

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

March 19, 2012

Agenda ID #11175

TO PARTIES OF RECORD IN CITATION NO. ALJ-274 2012-01-001

The attached draft Resolution ALJ-277 denies the appeal filed by Pacific Gas and Electric Company of Citation No. 2012-01-001. It directs Pacific Gas and Electric Company, within 30 days of the date the resolution is issued, to pay a fine of \$16,760,000. This draft resolution will be on the agenda at the April 19, 2012 Commission meeting. The Commission may then vote on this draft resolution, or it may postpone a vote. When the Commission acts on the draft resolution, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own order. Only when the Commission acts does the resolution become binding on the parties.

You may file comments on the draft resolution. Opening comments shall be filed no later than April 9, 2012, and reply comments shall be filed no later than April 16, 2012. Opening comments shall be limited to ten pages in length, plus a subject index listing the recommended changes to the draft resolution, a table of authorities, and an appendix setting forth the proposed findings of fact and conclusions of law. Reply comments shall not exceed five pages. Comments shall focus on the factual, legal, or technical errors in the draft resolution and, in citing such errors, shall make specific references to the record or applicable law. Comments which fail to do so will be accorded no weight and are not to be submitted. Comments proposing specific changes to the draft resolution shall include supporting findings of fact and conclusions of law.

Service is required on all persons on the service list for this appeal. Comments shall be served consistent with the requirements of Pub. Util. Code § 311(g) and Rule 14.5 of the Rules of Practice and Procedure. Finally, comments must be served separately on Administrative Law Judge Mattson by e-mail at bwm@cpuc.ca.gov, plus a paper copy for which I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ KAREN V. CLOPTON

Karen V. Clopton, Chief
Administrative Law Judge

KVC:eam

Attachment

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-277
Administrative Law Judge Division
April 19, 2012

RESOLUTION

RESOLUTION ALJ-277 Affirming Citation No. 2012-01-001 Issued to Pacific Gas and Electric Company for Violations of General Order 112-E.

1. SUMMARY

This resolution denies the appeal filed by Pacific Gas and Electric Company of Citation No. 2012-01-001. The citation was issued by the Commission's Consumer Protection and Safety Division pursuant to Commission Resolution ALJ-274 for utility violations of gas safety requirements. Citation 2012-01-001 is affirmed. Pacific Gas and Electric Company shall, within 30 days of the date this resolution is issued, pay a fine of \$16,760,000.

2. BACKGROUND

Resolution ALJ-274, issued on December 7, 2011, authorizes staff of the Commission's Consumer Protection and Safety Division (CPSD), or other staff designated by the Commission's Executive Director, to issue enforcement citations regarding gas utility violations of Commission General Order (GO) 112-E, including federal regulations incorporated by reference into the General Order. GO 112-E contains specific rules governing the design, construction, testing, maintenance, and operation of utility gas gathering, transmission, and distribution pipeline systems, and supplements compliance with the federal standards set forth in the Code of Federal Regulations (CFR), Title 49, Parts 190, 191, 192, 193, and 199.

On December 30, 2011, Pacific Gas and Electric Company (PG&E) notified CPSD that it had identified non-compliance issues within its gas system, and was thereby in violation of GO 112-E and related federal regulations. In particular, PG&E's notice explained that on December 21, 2011, a PG&E employee discovered 16 plat maps containing approximately 13.83 miles of gas distribution mains and 1,242 services that were not included in PG&E's

leak survey schedule.¹ The maps are for areas in PG&E's Diablo Division involving seven cities in Contra Costa County (Antioch, Brentwood, Byron, Concord, Danville, Discovery Bay, Pittsburg). PG&E stated that these distribution pipelines and services had not been surveyed for leaks within the five-year timeframe required by federal regulation 49 CFR § 192.723(b)(2).² PG&E reported that it had taken immediate corrective action including: (a) completion on December 29, 2011, of a leak survey of all involved distribution pipelines and services, (b) identification of 23 leaks,³ (c) immediate repair on December 30, 2011, of the most serious leak, (d) implementation of a plan for timely repair or continuing annual surveys of the remaining leaks, (f) inclusion of the 16 plat maps in the five-year gas distribution leak survey schedule, (g) completion and validation of all gas plat maps in the Diablo Division to ensure their inclusion in the five-year leak survey, and (h) addition of another step in the Diablo Division gas mapping process to ensure all new maps are added to the five-year leak survey. PG&E indicated two additional steps it would take: (a) formal root cause analysis to determine the cause of the error and to identify any additional necessary corrective actions, and (b) system-wide analysis to determine if this issue is present in any other divisions and to implement corrective action as needed. PG&E also verified that on December 30, 2011, it contacted local authorities in the seven cities as required by the Commission.

On January 27, 2012, pursuant to Resolution ALJ-274, CPSD issued Citation No. 2012-01-001 to PG&E. CPSD cited PG&E for violations during the period 1993 through 2011 involving failures to conduct leak detection surveys required by 49 CFR § 192.723(b)(2). CPSD directed PG&E to correct the violations and/or submit a Compliance Plan for correcting the violations. CPSD also directed PG&E to, within 10 calendar days of the citation service date, pay a fine of \$16,760,000 or file a Notice of Appeal. On February 1, 2012, PG&E filed a Notice of Appeal.

On February 2, 2012, the matter was assigned to Administrative Law Judge (ALJ) Burton W. Mattson. A telephone prehearing conference was held on February 7, 2012. Parties agreed that no evidentiary hearing was needed given that there are no disputed issues of material fact. By ruling dated February 10, 2012, the citation and appeal were each received as evidence, PG&E was directed to produce additional material, issues were

¹ A plat map is a map which shows divisions of a piece of land, such as building lots. Distribution mains are generally larger diameter pipes located in a roadway. Services are smaller diameter pipes leading from the main to the property of an individual customer.

² Title 49 CFR § 192.723(b)(2) states: "A leakage survey with leak detector equipment must be conducted outside business districts as frequently as necessary, but at least once every 5 calendar years at intervals not exceeding 63 months." (Exhibit 1 at 1.)

³ PG&E's December 30, 2011 notice identified 22 leaks, with the 23rd leak reported in a January 6, 2012 update letter to CPSD. The January 6, 2011 letter also updated the mileage from 13.83 miles to 13.72 miles, and the number of services from 1,242 to 1,127.

identified, a schedule was adopted, and procedural matters were addressed. On February 21, 2012, PG&E submitted the additional material, which was received as evidence on February 24, 2012. On February 28, 2012, CPSD moved for receipt of further evidence, the motion was granted, and the evidence was received. A total of seven exhibits were received as evidence. On February 28, 2012, PG&E and CPSD filed briefs. On March 9, 2012, PG&E and CPSD filed reply briefs. The proceeding was submitted for decision on March 9, 2012, upon receipt of reply briefs.

3. DISCUSSION

PG&E does not dispute the violations, but says the fine is excessive. PG&E appeals the citation on three grounds: the number of violations, the level of fine per violation, and whether the citation process should be suspended for self-reported violations pending further Commission consideration.

3.1. Number of Violations

CPSD identifies 838 violations. PG&E argues that the number is 21. For the reasons explained below, we find that there are 838 violations.

CPSD calculates the number of violations as the number of months from the due date of the first missed leak survey (based on the oldest main installed on the plat map) to the date of the actual survey. CPSD counts each month after the date of the first missed leak survey as one violation. For example, the earliest main operational date for the first listed plat map in CPSD's tabulation was November 4, 1999. (See Appendix A.) The first missed leak survey date was December 31, 2004. The actual leak survey was December 29, 2011. The number of months between December 31, 2004 and December 29, 2011 is 84. For the 16 plat maps, this approach results in a total of 838 violations.

PG&E contends that the requirement to conduct a leak survey is once every five years. According to PG&E, after missing one leak survey the next violation could only occur by missing the next five-year leak survey. For the first plat map listed in CPSD's calculation, for example, PG&E's approach results in two missed five-year surveys. That is, the first missed survey was December 31, 2004, and the second was December 31, 2009. For the 16 plat maps, PG&E's five-year approach results in a total of 21 violations.

PG&E is incorrect. A leak detection survey must be conducted as frequently as necessary, but not less than every five years. The duty to conduct a leak survey does not expire for five years once a survey date has passed. To the contrary, the responsibility to conduct a leak survey continues every day after the missed survey date until the survey is conducted. Each missed day is a violation.

This view is consistent with state law, which provides that in the case of a continuing violation each day's continuance is a separate and distinct offense.⁴ Similarly, Commission Resolution ALJ-274 provides that each day of an ongoing violation may be cited as a separate and distinct offense, and authorizes CPSD to impose a penalty for each day of an ongoing violation.⁵ If calculated daily rather than monthly, the number of violations would be about 25,140, and the penalty at \$20,000 per violation would be significantly higher than the one assessed in Citation No. 2012-01-001.⁶

When issuing a citation, we directed CPSD to consider the factors delineated in Pub. Util. Code § 2104.5 (i.e., size of business, gravity of violation, good faith of business to achieve compliance). We also directed that staff take into account whether the violations are self-identified and self-corrected, and whether injury or damage resulted from the violations.⁷ We find that CPSD did so here, as explained further below, by applying one violation per month rather than one violation per day. This reduces the number of violations and the amount of the fine to about one-thirtieth of what would otherwise be the result.

We conclude that PG&E's assertion that the number of violations should be 21, based on the number of missed five-year surveys, is unpersuasive and is unreasonable. Each day of an ongoing offense is a separate and distinct violation. The violations here are about 25,140. The law and good public policy require that CPSD and the Commission take into account several factors, including those in Pub. Util. Code § 2104.5. We do that here and find that the just and reasonable number of violations is 838.

⁴ "Every violation of the provisions of this part or of any part of any order, decision, decree, rule, direction, demand, or requirement of the commission, by any corporation or person is a separate and distinct offense, and in the case of a continuing violation each day's continuance thereof shall be a separate and distinct offense." (Pub. Util. Code § 2108.)

⁵ "Each violation is a separate and distinct offense and each day of an ongoing violation may be cited as a separate and distinct offense, consistent with Pub. Util. Code § 2108." (Resolution ALJ-274 at 1; also see 7, 10, Finding and Conclusion 13, and Appendix A at Sections 1.A.1 and 1.C.1.)

⁶ Rather than 838 violations, the number of violations would be approximately 30 times more, or about 25,140 (assuming 30 days per month for 838 monthly violations). This would result in a total penalty of about \$502,800,000 (\$20,000 per violation for 25,140 violations).

⁷ Resolution ALJ-274, Findings and Conclusions 12 and 19.

3.2. Level of Fine Per Violation

CPSD assessed a penalty of \$20,000 per violation. PG&E argues the Commission should exercise its discretion to adopt a fine that is appropriate to the circumstances, which PG&E states is either no penalty at all or one that is less than the statutory maximum (such as the statutory minimum of \$500 per violation, according to PG&E). As explained below, we find that the appropriate penalty level is \$20,000 per violation.

Gas, electric and other utilities provide services using inherently hazardous materials which require safe operating practices and facilities. Safety for the public and utility employees is essential. We have repeatedly stressed that the Commission's primary concern is safety. For example, in our original adoption of GO 112 we stated that the safety rules contained in the General Order, no matter how carefully and well prepared, could not and did not:

...remove or minimize the primary obligation and responsibility of respondents [gas utilities] to provide safe service and facilities in their gas operations. Officers and employees of the respondents must continue to be ever conscious of the importance of safe operating practices and facilities and of their obligation to the public in that respect. (Resolution ALJ-274 at 5, citing Decision (D.) 61269, 58 CPUC 1st 413, 420.)

We have continuously and consistently emphasized safety. This was underscored recently when we said the "duty to furnish and maintain safe equipment and facilities is paramount for all California public utilities." (D.11-06-017 at 16.)

In adopting Resolution ALJ-274, we said (at 11): "In this Resolution, we are specifically sending a strong message to gas corporations: safety is our primary concern..." We expressly recognized that recent legislation added to or amended provisions of the Public Utilities Code that specifically mandate increased safety measures related to gas pipeline safety.⁸ We also acknowledged the importance of restoring the public's confidence in the safety of all gas utilities' transmission and distribution facilities, particularly in the wake of the September 9, 2010 San Bruno explosion, and the August 30, 2011 National Transportation Safety Board (NTSB) "Pipeline Accident Report" (with the NTSB's strong recommendation for expansion of the Commission staff's enforcement authority, including authority to issue fines and penalties). Taking all factors together, we found:

⁸ Five recent bills, for example, include: Assembly Bill (AB) 56, Senate Bill (SB) 44, SB 216, SB 705 and AB 879. (See Resolution ALJ-274 at Finding and Conclusion 4.)

It is reasonable to assess penalties for each violation at the maximum amount set forth in Pub. Util. Code § 2107; this approach is consistent with the need to protect public safety and to ensure compliance with the safety requirements of the Commission's orders and the Public Utilities Code. (Finding and Conclusion 11.)

CPSD properly applied our specific directions and assessed \$20,000 per violation.

At the same time, the Commission directed staff, when issuing a citation, to take account of the factors listed in Pub. Util. Code § 2104.5. Those factors are the size of the business, the gravity of the violation, and the good faith of the business in attempting to achieve compliance. We also directed staff to consider the extent to which the violations are self-identified and self-corrected, and whether injury or damage resulted. (Resolution ALJ-274, Findings and Conclusions 12 and 19.)

These considerations dovetail with principles the Commission has historically used to set fines, including those recently used to set a penalty for the 2008 gas explosion and fire in Rancho Cordova, California. (See D.11-12-021, D.11-11-001, and D.98-12-075 (84 CPUC2d 155, 182-184, 188-190).) Those principles are (a) the severity of the offense, (b) the conduct of the utility (including before, during and after the offense to prevent, detect, disclose and rectify a violation), (c) the financial resources of the utility, (d) the totality of the circumstances in furtherance of the public interest, and (e) the role of precedent. For the reasons discussed below, the total penalty of \$16.76 million affirmed here reasonably relies upon these five considerations.

3.2.1. Severity of Offense

PG&E's offenses were severe. Leak surveys are the primary industry tool available to detect and correct gas leaks before they become serious. Moreover, leak survey data provides critical information that operators must consider in determining the need and schedule for necessary maintenance or replacement. Federal regulations require such surveys outside business districts as frequently as necessary, but not less often than every five years. The facilities here were not leak surveyed until December 2011, even though some were first installed more than 18 years earlier. (See Appendix A, Item 5, plat map 51E09, Danville.)

The potential public harm from these violations was great. The violations were significant, with the capacity for serious injury to persons and property, as demonstrated by both the 2008 Rancho Cordova explosion and the 2010 San Bruno explosion. (See D.11-11-001; also see Resolution ALJ-274 at 6.) One of the leaks identified here, in fact, was a Grade 1 leak, which is the most serious and requires immediate repair.⁹

These violations were avoidable. PG&E had multiple opportunities to detect and correct the violations before December 2011. For example, some facilities were installed as early as 1993, resulting in several missed leak surveys with multiple opportunities for an alert PG&E survey crew, supervisor, or higher management to question why some areas were not surveyed. Further, over time multiple services were added to existing facilities on many of the plat maps at issue here. With each completed installation, PG&E was presented with another opportunity to add the plat map to its leak survey schedule. PG&E missed each opportunity. Moreover, any quality control procedures PG&E may have had in place clearly failed.

Another opportunity was presented when PG&E reported to CPSD in November 2007 that some leak surveys in its North Coast Division had been falsified. To address this problem, PG&E reviewed the adequacy of its North Coast Division leak survey procedures. The review resulted in PG&E identifying additional issues. PG&E responded by conducting an accelerated leak survey of its entire gas distribution system. The system-wide resurvey effort was yet another missed opportunity for PG&E to have identified that its facilities had not all been surveyed.

Other opportunities were presented. The December 2008 Rancho Cordova explosion and fire, and the September 2010 San Bruno explosion and fire, each presented an opportunity for PG&E to review the safety of its entire gas system. These opportunities were missed, at least with respect to leak surveys for the Diablo Division, until events resulted in their being found in December 2011 (36 months after Rancho Cordova, and 15 months after San Bruno).

Violations which cause actual physical harm to people or property are generally considered the most severe, with violations that threaten such harm closely following. (D.98-12-075, 84 CPUC2d 155, 188.) The violations here threatened actual physical harm to people and property, and are very severe.

⁹ PG&E classifies leaks into four grades. A Grade 1 leak “represents an existing or probable hazard to persons or property, and requires immediate repair or continuous action until the conditions are no longer hazardous.” (Exhibit 6 at 2.)

We also consider harm to the integrity of the regulatory process in setting penalties. Compliance by public utilities with Commission orders is required by law:

Every public utility shall obey and comply with every order, decision, direction, or rule made or prescribed by the commission in the matters specified in this part, or any other matter in any way relating to or affecting its business as a public utility, and shall do everything necessary or proper to secure compliance therewith by all of its officers, agents, and employees. (Pub. Util. Code § 702.)

We take this seriously and, as a result, have unambiguously stated:

Such compliance is absolutely necessary to the proper functioning of the regulatory process. For this reason, disregarding a statutory or Commission directive, regardless of the effects on the public, will be accorded a high level of severity. (D.98-12-075, 84 CPUC2d 155, 188.)

The violations here date to the 1990s. Disregard of a Commission directive, regardless of the effects on the public, is very severe.

For all these reasons, these violations are accorded a very high level of severity.

3.2.2. Conduct of Utility

PG&E asserts that its conduct in discovering, self-reporting and correcting the violations demonstrates the taking of necessary and appropriate responsibility in good faith. CPSD says PG&E's conduct appears to have been in good faith, which CPSD states it considered a mitigating factor that justified a lower fine. CPSD explains that other factors must also be considered. For the reasons discussed below, we agree that PG&E's conduct is a potential mitigating factor, but its conduct must be put in perspective.

We judge the conduct of the utility by assessing its actions before, during and after the offense to prevent, detect, disclose and rectify a violation. (D.98-12-075, 84 CPUC2d 155, 183-184, 188-189.) That is, we look at the entire track record of the utility's conduct.

We described the utility's actions to prevent a violation as:

Prior to a violation occurring, prudent practice requires that all public utilities take reasonable steps to ensure compliance with Commission directives. This includes becoming familiar with applicable laws and regulations, and most critically, the utility regularly reviewing its own operations to ensure full compliance. (Id., 189.)

PG&E's failure to discover missed leak surveys involving facilities installed as far back as 1993 shows PG&E did not do an adequate job of "regularly reviewing its own operations." This failure is further exposed by the specific missed opportunities described above (e.g., added services, system-wide reviews) which presented additional chances beyond a "regular review of operations" to discover missed surveys.

Nonetheless, PG&E asks the Commission to exercise its discretion to impose no or a limited penalty because, according to PG&E, its employees acted with an unswerving commitment to safety, and the company quickly investigated the issue, performed leak surveys, and repaired leaks when found. We recognize this action and commend PG&E. We point out, however, that this behavior is the duty of each utility under the law and Commission orders. This is the baseline conduct expected of public utilities, the costs for which we include in Commission-authorized rates paid by ratepayers. Nothing less than an unswerving commitment to safety with quick responses is acceptable.¹⁰

PG&E also makes a public policy argument for no or a reduced penalty in early citations issued under Resolution ALJ-274:

There is a strong public policy reason for the Commission to encourage self-reporting and prompt corrective action in the initial application of Res. ALJ-274 and not to discourage future reports through a punitive response. The \$16.8 million fine here would be to send a message to

¹⁰ PG&E characterizes its system-wide review of maps to identify any other possible missed leak surveys as "voluntary." (PG&E Brief at 6.) We question this characterization. PG&E may have undertaken a system-wide review pursuant to its own initiative, before being ordered to do so by the Commission. Given the severity of the violations, however, a system-wide review is responsible action consistent with PG&E's duty to provide safe service. Anything less would be subject to severe concern by the Commission and the public. While we consider the extent to which PG&E undertook a system-wide review without a specific Commission order, we consider this in the context of each utility's duty to at all times do everything necessary and reasonable to provide safe service. Moreover, we note that this was at least the second PG&E system-wide review. (The first was after the November 2007 report to CPSD about problems in the North Coast Division.) The need for a second system-wide review raises concern about the quality and reliability of the first system-wide review.

PG&E's employees (and those at other gas utilities) that undermines the safety and compliance message PG&E has been reinforcing ... No matter how much PG&E's management tries to convey that these employees' conduct [the employees who identified the plat map issue] was exemplary and that they acted precisely as the Company wanted them to act, because their discovery of the map issue could cost the Company \$16.8 million, it may well cause employees to wonder in the future if they should simply fix problems and not bring them to the attention of management. This is not what PG&E wants and it should not be the message the Commission wants to send to our employees and the employees of the other gas utilities. (PG&E Brief at 6-7; emphasis in original.)

Incentives for good behavior are an issue. We point out, however, that the utility and its employees have a "primary obligation and responsibility...to provide safe service and facilities in their gas operations." (D.61269, 58 CPUC1st 413, 420.) Safety is the Commission's primary concern, and must be the primary concern of every gas utility. The size of the penalty here does not in any way alter that primary obligation and responsibility. Further, we note that the law requires that every public utility shall do everything necessary to secure compliance by all of its employees with every order, decision, direction or rule of the Commission. (Pub. Util. Code § 702.) That includes Commission orders regarding safety reports. The amount of the fine does not change that duty.

We reject the proposition that the size of the penalty will cause a PG&E employee to engage in behavior which in any way violates the law or Commission orders (e.g., by ignoring or violating Commission reporting requirements). We also reject the notion that PG&E management will not create and enforce policies, rules and a culture of responsibility that incorporates the highest standards of behavior (including a company rule that employees bring problems to the attention of management).¹¹ In short, we are not persuaded that these concerns should govern the level of penalty here.

¹¹ In judging the conduct of the utility, we have said we "will also look at the management's conduct during the period in which the violation occurred to ascertain particularly the level and extent of involvement in or tolerance of the offense by management personnel ... Managers will be considered, absent clear evidence to the contrary, to have condoned day-to-day actions by employees and agents under their supervision." (D.98-12-075, 84 CPUC2d 155, 189.) We expect utility management to have rules requiring that employees promptly bring safety problems to management's attention. We would find it very troubling if management tolerates employees simply fixing problems and not bringing them to the attention of management. We understand PG&E is presenting us with a hypothetical in support of its request for no or a reduced penalty. Even the hypothetical, however, is very troubling given long-standing law and the Commission's clear orders regarding the fundamental importance of safety and each utility's responsibilities.

Lastly, PG&E argues that its prompt remedial action and the absence of any harm or property damage should result in the Commission exercising its discretion to adopt no penalty or a penalty of less than the \$16.76 million assessed by CPSD. We do not agree. The severity of the violations is great. This is not the case where a utility has presented evidence of a documented track record over many years of safety; prompt, accurate and complete reporting; good behavior; good faith action; and a pervasive safety culture. PG&E presents no evidence of such track record in this appeal. To the contrary, the violations at issue date back to facilities first installed in 1993, with many missed opportunities to discover and correct the violations. PG&E was fined in 2011 for the 2008 Rancho Cordova explosion and fire. An investigation is underway into whether and how much PG&E should be fined for the 2010 San Bruno explosion and fire. (Investigation 12-01-007.) PG&E's track record at present does not justify no or a reduced penalty.

CPSD and the Commission consider a utility's safety track record when determining the size of a penalty.¹² Each utility may present evidence of its safety conduct in a future citation appeal proceeding, if any. This is – and we intend it to be – a strong incentive for PG&E to develop a stellar track record that can potentially be considered in a future PG&E request for no or reduced penalties. However, the evidence does not support such an outcome here.

We have also noted another very important role for fines: “to effectively deter further violations by this perpetrator or others.” (D.98-12-075, 84 CPUC2d 155, 188.) We must consider the deterrence effect when assessing the amount of the fine here, not only with regard to PG&E but also other California gas utilities. We adopted Resolution ALJ-274 as part of a strong message to gas corporations that safety must be paramount and primary in everything they do. A substantial penalty here will give PG&E and all California gas utilities a strong incentive to conduct their operations safely so as to avoid further violations. This is an important element in the deterrence role of a fine.

¹² The total conduct of the utility is assessed by looking at its actions before, during and after the offense to prevent, detect, disclose and rectify a violation. On February 1, 2012, PG&E reported to CPSD that it had identified an additional 46 plat maps in its distribution system that were not included in its leak survey schedule. CPSD says that PG&E appears to have embraced the gravity of the situation and continues to identify, self-report, and address these violations. These factors will be taken into account, according to CPSD, as CPSD considers its action on these violations. (CPSD Opening Brief at 8, footnote 23.) This might be one potential element in PG&E constructing a documented and compelling track record of safety over many years.

Taking all these factors into account, PG&E's conduct supports a substantial penalty mitigated in part by its discovering, self-reporting and quickly correcting the violations in good faith.

3.2.3. Financial Resources of Utility

PG&E is a very large utility with significant financial resources. It is among the largest corporations in the United States. We recently described its size as:

PG&E serves approximately 4.3 million natural gas customers and 5.2 million electric customers in a northern California service territory that covers 43% of the state. PG&E reported 2010 operating revenues of \$13.841 billion. (D.11-11-001 at 39.)

PG&E Corporation reported 2011 operating revenues of \$14.956 billion. (Exhibit 3 at 2.)

3.2.4. Totality of Circumstances

The factors weighing against PG&E when considering the totality of the circumstances in furtherance of the public interest include the severity of the offense, potential for harm to persons and property, number of years of non-compliance, number of missed opportunities to discover and correct the non-compliance, harm to the integrity of the regulatory process, inadequacy of the regular reviews of its own operations, size of the utility and, as discussed below, precedent. These are balanced in part by PG&E's discovery of the problems, self-reporting, quick action, and no known harm to persons or property.

3.2.5. Precedent

We expect parties to explicitly address previously issued decisions involving sanctions, including ones with the most reasonably comparable facts. (D.98-12-075, 84 CPUC2d 155, 184.) CPSD identifies and discusses several prior decisions regarding fines where there was no loss of life, including one in which we took into account a utility's good faith cooperation. We note five previous sanctions in cases with reasonably comparable facts.

**DECISIONS INVOLVING SANCTIONS
WITH REASONABLY COMPARABLE FACTS** ¹³

Line No	Sanction	Company	Summary
1	\$30,000,000 ¹⁴	Southern California Edison Company (SCE)	D.08-09-038: Penalty for false reporting of data in connection with its performance based ratemaking mechanism, taking into account SCE's good faith cooperation with the Commission once the violations were identified.
2	\$27,000,000	Pacific Bell Telephone Company and related companies	D.02-10-073: Penalty for billing problems associated with broadband services.
3	\$25,000,000	Pacific Bell	D.01-09-058: Penalty for violations of caller ID regulations and incomplete disclosure of price information.
4	\$20,340,000	Quest Communications Corporation	D.02-10-059: Penalty for slamming and unauthorized billings.
5	\$12,140,000 ¹⁵	Cingular Wireless	D.04-09-062 and D.07-03-048: Penalty for collecting early termination fees.

These penalties are for relatively large utilities. They range from \$12.1 million to \$30 million but, unlike here, do not involve the potential for loss of life or great physical harm to persons and property. In deciding upon a penalty of \$30 million, we took SCE's good faith conduct into account.

PG&E contends a 2004 case involving a number of safety violations by SCE is of greater relevance than the cases cited by CPSD. (PG&E Reply Brief at 3, citing D.04-04-065.) In the 2004 case the Commission rejected a CPSD recommended fine of approximately \$97 million and instead fined SCE \$656,000. PG&E points out that the Commission did not fine SCE for 4,721 violations that SCE promptly remedied after they were brought to SCE's attention by CPSD. PG&E does not convincingly state the reasonably comparable facts, if any, and we find the facts are not reasonably comparable for two reasons.

¹³ In a recent PG&E case involving loss of life, the Administrative Law Judge rejected a settlement which included a penalty of \$26 million, and instead imposed a penalty of \$38 million. (D.11-11-001.) We affirmed that decision. (D.11-12-021.) We do not include that decision here because it involved the loss of life.

¹⁴ We also ordered restitution of \$115.714 million.

¹⁵ We also ordered restitution of \$17.717 million.

First, CPSD characterizes prior enforcement implementation as working collaboratively with self-reporting utilities and, where possible, generally avoiding fines. As explained in Resolution ALJ-274, however, both the Independent Review Panel and the NTSB recommended additional enforcement tools and an expansion of staff enforcement authority. (See pages 6-7.) We adopted those recommendations and have increased staff's tools and authority. The regulatory regime is not the same as it was in 2004. CPSD has in this case used these new tools and authority as we expect it to do, and we affirm the result here.

Second, we found in the 2004 case that CPSD failed to demonstrate that the cumulative effect of SCE's violations compromised SCE's system safety. That is not the case in this appeal. The evidence here persuasively shows that PG&E's violations compromised PG&E's system safety. Further, we were concerned in 2004 that CPSD failed to put SCE's violations in adequate context. Again, that is not the case here because CPSD convincingly put PG&E's violations in context. Finally, for violations by SCE involving potential serious harm, we assessed the maximum penalty of \$20,000, as provided by Pub. Util. Code § 2107. We similarly do so here.

The fine in this case is consistent with prior precedent.

3.2.6. Conclusion

We take all factors into account identified in Pub. Util. Code § 2104.5, D.98-12-045, and Resolution ALJ-274:

- size of the business (including its financial resources);
- gravity of the violation (including the severity of the offense);
- good faith of the business in attempting to achieve compliance (including the conduct of the utility before, during and after the offense to prevent, detect, disclose and rectify a violation);
- totality of circumstances in furtherance of the public interest (including the extent to which the violations are self-identified and self-corrected, and whether injury or damage resulted); and
- role of precedent.

A fine of \$20,000 per violation reasonably recognizes all factors, particularly the size of the business, gravity of the violations, need to send a strong message to gas corporations that safety must be their highest priority, goal of recent legislation to mandate increased safety measures related to gas pipeline safety, importance of restoring the public's confidence in the safety of all gas utilities' facilities, need to protect public safety, obligation to ensure compliance with the safety requirements of the Commission's orders and the Public Utilities Code, and our duty to restore faith and confidence in the regulatory process. Finding the number of violations is 838 (based on months rather than days) reasonably recognizes the good faith of PG&E in attempting to achieve compliance, the totality of the circumstances, and the role of precedent.

3.3 Suspension of CPSD Citations for Self-Reported Violations Pending Further Commission Consideration

Finally, PG&E asks that the Commission direct CPSD to withhold issuing citations for self-reported violations pending further Commission consideration. CPSD does not agree. We decline to instruct staff to withhold issuing citations.

The citation and appeal process authorized in Resolution ALJ-274 is an important new regulatory tool. CPSD is using this tool exactly as it was intended.

PG&E argues that the magnitude of the penalty in this, the first self-identified and self-corrected violation since adoption of Resolution ALJ-274, shows that the new tool may have unintended consequences. For all the reasons stated above, we disagree.

In comments on Resolution ALJ-274, the Utility Workers Union of America (UWUA) recommended giving particular consideration to self-identified and self-corrected violations. We did so, and directed staff to consider the extent to which a gas corporation self-identifies and self-corrects violations, and no injury or damage has occurred. (Resolution ALJ-274 at 12; also Appendix A at 4, Section 1.F.) CPSD reports that these were factors in its calculation of the violations here (i.e., monthly rather than daily). We have given the role of self-identified and self-corrected violations proper consideration with appropriate directions to staff. We need not suspend this tool pending further consideration.

Further, a strong, documented track record over many years of safe operations and practices may, when considered by CPSD in a future citation, result in no or a reduced penalty. When credibly presented in a future appeal of such citation, it may be a factor in the Commission reaching a result of no or a reduced penalty on appeal. The burden is on each utility, however, to establish and document that safety track record.

PG&E cites an investment report in support of its claim that the citation here of \$16.76 million sets a negative regulatory precedent and, if this citation process is used to set record-level fines for each violation, will likely require the investment community to seriously consider a valuation discount for future gas pipeline infrastructure investment. We are not persuaded. While an investment firm may necessarily focus on a company's near-term valuation, the Commission is obligated to consider many factors in addition to near-term valuation when making its regulatory decisions, including the public interest and the role of deterrence. Further, this is only one investment firm and may or may not represent the view of the broader investment community. Finally, we think the larger investment community will temper its concern, if any, over near-term valuation when it has time to consider how a good track record of safe operations and practices benefits the utility and the public, and mitigates the size of – or eliminates entirely – future penalties.

4. CONCLUSION

PG&E's appeal is denied. Citation No. 2012-01-001 is affirmed.

5. COMMENTS

Public Utilities Code Section 311(g)(1) requires that a draft resolution be served on all parties, and be subject to a public review and comment period of 30 days or more, prior to a vote of the Commission on the resolution. On March 19, 2012, a draft of today's resolution was distributed for comment to the two parties, PG&E and CPSD. On April ___, 2012, comments were filed by _____. On April ___, 2012, reply comments were filed by _____.

FINDINGS OF FACT

1. On December 31, 2011, PG&E notified CPSD that it had identified non-compliance issues within its gas system, and was in violation of GO 112-E and 49 CFR § 192.723(b)(2); the violations involved 16 plat maps containing approximately 13.72 miles of gas distribution pipelines and 1,127 services in PG&E's Diablo Division involving seven cities that were not included in PG&E's leak survey schedule; these pipelines and services had not been surveyed for leaks within the five-year timeframe required by 49 CFR § 192.723(b)(2); PG&E took corrective action.
2. On January 27, 2012, pursuant to Resolution ALJ-274, CPSD issued Citation No. 2012-01-001 to PG&E, citing PG&E for violations during the period 1993 through 2011 involving failures to conduct leak detection surveys required by 49 CFR § 192.723(b)(2); CPSD directed PG&E to correct the violations; CPSD also directed PG&E to pay a fine of \$16,760,000 or file a Notice of Appeal.

3. On February 1, 2012, PG&E filed a Notice of Appeal.
4. PG&E does not dispute the violations (which it self-identified, self-reported, and self-corrected), and there are no disputed issues of material fact.
5. PG&E asserts the fine is excessive and appeals on three grounds.
6. CPSD identifies 838 violations, counting each month between the date of the first missed leak survey and the date of the actual survey as one violation.
7. PG&E identifies 21 violations, contending that the requirement to conduct a leak survey is once every five years and, after missing one leak survey, the next violation can only occur by missing the next five-year leak survey.
8. A leak detection survey must be conducted as frequently as necessary, but not less than every five years; the duty to conduct a leak survey does not expire for five years once a survey date has passed; the responsibility to conduct a leak survey continues every day after the missed survey date until the survey is conducted, with each missed day being a violation.
9. If calculated daily rather than monthly, the number of violations would be about 25,140, and the penalty at \$20,000 per violation would be about 30 times higher than the \$16.76 million assessed in Citation No. 2012-01-001.
10. In issuing a citation, we directed staff to consider various factors (i.e., size of business, gravity of violation, good faith of business to achieve compliance, whether violations are self-identified and self-corrected, whether injury or damage resulted); CPSD considered these factors here.
11. Gas utilities provide services using inherently hazardous materials which require safe operating practices and facilities; the Commission has consistently stated that safety for the public and utility employees must be the primary obligation and responsibility of gas utilities; safety is the Commission's primary concern.
12. The Commission ordered that penalties assessed pursuant to Resolution ALJ-274 be at \$20,000 per violation, the maximum amount set forth in Pub. Util. Code § 2107, consistent with the need to protect public safety and to ensure compliance with the safety requirements of the Commission's orders and the Public Utilities Code.
13. The factors historically used by the Commission to set fines incorporate the factors listed in Pub. Util. Code § 2104.5 and the additional factors we identified in Resolution ALJ-274.
14. The failure to conduct leak surveys was severe and the potential for public harm from these violations was great, with one of the 23 leaks at issue here a Grade 1 leak (the most serious and requiring immediate repair).

15. These violations were avoidable, with multiple opportunities for PG&E to have detected and corrected the violations over many years.
16. Violations which cause actual physical harm to people or property are generally considered the most severe, with violations that threaten such harm closely following; the violations here threatened actual physical harm to people and property, and are very severe.
17. Compliance with every Commission order, decision, direction, or rule is absolutely necessary to the proper functioning of the regulatory process and disregard of a Commission directive, regardless of the effects on the public, is very severe.
18. The violations here date to facilities first installed in 1993, and involve disregard of a Commission directive.
19. The violations at issue here are accorded a very high level of severity.
20. The utility's conduct is assessed by its actions before, during and after the offense to prevent, detect, disclose and rectify a violation; one element of a utility's actions to prevent a violation include a utility regularly reviewing its own operations to ensure full compliance with Commission orders.
21. PG&E did not do an adequate job of regularly reviewing its own operations with respect to five-year gas leak surveys.
22. It is the duty of each utility under the law and Commission orders to act with an unswerving commitment to safety, and quickly investigate and fix safety problems once found.
23. The size of the penalty does not alter the primary obligation and responsibility of each gas utility to provide safe service, and to do everything necessary to secure compliance by all of its employees.
24. Utility evidence of a documented track record over many years (e.g., showing safety; prompt, accurate and complete reporting; good behavior; good faith action; a pervasive safety culture) may be considered as mitigating factors when assessing a penalty; PG&E presents no such evidence here.
25. An important role for fines is to deter further violations by the perpetrator and others.
26. PG&E has over 4 million natural gas customers, and reported 2011 operating revenue of nearly \$15 billion.
27. When considering the totality of the circumstances, factors weighing against PG&E (e.g., severity of offense, potential harm, size of the utility) are balanced in part by PG&E's good faith actions (e.g., discovery of the problem, self-reporting, quick remedies) and the fact that there is no known harm to persons or property.

28. The level of fines in prior decisions with the most reasonably comparable facts supports a fine of \$16.76 million in this case.
29. A fine of \$16.76 million (\$20,000 per violation for 838 violations) reasonably accounts for all factors the Commission must and should consider in determining the amount of a penalty.
30. CPSD is using the new regulatory tool authorized in Resolution ALJ-274 as it was intended; we have already considered and given direction to staff to consider the extent to which a gas utility self-identifies and self-corrects a violation, and no injury or damage results; a strong, documented safety track record over many years can potentially be considered in a future utility request for no or a reduced penalty.

CONCLUSIONS OF LAW

1. PG&E violated GO 112-E and 49 CFR § 192.723(b)(2) by failing to conduct leak surveys in its Diablo Division.
2. The number of violations should be 838, taking into account PG&E's self-identification and self-correction of the problem, and that no known injury or damage resulted from the violations.
3. The penalty level should be \$20,000 per violation taking into account the severity of the offense, the conduct of the utility, financial resources of the utility, totality of the circumstances, and precedent.
4. The Commission should not suspend the use of Resolution ALJ-274 for self-reported violations pending further Commission consideration.
5. Pacific Gas and Electric should pay a fine of \$16,760,000 in full within 30 days of the date this resolution is issued.
6. This order should be effective today to ensure that the strong message in Resolution ALJ-274 regarding safety being the primary concern is immediately and clearly affirmed, and removing any doubt about this appeal so that the deterrent effect of this resolution will take effect immediately.

THEREFORE, IT IS ORDERED that:

1. Citation No. 2012-01-001 is affirmed.
2. Pacific Gas and Electric Company shall pay a fine of \$16,760,000 in full within 30 days of the date this resolution is issued. The check shall be submitted to the Commission's Fiscal Office, 505 Van Ness Avenue, San Francisco, CA 94102, in the form of a certified check, payable to the California Public Utilities Commission. Pacific Gas and Electric Company shall include a completed Citation Payment Form, and the citation number

shall be identified on the face of the check. Upon payment, the fine will be deposited in the State Treasury to the credit of the State General Fund. Pursuant to Resolution ALJ-274 (Appendix A, Section I.D.3), failure to pay the full amount of the fine shall place Pacific Gas and Electric Company in default, the fine shall become final, and Pacific Gas and Electric Company shall have forfeited its right to further appeal. A late payment is subject to a penalty of 10 percent per year, compounded daily and to be assessed beginning the calendar day following the payment-due date.

3. If Pacific Gas and Electric Company fails to pay the fine as provided herein, the Commission shall take any and all action provided by law to recover the unpaid fine and ensure compliance with applicable statutes and Commission orders.
4. The appeal of Citation No. 2012-01-001 is closed.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on _____, the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director