



State of California
Public Utilities Commission

Notice of Appeal Form
(For A Citation Issued Pursuant to Resolution ALJ-274)

Respondent: Ms. Jane Yura
Vice President, Gas Operations,
Standards and Policies
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San Francisco, CA 94177

Citation Date: January 27, 2012
Citation #: 2012-01-001
Operator ID#: 15007
Appeal Date: February 1, 2012

Statements supporting Respondent's Appeal of Citation (You may use additional pages if needed and/or attach copies of supporting materials along with this form).

Please see attached

Attachment to Notice of Appeal

While PG&E does not dispute the violations it self-reported, the citation's \$16.8 million fine is an excessive amount based on over counting the number of "violations." Even if CPSD were correct about the number of violations, the amount of the fine undermines the Commission's policy objective of encouraging gas utilities to identify, report and fix safety issues. The Commission should reduce the penalty to an appropriate amount.

Background

This citation – the first issued by CPSD under Resolution ALJ-274 – arises from self-identified and self-corrected violations of 49 C.F.R. § 192.723(b)(2), which requires leak surveys every five calendar years. On December 30, 2011, PG&E reported to CPSD that it had identified a non-compliance issue in its Diablo Division. The non-compliance resulted from the omission from the five-year leak survey program of 16 plat maps containing approximately 13.83 miles of distribution mains and 1,125 services. CPSD confirmed that as of December 29, 2011, PG&E had leak surveyed all distribution facilities on all 16 maps. CPSD also confirmed, "There was no injury or damage resulting from the violation and PG&E has initiated corrective actions in Diablo." Preliminary Investigation Report at 1.

Res. ALJ-274 requires CPSD to impose the maximum statutory penalty for any violation it cites; CPSD has no discretion to impose a lesser penalty. In the case of self-identified and self-corrected violations, the resolution gives CPSD limited discretion not to issue a citation. If, however, CPSD decides to cite – as it did here – it has no discretion to impose less than the maximum statutory penalty.

Basis for Appeal

The Commission should modify \$16.8 fine imposed by CPSD for two fundamental reasons. First, CPSD over-counted the number of “violations.” Second, the Commission should exercise the discretion it reserved to itself in Res. ALJ-274 and adopt a fine based on less than the statutory maximum.

1. CPSD over-counted violations

As CPSD notes, distribution mains and services on 13 of PG&E’s plat maps “missed one or more five-year leak surveys as required by 49 CFR 192.723(b)(2).” Preliminary Investigation Report at 1; *see also Id.* at 2 (“PG&E missed one or more of the required 5-year distribution leak survey[s] for the distribution mains and services on the remaining 13 plat maps.”).

The violations lie in missing the five-year leak surveys. CPSD erroneously treated the passage of each month after the first missed leak survey as a separate violation. Instead, the next violation could only be missing the next five-year leak survey. Thus, for item 2 on its table, for example, when the five-year survey was missed on December 16, 2010, CPSD treated this as 12 violations – not the single violation that it is. And when the August 10, 2005 leak survey was missed for item 6, CPSD treated it as 76 violations rather than two (a missed survey in 2005 and another missed survey in 2010). If the fines are aligned with the violations and applying the statutory maximum, as CPSD is required to do, the result is as follows:¹

¹ This table is derived from that on page 4 of CPSD’s Preliminary Investigation Report.

Item #	Plat Map	Main Operational Date (Earliest)	<u>A</u> 1 st Missed Leak Survey Date	<u>B</u> Leak Survey Date	<u>C</u> # of Missed 5-Year Leak Surveys	<u>D</u> Fine \$20,000 per violation [C x \$20,000]
1	53B10	11/4/1999	12/31/2004	12/29/2011	2	\$40,000
2	53B11	9/16/2005	12/16/2010	12/29/2011	1	\$20,000
3	49A10	5/27/2002	8/27/2007	12/29/2011	1	\$20,000
4	49B11	11/17/1999	12/31/2004	12/29/2011	2	\$40,000
5	51E09	6/17/1993	9/17/1998	12/29/2011	3	\$60,000
6	53E16	5/10/2000	8/10/2005	12/29/2011	2	\$40,000
7	56D09	9/13/2005	12/13/2010	12/29/2011	1	\$20,000
8	58F02	3/23/1998	6/23/2003	12/29/2011	2	\$40,000
9	63F02	5/1/2007	None	12/29/2011	0	\$0
10	59D09	12/5/2001	12/31/2006	12/29/2011	1	\$20,000
11	59E09	6/13/2006	9/13/2011	12/29/2011	1	\$20,000
12	59F12	7/13/2006	10/13/2011	12/29/2011	1	\$20,000
13	64A10	6/20/2008	None	12/29/2011	0	\$0
14	64C07	12/8/1998	12/31/2003	12/29/2011	0 ²	\$0
15	64D06	12/8/1998	12/31/2003	12/29/2011	2	\$40,000
16	64D07	12/8/1998	12/31/2003	12/29/2011	2	\$40,000
TOTAL AMOUNT						\$420,000

2. The Commission should exercise its discretion to adopt a fine that is appropriate to the circumstances

Having determined to count the violations as it did, CPSD had only two choices under Res. ALJ-274: (1) impose a fine at the maximum statutory rate of \$20,000 per violation or (2) decline to issue a citation. Even if the Commission agrees with the CPSD's method of counting violations, it has the discretion to adopt a penalty anywhere in the statutory range of \$500 to \$20,000 per violation.

Under the circumstances here, the Commission should exercise that discretion. This is the first self-identified and self-corrected violation since the adoption of Res. ALJ-274. Not only did PG&E's employees act with an unswerving commitment to safety, the Company quickly investigated the issue, corrected it by performing leak surveys and repairing the leaks found, and undertook to review its maps system-wide to identify any other possible missed leak surveys.

² CPSD did not consider this a violation because part of the distribution main was included in a transmission pipeline leak survey.

While PG&E does not in any way minimize the importance of timely performing all leak surveys, it corrected the problem as soon as it was discovered, and took steps to prevent a recurrence.

For the Commission to uphold the \$16.8 million fine here would be to send a message to PG&E's employees that undermines the safety and compliance message PG&E has been reinforcing. PG&E has told its employees that it expects them to identify shortcomings, safety issues and non-compliances and to bring them to the attention of their supervisors for corrective action. PG&E's Executive Vice President of Gas Operations has publicly recognized and praised the employees who identified the plat map issue that is the subject of PG&E's self-report and this citation. No matter how much PG&E's management tries to convey that these employees' conduct 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's prompt remedial actions, and the absence of any harm or property damage argue for the Commission to exercise its discretion to adopt no penalty or a penalty at less than the maximum amount. Even if the Commission were to agree with CPSD's count of violations, it should penalize each of the claimed 838 violations at the statutory minimum of \$500, resulting in a total penalty of \$419,000.

Consideration of Citations for Self-Identified Violations

The present citation shows that Res. ALJ-274 may have an unintended consequence in its application to self-identified and self-corrected violations. As discussed above, this has serious policy implications that the Commission should carefully consider.


Until the Commission is able to review the policy implications of the way Res. ALJ-274 applies to self-reported violations, PG&E urges the Commission to direct CPSD not to issue citations for self-reported violations until the Commission has had an opportunity to consider their appropriate place in its enforcement regime. Instead, CPSD should report to the Commission on the self-reported violations it has received from PG&E and the other gas utilities. CPSD should also go ahead with its planned workshop on the implementation of Res. ALJ-274, and receive the views of the many interested parties. Armed with information about self-reporting and the results of the workshop, the Commission can make an informed decision about how it wants the self-reporting aspect of Res. ALJ-274 to work.

Conclusion

The \$16.8 million penalty assessed by CPSD both starts with an erroneous calculation of "violations" and undermines the important public policy objective of encouraging self-reporting of violations. The Commission should correct CPSD's error and exercise its discretion to impose no penalty or, at most, a penalty of \$420,000.

Respectfully submitted,

PACIFIC GAS AND ELECTRIC COMPANY

By 
Thomas E. Bottorff
Senior Vice President, Regulatory Relations

CERTIFICATE OF SERVICE

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is 77 Beale Street, San Francisco, California 94105.

I am readily familiar with the business practice of Pacific Gas and Electric Company for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On February 1, 2012, I served a true copy of:

**PACIFIC GAS AND ELECTRIC COMPANY'S APPEAL OF
CITATION NO. 2012-01-001**

[XX] By Electronic Mail – serving the enclosed via e-mail transmission to each of the parties listed on the official service list for Citation No. 2012-01-001 with an e-mail address.

[XX] By U.S. Mail – by placing the enclosed for collection and mailing, in the course of ordinary business practice, with other correspondence of Pacific Gas and Electric Company, enclosed in a sealed envelope, with postage fully prepaid, addressed to those parties listed on the official service list for Citation No. 2012-01-001 without an e-mail address.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed in San Francisco, California on February 1, 2012.

/s/
Tauvela V. U'u