a waiver consistent with federal law, and as part of the waiver process, PG&E should be required to provide a comprehensive plan for bringing its system into compliance, including the type of line-specific information PHMSA requires to issue a special permit under the federal waiver process.[33] Such a compliance plan would likely meet the majority of the § 958 requirements, and would facilitate SED's ability to monitor, in a meaningful, quantitative manner, PG&E's progress towards compliance.

IV. THIS PROCEEDING IS THE APPROPRIATE FORUM FOR AN ORDER TO SHOW CAUSE

PG&E argues that its compliance with federal regulations and the appropriate methodology for calculating MAOP are not within the scope of this proceeding.[34] It proposes to move these considerations to R.11-02-019 to the extent they must be considered. The discussion in Section II.B above explains how requests to address these issues in R.11-02-019 were repeatedly denied such that it would be inappropriate to now move them to that proceeding. Further, to the extent that the "scope" of the proceeding is determinative, R.11-02-019 is no better suited than this proceeding for consideration of these issues. The scope of that proceeding does not include consideration of PG&E's violation of federal regulations, as demonstrated by the denial of ORA's motions to consider those issues in that proceeding.

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[33] 49 USC § 60118 and 49 CFR § 190.341 – "Special permits." *See also* ORA Motion, Attachment I, a PHMSA presentation made during the May 2015 SED-sponsored Workshops, which outlines the waiver process and provides examples of its application.

[34] PG&E Response, pp. 3-4.

Given that the most significant outcome of any enforcement pursued as a result of ORA's Motion should be PG&E's development of a comprehensive compliance plan consistent with § 958 and federal law – and the Commission's review and possible approval of that plan – this proceeding is the most appropriate for consideration of ORA's Motion. Recall that consideration of PG&E's PSEP was pursued in R.11-02-019 to ensure rate recovery *between* rate case cycles. It was an anomaly which should not be permitted to swallow the rule.

This is the only proceeding where PG&E's continuing work to bring its system up to date is being examined. PSEP issues have been moved to this proceeding such that approval of PG&E's test and replace plan in this proceeding will implicitly authorize PG&E to abandon the PSEP work authorized in R.11-02-019.[35] Deviations from PG&E's work proposed in this rate case – including work to address the deficiencies identified in ORA's Motion – should be addressed in this, or future rate cases.

V. PG&E'S RESPONSE PERPETUATES ITS MISREPRESENTATIONS

While ORA does not belabor the point here, it is significant to note that PG&E's Response perpetuates the misrepresentations and the constantly changing positions that the ORA Motion observed. For example, PG&E continues to assert that it must calculate MAOP pursuant to 49 CFR § 192.619(a), even though, as the ORA Motion explains, it took a very different position in the November 2013 Line 147 proceedings. As recently its February 2, 2015 letter to ORA (ORA Motion, Attachment F), PG&E appears to ridicule ORA for claiming that the Commission had "eliminated" reliance on the Grandfather Clause.[36]

Consistent with its historic practices, PG&E now offers a tortured interpretation of the PHMSA Annual Report instructions to explain why it was reasonable for it to report

[35] *See* ORA Motion, p. 24 at Footnote 62.

[36] *See* ORA Motion, Attachment F, p. 3. The PG&E February 2, 2015 Letter asserted that "ORA's request for interpretation to PHMSA misrepresented the Commission's decisions …" The only "misrepresentation" in ORA's request, which ORA acknowledged to PHMSA, was that the Commission had eliminated reliance on the Grandfather Clause for purposes of calculating MAOP.

"zero" incomplete records in its Annual Reports to PHMSA and this Commission.[37] PG&E explains that the rules permit it to only report the miles of pipes for which a "records review" was not completed. As all of its records reviews were completed, it reported "zero" miles had incomplete records, even though it was well aware that it had incomplete records for many of those miles.

Clearly, a reasonable reading of the instructions shows that PHMSA intended all miles with incomplete records to be reported, and where the operator did not know if it had complete records (because no records review had yet been done), it should also include those pipes in the "incomplete records" category.

PG&E's continued attempts to play fast and loose with gas safety reporting requirements and MAOP regulations must be sanctioned by this Commission.

VI. CONCLUSION

For all of the reasons set forth above and in ORA's Motion for an Order to Show Cause filed on December 16, 2015, 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, and for failure to have a comprehensive test and replace plan as required by Public Utilities Code § 958. The Order to Show Cause should also inquire into the scope of PG&E's violations of the federal MAOP regulations, and consider additional fines for those violations.

To facilitate future enforcement actions, including SED's 2016 MAOP Validation audit of PG&E's system, the Commission should, as soon as practicable, provide 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 the requirements of 49 CFR Part 192, including §§ 619(a) and 619(c).

Finally, 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.

[37] PG&E Response, pp. 14-15.

Any such plan should contain the level of detail required by PHMSA for "special permits"[38] and identify where waivers are required, pursuant to federal law.

Respectfully submitted,

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[38] 49 CFR § 190.341.