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NEWS RELEASE

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Herrera sues feds for failing to enforce gas pipeline safety standards before and after San Bruno blast

PHMSA 'still asleep at the switch,' City Attorney says, after ignoring S.F.'s concerns, recommendations of federal investigators

SAN FRANCISCO (Feb. 14, 2012)—City Attorney Dennis Herrera today sued the U.S. Pipeline and Hazardous Materials Safety Administration for having “abjectly failed” to enforce federal gas pipeline safety standards for more than a decade prior to the deadly explosion of a PG&E gas transmission line in San Bruno, Calif., which on Sept. 9, 2010 claimed eight lives, injured more than 50 others, and destroyed or damaged more than 100 homes.

The lawsuit proceeds from a move Herrera undertook last year, when he notified federal and state regulators of his intent to seek a court order compelling them to fulfill their enforcement duties as required by the Pipeline Safety Act. The July 14, 2011 letter to PHMSA and the California Public Utilities Commission offered to discuss alternatives to litigation in order to ensure that the public safety protections mandated by federal law were being met. Yet according to the city’s complaint filed today, PHMSA ignored San Francisco’s concerns about the inadequacy of its oversight, and has similarly flouted recommendations from a National Transportation Safety Board investigation report that faulted both PG&E’s negligence and lax governmental enforcement for the San Bruno blast.

“One of the most troubling findings to emerge in the 18 months since the San Bruno tragedy is that regulators were either asleep at the switch or far too cozy with the industry they’re supposed to regulate,” said Herrera. “And in the case of PHMSA, the agency is still asleep at the switch. It has ignored the concerns San Francisco expressed last year, it insists it administers a ‘strong’ pipeline safety program, and it continues to flout recommendations from the NTSB, which blamed its failures in part for the blast. Human life and safety clearly demand meaningful enforcement of gas pipeline standards—and federal law requires it. That’s why I’m today seeking a court order to compel PHMSA to live up to its enforcement responsibilities.”

Notably unnamed in the action filed in U.S. District Court today is the California Public Utilities Commission which was among the targets of the Herrera’s intent to sue notice last July. Though the complaint sharply criticizes CPUC for its ineffectiveness, it notes that in contrast to PHMSA, state regulators have since modified some of their enforcement and regulatory practices, and have taken steps to reallocate resources toward improving CPUC’s pipeline safety enforcement. Herrera’s office continues to participate in the CPUC’s ongoing proceedings “in the hopes of spurring meaningful change,” according to the pleading, while withholding judgment on “whether the CPUC will conduct a thorough and independent examination of its own failures and adopt meaningful reforms to its own practices.”

[MORE]

Last year's investigation report from National Transportation Safety Board, which is responsible for determining the cause of certain transportation and pipeline accidents, found that PHMSA's failures directly contributed to the San Bruno explosion, and that the agency's failures were continuing. The investigation report found that PHMSA and CPUC together "placed a blind trust in the companies that they were charged with overseeing—to the detriment of public safety." The investigation report also expressed "strong doubts about the quality and effectiveness of enforcement at both the Federal and state levels. Although PHMSA and the CPUC have authority to enforce pipeline safety regulations, the organizational failures of PG&E seen in this accident suggest that some operators are able to ignore certain standards without concern for meaningful enforcement action against them."

Herrera's notice of intent to sue additionally cited the 2009 findings of a U.S. House of Representatives' Committee on Transportation and Infrastructure, which concluded that PHMSA was broadly failing in its legal duties to protect public safety. The committee report concluded that: "PHMSA's performance of its primary safety mission is less than diligent in far too many instances, because it appears to be inappropriately 'cozy' with industry." PHMSA staff members reported that the agency "had changed its focus from keeping the public safe to keeping the industry happy," and that the industry essentially "ran the organization."

PG&E operates three major gas transmission lines—including the very same line that failed catastrophically in San Bruno in 2012, and another dating back to the 1930s—that run beneath densely populated residential areas and business districts in San Francisco where hundreds of thousands live and work. Major facilities threatened by the failure of these inadequately inspected transmission lines include numerous schools and recreation centers, San Francisco City College, and San Francisco General Hospital, which typically contains more than 5,000 acute care patients and visitors, medical professionals and staff. Significant stretches of Highway 101 and Highway 280 additionally run over the antiquated lines.

The case is: *City and County of San Francisco v. United States Department of Transportation*, U.S. District Court for the Northern District of California, filed Feb. 14, 2012.

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THE CITY AND COUNTY OF SAN FRANCISCO

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 THE CITY AND COUNTY OF SAN
FRANCISCO,

14 Plaintiff,

15 vs.

16 The UNITED STATES DEPARTMENT OF
17 TRANSPORTATION; RAY LAHOOD,
Secretary of Transportation, sued solely in his
18 official capacity; the PIPELINE AND
HAZARDOUS MATERIALS SAFETY
19 ADMINISTRATION; and CYNTHIA L.
QUARTERMAN, Administrator of the
20 Pipeline and Hazardous Materials Safety
Administration, sued solely in her official
21 capacity,

22 Defendants.

Case No.

**COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF FOR VIOLATIONS
OF THE NATURAL GAS PIPELINE SAFETY
ACT, 49 U.S.C. §§ 60101 ET SEQ.**

1
2 **INTRODUCTION**

3 1. In the United States, there are millions of miles of natural gas pipelines running
4 underground. Many of these pipelines are located beneath streets, homes, schools, hospitals, and other
5 buildings where millions of men, women and children live and work. In the City and County of San
6 Francisco alone, there are hundreds of miles of natural gas transmission and distribution pipelines
7 running beneath streets, homes, and buildings where more than 800,000 people live and work.

8 2. Because natural gas pipelines carry highly flammable and explosive fuel, sometimes at
9 high pressures, those pipelines pose a grave threat to the lives and property of the millions of men,
10 women, and children who live and work near them.

11 3. Recognizing the need to protect people, property, and the environment from this grave
12 threat, Congress enacted the Pipeline Safety Act ("Act"). Under the Act, the Secretary of
13 Transportation must prescribe minimum safety standards for natural gas pipelines and pipeline
14 facilities. Those standards must "provide adequate protection against risks to life and property posed
15 by pipeline transportation and pipeline facilities." 49 U.S.C. § 60102(a)(1). The Act further provides
16 that a state authority may assume responsibility for regulating intrastate pipelines and enforcing
17 federal safety standards for those pipelines. State authorities assume that responsibility by submitting
18 to the Secretary a certification that the authority has adopted each applicable pipeline safety standard
19 promulgated by the Secretary and is enforcing those standards in ways that include inspections
20 conducted by qualified employees. 49 U.S.C. § 60105(a) & (b). The Secretary has a duty under the
21 Act to oversee those state authorities to ensure that they are complying with their duties under their
22 certifications and to enforce federal pipeline safety standards to the extent that state authorities are not
23 doing so.

24 4. The Pipeline and Hazardous Materials Safety Administration ("PHMSA") and the
25 California Public Utilities Commission ("CPUC") are the federal and state regulators responsible for
26 protecting people, property, and the environment from the grave threat posed by natural gas pipelines
27 in California. For decades, the CPUC has assumed responsibility for regulating intrastate pipelines in
28 California and for enforcing federal safety standards for those pipelines by submitting a certification to

1 PHMSA. PHMSA has accepted the CPUC's certification and has disbursed federal funds to the CPUC
2 to carry out its pipeline safety program in compliance with its certification. As a result, PHMSA has a
3 duty under the Act to ensure that the CPUC is complying with its certification and that federal pipeline
4 safety standards are being enforced in California.

5 5. PHMSA, however, has been shirking that duty for over a decade, if not longer. As a
6 consequence, there have been a series of natural gas pipeline disasters in recent years that have
7 resulted in numerous deaths and injuries and widespread destruction of property. In the last three
8 years in California alone, these disasters include: (1) the rupture and explosion of a natural gas
9 transmission pipeline owned and operated by PG&E in San Bruno, California that killed eight people,
10 injured more than 50 others, and destroyed or damaged more than 100 homes in 2010; (2) the failure
11 and explosion of a natural gas distribution line owned and operated by PG&E in Rancho Cordova,
12 California that killed one person, injured five others, and damaged several homes in 2008; and (3) the
13 failure and explosion of a plastic distribution pipe owned and operated by PG&E in Cupertino,
14 California that severely damaged a two-story condominium in 2011.

15 6. Events surrounding these recent pipeline disasters paint a disturbing picture. They
16 reveal that, for over a decade, the CPUC has failed to enforce federal pipeline safety standards as
17 required by its certification and has allowed PG&E to blatantly violate those standards. This has
18 occurred because PHMSA has abdicated its duty to oversee the CPUC and to ensure that federal
19 pipeline safety standards are being enforced. Instead, PHMSA, together with the CPUC, have "placed
20 a blind trust in the companies that they were charged with overseeing – to the detriment of public
21 safety." Accident Report on the Pacific Gas and Electric Company Natural Gas Transmission Pipeline
22 Rupture and Fire in San Bruno, California on September 9, 2010 ("NTSB Report"), at 135.¹ As a
23 result, PHMSA, for all practical purposes, has allowed gas pipeline operators like PG&E to regulate
24 themselves and, in doing so, has improperly delegated its authority to enforce federal pipeline safety
25 standards to those operators. Not surprisingly, self-regulation has allowed PG&E, with the apparent
26 blessing of PHMSA and the CPUC, to pervasively and continuously violate federal pipeline safety
27

28 ¹ The NTSB Report can be found at: <http://www.nts.gov/doclib/reports/2011/PAR1101.pdf>.

1 standards in order to maximize profits at the expense of safety. Simply put, PHMSA has violated the
2 Act by allowing the foxes to guard the henhouse.

3 7. Indeed, the NTSB has expressed "strong doubts about the quality and effectiveness of
4 enforcement at both the Federal and state levels. Although PHMSA and the CPUC have authority to
5 enforce pipeline safety regulations, the organizational failures of PG&E seen in this accident [the San
6 Bruno explosion] suggest that some operators are able to ignore certain standards without concern for
7 meaningful enforcement action against them." NTSB Report, at 123.

8 8. By abdicating its duties as a regulator and by improperly delegating those duties to gas
9 pipeline operators like PG&E, PHMSA has placed the lives and property of millions of men, women,
10 and children – including hundreds of thousands of men, women, and children in San Francisco – at
11 substantial and unnecessary risk.

12 9. In July and October 2011, the City and County of San Francisco ("City" or "San
13 Francisco"), understandably concerned about the safety of the hundreds of miles of natural gas
14 pipelines that run beneath the City, notified PHMSA and the CPUC about its intent to sue under the
15 Act. In the notices, the City identified numerous instances where PHMSA and the CPUC had
16 abdicated their duties under the Act and had, for all practical purposes, allowed gas operators like
17 PG&E to regulate themselves. The City also notified PHMSA and the CPUC that it would seek
18 injunctive relief requiring PHMSA and the CPUC to comply with their duties under the Act.

19 10. The CPUC initially responded to the notices by claiming that it "is carrying out its
20 statutory and regulatory responsibilities for pipeline safety in a manner that is not only lawful but
21 *exemplary*." Ex. B at 1 (italics added). In a similar vein, Michael Peevey, the CPUC's President,
22 continues to blame others for the CPUC's failure to do its job. At a recent legislative hearing, Peevey
23 blamed California's Department of Finance and utility consumer representatives for the CPUC's failure
24 to ensure the safety of California's natural gas pipelines. Aug. 16, 2011 Hearing before the California
25 Senate Energy, Utilities and Communications Com. These claims are troubling in light of the
26 overwhelming evidence of the CPUC's failures over the past decade or more and the years it will take
27 the CPUC to develop a properly trained and effective pipeline safety staff. The CPUC, like PG&E,
28 must change its culture to prioritize safety, and such changes are unlikely to occur quickly.

1 11. Nonetheless, the CPUC has recently initiated several investigatory and rulemaking
2 proceedings regarding PG&E's failures and pipeline safety throughout California. The CPUC has also
3 recently taken various actions to restructure and increase its pipeline safety enforcement resources –
4 all ostensibly designed to address the concerns raised in the City's notices of intent to sue as well as
5 concerns raised by the National Transportation Safety Board ("NTSB") and a separate panel convened
6 by the CPUC. It remains to be seen whether the CPUC will conduct a thorough and independent
7 examination of its own failures and adopt meaningful reforms to its own practices or whether the
8 CPUC will revert to its past practice of failing to fulfill its duty to enforce federal pipeline safety
9 standards in compliance with its certification. In the meantime, the City is participating in the CPUC's
10 ongoing proceedings in the hopes of spurring meaningful change.

11 12. Regardless of what the CPUC may or may not do, PHMSA, the federally appointed
12 watchdog of the CPUC, has abjectly failed to oversee the CPUC's pipeline safety program or to ensure
13 that federal pipeline safety standards are enforced. In failing to do so, PHMSA has violated and
14 continues to violate its duties under the Act.

15 13. This has not changed since PHMSA received the City's notices of intent to sue. Indeed,
16 PHMSA has initiated no proceedings and taken no apparent action to address the concerns raised in
17 the City's notices of intent to sue. Although PHMSA has initiated a rulemaking proceeding focused on
18 the safety of onshore gas transmission pipelines through new rules governing gas pipeline operators in
19 the wake of the San Bruno explosion, it continues to refuse to recognize its *own* persistent failure to do
20 its job as a regulator and the need to correct those failings. Among other things, PHMSA has failed to
21 respond to the recommendations made by the NTSB in its report on the San Bruno explosion. Even
22 more troubling, PHMSA continues to refuse to accept responsibility for its ongoing violations of the
23 Act. For example, as late as November 25, 2011, PHMSA maintained that it administers "a *strong*
24 federal-state pipeline safety program." Ex. E at p. 2 (italics added). That statement could not be
25 further from the truth.

26 14. Unless PHMSA acknowledges and corrects its pervasive and ongoing failure to comply
27 with its duties under the Act, it is not a question of if another pipeline will explode but a question of
28 when. Until then, no one who lives or works near a natural gas pipeline will be safe.

1 **THE PARTIES**

2 15. Plaintiff City and County of San Francisco ("City" or "San Francisco") is a municipal
3 corporation and charter city organized under the laws of the State of California. A municipality such
4 as the City is a "person" entitled to enforce the Act pursuant to 49 U.S.C. § 60101(a)(17).

5 16. Defendant United States Department of Transportation ("Department of
6 Transportation" or "Department") is an executive department of the United States Government
7 organized under 49 U.S.C. § 101, et al. Defendant Ray LaHood is the United States Secretary of
8 Transportation ("Secretary of Transportation" or "Secretary"). The Department and its Secretary are
9 "governmental authorities" subject to suit pursuant to 49 U.S.C. § 60121(a)(1). The Secretary is sued
10 solely in his official capacity.

11 17. Defendant the Pipeline and Hazardous Materials Safety Administration ("PHMSA") is
12 an agency of the Department of Transportation. Defendant Cynthia Quarterman is the Administrator
13 of PHMSA ("Administrator").² PHMSA and its Administrator are "governmental authorities" subject
14 to suit pursuant to 49 U.S.C. § 60121(a)(1). The Administrator is sued solely in her official capacity.

15 **JURISDICTION**

16 18. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because the
17 City's causes of action "aris[e] under" federal law, namely, 49 U.S.C. § 60121.

18 19. On July 14, 2011, the City notified Defendants and the CPUC of its intent to sue under
19 the Act. *See* 49 U.S.C. § 60121(a)(1)(A). A true and correct copy of the July 14, 2011 notice is
20 attached hereto as exhibit A. More than 60 days have passed since the City gave Defendants notice of
21 its intent to sue.

22 20. On September 16, 2011, the CPUC responded by claiming that it "is carrying out its
23 statutory and regulatory responsibilities for pipeline safety in a manner that is not only lawful but
24 *exemplary . . .*" The CPUC further contended it was already addressing the concerns identified by the
25 City even through the proceedings cited in its response focused *solely* on PG&E – and not on the
26
27

28 ² As used in the complaint, PHMSA refers to the agency and its predecessors.

1 CPUC's own misconduct. A true and correct copy of the CPUC's September 16, 2011 response is
2 attached hereto as exhibit B.

3 21. On October 12, 2011, the City notified Defendants and the CPUC of additional ongoing
4 violations of the Act. The City's supplemental notice of intent to sue attached and incorporated by
5 reference its original notice of intent to sue dated July 14, 2011. A true and correct copy of the
6 October 12, 2011 supplemental notice is attached hereto as exhibit C. More than 60 days have passed
7 since the City gave Defendants supplemental notice of its intent to sue.

8 22. On October 12, 2011, the City responded to the CPUC's September 16 letter. In its
9 response, the City explained that nothing cited in the CPUC's September 16 letter focused "in any
10 sustained manner on the [CPUC's] actions, omissions, or obligations under the Act; they are focused
11 almost exclusively on PG&E." The City also described several "intermediate steps" the CPUC should
12 take to address the issues raised in the City's notices of intent to sue. A true and correct copy of the
13 City's response is attached hereto as exhibit D.

14 23. Since receiving the City's notices of intent to sue and response, the CPUC has initiated
15 administrative proceedings and begun implementation of measures – including some of the steps
16 recommended in the City's October 12, 2011 response – ostensibly designed to address many of the
17 concerns raised in the City's notices of intent to sue.

18 24. By contrast, PHMSA has initiated *no* administrative proceedings and has taken *no*
19 apparent steps to address any of the issues raised in the City's notices of intent to sue.

20 25. Instead, on November 25, 2011, PHMSA responded to the City's notices of intent to
21 sue by claiming that it is "administering a *strong* federal-state pipeline safety program." PHMSA also
22 identified an Advance Notice of Proposed Rulemaking focused on improving the safety of onshore gas
23 transmission lines through new rules governing gas pipeline operators. PHMSA did not, however,
24 identify any administrative proceedings that focused on *its own* actions, omissions, or obligations
25 under the Act or any action it has taken in response to the City's notices of intent to sue or the NTSB's
26 recommendations. A true and correct copy of PHMSA's corrected response sent by facsimile on
27 December 1, 2011 is attached hereto as exhibit E.

1 26. Neither PHMSA nor the Secretary of Transportation "has begun and diligently is
2 pursuing an administrative proceeding for the violation[s]" alleged in this complaint. 49 U.S.C. §
3 60121(a)(1)(B). Indeed, PHMSA is not pursuing any administrative proceedings addressing the
4 violations of the Act alleged in this complaint.

5 27. Neither the Attorney General of the United States nor the California Attorney General
6 is pursuing a judicial proceeding related to the violations alleged in this complaint. *See* 49 U.S.C. §
7 60121(a)(1)(C).

8 28. Accordingly, this Court may freely exercise jurisdiction over this dispute.

9 VENUE

10 29. This Court has venue over this action pursuant to 28 U.S.C. § 1391(e)(2) and (3)
11 because (a) Defendants include officers and employees of the United States or any agency thereof
12 acting in their official capacities, and agencies of the United States, and a substantial part of the events
13 or omissions giving rise to the claims occurred in this District, and (b) Plaintiff resides in this District.

14 FACTUAL ALLEGATIONS

15 I. WITHOUT MEANINGFUL REGULATORY OVERSIGHT, NATURAL GAS 16 TRANSMISSION AND DISTRIBUTION PIPELINES POSE A GRAVE THREAT TO LIFE, PROPERTY, AND THE ENVIRONMENT.

17 30. Natural gas pipelines are a critical component of our nation's infrastructure. There are
18 currently millions of miles of natural gas pipelines nationwide. In California alone, there are over
19 100,000 miles of gas pipelines. These pipelines deliver approximately 80% of the natural gas used in
20 California and serve over 10.5 million residential, commercial, and industrial customers.

21 31. Most gas pipelines are either transmission or distribution lines. Transmission lines
22 generally carry gas from supply sources to distribution centers or high volume customers. These
23 pipelines typically operate at high pressures, are large – sometimes more than 24 inches in diameter –
24 and made of steel. Distribution lines carry gas from the point of local supply to homes, businesses,
25 and institutions. These pipelines typically operate at lower pressures and are made of various
26 materials, including plastic, cast iron, and steel.

27 32. Transmission and distribution lines are largely invisible to the general public because
28 most of them are underground. Because these pipelines transmit highly flammable gas sometimes at

1 high pressures, they are inherently dangerous. Indeed, gas releases from transmission or distribution
2 pipelines can result in fires and explosions that cause serious injuries and death and destroy property
3 and even entire neighborhoods.

4 33. In 2010 alone, there were no fewer than 106 significant incidents in the United States
5 involving onshore natural gas transmission and distribution lines.³ Thirty-one of these incidents
6 resulted in a fatality or a serious injury requiring hospitalization.

7 34. Recently, the rupture of a natural gas transmission pipeline owned and operated by
8 PG&E on September 9, 2010 in San Bruno, California caused multiple deaths and widespread
9 destruction. According to the NTSB Report, "the rupture of Line 132 [in San Bruno] was caused by a
10 fracture that originated in the partially welded longitudinal seam of one of six short pipe sections,
11 which are known in the industry as 'pups.' " NTSB Report, at x. The rupture "produced a crater about
12 72 feet long by 26 feet wide" and resulted in the ignition of escaping gas – which "created an inferno."
13 *Id.* at x. The ignition of the released gas and the resulting fire destroyed 38 homes and damaged
14 another 70 homes. It also destroyed government property, such as streetlights, sidewalks, streets, and
15 utility poles. Eight people were killed, more than 50 people were injured, and many more were
16 evacuated from the area. It took PG&E "95 minutes to stop the flow of gas and to isolate the rupture
17 site – a response time that was excessively long and contributed to the extent and severity of property
18 damage and increased the life-threatening risks to the residents and emergency responders." *Id.* at x.

19 35. The San Bruno explosion was not an isolated incident. Less than two years earlier, the
20 failure and explosion of a distribution pipeline owned and operated by PG&E in Rancho Cordova, a
21 suburb of California's state capitol, Sacramento, killed one person, injured five others, and damaged
22 several homes.

23 36. Even more recently, on August 31, 2011, the failure of a defectively manufactured
24 plastic distribution pipe caused an explosion in a condominium complex in Cupertino, California. The
25 explosion blew the garage door off a condominium and caused a fire that severely damaged a home.

26 _____
27 ³ As defined by PHMSA, an incident is significant if it results in: (1) fatality or injury
28 requiring in-patient hospitalization; (2) \$50,000 or more in total costs; (3) highly volatile liquid release
of five barrels or more or other liquid releases of 50 barrels or more; or (4) liquid releases resulting in
an unintentional fire or explosion.

1 The owner escaped serious injury or death only because she happened to leave her home for lunch a
2 few minutes before the explosion.

3 37. These and other incidents involving the failure and explosion of natural gas pipelines
4 could have been prevented if PHMSA and the CPUC had been fulfilling their duties under the
5 pertinent statutes, regulations, and certifications. Indeed, the NTSB recently found that "PHMSA's
6 enforcement program and its monitoring of" the CPUC's pipeline safety program "have been weak and
7 have resulted in the lack of effective Federal oversight and state oversight exercised by the CPUC."
8 NTSB Report, at 123. In turn, "the ineffective enforcement posture of the CPUC permitted PG&E's
9 organizational failures to continue over many years." *Id.* As a result, "[i]t was not a question of if [the
10 San Bruno] pipeline would burst. It was a question of when." Deborah Hersman, Chairman of the
11 NTSB, Opening Statement: Pipeline Accident Report – San Bruno, California, September 9 2010
12 (Aug. 30, 2011) ("Hersman Opening Statement").⁴

13 **II. SAN FRANCISCO HAS A STRONG INTEREST IN THE SAFETY OF NATURAL**
14 **GAS TRANSMISSION AND DISTRIBUTION PIPELINES WITHIN ITS**
15 **BOUNDARIES.**

16 38. PG&E operates three natural gas transmission lines within the boundaries of San
17 Francisco: Lines 101, 109, and 132. These transmission pipelines run underneath or near a number of
18 critical facilities, including San Francisco General Hospital (the only level I trauma center serving the
19 City and northern San Mateo County), City College of San Francisco, major stretches of Highways
20 101 and 280, the Potrero Hill and Portola Recreation Centers, and numerous schools that serve
21 thousands of children in San Francisco.

22 39. Segments of Lines 101, 109, and 132 date as far back as the 1930's and were fabricated
23 using older techniques that present potential risks to pipeline integrity and therefore require special
24 forms of assessment and remediation. Indeed, the rupture of a segment of Line 132 – part of the same
25 pipeline that runs beneath critical facilities in San Francisco – caused the explosion in San Bruno that
26 killed and injured numerous people and destroyed or damaged more than 100 homes. Transmission

27 _____
28 ⁴ The Opening Statement is available at:
<http://www.nts.gov/news/speeches/hersman/daph110830o.html>.

1 pipelines of similar vintage are currently running underneath not only San Francisco but numerous
2 other cities and counties throughout California.

3 40. PG&E also operates a vast web of distribution lines spanning the entire City. These
4 pipelines run beneath densely populated residential areas and business districts in which hundreds of
5 thousands of men, women, and children live and work.

6 41. The safety of these distribution lines is of particular concern to San Francisco and its
7 citizens. In August 1981, a PG&E distribution main failed at the intersection of Sacramento and
8 Battery streets in San Francisco as the result of a puncture during construction activity at the site. The
9 resulting explosion contaminated eight square blocks of San Francisco's financial district with gas
10 containing toxic PCBs, and necessitated the evacuation of 30,000 people. The NTSB's report on this
11 incident cited PG&E's inaccurate recordkeeping, PG&E's dispatch of employees who were not trained
12 or equipped to close valves, and PG&E's unacceptable delays in shutting down the pipeline as factors
13 that exacerbated the damage caused by the explosion. These findings are remarkably similar to the
14 findings made by the NTSB 30 years later on the San Bruno Explosion.

15 42. When natural gas transmission or distribution pipelines in the City fail, San Francisco's
16 police, emergency crews and firefighters are typically the first responders who place themselves at risk
17 of serious physical harm when they come to the aid and rescue of affected residents and visitors. San
18 Francisco General Hospital, the only level I trauma center in the area, typically provides emergency
19 care to victims of disasters, which would include pipeline explosions, and the City's Chief Medical
20 Examiner deals with the deceased. When homes, businesses, and neighborhoods are destroyed or
21 damaged by exploding gas pipelines, the property tax base of San Francisco declines. Streets,
22 sidewalks, utility poles, other underground facilities like water pipes and municipal transit stations and
23 equipment, parks, schools, libraries, and other government buildings may also be damaged or
24 destroyed by explosions caused by failed gas pipelines and need to be repaired or replaced. Many of
25 these costs caused by failed gas pipelines are borne by San Francisco and its taxpayers.

26 43. The safety of natural gas pipelines running beneath San Francisco depends on
27 meaningful regulatory oversight and enforcement by PHMSA. As the Chairman of the NTSB recently
28

1 explained, "[f]or government to do its job – safeguard the public – it cannot trust alone. It *must* verify
2 through effective oversight." NTSB Report, at 135 (emphasis added).

3 44. In investigating the San Bruno explosion, the NTSB, which is charged with
4 determining the cause of certain transportation and pipeline accidents and promoting the safe operation
5 of transportation systems, including natural gas pipelines, recently found that the failures of PHMSA
6 directly contributed to the San Bruno explosion, and that those failures are ongoing. The NTSB,
7 however, only has the power to investigate and make recommendations. It has no authority over
8 PHMSA and cannot compel any action whatsoever by PHMSA.

9 45. Until PHMSA corrects its violations of the Act, every person living, working or
10 otherwise located near a PG&E gas pipeline in San Francisco faces a similar risk of a sudden,
11 potentially devastating pipeline explosion causing death, injury, loss of loved ones, or widespread
12 destruction of property that the residents of San Bruno suffered in 2010, that the residents of Rancho
13 Cordova suffered in 2008, and that the residents of Cupertino suffered in 2011. As a result, San
14 Francisco has a strong interest in the safety of natural gas transmission and distribution lines operating
15 within its boundaries.

16 **III. THE FEDERAL PIPELINE SAFETY ACT IMPOSES DUTIES ON FEDERAL AND**
17 **STATE REGULATORS OF GAS PIPELINE OPERATORS.**

18 46. In 1968, Congress enacted the Pipeline Safety Act ("Act"), which mandates the
19 establishment of pipeline safety standards and provides for federal and state enforcement of those
20 standards. The purpose of the Act "is to provide adequate protection against risks to life and property
21 posed by pipeline transportation and pipeline facilities by improving the regulatory and enforcement
22 authority of the Secretary of Transportation." 49 U.S.C. § 60102(a)(1). Under the Act, the Secretary
23 must prescribe "minimum safety standards" for pipeline transportation and facilities. 49 U.S.C.
24 § 60102(a)(2). Those safety standards must be designed to ensure "gas pipeline safety" and to
25 "protect[] the environment." 49 U.S.C. § 60102(b)(1)(B)(1).

26 47. PHMSA is the agency within the Department of Transportation charged with
27 developing and enforcing regulations for the safe, reliable, and environmentally sound operation of the
28 nation's 2.3 million mile natural gas pipeline transportation system. As PHMSA states in its

1 Guidelines for States Participating in the Pipeline Safety Program (Revised Dec. 2010) ("Guidelines"),
2 PHMSA "is responsible for protecting the people and the environment in the United States through a
3 comprehensive pipeline safety program." Guidelines, at 1.

4 48. Although PHMSA may enforce federal pipeline safety standards itself, the Act provides
5 that a State may assume responsibility for regulating intrastate pipelines and enforcing federal safety
6 standards for those pipelines. To do so, a state authority must certify to the Secretary of
7 Transportation that, among other things, it has jurisdiction and authority to regulate intrastate pipeline
8 facilities, has adopted federal pipeline safety standards, and "is enforcing each adopted standard
9 through ways that include inspections conducted by State employees meeting the qualifications the
10 Secretary prescribes under section 60107(d)(1)(C) of this title." 49 U.S.C. § 60105(a) – (c).

11 49. As explained by PHMSA in its Guidelines, "[u]nder a certification, the State agency
12 assumes inspection and enforcement responsibility with respect to intrastate facilities over which it has
13 jurisdiction under State law." Guidelines, at 4. "State agency duties normally consist of operator
14 inspections, compliance and enforcement, safety programs, accident inspections, pipeline construction
15 inspections, and record maintenance and reporting." *Id.* at 2. "The effectiveness of the State agency's
16 pipeline safety efforts depends on information obtained through inspections and evaluation of operator
17 compliance." *Id.* at 22.

18 50. PHMSA also disburses federal funds to state authorities that certify that they are
19 enforcing federal pipeline safety standards. 49 U.S.C. § 60107; 49 C.F.R. § 198.11 (last amended
20 Nov. 30, 2009). PHMSA is only authorized to disburse funds that are "reasonably required for each
21 state agency to carry out a safety program for intrastate pipeline facilities under a certification or
22 agreement with the Administrator." 49 C.F.R. § 198.11. Thus, PHMSA may only disburse funds to a
23 state agency if, and to the extent that, the agency is meaningfully enforcing federal pipeline safety
24 standards in compliance with its certification. The amount of federal funds that a state agency receives
25 to carry out its safety program depends on the agency's "performance" – including, among other
26 things, the adequacy of the agency's operating practices, the quality of its inspections, investigations,
27 and enforcement/compliance actions, the adequacy of its recordkeeping, the qualifications of its
28

1 inspectors, and the number of state inspection person-days. 49 C.F.R. § 198.13 (last amended Mar. 8,
2 2005).

3 51. To ensure that state authorities are complying with their certifications, PHMSA has
4 broad authority to "conduct investigations, make reports, issue subpoenas, conduct hearings, require
5 the production of records, take depositions, and conduct research, testing, development,
6 demonstration, and training activities and promotional activities relating to prevention of damage to
7 pipeline facilities." 49 U.S.C. § 60117. If PHMSA determines that a state authority is not
8 satisfactorily enforcing federal pipeline safety standards, it has the power to "reject the certification,
9 assert United States Government jurisdiction, or take other appropriate action to achieve adequate
10 enforcement." 49 U.S.C. § 60105(f). PHMSA also has the power to "withhold any part of a payment
11 when" it "decides that the [state] authority is not carrying out satisfactorily a safety program or not
12 acting satisfactorily as an agent." 49 U.S.C. § 60107(b). Accordingly, PHMSA is responsible for
13 ensuring meaningful enforcement of pipeline safety standards, whether it enforces those standards
14 directly or through its oversight of state authorities that enforce those standards pursuant to their
15 certifications under the Act.

16 52. Thus, to protect people, property, and the environment from the grave threat posed by
17 natural gas pipelines, PHMSA must ensure that certified state authorities are requiring gas pipeline
18 operators to comply strictly with federal pipeline safety standards through meaningful inspections and
19 evaluations of the operator's maintenance and operations and through prompt correction of operator
20 violations of the Act through enforcement actions. At the very least, PHMSA must ensure that
21 certified state authorities have in place an effective system for monitoring whether an operator like
22 PG&E is maintaining and operating its pipelines in compliance with federal pipeline safety standards
23 and for enforcing those standards when the operator is not.

24 53. This is especially critical for ensuring the safety of natural gas transmission and
25 distribution pipelines because federal pipeline safety standards establish a performance-based
26 regulatory scheme. Under that scheme, gas pipeline operators, among other things, must adopt an
27 integrity management program that requires them to continuously gather and maintain certain data
28 about their pipeline systems, identify threats to pipeline integrity, select appropriate methods to assess

1 those threats, properly test for or assess those threats, remedy any problems identified by those tests or
2 assessments, and document the process. Without meaningful enforcement of federal pipeline safety
3 standards by PHMSA or the certified state authority and meaningful oversight by PHMSA over the
4 enforcement efforts of the certified state authority, gas pipeline operators, for all practical purposes,
5 regulate themselves and are free to disregard those standards without repercussion.

6 54. The failure of PHMSA to oversee state authorities like the CPUC and to ensure
7 compliance by gas pipeline operators like PG&E with federal pipeline safety standards violates the
8 Act and constitutes an improper delegation of its regulatory and enforcement authority to those
9 operators.

10 55. Recognizing the need for meaningful regulatory oversight in order to protect against the
11 risk to life, property, and the environment posed by natural gas pipelines, Congress expressly
12 authorized any "person" to pursue a civil action in federal district court against government regulators
13 who abdicate their duties under the Act. 49 U.S.C. Section 60121(a)(1) expressly includes "the United
14 States government and other governmental authorities" within the definition of "person[s]" against
15 whom a civil action may be brought.

16 **IV. PHMSA HAS ABDICATED ITS DUTY TO ENSURE THAT FEDERAL PIPELINE**
17 **SAFETY STANDARDS ARE ENFORCED AND HAS IMPROPERLY DELEGATED**
18 **ITS AUTHORITY TO DO SO TO GAS PIPELINE OPERATORS LIKE PG&E.**

19 **A. Overview Of PHMSA's Violations Of The Act.**

20 56. Under the Act, a state authority may submit a certification to the Secretary of
21 Transportation stating that the authority, among other things, (1) "has regulatory jurisdiction over the
22 standards and practices to which the certification applies," 49 U.S.C. § 60105(b)(1); (2) "has adopted,
23 by the date of certification, each applicable standard prescribed under" the Act "or, if a standard
24 under" the Act "was prescribed not later than 120 days before certification, is taking steps to adopt that
25 standard," 49 U.S.C. § 60105(b)(2); and (3) "is enforcing each adopted standard through ways that
26 include inspections conducted by State employees meeting the qualifications the Secretary prescribes
27 under section 60107(d)(1)(C) of" the Act, 49 U.S.C. § 60105(b)(3). If the Secretary does not reject
28 and thereby accepts this certification, then the Secretary "may not prescribe or enforce safety standards

1 and practices for an intrastate pipeline facility or intrastate pipeline transportation to the extent that the
2 safety standards and practices are regulated by" the certified state authority. 49 U.S.C. § 60105(a).

3 57. To fulfill the purposes of the Act under this regulatory scheme, the Secretary of
4 Transportation, through PHMSA, must oversee the enforcement of federal pipeline safety standards
5 for intrastate pipelines by state authorities like the CPUC pursuant to their certifications under the Act.
6 As the Chairman of the NTSB explained to a Senate Committee on June 24, 2010, "to ensure effective
7 risk-based integrity management programs are employed throughout the pipeline industry, PHMSA
8 must establish an aggressive oversight program that thoroughly examines each operator's decision-
9 making process for each element of its integrity management program."

10 58. To fulfill its duty under the Act to oversee certified state authorities and to ensure the
11 safety of our nation's natural gas pipelines through meaningful enforcement of federal pipeline safety
12 standards, PHMSA must identify appropriate protocols using objective criteria and meaningful metrics
13 for the authority's enforcement program, conduct bona fide audits of that program using objective
14 criteria and meaningful metrics, evaluate the data collected during those audits, demand operational
15 changes where indicated, and document the entire process so the efficacy of the enforcement program
16 may be evaluated. These are the minimum steps that PHMSA must take in order to fulfill its duties
17 under the Act.

18 59. To ensure that state authorities fulfill their inspection and enforcement duties in
19 compliance with their certifications under the Act, PHMSA purportedly conducts annual program
20 evaluations and reviews of information attached by the state authority to its certification. PHMSA
21 then scores the state authority to determine how closely its pipeline safety program aligns with
22 PHMSA standards. Based on these evaluations, reviews, and scores, PHMSA decides whether to
23 reject the certification of the state authority and whether to disburse federal funds (including the level
24 of funding) to that state authority for purposes of carrying out its pipeline safety program.

25 60. For over a decade, the CPUC has annually submitted a certification to PHMSA and
26 assumed inspection and enforcement responsibility over intrastate natural gas pipelines in California –
27 including the pipelines located in San Francisco. Each year, the CPUC has, among other things,
28 certified to PHMSA that it "has regulatory jurisdiction over the safety standards and practices of all

1 intrastate pipeline transportation within California," has adopted each federal safety standard
2 established under the Act, and "is enforcing" each of those standards. 49 U.S.C. § 60105(b)(1) & (3).
3 The CPUC has acknowledged that it has the power to enforce those safety standards "by injunctive
4 and monetary sanctions substantially the same as those provided under Sections 60120 and
5 60122(a)(1) and (b)-(f) of" the Act. The CPUC has also agreed "to cooperate fully in a system of
6 federal monitoring of the state program to assure the program is carried out in compliance with" its
7 certification. *See, e.g., U.S. D.O.T. / PHMSA Pipeline Safety 2009 Natural Gas Certification for*
8 *CPUC.*

9 61. Each year, PHMSA has accepted the CPUC's certification and has disbursed federal
10 funds to the CPUC for the purpose of performing activities reasonably required to carry out a safety
11 program for intrastate pipeline facilities. In 2006-2008, the CPUC received 37-40 percent of its annual
12 funding for its safety program from PHMSA. During that time, the maximum any state agency
13 received was 40-50 percent. In 2009 and 2010, the CPUC received about 64 percent of its annual
14 funding for its safety program from PHMSA; the maximum any state agency received during those
15 years was about 70 percent. *See NTSB Report, at 67.* The CPUC received federal Pipeline Safety
16 Base Grants of \$889,425 in 2008, \$1,405,283 in 2009, and \$1,304,798 in 2010. These funds may
17 *only* be used by the CPUC for the inspection of natural gas pipeline facilities to ensure compliance
18 with and enforcement of federal safety standards.

19 62. Although PHMSA has accepted the CPUC's certification and has given the CPUC
20 federal funds to carry out its pipeline safety program, PHMSA has never meaningfully evaluated the
21 CPUC's pipeline safety program.

22 63. Indeed, PHMSA is incapable of doing so because it has never identified, much less
23 utilized, metrics – i.e., objectively measurable criteria or guidelines – that would allow PHMSA to
24 evaluate, with any degree of accuracy, the effectiveness of a state authority's pipeline safety program.
25 Even more troubling, PHMSA has never identified, much less utilized, metrics that would allow
26 PHMSA or the CPUC to evaluate, with any degree of accuracy, the effectiveness of a gas pipeline
27 operator's safety program. As the NTSB found, PHMSA's oversight and audit protocols are
28

1 structurally inadequate to provide meaningful oversight over certified state authorities or gas pipeline
2 operators. *See* NTSB Report, at 121.

3 64. As a result, PHMSA, for all practical purposes, does not and cannot determine whether
4 the CPUC is fulfilling its duties under the Act or carrying out a safety program in compliance with its
5 certification or whether PG&E is fully complying with federal pipeline safety standards.

6 65. Lacking the ability to conduct meaningful evaluations of the CPUC's pipeline safety
7 program, PHMSA, instead, engages in a paperwork exercise that simply "checks the boxes." In other
8 words, PHMSA rubberstamps the certification of the CPUC and never actually determines whether the
9 federal funds it disburses to the CPUC are "reasonably required" to carry out its pipeline safety
10 program.

11 66. PHMSA also fails to take any corrective action even when it happens to discover that
12 the CPUC has failed to enforce federal pipeline safety standards. Indeed, PHMSA's certification
13 requirements do not even provide for the possibility of any enforcement action – short of
14 decertification – against a certified state authority like the CPUC.

15 67. Thus, for more than a decade, if not longer, the CPUC has, for all practical purposes,
16 operated its pipeline safety program with *no* federal oversight.

17 68. The absence of meaningful oversight by PHMSA has allowed the CPUC to shirk its
18 duty to enforce federal pipeline safety standards as required by its certification for over a decade, if not
19 longer.

20 69. In fact, because PHMSA has failed to identify or require the utilization of meaningful
21 metrics, the CPUC has been incapable of meaningfully inspecting and evaluating the safety programs
22 of gas pipeline operators like PG&E.

23 70. As a result, PG&E and possibly other gas pipeline operators have been pervasively and
24 continuously violating federal pipeline safety standards for over a decade, if not longer. As the NTSB
25 recently concluded, "the multiple and recurring deficiencies in PG&E operational practices indicate a
26 systemic problem." NTSB Report, at 118. This systemic problem – which caused the San Bruno
27 explosion – exists because PHMSA has violated its duties under the Act.

28

1 71. PHMSA has abdicated its duty to oversee the pipeline safety programs of certified state
2 authorities like the CPUC and to ensure that federal pipeline safety standards are being enforced. As a
3 result, PHMSA has, for all practical purposes, allowed gas pipeline operators like PG&E to regulate
4 themselves. In doing so, PHMSA has improperly delegated its regulatory and enforcement authority
5 under the Act to those operators. Simply put, PHMSA has violated the Act by allowing the foxes to
6 guard the henhouse.

7 72. Shockingly, PHMSA has done so intentionally. Linda Daugherty, PHMSA's Deputy
8 Associate Administrator for Policy and Program, explained, "*it is not the regulator's responsibility to*
9 *assure that operators comply* [with federal and state pipeline safety standards]. *It is the operator's*
10 *responsibility to assure that they comply.*" Transcript of March 2, 2011 NTSB Hearing into San Bruno
11 incident (Docket No. DCA-10-MP-008), at 417:23-25 (italics added).

12 73. As a result, opportunities to prevent tragedies like the recent pipeline explosions in San
13 Bruno, Rancho Cordova, and Cupertino were and continue to be lost.

14 74. Despite overwhelming evidence that PHMSA has abdicated its duties under the Act –
15 which include the findings of the NTSB and PHMSA's own admissions – PHMSA still maintains that
16 it administers "*a strong federal-state pipeline safety program.*" Ex. E at 2 (italics added). PHMSA's
17 head-in-the sand refusal to acknowledge its past and ongoing failures demonstrates that injunctive
18 relief is necessary to compel PHMSA to fulfill its duties under the Act. Indeed, there is no reason to
19 believe that PHMSA will comply with those duties absent court intervention, and every reason to
20 believe it will not.

21 **B. The Facts Demonstrate That PHMSA Has Abdicated Its Duties Under The Act**
22 **And Has Allowed The Improper Delegation Of Its Enforcement Authority Under**
23 **The Act To Gas Pipeline Operators Like PG&E.**

24 **1. Because PHMSA has never identified or utilized metrics necessary for**
25 **meaningful evaluations of the pipeline safety programs of certified state**
26 **authorities or gas pipeline operators, PHMSA cannot ensure that federal**
27 **pipeline standards are enforced.**

28 75. Federal pipeline safety standards establish a performance-based regulatory scheme that
depends on the individual gas pipeline operator to develop, implement, execute, evaluate, and adjust

1 its pipeline safety procedures, plans, programs and related activities to ensure the safe maintenance
2 and operation of its pipelines.

3 76. "[T]o provide adequate protection against risks to life and property posed by" natural
4 gas pipelines as required by the Act, 49 U.S.C. § 60102(a)(1), PHMSA and certified state authorities
5 must work together to ensure that gas pipeline operators comply with those standards.

6 77. PHMSA must, at a minimum, meaningfully inspect, audit, investigate, and evaluate the
7 certified state authority's pipeline safety program and enforcement activities. PHMSA must also
8 follow up on any deficiencies in those programs or activities as soon as they are uncovered.

9 78. PHMSA or the certified state authority must also, at a minimum, meaningfully inspect,
10 audit, investigate, and evaluate a gas pipeline operator's safety program and compliance activities.
11 PHMSA or the authority must also follow up on compliance deficiencies and violations committed by
12 an operator as soon as they are uncovered.

13 79. As the NTSB explained, "[t]he effectiveness of performance-based pipeline safety
14 programs is dependent on the *diligence and accountability* of both the operator *and the regulator* – the
15 operator for development and execution of its plan, and *the regulator for oversight of the operators.*"
16 NTSB Report, at 121 (italics added).

17 80. PHMSA, however, has not identified or utilized metrics necessary to measure, with any
18 degree of accuracy, the effectiveness of the pipeline safety program of a certified state authority like
19 the CPUC. As a result, PHMSA is incapable of determining whether the CPUC is enforcing federal
20 pipeline safety standards in compliance with its certification or whether the federal funds it disburses
21 to the CPUC are reasonably required to carry out its pipeline safety program.

22 81. PHMSA also has not identified or utilized or required certified state authorities like the
23 CPUC to identify or utilize metrics necessary to measure, with any degree of accuracy, the
24 effectiveness of the safety program of a gas pipeline operator like PG&E.

25 82. Meaningful enforcement of federal pipeline safety standards requires "the selection of
26 metrics that quantify the results against specified values to provide a rate of occurrence for either a
27 desired or undesired outcome." Those metrics should include "the number of incidents from internal
28 defects per mile of operating pipeline or the number of incidents in a specific location per total

1 incidents on a specific pipeline." Such metrics are critical because they provide a basis for comparing
2 the frequency of defects and help to identify specific locations on pipelines that are potentially
3 hazardous. They also allow regulators to "exercise more effective oversight by focusing on those
4 operators with problems, and to identify causes of critical safety problems." NTSB Report, at 121.

5 83. PHMSA has never asked, much less required, the CPUC to identify or utilize any
6 metrics that would allow the CPUC or gas pipeline operators to measure, with any degree of accuracy,
7 the success of their pipeline safety programs. As a result, neither PHMSA nor the CPUC has ever
8 identified or utilized any such metrics. NTSB Report, at p. 121.

9 84. Thus, neither PHMSA nor the CPUC can determine, with any reasonable degree of
10 certainty, whether a gas pipeline operator like the PG&E is complying with the performance-based
11 safety standards of the Act. Thus, "neither PG&E nor the CPUC is able to effectively evaluate or
12 assess the integrity of PG&E's pipeline system." NTSB Report, at 122.

13 85. Not surprisingly, PG&E has been able to violate federal pipeline safety standards for
14 decades with impunity "because performance measures were neither well defined nor evaluated with
15 respect to meeting performance goals." NTSB Report, at 121.

16 86. By failing to identify or utilize meaningful metrics, PHMSA has violated and continues
17 to violate its duty to oversee the CPUC and to ensure that federal pipeline safety standards are
18 meaningfully enforced. In doing so, PHMSA has left PG&E unregulated and allowed PG&E to evade
19 its obligations under the Act.

20 87. By disbursing federal funds to the CPUC even though it is incapable of determining
21 whether the CPUC's pipeline safety program complies with its certification, PHMSA has also violated
22 its duty to ensure that those funds are "reasonably required" to carry out a safety program.

23 **2. PHMSA conducts "check the boxes" evaluations that rubberstamp the**
24 **pipeline safety program of the CPUC and that, for all practical purposes,**
leave gas pipeline operators unregulated in California.

25 88. Each year, PHMSA purportedly evaluates the CPUC's regulation of gas pipeline
26 operators in California by performing onsite evaluations, reviewing the information the CPUC attaches
27 to its certification, and scoring the CPUC on how closely its pipeline safety program aligns with
28 PHMSA standards. In the area of safety program evaluation, PHMSA awarded the CPUC a score of

1 99.5 out of 100 in 2009, 99 out of 100 in 2008, and 100 out of 100 in the preceding years. As the
2 NTSB observed, these scores are "superior, if not outstanding." NTSB Report, at 122. Shockingly,
3 PHMSA continued to award the CPUC "superior, if not outstanding scores" even after the 2008
4 pipeline explosion in Rancho Cordova. Indeed, Zach Barrett, PHMSA's Director of State Programs,
5 testified that the CPUC "has a good inspection program. They have good qualified engineers that are
6 quite capable of doing inspections, investigations." Transcript of March 2, 2011 NTSB Hearing into
7 San Bruno incident (Docket No. DCA-10-MP-008) at 359:7-10; *see also* NTSB Report, at 70.

8 89. Each year, PHMSA has declined to reject and has thereby accepted the CPUC's
9 certification under the Act and has disbursed federal funds to the CPUC "to carry out a safety program
10 under" its certification. 49 U.S.C. § 60107(a). However, PHMSA's evaluations, reviews, and scoring
11 of the CPUC's pipeline safety program have been nothing more than paperwork exercises that merely
12 "check the boxes." In other words, PHMSA rubberstamps the CPUC's pipeline safety program. As
13 the NTSB recently concluded, "PHMSA's enforcement program and its monitoring of state oversight
14 programs have been weak and have resulted in the lack of effective Federal oversight and state
15 oversight exercised by the CPUC." NTSB Report, at 123.

16 90. For example, in October 2010, PHMSA, as part of its evaluation of the CPUC's
17 pipeline safety program, accepted the CPUC's verification "that their operators, except Southwest Gas
18 Company, have complied with Subpart O during their inspection reviews." (U.S. D.O.T. / PHMSA
19 2009 Natural Gas State Program Evaluation for CPUC, at p. 22, item 10.) PHMSA did so even though
20 the CPUC's May 2010 audit of PG&E found that PG&E had violated integrity management
21 requirements imposed by Subpart O and even though those violations had not been corrected by
22 PG&E at the time PHMSA made its evaluation in October 2010. This is just one of the many
23 examples where PHMSA conducted meaningless pro forma "evaluations" or "reviews" of the CPUC's
24 pipeline safety program.

25 91. Indeed, PHMSA has consistently given the CPUC an "A" grade for its pipeline safety
26 program even though PHMSA did not, for all practical purposes, review the CPUC's actual program or
27 performance. Indeed, the NTSB recently found that "PHMSA continue[s] to conduct audits that focus
28 on verification of paper records and plans rather than on gathering information on how performance-

1 based safety systems *are* implemented, executed, and evaluated, and whether problem areas *are* being
2 detected and corrected." NTSB Report, at 121 (italics added).

3 92. As a result, PHMSA has violated and continues to violate its duty to oversee the CPUC
4 and to ensure that federal pipeline safety standards are meaningfully enforced. In doing so, PHMSA
5 has left PG&E unregulated and allowed PG&E to evade its obligations under the Act.

6 93. By disbursing federal funds to the CPUC even though the CPUC, for all practical
7 purposes, failed to carry out a safety program in compliance with its certification under the Act,
8 PHMSA has also violated its duty to ensure that those funds are "reasonably required" to carry out a
9 safety program.

10 **3. For over a decade, PHMSA has ignored the CPUC's failure to maintain**
11 **adequate staffing, which made it impossible for the CPUC to enforce**
federal pipeline safety standards as required by its certification.

12 94. Each year, the CPUC has certified to PHMSA that it is enforcing federal pipeline safety
13 standards "through ways that include inspections conducted by State employees meeting the
14 qualifications the Secretary prescribes." 49 U.S.C. §§ 60105(a) and (b)(3). As PHMSA's Guidelines
15 explain, "[t]o meet the State agency's commitment to pipeline safety, each State agency must maintain
16 an adequate, base-level number of pipeline safety inspectors." Guidelines, at 12.

17 95. For over a decade, however, the CPUC, with PHMSA's knowledge and tacit approval,
18 has failed to maintain staffing sufficient in number, training, and experience to fulfill its inspection and
19 enforcement duties under the Act.

20 96. As early as 1998, PHMSA found that staffing at the CPUC "continues to be a problem."
21 In a 1998 letter to the CPUC, PHMSA pointed out that the CPUC needed to devote 28 person-years to
22 safety inspections but that the CPUC had only devoted 13.25 person-years in 1997, and with upcoming
23 staff departures, the CPUC was projected to devote only 9.84 person-years in 1998. The following
24 year, PHMSA found that the CPUC's inspection staffing in 1998 had fallen to 7.54 person-years. Sept.
25 28, 1998 letter from E.J. Ondak, U.S. D.O.T. Director, to R.A. Bilas, CPUC President.

26 97. In virtually every year since then, PHMSA has found that the CPUC failed to meet
27 either the staffing levels or the training requirements prescribed by the Secretary for safety inspections.
28 For example, in 2006, PHMSA found that the "low number of on-site inspection days not only reduces

1 public safety, but lowers the amount of federal funds allocated to your pipeline safety program." Jan/
2 12, 2006 letter from C. Hoidal, PHMSA Director, Western Region, to M. Peevey, CPUC President.

3 98. On information and belief, the number of days spent in the field by California's gas
4 pipeline safety inspectors have been woefully inadequate in comparison to other states. For example,
5 in New York, 20 inspectors worked approximately 4,300 field days in 2010. In contrast, California's
6 nine inspectors worked only 787 field days in 2010 even though California's gas pipeline system is
7 more than twice as large as New York's system. And almost half of those field days were spent
8 monitoring propane and mobile home park systems – *not* transmission or distribution pipelines.

9 99. The CPUC has also admitted to the NTSB that it does not perform annual audits
10 because it lacks sufficient resources to do so. *See* NTSB Report, at 67.

11 100. The CPUC's safety division has been woefully understaffed for many years. The panel
12 convened by the CPUC following the San Bruno explosion documented this severe understaffing.
13 Report of the Independent Review Panel: San Bruno Explosion (Revised Copy June 24, 2011) ("Panel
14 Report"), at 18-22, 88-91.⁵

15 101. For over a decade, PHMSA has known about the CPUC's longstanding failure to
16 maintain adequate staffing of its pipeline safety program. PHMSA has also acknowledged that the
17 CPUC's staffing deficiencies pose a grave threat to public safety. Based solely on those longstanding
18 staffing deficiencies, PHMSA knew or should have known that the CPUC did not have the ability to
19 determine whether PG&E was complying with federal pipeline safety standards. Nonetheless, aside
20 from some written warnings and a marginal reduction in federal funds disbursed to the CPUC,
21 PHMSA has never taken any corrective action against the CPUC – much less required the CPUC to
22 increase its staffing. Instead, PHMSA has continually awarded the CPUC "superior, if not
23 outstanding" scores, NTSB Report, at 122, and has continually given the CPUC a substantial
24 proportion of the federal funds it has requested to carry out its pipeline safety program.

25 102. Even worse, PHMSA itself has hampered the CPUC's ability to enforce federal pipeline
26 safety standards by limiting the availability of training courses even though those courses are

27
28 ⁵ The Panel Report is available at: <http://www.cpuc.ca.gov/NR/rdonlyres/85E17CDA-7CE2-4D2D-93BA-B95D25CF98B2/0/cpucfinalreportrevised62411.pdf>.

1 mandatory. As a result, PHMSA has often denied the CPUC's inspectors access to these mandatory
2 courses due to over-subscription. Feb. 24, 2006 Letter from R. Stepanian, Interim Program Manager,
3 Utilities Safety and Reliability Branch, Consumer Protection and Safety Division to T. Finch, State
4 Liaison, Western Region, PHMSA. When the CPUC complained that its inspectors were unable to
5 sign up for training at the Department's Transportation Safety Institute, PHMSA responded "we
6 understand that newer inspectors are frequently 'wait listed.' I encourage that you maintain all
7 pertinent documentation of your enrollment efforts with" the Institute. Jan. 12, 2006 Letter from T.
8 Finch to R. Stepanian. In January 2007, PHMSA again acknowledged the difficulties in enrolling at
9 the Institute. But instead of taking measures to ensure that the CPUC's inspectors actually received the
10 necessary training, PHMSA again urged the CPUC to maintain all pertinent documentation.
11 PHMSA's emphasis on paperwork rather than training is symptomatic of the "check the boxes"
12 approach to pipeline safety exhibited by both PHMSA and the CPUC. *See* Panel Report, at 25-26, 98-
13 99.

14 103. As a result, PHMSA has violated and continues to violate its duty to oversee the CPUC
15 and to ensure that federal pipeline safety standards are meaningfully enforced. In doing so, PHMSA
16 has left PG&E unregulated and allowed PG&E to evade its obligations under the Act.

17 104. By disbursing federal funds to the CPUC even though the CPUC lacked personnel in
18 sufficient numbers, training, and experience to carry out a safety program in compliance with its
19 certification under the Act, PHMSA has also violated its duty to ensure that those funds are
20 "reasonably required" to carry out a safety program.

21 105. Although the CPUC has recently increased the size of its inspection staff and plans to
22 hire more inspectors, it did so in response to the NTSB Report and the report of its own panel. It did
23 not do so because of any corrective action by PHMSA. Indeed, PHMSA still has taken no corrective
24 action to require the CPUC to maintain adequate staffing. Given PHMSA's long history of ignoring
25 staffing deficiencies at the CPUC, there is no reason to believe that PHMSA will fulfill its duty under
26 the Act and ensure that the CPUC maintains adequate staffing in the future.

1 **4. PHMSA has created a regulatory scheme that improperly delegates**
2 **enforcement of federal pipeline safety standards to gas pipeline operators**
3 **like PG&E.**

4 106. Under the Act, the Secretary of Transportation, through PHMSA, has a duty to
5 prescribe "minimum safety standards for pipeline transportation and for pipeline facilities." 49 U.S.C.
6 § 60102(a)(2). Those standards must be: (1) "practicable"; and (2) "designed to meet the need for"
7 "pipeline safety" and "protecting the environment." 49 U.S.C. § 60102(b)(1). The Act also gives the
8 Secretary the power to enforce those standards through monetary civil penalties, injunctive relief and
9 other appropriate relief. The purpose behind the creation and enforcement of those standards "is to
10 provide adequate protection against risks to life and property posed by pipeline transportation and
11 pipeline facilities." 49 U.S.C. § 60102(a)(1).

12 107. Instead of prescribing and enforcing federal pipeline safety standards as required by the
13 Act, PHMSA has created a regulatory scheme that improperly delegates to gas pipeline operators
14 responsibility for the safe operation and maintenance of gas pipeline facilities. This regulatory scheme
15 grants pipeline operators broad discretion to decide what maintenance and safety practices are
16 necessary to ensure the safe operation of their pipelines. At the same time, PHMSA has failed to
17 ensure that operators comply with the few regulatory limits or standards that govern the operators'
18 exercise of this discretion. In failing to do so, PHMSA has improperly delegated the Secretary's
19 enforcement authority to gas pipeline operators like PG&E. As the NTSB Chairman stated before a
20 Senate Committee on June 24, 2010, "the NTSB discovered indications that PHMSA and operator
21 oversight of risk-based assessment programs, specifically integrity management programs and public
22 education programs, has been lacking and has failed to detect flaws and weaknesses in such
23 programs."

24 108. For example, PHMSA has long known about the threat to life and property posed by
25 plastic pipes known to be susceptible to cracking and failure. Questions regarding the safety of certain
26 types of plastic pipes used for natural gas distribution lines surfaced as early as the 1970's. In 1998,
27 the NTSB issued a special report – which found that plastic pipes made by Century Utility Products,
28 Inc. ("Century") suffered from "brittle-like cracking under stress intensification" leading to an
 increased risk of failure and explosion. The NTSB also found that much of the plastic pipes

1 manufactured and installed from the 1960's through the early 1980's may be susceptible to brittle-like
2 cracking and failure. Based on these findings, the NTSB recommended that PHMSA (1) *require* gas
3 pipeline operators to carefully monitor plastic pipes manufactured by Century and to replace those
4 pipes as soon as they indicated poor performance, and (2) determine whether other older plastic pipes
5 were susceptible to premature brittle-like cracking, inform operators of those findings, and require
6 operators to replace any pipes that exhibit poor performance.

7 109. Instead of implementing the NTSB's recommendations, PHMSA issued advisories that
8 merely *recommended* that gas pipeline operators monitor the performance of older plastic pipes and
9 consider replacing those pipes that indicated poor performance. Although the NTSB on several
10 occasions took issue with PHMSA's failure to *require* monitoring and replacement of plastic pipe
11 susceptible to cracking and premature failure, PHMSA, to this day, does not require replacement of
12 those pipes.

13 110. In December 2009, PHMSA, for the first time, promulgated regulations mandating
14 integrity management programs for distribution lines. Although those regulations purportedly require
15 operators of distribution lines to identify and assess the risks associated with their distribution
16 pipelines, including the risks associated with older plastic pipes, they do not require operators to take
17 any specific action if they find older plastic pipes that are susceptible to cracking and premature
18 failure. Instead, PHMSA continues to give operators broad discretion to determine whether to take
19 any actions regarding those older plastic pipes.

20 111. Indeed, PHMSA does not even require operators of distribution pipelines to report the
21 involvement of older plastic pipes in incident reports submitted to PHMSA. Instead, PHMSA merely
22 *encourages* those operators to report data regarding plastic pipe failures to the Plastic Pipe Database
23 Committee ("PPDC"), an entity established jointly by PHMSA and the American Gas Association, an
24 industry group. The PPDC keeps this data confidential and will not even share this data with PHMSA.
25 As a result, neither PHMSA nor a certified state authority can determine which plastic pipes present a
26 greater risk of rupture, how many of those pipes remain in use, and whether any additional safety
27 measures are necessary to prevent the rupture of those pipes. Thus, neither PHMSA nor a certified
28 state authority like the CPUC has any way of determining whether gas pipeline operators are

1 complying with the recently promulgated regulations requiring operators to identify and assess the
2 risks associated with older plastic pipes.

3 112. The consequences of this ongoing violation of the Act by PHMSA are serious. In 2011,
4 an older plastic pipe known to be susceptible to cracking and failure exploded in Cupertino, severely
5 damaging a home in a condominium complex. The owner only escaped serious injury or death
6 because she happened to leave her home minutes before the explosion.

7 **5. With PHMSA's knowledge and tacit approval, the CPUC for many years**
8 **has forsaken its duty to enforce federal pipeline safety standards and has**
9 **allowed PG&E to pervasively and continuously violate those standards.**

10 113. Under the Act, PHMSA has a duty to oversee the CPUC's pipeline safety program and
11 to ensure that the CPUC is enforcing federal pipeline safety standards in compliance with its
12 certification. PHMSA also has a duty to enforce federal pipeline safety standards to the extent that the
13 CPUC is not doing so.

14 114. For many years, however, the CPUC has forsaken its duty to enforce federal pipeline
15 safety standards and has improperly delegated its authority to do so to gas pipeline operators like
16 PG&E. Indeed, until it recently levied fines against PG&E in connection with the Rancho Cordova
17 and San Bruno explosions, the CPUC had not fined a utility for a violation of federal pipeline
18 standards since at least 1999.

19 115. As the NTSB aptly observed, "the ineffective enforcement posture of the CPUC
20 permitted PG&E's organizational failures to continue over many years." NTSB Report, at 123.
21 Indeed, "the organizational failures of PG&E seen in [the San Bruno] accident suggest that some
22 operators are able to ignore certain standards without concern for meaningful enforcement action
23 against them." *Id.* at 123.

24 116. PHMSA has long been aware of the CPUC's longstanding failure to enforce federal
25 pipeline safety standards and PG&E's longstanding violations of those standards. For example, in
26 2005, PHMSA and the CPUC conducted a joint audit of PG&E's gas transmission pipeline safety
27 program. During the audit, PHMSA reviewed, evaluated, and assisted in the CPUC's inspections and
28 evaluations of PG&E's safety program and performance. During that audit, PHMSA also learned of
some of PG&E's longstanding violations of federal pipeline safety standards.

1 117. Despite having firsthand knowledge of the many deficiencies in the CPUC's pipeline
2 safety program and PG&E's longstanding violations of federal pipeline safety standards, PHMSA has
3 *never taken any* corrective action whatsoever. Indeed, PHMSA has neither required the CPUC to
4 comply with its duty to enforce federal pipeline safety standards nor rejected the CPUC's certification
5 and asserted federal jurisdiction to require PG&E to meet those standards.

6 118. As the NTSB correctly found, "PHMSA's failure to recognize the CPUC's
7 ineffectiveness indicate[s] that more fundamental problems exist, particularly with enforcement
8 practices and policies." NTSB Report, at 122.

9 119. Thus, PHMSA has violated and continues to violate its duty to oversee the CPUC and
10 to ensure that federal pipeline safety standards are meaningfully enforced. In doing so, PHMSA has
11 left PG&E unregulated and allowed PG&E to evade its obligations under the Act. As the NTSB
12 recently concluded, "the multiple and recurring deficiencies in PG&E operational practices indicate a
13 systemic problem." NTSB Report, at 118.

14 120. By disbursing federal funds to the CPUC even though the CPUC, for all practical
15 purposes, failed to carry out a safety program in compliance with its certification under the Act,
16 PHMSA has also violated its duty to ensure that those funds are "reasonably required" to carry out a
17 safety program.

18 121. The consequences are severe. As the Chairman of the NTSB aptly stated, given the
19 myriad of operational and regulatory failings surrounding PG&E's natural gas pipelines, "it was not a
20 question of if" a pipeline would explode, but rather "a question of when." Hersman Opening
21 Statement.

22 122. PHMSA's violations of its duties under the Act are clear from the examples described
23 below. In each example, PHMSA knew or should have known about the CPUC's longstanding failure
24 to meaningfully enforce federal pipeline safety standards and PG&E's pervasive and longstanding
25 violations of those standards. Nonetheless, PHMSA took no corrective actions requiring either the
26 CPUC or PG&E to comply with their duties under the Act.

1 a. **With PHMSA's knowledge and tacit approval, the CPUC, for over a**
2 **decade, has conducted meaningless inspections that rubberstamp**
3 **the safety programs and performance of gas pipeline operators and**
4 **effectively leave those operators unregulated.**

5 123. As explained above, federal pipeline safety standards establish a performance-based
6 regulatory scheme for integrity management that depends on meaningful regulatory oversight of gas
7 pipeline operators by certified state authorities and PHMSA.

8 124. PHMSA's Guidelines make this clear. "The effectiveness of the State agency's pipeline
9 safety efforts depends on information obtained through inspections and evaluation of operator
10 compliance." Guidelines, at 22. Thus, the agency must conduct "a comprehensive and thorough
11 review of an operator's compliance records, operations and maintenance plans, emergency procedures,
12 public awareness plans, drug and alcohol programs and pipeline facilities. This would include, at a
13 minimum, an evaluation of such items as corrosion control, leakage surveys, overpressure protection
14 and pressure regulating equipment, repaired and/or active leaks, emergency valves, emergency
15 response, etc. This includes any field verification of an operator's compliance records" *Id.* at 23.
16 PHMSA's Guidelines further state that "[t]he State agency *must* conduct follow-up actions when
17 noncompliance is discovered during an inspection." *Id.* at 25 (italics added).

18 125. Although certified state authorities play a critical role in ensuring the safety of our
19 nation's natural gas pipelines, ultimate responsibility lies with PHMSA, the federal agency that has the
20 duty and power under the Act to protect the public from the dangers posed by those pipelines. Thus,
21 PHMSA has a duty under the Act to ensure that state authorities meaningfully inspect, audit,
22 investigate, and evaluate an operator's pipeline safety program and compliance activities.

23 126. PHMSA, however, has abdicated its duty to do so. Instead, PHMSA has allowed the
24 CPUC to conduct inspections of gas pipeline operators like PG&E that are generally paperwork
25 exercises where the CPUC simply "checks" boxes on a checklist. The CPUC does little, if any, field
26 auditing. Not surprisingly, the CPUC's paperwork exercises failed to uncover "systemic" violations by
27 PG&E of federal pipeline safety standards. As the NTSB recently concluded, the CPUC's paperwork
28 exercises "failed to uncover the pervasive and long-standing problems within PG&E" "despite the fact
that many of them should have been easy to detect." NTSB Report, at 120, 122.

1 127. The CPUC has performed these paperwork exercises for many years with PHMSA's
2 knowledge and tacit approval. In fact, PHMSA has allowed the CPUC to rubberstamp PG&E's
3 pipeline safety program for many years.

4 128. Even when the CPUC has discovered violations of federal pipeline safety standards by
5 PG&E, it has not conducted follow-up to ensure that PG&E corrects the violation. Again, PHMSA
6 knew or should have known that the CPUC had not conducted the follow-up required by PHMSA's
7 own Guidelines.

8 129. Indeed, PG&E's violations of federal pipeline safety standards and the CPUC's failure
9 to detect or correct those violations has in some instances been so flagrant and longstanding that
10 PHMSA's failure to detect or address PG&E's violations or the CPUC's failings can only be explained
11 by PHMSA's silent complicity or its complete abandonment of its oversight function.

12 130. For example, PHMSA and the CPUC purportedly conducted a joint audit of PG&E's
13 Integrity Management Program in 2005. But the joint audit was a "check the boxes" exercise that
14 failed to uncover many serious deficiencies in PG&E's safety program even though those deficiencies
15 were obvious and should have been easy to detect. The same is true for a second audit of PG&E's
16 integrity management program conducted by the CPUC in 2010 using PHMSA's inspection protocols.

17 131. None of these audits – including the joint audit conducted by PHMSA and the CPUC –
18 utilized any metrics that would allow PHMSA or the CPUC to compare the results of one audit to the
19 next. Without such metrics, the audits were blind assessments of operator performance conducted in a
20 vacuum that had little value and did little to help PHMSA or the CPUC identify trends or common
21 causes of critical safety problems.

22 132. As explained above, gas pipeline safety depends on the development and
23 implementation of a rigorous program to identify, find, assess, manage, eliminate or mitigate each
24 threat that may contribute to pipeline failure. This program uses risk analysis to prioritize resources
25 and activities so that the risks of each threat to public safety and the environment are minimized.

26 133. For these performance-based safety programs to effectuate the purposes of the Act,
27 PHMSA must exercise meaningful oversight and ensure that the requirements of the program are
28

1 being enforced by the CPUC. In particular, PHMSA must rigorously and knowledgeably ensure that
2 the CPUC and gas pipeline operators focus on safety and not on the financial interests of the operator.

3 134. PHMSA, however, has failed to do so. Instead, PHMSA has allowed the CPUC, for
4 many years, to forsake its duty to enforce federal pipeline safety standards in compliance with its
5 certification.

6 135. As a result, PG&E has been able to adopt an Integrity Management Program that
7 violates federal pipeline safety standards. For example, PG&E has: (1) failed to keep records of a kind
8 and in a manner sufficient to understand and assess pipeline vulnerabilities and risk and to operate and
9 maintain its transmission pipelines safely; (2) failed to properly identify pipeline segments in "High
10 Consequence Areas" ("HCAs"); (3) failed to identify high priority threats to the integrity of pipelines;
11 (4) failed to identify high-risk pipeline segments; (5) failed to perform assessments necessary to ensure
12 pipeline integrity; and (6) failed to identify and eliminate or remediate each threat that could contribute
13 to a pipeline rupture. Each of these failures is a serious violation of federal pipeline safety standards.
14 *See, e.g.*, 49 C.F.R. § 192.905 (last amended Dec. 22, 2003), § 192.911 (last amended June 8, 2006),
15 § 192.917 (last amended June 8, 2006), § 192.933 (last amended July 17, 2007), § 192.935 (last
16 amended Aug. 11, 2010); § 192.937 (last amended June 8, 2006), and § 192.947 (last amended Apr. 6,
17 2004).

18 136. The joint paperwork audit conducted by PHMSA and the CPUC in 2005 failed to
19 uncover many of these fundamental and serious violations even though those violations should have
20 been easy to detect.

21 137. For example, the 2005 joint audit failed to discover the huge gaps in PG&E's
22 recordkeeping. Those missing records contained basic pipeline information that is crucial for
23 determining the existence and nature of any threats to pipeline safety. These huge gaps in PG&E's
24 recordkeeping came to light solely because of the NTSB investigation following the San Bruno
25 pipeline explosion. If PHMSA had been fulfilling its duties under the Act, it and the CPUC, at a
26 minimum, would have discovered at least some, if not most, of those gaps during the 2005 joint audit,
27 if not earlier.

1 138. Even when PHMSA and the CPUC did find violations during its 2005 joint audit, they
2 failed to take any follow-up action. For example, neither PHMSA nor the CPUC followed up on the
3 finding in their 2005 joint audit that PG&E had violated federal regulations regarding automatic
4 shutoff vales ("ASVs") and remote controlled valves ("RCVs"). Federal regulations promulgated by
5 PHMSA give gas pipeline operators discretion to decide whether to install ASVs or RCVs so long as
6 those operators consider a list of factors. 49 C.F.R. § 192.935(c) (last amended Aug. 11, 2010).

7 139. In the 2005 joint audit, PHMSA and the CPUC found that PG&E had *never* evaluated
8 whether ASVs or RCVs "would be an efficient means of adding protection to a high consequence area
9 in the event of a gas release," as required by 49 C.F.R. § 192.935(a), (c) and (e) (last amended Aug.
10 11, 2010). In response, PG&E produced a memo that concluded, on the basis of industry sources
11 claiming that most of the damage from ruptured pipelines occurred in the first 30 seconds, that ASVs
12 or RCVs would have "little or no effect on increasing human safety or protecting properties." This
13 industry conclusion was biased, unsupported, and incorrect. Even more troubling, PG&E's memo, on
14 its face, did not explicitly weigh the relevant factors as required by federal regulation.

15 140. Despite finding that PG&E had failed to evaluate ASVs and RCVs as required by
16 federal regulation, neither PHMSA nor the CPUC followed up on that finding. Nor did either agency
17 review the memorandum that PG&E prepared in 2006 to determine whether its evaluation of ASVs
18 and RCVs complied with federal regulations. As the NTSB explained, "the CPUC apparently did not
19 evaluate the adequacy of [PG&E's response]. If it did, it failed to identify the flawed analysis that
20 concluded the use of ASVs would have little effect on increasing safety or protecting property."
21 NTSB Report, at 120.

22 141. Neither PHMSA nor the CPUC took *any* enforcement actions against PG&E to correct
23 *any* violations that it uncovered in their 2005 joint audit. Instead of issuing any citations or taking any
24 enforcement actions, both PHMSA and the CPUC treated the audit as a training exercise. The
25 Director of the Consumer Safety and Protection Division for the CPUC at the time even described the
26 audit as a "practice audit."
27
28

1 142. Neither PHMSA nor the CPUC followed up on their 2005 joint audit to determine
2 whether PG&E corrected any of the violations identified in the audit. Neither agency issued any
3 enforcement letters or initiated any proceedings to require PG&E to correct those violations.

4 143. The failure of PHMSA and the CPUC to follow up on their 2005 finding that PG&E
5 had violated federal regulations regarding ASVs and RCVs or to require PG&E to correct those
6 violations almost certainly increased the loss of life and destruction of property caused by the San
7 Bruno explosion.

8 144. In 2010, the CPUC performed a second audit of PG&E's Transmission Integrity
9 Management Program using PHMSA's inspection protocol in May 2010. Like the 2005 audit, this
10 audit failed to identify many of PG&E's violations of federal pipeline safety standards – including
11 numerous violations that contributed to the San Bruno explosion. Those violations include PG&E's
12 failure to maintain adequate records as required by federal pipeline safety standards, PG&E's failure to
13 properly evaluate whether ASVs or RCVs would have been effective in reducing risk to life and
14 property, and PG&E inadequate emergency response procedures.

15 145. Given PHMSA's abdication of its duty to oversee the CPUC's pipeline safety program,
16 the CPUC's failure to discover these violations in 2010 is hardly surprising. PHMSA did not require
17 the CPUC to identify or utilize metrics that would have enabled meaningful assessments of PG&E's
18 integrity management program. Indeed, PHMSA did nothing to ensure that the CPUC's 2010 audit
19 would be conducted in a minimally effective manner even though PHMSA knew or should have
20 known of the many deficiencies in the CPUC's audit procedures.

21 146. The CPUC also purportedly conducts audits of PG&E's Operations, Maintenance and
22 Emergency Plans. These plans are required by federal law. But once again, the CPUC's audits of
23 these plans are largely paperwork exercises that are performed in a "check the box" manner based on
24 the CPUC's questions and PG&E's answers. Indeed, the CPUC conducts little or no compliance
25 verification. Like the audits of PG&E's Integrity Management Plan, these audits rubberstamp PG&E's
26 plans and performance. PHMSA knew or should have known about the deficiencies in these audits
27 but did nothing about them.

28

1 147. The CPUC and PHMSA continue to conduct audits that focus on verifying paper
2 records and plans rather than on gathering information on how performance-based safety systems *are*
3 in fact implemented, executed, and evaluated, and whether problem areas *are* in fact being detected
4 and corrected. The NTSB recently reached this very same conclusion. NTSB Report, at 121.

5 148. This is just one of the many examples of PHMSA's ongoing violations of the Act –
6 which have allowed the CPUC to shirk its duties under its certification and PG&E to pervasively and
7 continuously violate federal pipeline safety standards.

8 **b. With PHMSA's knowledge and tacit approval, the CPUC, for over a**
9 **decade, failed to enforce federal standards mandating that pipeline**
10 **operators maintain adequate records to enable the operator and**
11 **regulators to ensure that pipelines are safe.**

12 149. For the performance-based regulatory scheme imposed by federal pipeline safety
13 standards to work, gas pipeline operators must maintain comprehensive records of their pipelines and
14 pipeline facilities and have those records readily accessible.

15 150. Thus, the Act requires gas pipeline operators to create and maintain records sufficient
16 to demonstrate compliance with federal pipeline safety standards. Further, the Act requires the
17 Secretary of Transportation to prescribe minimum standards for the information to be maintained by
18 operators and to be provided to the Secretary and to certified state authorities. *See* 49 U.S.C. §§
19 60102(d), 60117(b).

20 151. Recordkeeping requirements are pervasive throughout federal regulations, making it
21 plain that the obligation to keep complete and accurate records about pipeline manufacture,
22 installation, maintenance, and repairs is fundamental to the Act's purpose of protecting people and
23 property from the threat posed by natural gas pipelines. Without complete and accurate records, it is
24 impossible for an operator to comply with the minimum safety standards of the Act.

25 152. In particular, federal regulations require gas pipeline operators to prepare and regularly
26 update for each pipeline a manual to govern normal and abnormal operations and maintenance, and
27 emergency response. Those manuals must include the manufacturing, construction, operating, and
28 maintenance history of each pipeline. Indeed, the regulations governing an operator's integrity
management program require a comprehensive review of data and information on entire pipelines

1 "that could be relevant" to identify and assess potential threats to a pipeline segment. 49 C.F.R.
2 § 192.917(b) (last amended June 8, 2006).

3 153. To ensure that gas pipeline regulators comply with the critical recordkeeping
4 requirements of the Act, the CPUC must conduct "a comprehensive and thorough review of an
5 operator's compliance records" Guidelines, at 23. With PHMSA's knowledge and tacit approval,
6 however, the CPUC has failed to do so for over a decade, if not longer.

7 154. As a result, PG&E's records regarding pipeline conditions and features are so
8 incomplete, inaccurate or unavailable that they provide no assurance that its pipelines comply with
9 federal safety standards and are safe. Moreover, because PG&E lacks records sufficient to identify all
10 potential threats and fails to maintain such records in an accessible and searchable form, it has not
11 addressed all potential threats to pipeline integrity, such as manufacturing and construction defects like
12 faulty seam welds or the risk of seismic movement, as required by federal law.

13 155. PG&E's inability to produce complete and accurate records has been publicly
14 documented in connection with the San Bruno explosion. The most shocking fact illustrating the
15 breadth of PG&E's abject recordkeeping failures is PG&E's ongoing inability to produce
16 documentation showing the condition of pipelines it currently operates and supporting its rationale for
17 choosing the maximum allowable operating pressures for those pipelines. Setting the maximum
18 allowable operating pressure is among the most basic and important activities that an operator of a
19 natural gas pipeline must perform, and extensive records and documentation are required to make this
20 critical determination in a manner that ensures the safety of its pipelines. PG&E appears not to have
21 many of *the most basic* documents pertaining to its determinations of operating pressure. This failure
22 is just one example of PG&E's utter disregard for public safety and the egregious absence of any
23 meaningful regulatory oversight at any level.

24 156. Other notable examples of PG&E's blatant disregard for basic recordkeeping
25 requirements include: (1) PG&E's identification of Line 132 as a seamless pipe when in fact it was a
26 seam welded pipe; (2) PG&E's failure to identify that the ruptured pipe was constructed using short
27 sections of pipe, known as "pups"; (3) PG&E failure to produce records demonstrating the type and
28 grade of pipe that ruptured in San Bruno, even though pipe grade is essential for determining the safe

1 maximum allowable operating pressure; (4) PG&E's inability to demonstrate with records where the
2 pipe that ruptured was manufactured; (5) PG&E's inability to know when and where the pipeline
3 ruptured; (6) PG&E inability to promptly locate the shutoff valves for Line 132, each less than one
4 mile from the rupture, and PG&E's resulting inability to shut off the flow of gas until 95 minutes after
5 the explosion; and (7) PG&E's admission on December 30, 2011 that it had violated federal pipeline
6 safety standards for up to 20 years by failing to conduct leak inspections of nearly 14 miles of San
7 Francisco Bay area distribution pipelines after losing the maps of those pipelines. This type of
8 information should be readily accessible to a pipeline operator that has complied with federal pipeline
9 safety standards. The absence and inaccessibility of such important records means that PG&E is
10 unable to identify, prioritize, and mitigate threats to pipeline integrity.

11 157. The inadequacy and inaccuracy of PG&E's records related to pipeline safety is
12 longstanding and recently well-documented. The NTSB found that PG&E's inadequate recordkeeping
13 contributed to the gas pipeline failure in San Francisco in 1981. Like the San Bruno explosion, the
14 1981 failure involved the dispatch by PG&E of employees who were not trained or equipped to close
15 valves, and unacceptable delays in shutting down the pipeline. *See Pacific Gas & Electric Company*
16 *Natural Gas Pipeline Puncture, San Francisco, California, August 25, 1981, Pipeline Accident Report*
17 *NTSB/PAR-82/01* (Washington, DC: National Transportation Safety Board, 1982). The inadequacy
18 and inaccuracy of PG&E's records and compliance activities would have been obvious to the CPUC if
19 the CPUC had meaningfully reviewed PG&E's recordkeeping as required by the Act. Given the
20 pervasiveness, seriousness, and longevity of PG&E's recordkeeping failures, the CPUC plainly did not
21 require PG&E to comply with federal recordkeeping requirements for decades. Instead, the CPUC
22 placed "blind trust" in gas pipeline operators like PG&E. NTSB Report, at 135.

23 158. The CPUC's longstanding failure to detect and correct PG&E's recordkeeping and
24 compliance violations can only be explained by incompetence or silent complicity.

25 159. PHMSA knew or should have known that the CPUC was not enforcing the Act's
26 recordkeeping requirements. Indeed, PHMSA conducted a joint audit with the CPUC in 2005 of
27 PG&E's Integrity Management Program – which purportedly included an evaluation and review of
28 PG&E's recordkeeping. The deficiencies in PG&E recordkeeping should have been readily apparent

1 to PHMSA during this audit. Despite this, PHMSA never raised any concerns with the CPUC's
2 enforcement of the Act's recordkeeping requirements. In fact, PHMSA has *never* taken any corrective
3 action against the CPUC or PG&E with respect to the Act's recordkeeping requirements.

4 160. This is another example of PHMSA's ongoing violations of the Act – which have
5 allowed the CPUC to shirk its duties under its certification and PG&E to pervasively and continuously
6 violate federal pipeline safety standards.

7 **c. With PHMSA's knowledge and tacit approval, the CPUC did not**
8 **perform its duty to enforce federal standards requiring that**
9 **operators identify all "High Consequence Areas" in which**
10 **transmission pipeline failure would result in significant harm.**

11 161. Federal regulations require gas transmission pipeline operators to identify all high
12 consequence areas ("HCAs") through which their transmission lines run. HCAs are areas that are
13 densely populated or where substantial numbers of people are likely to be present (e.g., a hospital or a
14 recreational area), such that a pipeline rupture in the area would significantly endanger people and
15 property. Pipelines in HCAs must be included in an operator's integrity management plan and are
16 subject to more rigorous requirements regarding identification of threats to pipeline safety,
17 prioritization of assessments, and remediation of threats. Identifying HCAs is an essential step for
18 prioritizing threat elimination, mitigation activities, and risk analysis as required in any operator's
19 Integrity Management Program because gas pipeline failures that occur in HCAs pose an especially
20 high risk of harm to people and property.

21 162. In their 2005 joint audit of PG&E's Integrity Management Program, PHMSA and the
22 CPUC found that PG&E had failed to sufficiently explain its process for identifying HCAs, the critical
23 first step in the integrity management process, and that PG&E's Integrity Management Program failed
24 to include areas known to be HCAs.

25 163. Yet neither PHMSA nor the CPUC followed up on this finding, and neither required
26 PG&E to correct this violation of federal pipeline safety standards.

27 164. Five years later, in a May 2010 audit, the CPUC found that PG&E had used improper
28 data regarding pipeline pressures in determining whether a particular area was an HCA. As a result,
PG&E continues to fail to identify all HCAs. This violation of federal pipeline safety standards would

1 have been corrected by PG&E in 2005 if PHMSA had required the CPUC to follow up on their joint
2 2005 findings or had followed up itself and required PG&E to explain and correct what turned out to
3 be its faulty process for identifying HCAs.

4 165. As of the date of the filing of this complaint, the CPUC has still not required PG&E to
5 comply with the Act's HCA requirements, and PHMSA has *still* done nothing about that failure. On
6 an ongoing basis, this regulatory failure is placing lives and property in densely populated areas in San
7 Francisco and throughout California at risk.

8 166. PHMSA knew or should have known about PG&E's pervasive and longstanding
9 violation of federal pipeline safety standards governing HCAs and the CPUC's longstanding failure to
10 require correction of those violations. Yet, PHMSA has done nothing to require PG&E or the CPUC
11 to correct those violations.

12 167. This is another example of PHMSA's ongoing violations of the Act – which have
13 allowed the CPUC to shirk its duties under its certification and PG&E to pervasively and continuously
14 violate federal pipeline safety standards.

15 **d. For many years, PHMSA and the CPUC have allowed PG&E to**
16 **violate federal regulations requiring it to address and prioritize**
threats posed by defects in its pipelines.

17 168. Once a gas pipeline operator identifies the HCAs in its service territory, its next
18 obligation is to develop a baseline assessment plan ("BAP") for its service territory. The BAP must
19 include: (1) an identification of the potential threats to covered pipeline segments; (2) the methods
20 selected to assess the integrity of the pipeline, including an explanation of why the assessment method
21 was selected; (3) a schedule for completing the assessments; and (4) a procedure for minimizing
22 environmental and safety risks. 49 C.F.R. § 192.919 (last amended Dec. 22, 2003). Threat
23 identification is important because it defines what types of assessment technology should be used to
24 assess the risk of pipeline failure and whether a threat needs to be remediated.

25 169. Despite this obligation, PG&E does not: (1) identify all threats as required by federal
26 pipeline safety standards; (2) identify segments posing the highest risk of rupture or leaking; (3)
27 remediate significant anomalies; or (4) take programmatic actions to prevent or mitigate threats.

1 170. PG&E has pervasively and continuously violated these obligations under the Act. In
2 some instances, PG&E has done so with PHMSA's and the CPUC's knowledge and tacit approval. In
3 other instances, PHMSA or the CPUC should have known about PG&E's violations of the Act.

4 171. For example, federal pipeline safety standards state that an operator may consider a
5 manufacturing and construction defect to be stable and not warrant further assessment, only if the
6 operating pressure on the covered segment has not increased "above the maximum operating pressure
7 experienced during the preceding five years." 49 C.F.R. § 192.917(e)(3)(i) (last amended June 8,
8 2006.) If the pressure exceeds the five-year maximum operating pressure, then the operator must
9 consider that segment to be a high risk segment for the baseline assessment and all subsequent
10 assessments.

11 172. In addition, federal pipeline safety standards recognize that certain pre-1970's
12 manufacturing or construction methods may be particularly susceptible to failure – including rupture –
13 and therefore threaten pipeline integrity. These high risk pipelines include pipeline segments with low
14 frequency electric resistance welds and electric fusion welded steel pipelines more than 50 years old,
15 mechanically coupled pipelines, and pipelines joined by acetylene girth welds in areas where the
16 pipeline is exposed to land movement. Because these pipelines are more susceptible to failure, federal
17 pipeline safety standards state that if the operating pressure of these high risk pipeline segments
18 exceeds the five year maximum operating pressure, in addition to considering the segment as a high
19 risk for the baseline assessment or subsequent assessments, the operator "must select an assessment
20 technology or technologies with a proven application capable of assessing seam integrity and seam
21 corrosion anomalies." 49 C.F.R. § 192.917(e)(4) (last amended June 8, 2006). The assessment
22 technologies capable of assessing seam integrity are pressure testing and some specialized forms of in-
23 line inspection.

24 173. Instead of making sure that PG&E complies with federal testing requirements imposed
25 on these so-called "historic" pipelines, PHMSA and the CPUC, for many years, have allowed PG&E
26 to evade pressure tests or in-line inspection of its many miles of historic pipelines even when the
27 operating pressure on these lines has exceeded the five-year maximum operating pressure. As a result,
28

1 PG&E continues to violate federal pipeline safety standards by using "historic" pipelines known to be
2 particularly susceptible to failure without testing the integrity of those pipelines.

3 174. Under PG&E's Risk Management Instruction, Rev. 1 ("RMI-06") – which explains
4 how PG&E will carry out its risk management plan – if the pressure on an historic pipeline segment
5 that is particularly susceptible to failure exceeds the historic five year maximum operating pressure,
6 PG&E will not conduct the mandatory physical assessment of the seam integrity of the affected
7 segment as required by federal pipeline safety standards. Instead, PG&E will convene a committee to
8 review the pipeline's characteristics. This proposed review – referred to by PG&E as an "Engineering
9 Critical Assessment (ECA) " – requires only a review of the characteristics and pressure test history
10 of the affected pipeline segments "to determine whether or not the seam related manufacturing threat
11 has become unstable." Instead of performing an actual physical assessment of seam integrity as
12 required by law, PG&E proposes to convene a committee that will determine whether PG&E should
13 follow the law.

14 175. The CPUC has been aware of RMI-06 since at least 2010 and its subsequent
15 amendment since at least 2011. Nonetheless, the CPUC has taken no corrective actions to date against
16 PG&E. It has not even notified PG&E that RMI-06 violates federal pipeline safety standards, much
17 less required PG&E to change RMI-06 to provide for testing required by law.

18 176. This is another example where PHMSA's abdication of its duty under the Act to
19 oversee the CPUC and to ensure that federal pipeline safety standards are being enforced has allowed
20 the CPUC to shirk its duties under its certification and PG&E to pervasively and continuously violate
21 federal pipeline safety standards.

22 177. PHMSA's violation of its duty in this example is especially troubling. Many of PG&E's
23 transmission pipelines in San Francisco and the San Francisco Peninsula are older and likely to be at
24 high risk of failure because they have been constructed using manufacturing or construction methods
25 that are particularly susceptible to failure. For example, all three transmission lines running through
26 San Francisco have segments with manufacturing or construction defects or other conditions that
27 would require PG&E under sections 192.917(e)(3)(i) and (4) of title 49 of the Code of Federal
28 Regulations to prioritize and perform rigorous assessment of pipeline integrity if the line pressure

1 exceeds the five year historical maximum operating pressure. In addition, seismic movement in San
2 Francisco that can lead to pipeline failure is well-documented. By allowing PG&E to pervasively and
3 continuously violate federal safety standards requiring it to address and prioritize threats posed by
4 defects in its high risk pipelines, PHMSA continues to place the lives and property of Californians—
5 including San Franciscans – at grave risk.

6 **V. PHMSA'S VIOLATIONS OF THE ACT AND ITS CONTINUED REFUSAL TO**
7 **ACKNOWLEDGE, MUCH LESS CORRECT, THESE VIOLATIONS PLACE**
8 **MILLIONS OF CALIFORNIANS AT GRAVE RISK OF DEATH, INJURY, AND**
9 **PROPERTY DAMAGE.**

10 178. The failures of natural gas transmission and distribution pipelines pose a serious risk
11 not just to San Franciscans, but to all Californians because such ruptures and leaks often result in
12 explosions that cause widespread death and destruction. This risk is only increasing as pipelines age
13 and continue to be neglected by gas pipeline operators like PG&E. Indeed, the recent spate of pipeline
14 explosions in San Bruno, Rancho Cordova, and Cupertino provides ample evidence that the threat is
15 real and growing.

16 179. The conscious decision by PHMSA to abdicate its duty to ensure that federal pipeline
17 safety standards are being enforced and to delegate its authority to do so to gas pipeline operators like
18 PG&E has not only increased the risk of pipeline explosions resulting in death and destruction. That
19 decision has directly contributed to the pipeline explosions that have recently occurred in California.
20 Absent injunctive relief, there may well be more.

21 180. For example, the failings of PHMSA and the CPUC directly contributed to the San
22 Bruno explosion – which resulted in numerous deaths and injuries and widespread destruction.

23 181. The probable cause of the San Bruno explosion was PG&E's "inadequate quality
24 assurance and quality control in 1956" and "inadequate pipeline integrity management program, which
25 failed to detect and repair or remove the defective pipe section." NTSB Report, at xii. PG&E used
26 inferior and undocumented pipes, performed inferior work, ignored documentation requirements
27 normally performed during pipeline construction, and failed to maintain adequate control of critical
28 records needed to assure pipeline safety. PG&E further exacerbated the risk of rupture by
circumventing pipeline testing required by federal safety standards. PG&E also lacked trained

1 personnel and adequate records which prevented it from halting the massive burning of released gas
2 and the attendant death and destruction for hours after the rupture. Given the myriad of operational
3 and regulatory failings surrounding all of PG&E's natural gas pipelines, "[o]pportunities were missed
4 that could have – and should have – prevented this tragedy." Hersman Opening Statement. Thus, "[i]t
5 was not a question of if this pipeline would burst. It was a question of when." *Id.*

6 182. By abdicating its duties under the Act, PHMSA allowed the CPUC to forsake its duty
7 to enforce federal pipeline safety standards as required by its certification – which, in turn, allowed
8 PG&E to pervasively and continuously violate federal pipeline safety standards for over a decade, if
9 not longer. Indeed, the NTSB specifically faulted both PHMSA and the CPUC for allowing PG&E to
10 do so and concluded that the failings of PHMSA and the CPUC directly contributed to the explosion.
11 "The CPUC, as the regulator for pipeline safety within California, failed to uncover the pervasive and
12 long-standing problems within PG&E. Consequently, this failure precluded the CPUC from taking
13 any enforcement action against PG&E. The CPUC lost opportunities to identify needed corrective
14 action and to follow through and ensure that PG&E completed the prescribed corrective actions in a
15 timely manner. For its part, PHMSA rated the CPUC's pipeline safety program in the mid- to high-90s
16 in the years leading up to the San Bruno accident – a superior, if not outstanding, score. Furthermore,
17 PHMSA's participation in the 2005 joint audit with the CPUC of PG&E apparently did not make any
18 difference in uncovering PG&E's systemic problems or in accurately assessing the quality of oversight
19 exercised by the CPUC." NTSB Report, at 122. As the Chairman of the NTSB aptly summarized, the
20 "lax" system of oversight adopted by PHMSA and the CPUC "placed a blind trust in the companies
21 that they were charged with overseeing – to the detriment of public safety." *Id.* at 135.

22 183. Based on its investigation of the San Bruno explosion, the NTSB expressed "strong
23 doubts about the quality and effectiveness of enforcement at both the Federal and state levels." NTSB
24 Report, at 123. As NTSB member Robert Sumwalt stated during the August 30, 2011 hearing at
25 which the NTSB adopted the final report on the San Bruno incident: "This accident is not just about
26 the failure of a seam in a pipeline. Rather it's about a failure of an entire system – a system of checks
27 and balances that should have been put in place to prevent the disaster."
28

1 184. A panel convened by the CPUC to gather facts and make recommendations in the wake
2 of the San Bruno explosion reached a similar conclusion. The Panel stated that "the CPUC's role in
3 the auditing of Integrity Management must shift culturally to a destination beyond compliance. It
4 must summon up the courage and resources to monitor the prudence of the operator's program, its
5 effectiveness and analysis of the program results to manage the system risks." Panel Report, at 98-99.

6 185. If PHMSA had required the CPUC to meaningfully investigate the Rancho Cordova
7 explosion, many of PG&E's violations of federal pipeline safety standards would have been identified,
8 and the identification of those violations would have triggered an extensive review of PG&E's woeful
9 pipeline safety program. Thus, the tragedy at Rancho Cordova is yet another instance where PHMSA
10 and the CPUC failed to learn from their past mistakes and failed to take measures to comply with their
11 duties under the Act.

12 186. Instead, PHMSA "permitted PG&E's organizational failures to continue over many
13 years." NTSB Report, at 123. PHMSA failed to exercise its authority to ensure that the safety
14 standards of the Act were enforced and allowed the CPUC to place "blind trust" in gas pipeline
15 operators like PG&E. *Id.* at 135. As a result, PHMSA, for all practical purposes, has allowed those
16 operators to regulate themselves. In doing so, PHMSA has improperly delegated its authority under
17 the Act to gas pipeline operators like PG&E. Simply put, PHMSA has violated the Act by allowing
18 the foxes to guard the henhouse.

19 187. Despite this, PHMSA continues to refuse to acknowledge its own failings, much less its
20 direct contribution to recent pipeline explosions and the increased risk of future explosions. Instead, in
21 a November 25, 2011 response to San Francisco's notices of intent to sue, PHMSA stated that it "will
22 vigorously defend its record of administering a *strong* federal-state pipeline safety program." Ex. E at
23 2 (*italics added*).

24 188. Given these public pronouncements by PHMSA and given the failure by PHMSA to
25 initiate *any* administrative proceedings focused on its *own* misconduct, only one conclusion may be
26 drawn: PHMSA will continue its longstanding violations of the Act. As a result, it will remain a
27 question of when, and not if, another pipeline explosion will occur. San Francisco is left with one
28

1 option to ensure the safety of its citizens: to file this action to compel PHMSA to exercise its authority
2 under the Act to oversee the CPUC and to ensure that federal pipeline safety standards are enforced.

3 **CAUSES OF ACTION FOR DECLARATORY AND INJUNCTIVE RELIEF**

4 **FIRST CAUSE OF ACTION**

5 **Violation of the Pipeline Safety Act, 49 U.S.C. § 60101 ET SEQ.**

6 **(Against The U.S. DEPARTMENT OF TRANSPORTATION, PHMSA, Cynthia Quarterman,
7 in her official capacity, and Ray LaHood, in his official capacity)**

8 189. The City realleges and incorporates by reference paragraphs 1 through 188 as if fully
9 set forth herein.

10 190. Under the Act, PHMSA has a duty to prescribe minimum safety standards. *See* 49
11 U.S.C. § 60102(a)(2). PHMSA also has a duty to exercise oversight over certified state authorities
12 like the CPUC and to ensure that those authorities comply with their certification under the Act. *See*
13 49 U.S.C. § 60105. PHMSA also has a duty to enforce federal pipeline safety standards to the extent
14 that a state authority is not. *See* 49 U.S.C. § 60105(a).

15 191. As set forth above, PHMSA has violated those duties under the Act. In doing so,
16 PHMSA has abdicated its duty to oversee the CPUC's pipeline safety program and to ensure that
17 federal pipeline safety standards are being enforced and has improperly delegated its authority to do so
18 to gas pipeline operators like PG&E.

19 192. As a result, PHMSA is violating the Act on an ongoing and continuous basis in
20 contravention of the Act's purposes – which are to protect life, property, and the environment and to
21 ensure adequate governmental regulation of pipeline safety.

22 **SECOND CAUSE OF ACTION**

23 **Violation of the Pipeline Safety Act, 49 U.S.C. § 60101 ET SEQ.**

24 **(Against The U.S. DEPARTMENT OF TRANSPORTATION, PHMSA, Cynthia Quarterman,
25 in her official capacity, and Ray LaHood, in his official capacity)**

26 193. The City realleges and incorporates by reference paragraphs 1 through 192 as if fully
27 set forth herein.

28 194. Under the Act, PHMSA may disburse federal funds to the CPUC *only* to the extent
those funds are "reasonably required" by the CPUC "to carry out a safety program under a certification
under section 60105" *See* 49 U.S.C. § 60107(a)(1).

1 3. For a declaration that the Secretary of Transportation, the Administrator of PHMSA,
2 the Department of Transportation, and PHMSA have improperly disbursed federal funds to a state
3 authority that were not reasonably required to carry out the authority's pipeline safety program in
4 compliance with its certification to PHMSA in violation of the Act;

5 4. For a preliminary and permanent injunction requiring the Secretary of Transportation,
6 the Administrator of PHMSA, the Department of Transportation and PHMSA to only disburse federal
7 funds to a state authority that are reasonably required to carry out a pipeline safety program in
8 compliance with the authority's certification to PHMSA;

9 5. For reasonable attorneys' fees and costs; and

10 6. For such other and further relief as the court may deem just and proper.

11
12 Dated: February _____, 2012

DENNIS J. HERRERA
City Attorney
THERESE M. STEWART
Chief Deputy City Attorney
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17
18 By: _____
19 DANNY CHOU
20 Attorneys for Plaintiff
21 THE CITY AND COUNTY OF SAN FRANCISCO
22
23
24
25
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27
28

EXHIBIT A

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY



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July 14, 2011

VIA CERTIFIED MAIL—RETURN RECEIPT REQUESTED

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San Francisco, CA 94102

Cynthia L. Quarterman, Administrator
Pipeline and Hazardous Materials Safety Administration
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Washington, D.C. 20590

Governor Jerry Brown
Office of the Governor of California
State Capitol
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Sacramento, CA 95814

Secretary of Transportation Ray LaHood
United States Department of Transportation
1200 New Jersey Avenue SE
Washington, D.C. 20590

Re: Notice of Intent to File Suit Under the Federal Pipeline Safety Act, 49 U.S.C. § 60101 et seq.

Dear President Peevey, Administrator Quarterman, Governor Brown, and Secretary LaHood,

The City and County of San Francisco (the City) hereby provides notice of intent to sue the California Public Utilities Commission (CPUC), and the Pipeline and Hazardous Materials Safety Administration (PHMSA) of the U.S. Department of Transportation (DOT), for failure to enforce federal pipeline safety standards in a manner that provides “adequate protection against risk to life and property” as required by the Pipeline Safety Act (the Act)¹.

¹ 49 U.S.C. § 60102(a)(1).

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I. INTRODUCTION AND NOTICE OF INTENT TO SUE THE CPUC AND PHMSA.

On September 9, 2010, a gas pipeline exploded in San Bruno, California, killing eight people, injuring dozens more, and destroying multiple homes. Since then, federal and state investigators have mainly focused on Pacific Gas & Electric Co.'s (PG&E) apparent failure to comply with certain pipeline safety standards developed to implement the Act. The City supports these important efforts, but is also concerned by the CPUC's and PHMSA's equally apparent failure to enforce those standards in a reasonable manner as required by the Act.

In the aftermath of the San Bruno explosion, the City and other stakeholders have learned a great deal about the potential risks posed by the gas transmission pipelines that run beneath our homes, offices, and public spaces. Even though the cause of the San Bruno blast has not been finally determined yet, it is obvious that the potential for additional gas transmission pipeline failures cannot be ignored. Pipelines transmitting flammable gas at high pressure are inherently dangerous. For this reason, strict enforcement of the regulatory scheme mandated by federal law is necessary to protect people and property from harm. The public is at risk because the mandates of federal law have not been followed by PG&E or enforced by the CPUC and PHMSA.

The City acknowledges that in the months since the San Bruno explosion, the CPUC has initiated investigative and rulemaking proceedings and other efforts to enhance pipeline safety. However, the CPUC and PHMSA have a poor track record in actual enforcement, instead adopting a minimalist, "check the boxes" approach to their regulatory obligations under the Act.² Given the present threat of serious harm to the City and its occupants, the City is compelled to seek a federal court order requiring the CPUC and PHMSA to comply with the Act.

Under the Act, a person³ intending to sue to enforce the Act's requirements must first provide sixty days' notice to: (1) each person alleged to have committed a violation of the Act;⁴ (2) the United States Secretary of Transportation; and (3) the appropriate state authority with a duty to ensure state agencies comply with the Act.⁵ This letter comports with these requirements by providing notice of intent to sue to the following persons in their official capacities:

- Michael R. Peevey, President, CPUC.
- Cynthia L. Quarterman, Administrator, PHMSA.
- Jerry Brown, Governor of California.
- Ray LaHood, U.S. Secretary of Transportation.

The City intends to file suit in the United States District Court for the Northern District of California. The City will seek all appropriate relief, including injunctive relief pursuant to 49 U.S.C. § 60121(a)(1); and attorneys fees, expert fees, and costs pursuant to 49 U.S.C. § 60121(b).

² *Report of the Independent Review Panel: San Bruno Explosion*, (Rev. June 24, 2011), at pp. 5, 26.

³ The City is a "person" entitled to sue under the Act. 49 U.S.C. § 60101(a)(17).

⁴ The federal and state governments are "persons" who may be sued for failure to comply with the Act. 49 U.S.C. § 60121(a), 60101(a)(17).

⁵ 49 U.S.C. § 60121(a)(1)(A).

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II. THE EXPLOSION IN SAN BRUNO AND THE INDEPENDENT REVIEW PANEL REPORT.

Two weeks after the San Bruno explosion, the CPUC appointed an Independent Review Panel (the Panel) to investigate the incident.⁶ On June 8, 2011, the Panel issued a 196-page report evaluating the causes of the San Bruno explosion.⁷ The Panel collected documentation and interviewed employees from PG&E, the CPUC and San Bruno.⁸

The Panel found that PG&E has failed to:

- (1) identify all threats to each segment as required by the regulations;
- (2) identify highest risk pipeline segments;
- (3) perform necessary tests for pipeline integrity; and
- (4) remediate significant anomalies that could result in pipeline failures.⁹

The Panel also found that the CPUC failed to perform its duty to adequately monitor PG&E's performance of pipeline integrity management.¹⁰

The Panel did not determine the cause of the San Bruno incident but considered several factors that could have contributed to the explosion, including manufacturing defects and faulty seam welds. The Panel also considered the potential for soil movement to compromise a defective seam weld and cause a pipeline failure.¹¹

III. GAS TRANSMISSION PIPELINES IN SAN FRANCISCO ARE AT RISK OF FAILURE.

PG&E runs three gas transmission pipelines under the City: Line 132, Line 109, and Line 101.¹² Like the segment of line 132 that exploded in San Bruno, some segments of the other two lines date back as far as the 1930's and were fabricated with older techniques that

⁶ The Panel was "established to gather information regarding the San Bruno explosion and the overall safety of PG&E's natural gas transmission pipelines, and to review and evaluate such information, as well as make recommendations to the Commission." CPUC Resolution L-403, September 24, 2010, Ordering Paragraph 2, p. 10.

⁷ A revised version of the Report was issued on June 24, 2011. *Report of the Independent Review Panel: San Bruno Explosion*, (Rev. June 24, 2011).

⁸ The Report contains the important caveat that it could not verify the validity of the information received from others, including PG&E and the CPUC, and thus could not guarantee its conclusions were accurate. *Report of the Independent Review Panel: San Bruno Explosion*, (Rev. June 24, 2011), at pp. iii and 8.

⁹ *Report of the Independent Review Panel: San Bruno Explosion*, (Rev. June 24, 2011), at p. 8.

¹⁰ *Report of the Independent Review Panel: San Bruno Explosion*, (Rev. June 24, 2011), at p. 5.

¹¹ *Report of the Independent Review Panel: San Bruno Explosion*, (Rev. June 24, 2011), at pp. 5-6 and 68.

¹² A map of these gas pipelines is attached to this letter and is available at: http://www.pge.com/includes/docs/pdfs/myhome/edusafety/systemworks/gas/latestupdates/filing_inaps/Map%2026.pdf.

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present potential risks to pipeline integrity and may require special forms of assessment and remediation.¹³

Taken together, these pipelines run under nine densely-populated San Francisco neighborhoods where many thousands of people live and work. Critical and high-population-density facilities and public works in these neighborhoods include San Francisco General Hospital, San Francisco City College, major stretches of Highways 101 and 280, the Potrero Hill and Portola Recreation Centers, and numerous schools.

While PG&E has done repair work along some segments of these lines, its records regarding pipeline condition and features are so incomplete, inaccurate and/or unavailable that they provide no assurance that the lines are safe. Moreover, because PG&E lacks sufficient records to identify all potential threats, it has not addressed all potential threats to pipeline integrity, such as manufacturing and construction defects like faulty seam welds, or the risk of seismic movement¹⁴ as required by federal law.¹⁵ One of the tenets of transmission pipeline integrity management is that “a threat is assumed to exist until it can be demonstrated it does not exist.”¹⁶ The City’s concerns about the condition of gas transmission pipelines in San Francisco are heightened by the initial report of the National Transportation Safety Board (NTSB), which indicated that the San Bruno explosion originated at a poorly installed weld along the lengthwise seam of the transmission line.¹⁷

For all these reasons, the City and its occupants are at risk of experiencing a pipeline failure as devastating as the San Bruno explosion.

¹³ For example, PG&E has found a number of flawed girth welds in lines 132 and 109 over the years.

ftp://ftp.cpuc.ca.gov/Gas_Pipeline_Safety/11102016_Investigation_Into_PG_and_E_Pipeline_Records/PG_and_E_June_20_2011_Response_DOC_110610497/Chapter_7/07_ATS_Reports/P7-7086.pdf.

ftp://ftp.cpuc.ca.gov/Gas_Pipeline_Safety/11102016_Investigation_Into_PG_and_E_Pipeline_Records/PG_and_E_June_20_2011_Response_DOC_110610497/Chapter_7/07_ATS_Reports/P7-7056.pdf.

ftp://ftp.cpuc.ca.gov/Gas_Pipeline_Safety/11102016_Investigation_Into_PG_and_E_Pipeline_Records/PG_and_E_June_20_2011_Response_DOC_110610497/Chapter_7/07_ATS_Reports/P7-7073.pdf

¹⁴ Soil movement due to seismic activity occurs regularly in San Francisco, which experienced large and destructive earthquakes in 1838, 1868, 1906, and 1989, and the United States Geological Survey (USGS) has described “future large earthquakes” in San Francisco as “a certainty.” (See earthquake.usgs.gov/regional/nca/wg02/index.php.) As for massive (as opposed to merely “large”) earthquakes, a USGS forecast issued in April 2008 estimate that over the next thirty years the San Francisco Bay Area has a 63 percent chance of experiencing an earthquake measuring 6.7 or greater.

¹⁵ *Report of the Independent Review Panel: San Bruno Explosion*, (Rev. June 24, 2011), at p. 8.

¹⁶ *Report of the Independent Review Panel: San Bruno Explosion*, (Rev. June 24, 2011), at p. 4.

¹⁷ NTSB Materials Laboratory Factual Report No. 10-119, issued January 21, 2011, p 10. The NTSB has not issued a final determination of the causes of the San Bruno explosion.

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IV. THE FEDERAL PIPELINE SAFETY ACT AND LEGAL DUTIES OF THE CPUC AND PHMSA.

A. The Pipeline Safety Act.

In 1968, Congress enacted the Pipeline Safety Act, which sets safety standards and provides for federal and state enforcement of those standards. The Act's purposes are to protect life and property and to ensure governmental regulation of pipeline safety and enforcement of pipeline safety standards.¹⁸ To achieve this purpose, the Act requires gas pipeline operators to comply strictly with federal pipeline safety standards, and requires certified State agencies and the federal government to enforce those standards in a reasonable manner.

B. Federal Safety Regulations Regarding Gas Transmission Pipeline Integrity.

PG&E has an ongoing obligation to comply with all federal pipeline safety standards promulgated under the Act. Viewed as a whole, those standards require gas transmission pipeline operators, such as PG&E, to engage in a process commonly known as "integrity management," a "program to assess and mitigate safety threats to sections of their pipeline systems where leaks or ruptures would have the greatest impact on public safety," that requires operators to identify "high consequence areas" (e.g., densely populated areas), and then systematically assess pipelines in such areas for safety risks, and repair or replace any defective pipeline segments.¹⁹ Generally speaking, the federal regulations require operators to continuously identify threats, select appropriate methods to assess those threats, properly test for those threats, remedy any problems or anomalies, and document the entire process.²⁰

A fundamental concept in the design of gas pipelines is that "if a pipeline is constructed, operated, and maintained according to its design, then it should operate," one hundred percent of the time "without safety risk to the public." The industry refers to this concept as "zero significant incidents."²¹ In order to maintain this standard, the operator must maintain a continuous cycle of identifying pipeline segments and all potential threats for each segment, inspecting and assessing, mitigating and remediating anomalies and defects, providing quality assurance, and generating new data and analysis.²² The overall goal is to identify and remedy potential threats to pipeline safety and thereby head off potentially devastating gas pipeline explosions.

C. CPUC's and PHMSA's Joint Obligations To Enforce The Act.

PHMSA has an ongoing obligation to regulate and enforce all federal pipeline safety standards promulgated under the Act. PHMSA may enforce those standards itself, but the Act also provides that a state may regulate and enforce the federal pipeline safety standards if a state authority certifies to DOT that, among other things, it has jurisdiction and authority to regulate

¹⁸ 49 U.S.C. § 60102.

¹⁹ Government Accountability Office Report to Congressional Committees, "Natural Gas Pipeline Safety. Integrity Management Benefits Public Safety, but Consistency of Performance Measures Should Be Improved" (GAO-06-946, Sept. 2006), at 5-6.

²⁰ 49 C.F.R. § 192.937.

²¹ *Report of the Independent Review Panel: San Bruno Explosion*, (Rev. June 24, 2011), at p. 63.

²² 49 C.F.R. § 192.937.

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such pipeline facilities, has adopted the federal safety standards, and is enforcing them.²³ If DOT determines that the state authority is not satisfactorily enforcing compliance with the safety standards, it may reject the state's certification and assert federal jurisdiction to enforce the Act.²⁴ Accordingly, PHMSA remains responsible for ensuring adequate enforcement of federal pipeline safety requirements, whether it enforces those requirements directly or by oversight of state activities.

The CPUC has certified annually to PHMSA that it has the jurisdiction and authority to enforce the pipeline safety requirements at issue in this notice letter. The CPUC has adopted federal pipeline safety regulations and has certified that it enforces them through ways that include inspections by state employees who meet qualifications prescribed by DOT.²⁵ In exchange, the federal government funds approximately sixty percent of the CPUC's costs for the state's gas pipeline safety program, which includes gas transmission pipeline integrity management.²⁶

The Act provides for the CPUC and PHMSA to work together to regulate PG&E and enforce federal pipeline safety requirements. Reasonable enforcement requires, at the very least, having in place an effective system for monitoring whether an operator, such as PG&E, is engaging in the risk management steps required by the Act. A process of governmental enforcement that fails to reliably ensure compliance on a utility's part itself violates the Act. It is apparent that neither the CPUC nor PHMSA have put in place a reliable means for assuring PG&E's compliance, leaving the millions of people who rely on their enforcement activities with a false sense of security. Below, the City identifies examples of the CPUC's and PHMSA's multiple failures to enforce the Act, the cumulative effect of which has been to allow PG&E to operate unregulated and contrary to federal safety standards.

V. THE CPUC AND PHMSA HAVE FAILED TO ENFORCE FEDERAL PIPELINE SAFETY STANDARDS IN VIOLATION OF THE ACT.

A. CPUC And PHMSA Have Failed To Enforce Federal Regulations Mandating That Pipeline Operators Maintain Adequate Records To Enable The Operator And Regulators To Ensure That Pipeline Conditions Are Not A Threat To Public Safety.

The Act requires pipeline operators to create and maintain records adequate to demonstrate compliance with safety standards. Further, the Act requires the Secretary to prescribe minimum standards for the information to be maintained by operators and provided to the Secretary and state authorities.²⁷ Record-keeping requirements are pervasive in the Federal regulations, making it plain that the obligation to keep records is fundamental to the Act's purpose of protecting people and property from the risks posed by operation of gas pipelines.²⁸

²³ 49 U.S.C. § 60105(a) – (c).

²⁴ 49 U.S.C. § 60105(f).

²⁵ *Pipeline Natural Gas Certifications for California Public Utilities Commission for years 2004 through 2010*.

²⁶ *Report of the Independent Review Panel: San Bruno Explosion*, (Rev. June 24, 2011), at p. 19.

²⁷ 49 USC §§ 60102(d), 60117(b).

²⁸ See, e.g., 49 C.F.R. §§ 192.14(a)(1) and (b), 192.517, 192.603(b), 192.605(a) and (b)(3), 192.917(b) and 192.947.

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Without adequate records, it is impossible for an operator to comply with the minimum safety standards of the Act. The regulations require operators to prepare and regularly update for each pipeline a manual to govern normal and emergency conditions, specifically including construction and operating history. The regulations implementing a gas transmission pipeline integrity management program require a comprehensive review of data and information "that could be relevant" in order to identify and assess the potential threats to a pipeline segment.²⁹

PG&E's inability to produce adequate and accurate records has been publicly documented. One example is PG&E's initial identification of the ruptured segment of Line 132 in San Bruno as seamless pipe when it was in fact a seam welded pipe with numerous short sections. In addition, PG&E has yet to produce adequate records demonstrating the grade of pipe that failed, even though pipe grade is an important property utilized in assessing a pipe's ability to avoid failure. Further, PG&E has not yet been able to demonstrate whether the pipe that failed was manufactured at a mill or constructed at a local shop. All of this is information that is typically produced very quickly by a pipeline operator with adequate records. The absence of such information means that PG&E is unable to appropriately identify, prioritize, and mitigate threats to pipeline integrity.

Moreover, the company's ongoing inability to produce complete and accurate records, as ordered by the NTSB and the CPUC in January 2011, is well-documented. This inadequacy is not recent or isolated, as is demonstrated by PG&E's internal memoranda from 1992 and 1993, which specifically identified the absence of an adequate records-keeping system for gas transmission pipelines.³⁰ Given the pervasiveness, seriousness and longevity of PG&E's record-keeping failures, it is obvious that the CPUC and PHMSA have not required PG&E to comply with federal law. PG&E's complete failure to comply with the recordkeeping requirements should have been apparent to the CPUC and PHMSA if they had been reasonably performing their obligations to enforce the safety standards of federal law. This abdication by the CPUC and PHMSA of their obligation to monitor and enforce record-keeping requirements violates the Act.

B. CPUC And PHMSA Have Failed To Enforce Federal Regulations Requiring That Gas Transmission Pipeline Operators Identify All "High Consequence Areas" In Which Pipeline Failure Would Result In Significant Harm To People And Damage To Property.

Federal regulations require gas transmission pipeline operators to identify "high consequence areas" (HCAs) through which their pipelines run. HCAs are areas that are densely populated or where substantial numbers of people are likely to be present (e.g., a hospital or a recreational area), such that a pipeline failure in the area would significantly impact people and property.³¹ The regulations also prescribe a formula for calculating the radius of such an area; one factor in this formula is the "maximum allowable operating pressure" (MAOP) for the pipeline segment. A pipeline operator must explain in its "Integrity Management Program" (IMP) its method of identifying HCAs.

In a 2005 audit, the CPUC found that PG&E's IMP did not sufficiently explain its process for identifying HCAs and also found that the IMP failed to include areas known to be HCAs. Yet neither the CPUC nor PHMSA required PG&E to correct these deficiencies at that time. Five years later, in a May 2010 audit, the CPUC found that PG&E's IMP improperly

²⁹ 49 C.F.R. §192.917(b).

³⁰ These documents were provided to the CPUC by Representative Jackie Speier and made available by the CPUC at: <http://docs.cpuc.ca.gov/efile/RULINGS/137470.pdf>.

³¹ 49 C.F.R. §§ 192.903 and 192.905(a).

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prescribes calculation of the radius of a potential HCA by using a lower pressure than the MAOP required by federal regulations. PG&E used instead "maximum operating pressure," or MOP. PG&E's IMP is contrary to express PHMSA guidance prohibiting the use of operating pressures lower than MAOP to identify HCAs.³²

This is not just a technical violation. The use of the lower pressures as a factor in the HCA determination results in under-identification of HCAs, which are subject to more rigorous requirements regarding identification of threats to pipeline safety, prioritization of assessment, and remediation of those threats. It appears that PG&E has never complied with the HCA requirements of the Act. Despite this, prior to 2010 neither the CPUC nor PHMSA ensured that PG&E was even explaining its process for identifying HCAs sufficiently to determine whether it was in compliance. Nor has either agency taken any action since PG&E's 2010 audit to require PG&E to change its IMP or to identify HCAs using the required MAOP as a factor.

C. CPUC And PHMSA Have Failed To Enforce Federal Regulations Mandating Inspections Of Gas Transmission Pipeline Integrity For Pipelines Susceptible To Manufacturing And Construction Defects, Or Other Potential Risks.

1. CPUC And PHMSA Have Tolerated PG&E's Intentional Spiking Of Pressures On Pipelines With Identified Manufacturing And Construction Defects, Or Other Potential Threats, Thereby Risking Pipeline Failure.

Federal regulations recognize that certain manufacturing and construction defects and some pre-1970's manufacturing or construction methods may render the affected pipelines particularly susceptible to failure and therefore pose potential threats to pipeline integrity. These include low frequency electric resistance weld (ERW) pipe, steel pipeline more than 50 years old, mechanically coupled pipelines, and pipelines joined by acetylene girth welds in areas where the pipeline is exposed to land movement.³³ Federal regulations mandate prioritized and rigorous assessment of integrity whenever the operating pressure on a pipeline segment affected by these possible threats has experienced seam failure or exceeds the maximum operating pressure experienced during the preceding five years.

Instead of properly identifying and mitigating the potential risks presented by these types of manufacturing and construction threats, PG&E has risked destabilizing the pipeline segments containing these latent defects by engaging in planned pressure spikes without undertaking the threat analysis or assessments required by the regulations. During the recent March 2011 NTSB hearings, PG&E representatives testified that until recently it was PG&E's routine practice to do planned pressure spikes every five years on pipelines with these identified threats if the maximum pressure reached during normal operation of those pipelines was below the maximum operating pressure experienced during the prior five year period.³⁴ PG&E representatives explained that these planned pressure increases were done to avoid reduction of the maximum operating pressure that, if exceeded, would trigger the requirement to undertake more rigorous assessment of pipeline integrity.³⁵ During those same NTSB hearings, the CPUC and PHMSA representatives testified that they understood that PG&E performed these planned pressure

³² PHMSA FAQ-119.

³³ 49 C.F.R. §§ 192.917(e)(3)(i) and (4).

³⁴ NTSB Docket No. SA-534, Transcript of March 1-3, 2011 Hearing, at 80:15-81:11, 83:8-18.

³⁵ NTSB Docket No. SA-534, Transcript of March 1-3, 2011 Hearing, at 83:8-18.

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spikes every five years to avoid having to perform burdensome assessment of the integrity of such pipelines.³⁶ Despite this, neither the CPUC nor PHMSA took any action regarding PG&E's pressure spiking practice.

All three of the transmission lines that run through San Francisco have been identified as having manufacturing or construction defects, or other conditions that would require PG&E to perform rigorous assessment of pipeline integrity if the line pressure exceeds the five year historical maximum operating pressure. Nonetheless, PG&E has performed planned pressure spikes on all three lines. It spiked the pressure on Line 101 in December 2003; on Line 109 in December 2003, November 2008 and April 2010; and on Line 132 in December 2003 and December 2008.³⁷ This practice of sudden pressure increases on these already compromised pipeline segments within the City seriously increased the risk of destabilizing these pipeline segments.

2. CPUC And PHMSA Have Failed To Enforce Federal Regulations Mandating High Priority Assessment of the Integrity of Pipelines With Identified Manufacturing And Construction Defects, Or Other Potential Threats.

Federal regulations mandate prioritized and rigorous assessment of pipeline integrity whenever the operating pressure on a pipeline segment with identified manufacturing and construction or other threats has experienced seam failure or exceeds the maximum operating pressure experienced during the preceding five years.³⁸ In violation of these requirements, PG&E's Integrity Management Program expressly instructs that the five-year historical maximum operating pressure, or PG&E's MOP, may be exceeded on pipe segments containing ERW or other manufacturing and construction defects identified in 49 C.F.R. §§ 192.917(e)(3)(i) and (4) without triggering the obligation to prioritize assessment of seam integrity or corrosion. PG&E's RMI-06 states "PG&E has made a decision to only reprioritize those pipeline segments that exceed the historic 5 year MOP *plus 10% of the historic 5 year MOP.*" (*emphasis added*)³⁹ PG&E's instruction contravenes explicit PHMSA guidance and violates federal law:

PHMSA FAQ-221: Amount of pressure increase to trigger assessment of M&C defects

Question: Relative to the requirement in 192.917(e)(3)(i), how much pressure increase (above the maximum experienced in the preceding five years of operation) will trigger the requirement to treat the segment as high risk for purposes of integrity assessments.

Answer: The rule specifies that any pressure increase, regardless of amount, will require that the segment be prioritized as high risk for integrity assessment.

Through inspections, audits, and review of PG&E's Integrity Management Program documents, the CPUC and PHMSA should have known about PG&E's unlawful instruction not to assess threats of pipe segments with these manufacturing and construction threats unless operating pressure exceeds the five-year maximum by 10%. Nonetheless, neither agency has taken any action to require PG&E to revise its Integrity Management Program to comply with

³⁶ NTSB Docket No. SA-534, Transcript of March 1-3, 2011 Hearing, at 347:16-351:2.

³⁷ Exh. No. 2-AI, NTSB Docket No. SA-534, at pp. 2-3.

³⁸ 49 C.F.R. §§ 192.917(e)(3)(i) and (4).

³⁹ RMI-06, Exh. 2-AG, NTSB Docket No. SA-534, at p. 2.

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federal regulations by requiring PG&E to treat as “high risk,” and subject to prioritized assessment of seam integrity, any ERW pipeline, or pipe with manufacturing or construction defects on which operating pressure exceeds the five-year historical maximum operating pressure by any amount.

This failure poses substantial risk to the people of the City. These pipeline segments already pose higher threats due to their manufacturing or construction defects or other conditions specified by the regulations. The practice of spiking pressure to avoid the obligation to assess manufacturing and construction defects not only places a low priority on public safety, it also increases the risk to the public by exacerbating the potential threat that PG&E hopes to avoid assessing in the first place. Rather than treating these segments with the greater care mandated by the rules, PG&E has added to the risk that these identified threats will become unstable.

D. CPUC And PHMSA Have Failed To Ensure That CPUC Has Staff Sufficient In Number, Training, And Experience To Adequately Fulfill CPUC’s Obligations To Regulate And Enforce Pipeline Safety Regulations.

Federal law provides for regulation of intrastate pipelines by a state agency that certifies, among other qualifications, that the state agency is enforcing federal pipeline safety standards “through ways that include inspections conducted by State employees meeting the qualifications the Secretary prescribes.”⁴⁰ The Secretary of Transportation has issued guidelines specifying the necessary staffing levels, qualifications and training.⁴¹

The Panel found that the CPUC’s safety division is understaffed.⁴² The CPUC recently announced that it intends to double the number of its inspection staff by September 2011. This is a step in the right direction and testifies to the gross understaffing of safety inspectors at the CPUC. However, understaffing is not a new problem. Virtually every year since at least 2002, PHMSA evaluations of the CPUC have found that the CPUC has met neither the staffing levels nor the training requirements prescribed by the Secretary with respect to safety inspectors. PHMSA itself has precluded adequate training, as it has offered mandatory training courses in such limited fashion that CPUC inspectors have often been denied access to courses due to over-subscription, and have instead been wait-listed for admission to such courses. The failure of both the CPUC and PHMSA to ensure an adequate number of properly trained inspectors is a violation of the Act.

E. CPUC And PHMSA Have Failed To Ensure That Integrity Management Inspections Of Gas Transmission Pipelines In California Are Performed With Sufficient Frequency And Thoroughness To Ensure Pipeline Safety.

The Panel report found that the CPUC’s “current integrity management audits consist of predominantly tabletop exercises to assure compliance against a PHMSA checklist with little, if any, field related auditing.”⁴³ Even these “table-top” audits have lacked thoroughness. As

⁴⁰ 49 U.S.C. §§ 60105(a) and (b)(3).

⁴¹ Guidelines for States Participating in the Pipeline Safety Program (U.S. D.O.T. Office of Pipeline Safety, Sept. 2003), Chap. 4; and Guidelines for States Participating in the Pipeline Safety Program (PHMSA, rev. Dec. 2010), Section 4.

⁴² *Report of the Independent Review Panel: San Bruno Explosion*, (Rev. June 24, 2011), at pp. 87-96.

⁴³ *Report of the Independent Review Panel: San Bruno Explosion*, (Rev. June 24, 2011), at p. 94.

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described earlier, CPUC auditors in 2005 did not require PG&E to revise its IMP to fully explain its process for identifying HCAs, and CPUC auditors in 2010 did not note the statements in PG&E's IMP documents of policies and practices expressly prohibited by federal regulation. (Namely, as discussed above, that PG&E's RMI-06 was written to avoid prioritizing and assessing manufacturing and construction defects.)

As noted during the NTSB hearing in March 2011, PG&E's IMP took effect in 2004, yet even today the summary sheets for the IMP are lacking important information for several items.⁴⁴ CPUC auditors failed in both 2005 and 2010 to note the absence of such critical integrity management information. Also, both the 2005 and 2010 audits failed to discover the huge record-keeping gaps in basic pipeline information that is crucial to determining the existence and nature of threats to pipeline integrity. The gaping holes in PG&E's recordkeeping came to light only as a result of the NTSB investigation following the San Bruno pipeline rupture.

PHMSA has long been aware of the CPUC's anemic audit program. PHMSA's annual evaluations of the CPUC have repeatedly found low numbers of on-site audits, noting in one evaluation that the "low number of on-site inspection days not only reduces public safety, but lowers the amount of federal funds allocated to your pipeline safety program."⁴⁵ PHMSA assigned only 3 out of 9 possible performance points to the CPUC for the "number of inspection person days" spent by CPUC inspectors in 2004; and from 2005 through 2009, PHMSA assigned the CPUC only 5 out of 9 possible performance points for the number of inspection person days expended by CPUC safety inspectors in each of those years. Yet, PHMSA has neither taken enforcement action to require more frequent and thorough on-site audits by the CPUC, nor provided additional financial or logistical support to enable the CPUC to perform more audits. The combined failure of the CPUC to perform meaningful audits and of PHMSA to require thorough audits, have left PG&E's integrity management practices effectively unregulated, in violation of the Act.

F. CPUC And PHMSA Have Failed To Require PG&E To Correct Violations Found In Audits Of PG&E'S Integrity Management Practices.

Even where the audits have found deficiencies in PG&E's IMP, the CPUC has failed to follow up to ensure that PG&E has corrected the deficiencies within a reasonable time period commensurate with the seriousness of the deficiency. Some of these violations (such as procedures that will result in under-identification of HCAs, lack of confirmation of qualifications of PG&E integrity management personnel, and a failure to document what potential pipeline threats were considered, evaluated or assessed) go to the very core of PG&E's integrity management practices.

Moreover, a punchlist prepared for submission to the NTSB in 2010 regarding PG&E's response to the 2005 audit indicates that PG&E did not correct some of the other 2005 deficiencies until 2009 and 2010. Similarly, the CPUC has failed to follow up on several findings in its May 2010 audit of serious violations by PG&E of federal safety regulations or ensure their correction. The CPUC's failure to follow up on findings of safety violations to ensure their correction violates its certification that it is enforcing the federal pipeline safety

⁴⁴ NTSB Docket No. SA-534, Transcript of March 1-3, 2011 NTSB Hearing, at 134:6-33.

⁴⁵ January 12, 2006 letter from Chris Hoidal, Director, Western Region, Office of Pipeline Safety to Michael R. Peevey, President CPUC.

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standards.⁴⁶ CPUC's failure in this regard is exacerbated by PHMSA's own failure to ensure that the CPUC is satisfactorily enforcing the pipeline safety regulations, in violation of the Act.⁴⁷

VI. CONCLUSION

The allegations in Sections A-F, above, are consistent with the Panel's findings that the CPUC has not adequately monitored PG&E's performance of transmission pipeline integrity management,⁴⁸ and did not collect data necessary to track or benchmark pipeline risk management issues.⁴⁹ Instead, the Panel wrote, the CPUC has engaged in a "check the boxes" approach to enforcement that simply cannot result in pipeline safety as contemplated by the Act.⁵⁰ The Panel concluded that, in order to fulfill its mandate to enforce federal pipeline safety standards and keep Californians safe, the CPUC would have to "summon up the courage and resources to monitor the prudence of [PG&E's] program, its effectiveness and analysis of the program results to manage the system risks."⁵¹

As for PHMSA, a full year before the explosion in San Bruno, the House of Representatives' Committee on Transportation and Infrastructure found that PHMSA is broadly failing to perform its legal duty to ensure public safety, in part because it is plagued by industry capture.⁵² The Committee report included the following conclusions:

- "PHMSA's performance of its primary safety mission is less than diligent in far too many instances, because it appears to be inappropriately 'cozy' with industry;"
- "Universally, [PHMSA] staff believe that PHMSA's data is notoriously inaccurate, incomplete, and virtually useless;"
- One senior staffer "stated that PHMSA 'had changed its focus from keeping the public safe to keeping the industry happy'" and that "[m]any of the personnel interviewed stated 'industry ran the organization;'" and
- PHMSA "was spending too much time helping industry find ways around a regulation. . . rather than requiring compliance with the regulation."⁵³

⁴⁶ 49 U.S.C. § 60105(b)(3).

⁴⁷ 39 U.S.C. § 60105(f).

⁴⁸ *Report of the Independent Review Panel: San Bruno Explosion*, (Rev. June 24, 2011), at p. 5.

⁴⁹ *Report of the Independent Review Panel: San Bruno Explosion*, (Rev. June 24, 2011), at p. 100.

⁵⁰ *Report of the Independent Review Panel: San Bruno Explosion*, (Rev. June 24, 2011), at p. 24.

⁵¹ *Report of the Independent Review Panel: San Bruno Explosion*, (Rev. June 24, 2011), at pp. 98-99.

⁵² The hearing was focused on PHMSA's oversight of hazardous materials safety, and not pipeline safety. However, several of the Committee's general findings and conclusions apply to PHMSA as a whole, and thus shed light on PHMSA's failure to enforce pipeline safety requirements. U.S. House of Representatives, Committee on Transportation and Infrastructure, *Concerns With Hazardous Materials Safety in the U.S.: Is PHMSA Performing its Mission?*, Hearing, September 10, 2009 (Serial No. 111-57) (Washington: Government Printing Office, 2009).

⁵³ U.S. House of Representatives, Committee on Transportation and Infrastructure, *Concerns With Hazardous Materials Safety in the U.S.: Is PHMSA Performing its Mission?*, Hearing,


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As evidenced by the San Bruno explosion, natural gas pipelines that are not adequately maintained pursuant to an effective integrity management program pose a serious threat to those who live, work, and gather near them. This includes thousands of people who live and work in areas adjacent to the gas transmission pipelines running through San Francisco. Enforcement of federal safety standards governing those pipelines is crucial to ensure public safety. Because the CPUC and PHMSA are failing to comply with their obligation to enforce the Act, the City provides this notice of its intent to seek a federal court order requiring them to do so.

The City is open to discussing alternatives to litigation during the sixty-day notice period. Questions and requests for clarification should be directed to Deputy City Attorney Kathleen Morris (Kathleen.Morris@sfgov.org, 415-554-3987).

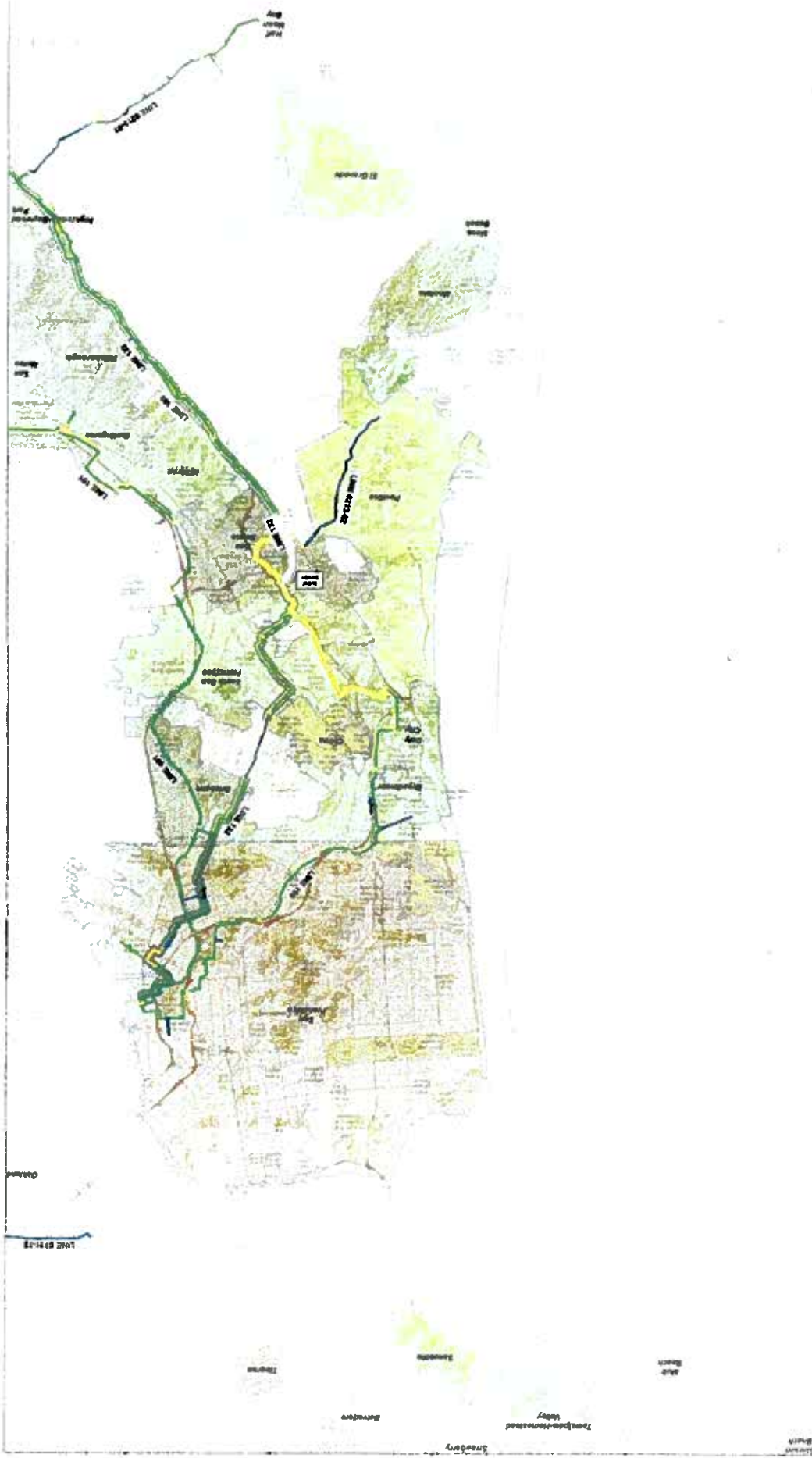
Very truly yours,

DENNIS J. HERRERA


City Attorney

Cc: U.S. Attorney General Eric Holder

Attachment



PG&E Gas Transmission Pipeline

- Natural Gas Transmission Pipelines (Pipelines)
- Pipelines in HCAs with Pressure Test Records and/or Section 619(c) Documentation
- Pipeline Segments in High Consequence Areas Under Review
- Reduced Pressure Zones
- 2011 Testing and Replacement Plan

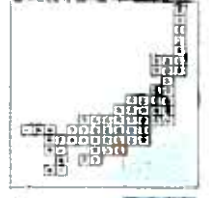


EXHIBIT B

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298
ID 94-3031353



September 16, 2011

Kathleen Morris
Deputy City Attorney
City and County of San Francisco
1 Dr. Carlton B. Goodlett Place, Suite 234
San Francisco, CA 94102

Re: *City and County of San Francisco Notice of Intent to Sue and Request for Information Relating to PG&E's Operation of Natural Gas Transmission Lines* CPUC Reference No.: PRA #0493

Dear Kathleen:

The purpose of this letter is to respond to the City Attorney's letter dated July 14, 2011, which was characterized as a Notice of Intent to File Suit under the Federal Pipeline Safety Act, and to provide a status report on our agency's efforts to respond to a subsequent letter you sent on August 4, 2011, requesting certain information from us.

As you know, you and I have spoken and conferred on several occasions about the prospect of an amicable resolution of the City's threatened lawsuit. Your August 4 information request was sent as part of that effort.

At this point, we hope the City is satisfied that the California Public Utilities Commission is carrying out its statutory and regulatory responsibilities for pipeline safety in a manner that is not only lawful but exemplary, in the wake of the tragic rupture and explosion of a Pacific Gas and Electric Company ("PG&E") high-pressure gas transmission line in San Bruno, California, on September 9, 2010, and therefore that there is no reason for the City to pursue the lawsuit described in the City Attorney's July 14 letter.

On the contrary, for the City to pursue a lawsuit at this juncture would be a needless distraction from the good efforts of this Commission and its professional staff. Indeed, the City and County of San Francisco, represented by the Office of the City Attorney, is itself an active participant in several Commission dockets initiated in the wake of the San Bruno tragedy. The City would be wasting its own precious resources on a federal lawsuit, at a time when your participation at the Commission is unquestionably a far more productive course of action.

Please allow me to explain six reasons why the City Attorney should reconsider his threat of a federal lawsuit over these pipeline safety issues. We are providing this information to you in advance of a meeting scheduled at City Hall next Tuesday, September 24, between your office and mine, along with counsel for the United States Department of Transportation's Pipeline and Hazardous Materials Administration (PHMSA), which was also mentioned as a potential defendant in the City Attorney's letter of July 14. We hope this letter will help inform your views in advance of Tuesday's meeting, and look forward to further discussion with you.

First, with respect to the ongoing investigation into the San Bruno accident, in an email dated September 13, 2011, you asked what our Commission intends to do with respect to its regulation of PG&E's pipeline operations in light of certain findings in the summary of the National Transportation Safety Board ("NTSB") report about the accident. As you know, the NTSB has not yet issued its full report, but in its summary report and in the comments by Board members, the NTSB has been very critical of PG&E's lack of safety measures, both prior to and during the rupture and its aftermath. Our Commission, as you know, has been a party to the NTSB's investigation of PG&E and the San Bruno explosion since immediately after the accident. Until the NTSB's full report becomes public (which has not yet occurred), the NTSB continues to have priority over all other investigations concerning the San Bruno explosion. *See* 49 C.F.R. §§ 831.5, 831.13. Until the NTSB's final report becomes available, our Commission is not able to issue an Order Instituting Investigation ("OII") into the San Bruno explosion. We expect that the NTSB's full report will be made public within the next few weeks, which in turn will afford our Commission the opportunity to consider whether to initiate an enforcement action against PG&E by issuance of an OII. For our Commission, an OII is a formal, adjudicatory enforcement proceeding in which alleged violations of laws and regulations can be pursued and appropriate remedies (including but not limited to civil penalties) can be considered. If an OII is issued, of course, the City and other interested members of the public will be afforded a full opportunity to participate as parties in the proceeding.

Second, following the NTSB's issuance of "Urgent Safety Recommendations" in letters to our Commission and to PG&E dated January 3, 2011, alleging inadequate recordkeeping practices by PG&E, on February 24, 2011, the Commission issued an OII (Investigation No. 11-02-016), to determine the safety issues posed by PG&E's lack of adequate recordkeeping, whether PG&E's past actions violated its obligations under § 451 of the California Public Utilities Code or any other laws, rules or regulations, and if so what remedies should be imposed. The City and County of San Francisco, represented by the Office of the City Attorney, has been granted full party status in this ongoing adjudicatory proceeding. The attorneys in your office and your professional engineering and safety consultants have been given access to a huge amount of information provided by PG&E in the OII proceeding. In addition, our staff have devoted considerable time and attention to providing yet additional information to your office pursuant to the Public Records Act request referenced at on page 1 of this letter, above. By a separate letter

dated September 15, 2011, one of our staff attorneys, Fred Harris, has documented fully the material we have provided to the City and its consultants. I think it is fair to say the City has received from our Commission substantially all of the information it has sought about pipeline safety issues. We remain available, as well, to provide additional information you might seek in follow-up requests.

Third, and perhaps most importantly, our Commission has been very proactive, in a forward-looking manner, about the safety of natural gas transmission pipelines under its jurisdiction. Towards this end, early this year the Commission issued a comprehensive Order Instituting Rulemaking ("OIR") (Rulemaking No. 11-02-019, filed February 24, 2011), to reexamine natural gas pipeline safety regulations in California. Once again, the City and County of San Francisco, represented by the City Attorney's office, is an active party participant in this ongoing proceeding, and so your office is fully aware of the issues and able to participate in the decisional process. On June 16, 2011, the Commission issued Decision No. 11-06-017, which ordered all jurisdictional high-pressure natural gas transmission pipeline operators in California, including PG&E, to file with the Commission implementation plans to replace or test all natural gas transmission pipeline that have not been pressure tested. On June 16, 2011, the Assigned Commissioner issued a scoping memo and ruling, providing an opportunity for parties to submit testimony on the pipelines' implementation plans and related matters. The Commission in this rulemaking also has ordered PG&E to operate its pipelines at substantially reduced pressures where PG&E is unable to document a valid pressure test. In Decision No. 11-09-006, issued just a week ago, the Commission denied a motion filed by PG&E which sought to delegate to the Commission's Executive Director the authority to allow PG&E to restore pressure on affected line segments to the previous higher levels. There is a hearing scheduled on this issue on September 19, 2011.

Fourth, the Commission, with the support of Governor Brown and the State Legislature, has substantially improved our staffing in the area of pipeline safety. The Commission's authorized budget for the current Fiscal Year (i.e., July 2011-June 2012) has nine new positions for safety experts, which the CPUC is currently in the process of filling. These new personnel will include both additional safety inspectors as well as a new risk assessment unit to help guide and prioritize the Commission's efforts in the area of natural gas pipeline safety.

Fifth, in view of the above, we can foresee no injunctive relief a federal court could conceivably grant in a lawsuit under the Federal Pipeline Safety Act, 49 U.S.C. § 60121, beyond what the Commission already is doing. Indeed, as a threshold matter, a federal lawsuit of this type would face numerous other defenses our Commission would assert under the Federal Pipeline Safety Act, such as the following: (i) Congress did not attempt to abrogate, but on the contrary explicitly recognized, the State's sovereign immunity under the Eleventh Amendment in § 60121(a)(1) ("to the extent permitted under the Eleventh Amendment to the Constitution"); (ii) in § 60121(a)(1)(B), Congress

precluded any party from bringing the action if the State authority is pursuing an administrative proceeding for the violation (which our Commission clearly is doing in the case of PG&E on three fronts – the record-keeping OII, the pipeline safety rulemaking, and a possible future OII on the San Bruno accident following issuance of the NTSB’s final report); and (iii) State violations are deemed to be violations only to the extent that that the State standard or practice is not more stringent than a comparable minimum safety standard. Our Commission’s General Order 112-E has adopted all minimum Federal pipeline safety standards, and its General Order 112-E, § 104, contains a provision automatically adopting any new Federal pipeline safety standards. The requirements now in effect in California under the terms of Decision No. 11-06-017, which obligate jurisdictional natural gas pipeline operators to submit implementation plans to replace or test all natural gas transmission pipeline that have not been pressure tested (regardless of whether they were grandfathered under the existing Federal standards), exceed existing Federal requirements. In these circumstances, there is no basis for a lawsuit alleging a violation of the Federal Pipeline Safety Act, nor any remedy available to a federal court in such a lawsuit.

In this regard, we wish to note that in *Williams Pipe Line v. City of Mounds View, Minn.*, 704 F. Supp. 914, 918 (D. Minn. 1989), a federal district court overruled the assertion by a city that Office of Pipeline Safety had failed to diligently pursue its duties in the area of pipeline safety. The court in that instance noted that the agency had commenced its investigation immediately, required hydrostatic pressure testing of the pipeline, and eventually had fined the company and ordered other corrective action. The court further declared that one purpose of the “diligent pursuit” provision in the federal law is to prevent citizen suits from interfering with the agency’s implementation of the Act, and found analogous cases where courts deferred to the agency’s remedies it chooses to pursue and those it chooses to forego. *Id.* The reasoning of the court’s decision in the foregoing case would present an insurmountable barrier to the type of lawsuit outlined in the City Attorney’s letter of July 14.

Sixth, and finally, we think it important to recognize that the City Attorney’s Office has been provided extensive information about PG&E natural gas transmission line segments located within San Francisco. The information you have been provided confirms that these are located downstream of regulator stations, where their pressure is substantially reduced, before these lines enter the City and County of San Francisco. It is my understanding that you have been provided complete information about pressure testing, maintenance and inspection of these line segments. Unless there are deficiencies in the information you have been provided (and we do not believe there are), you are in possession of all the information your expert consultants reasonably need in order to perform an independent assessment of the safety of these lines. Should you discover any deficiencies, moreover, the City can seek appropriate remedies in the above-referenced Commission dockets (the OII and/or the OIR). In short, a lawsuit under the Federal

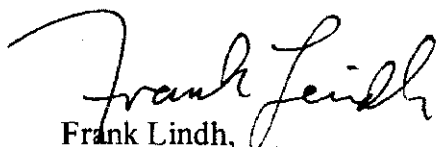
Kathleen Morris, Deputy City Attorney
September 16, 2011
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Pipeline Safety Act would yield nothing the City has not already obtained or cannot readily obtain through its participation in the above-referenced Commission dockets.

As I told you when we first spoke by telephone shortly after we received the July 14 letter, we believe it is far more constructive for us to discuss this matter in an amicable and professional manner than to have the City initiate federal court litigation. A lawsuit would needlessly divert the limited resources that both the Commission and the City could more prudently utilize in the ongoing Commission proceedings and investigations concerning natural gas pipeline safety issues. At this juncture, our highest priority must be protecting public safety. We should concentrate our efforts and our resources on identifying what went wrong and how we can avoid these types of tragedies in the future.

I look forward to our meeting next Tuesday for further discussion on these matters.

Sincerely,

A handwritten signature in cursive script that reads "Frank Lindh".

Frank Lindh,
General Counsel

cc: James M. Pates, Assistant Chief Counsel, PHMSA
Paul A. Clanon, Executive Director, CPUC
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Julie Halligan, Deputy Director, Consumer Protection and Safety Division, CPUC
Harvey Y. Morris, Esq., CPUC Legal Division
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EXHIBIT C

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY



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October 12, 2011

VIA CERTIFIED MAIL—RETURN RECEIPT REQUESTED

The Honorable Ray LaHood
Secretary of Transportation
United States Department of
Transportation
1200 New Jersey Avenue SE
Washington, D.C. 20590

Cynthia L. Quarterman, Administrator
Pipeline and Hazardous Materials Safety
Administration
East Building, Second Floor
1200 New Jersey Avenue, SE
Washington, D.C. 20590

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California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Timothy A. Simon, Commissioner
California Public Utilities Commission
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Catherine J. K. Sandoval, Commissioner
California Public Utilities Commission
505 Van Ness Avenue
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Michel P. Florio, Commissioner
California Public Utilities Commission
505 Van Ness Avenue
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Mark J. Ferron, Commissioner
California Public Utilities Commission
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San Francisco, CA 94102

The Honorable Jerry Brown
Governor
Office of the Governor of California
State Capitol
1315 10th St., Suite 1173
Sacramento, CA 95814

The Honorable Kamala D. Harris
Attorney General of California
Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814-2919

The Honorable Eric H. Holder, Jr.
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

**Re: Supplemental Notice of Intent to File Suit Under the Federal Pipeline Safety Act,
49 U.S.C. § 60101 et seq.**

Dear Mr. Secretary LaHood, Ms. Quarterman, President Peevey, Commissioners Simon,
Sandoval, Florio and Ferron, Governor Brown, Madam Attorney General Harris and Mr.
Attorney General Holder:

The City and County of San Francisco ("the City") hereby provides supplemental notice of violations of the Pipeline Safety Act, 49 U.S.C. § 60101 *et seq.* ("the Act") by the California Public Utilities Commission and its commissioners (collectively, the "CPUC"), the Secretary of the United States Department of Transportation (the "Secretary"), the United States Department

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of Transportation ("DOT"), and the United States Pipeline and Hazardous Materials Safety Administration ("PHMSA").¹ This letter supplements and incorporates by reference the notice of violation and intent to file suit previously given by the City in its letter dated July 14, 2011 (copy attached).

The CPUC has voluntarily assumed the obligation to enforce federal safety standards for intrastate natural gas pipelines in California by certifying to the Secretary that it will enforce pipeline safety pursuant to 49 U.S.C. § 60105. Yet, the CPUC has continually failed to enforce federal safety standards for both transmission and distribution lines in California. The CPUC does not conduct meaningful inspections and audits of transmission and distribution pipeline within its jurisdiction, does not require pipeline operators to comply with federal safety standards, does not require pipeline operators to correct violations of federal safety standards that the CPUC discovers, and does not have adequate staff in both numbers and training to inspect and audit transmission and distribution pipelines. In sum, the CPUC's efforts to enforce pipeline safety are wholly inadequate and leave pipeline operators essentially unregulated.

The Act mandates that the Secretary regulate pipeline transportation and facilities "to provide adequate protection against risks to life and property." 49 U.S.C. § 60102(a)(1). To achieve this purpose, the Act mandates that the Secretary prescribe minimum safety standards. *Id.* at § 60102(a)(2). The Act prohibits the Secretary from regulating intrastate pipeline in states that have certified they will enforce federal safety standards. *Id.* at § 60105(a). Yet, the Act empowers the Secretary to "reject the [state's] certification, assert United States Government jurisdiction, or take other appropriate action to achieve adequate enforcement" if a certifying state is not satisfactorily enforcing compliance with federal safety standards. *Id.* at § 60105(f). The Secretary, through DOT and PHMSA, the federal agencies to which he has delegated authority to promulgate and enforce pipeline safety regulations, has abdicated his statutorily mandated responsibility to ensure adequate enforcement of natural gas pipeline safety.

In California – as in all but two other states – a state agency, the CPUC, has been certified by PHMSA to regulate intrastate pipeline operators and enforce federal safety standards promulgated by the Secretary. But those standards give pipeline operators the authority to determine what maintenance, safety, and operating practices are necessary and reasonable to ensure the safety of their pipelines. This broad delegation of authority to pipeline operators violates the Act by in effect abdicating responsibilities that should be undertaken by federal or state agencies. At a minimum, such a regulatory scheme requires oversight by state regulatory agencies like the CPUC to ensure that the operators make safety determinations in a manner that ensures the safety of their pipeline systems. It also requires that PHMSA monitor state agencies' enforcement efforts, and if such efforts are inadequate, reject the agency's certification, assert federal jurisdiction or take other actions to ensure pipeline safety. PHMSA, however, by conducting mere paper audits and check-the-box evaluations of CPUC's enforcement efforts, and by failing to require correction of CPUC's inadequate practices has allowed the CPUC's enforcement failings to continue. As a result, the safety standards and regulations promulgated by the Secretary, and the enforcement actions taken by the PHMSA and state agencies like the CPUC are illusory and do not satisfy the statutory obligation of the Secretary to regulate natural gas pipelines and facilities "to provide adequate protection against risks to life and property." 49 U.S.C. § 60102(a)(1).

As stated above and in the City's July 14, 2011 letter, the CPUC and PHMSA have violated the Act by abdicating their respective obligations to regulate and enforce natural gas pipeline safety "to provide adequate protection against risks to life and property posed by

¹ The Secretary and federal agencies will be collectively referred to in this letter as "PHMSA."

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pipeline transportation and pipeline facilities." 49 U.S.C. § 60102(a)(1). Although the many examples the City provided in its July 14 letter focused on PHMSA's and the CPUC's failure to enforce pipeline safety for transmission lines, its notice of violation of the Act was not limited to failures relating to transmission lines. Nonetheless, the City intends this supplemental notice to emphasize that it intends to file suit for violations of the Act with respect to the regulation and enforcement of safety of both transmission and distribution pipelines and to provide additional examples of the abdication by the federal and state agencies of their enforcement obligations. As demonstrated by the recent incident involving distribution pipeline failure in Cupertino, and by the death and destruction caused by the distribution pipeline failure in Rancho Cordova in 2008, the abdication by federal and state agencies of their legal duties under the Act to enforce distribution pipeline safety has resulted in lost lives and significant destruction of property.

The final report recently issued by the National Transportation Safety Board validates the concerns expressed in the City's July 14, 2011 letter and this letter, and confirms that lax regulation by the CPUC and PHMSA was a contributing cause of the pipeline rupture in San Bruno that resulted in death and widespread destruction of property. NTSB Accident Report: Pacific Gas and Electric Company Natural Gas Transmission Pipeline Rupture and Fire, San Bruno, California, September 9, 2010 (Accident Report NTSB/Par11-01, PB2011-916501, adopted August 30, 2011) ("NTSB Report"). For example, the NTSB found that "[t]he ineffective enforcement posture of the California Public Utilities Commission permitted PG&E's organizational failures to continue over many years." NTSB Report, Finding 27, at p. 126. It also found that "[t]he Pipeline and Hazardous Materials Safety Administration's enforcement program and its monitoring of state oversight programs have been weak and have resulted in lack of effective Federal oversight and state oversight exercised by the California Public Utilities Commission." *Id.*, Finding 28.

Faced with the serious consequences from gas pipeline failures over the past few decades, the CPUC continues to resist a thorough review and revision of its own practices to ensure it fulfills its duties under the Act. Despite the NTSB's damning assessment of its ineffectiveness in enforcing pipeline safety, the CPUC maintains that its own enforcement efforts have been "exemplary." (September 16, 2011 letter from CPUC General Counsel Frank Lindh to Kathleen Morris, at p. 1. Available on the CPUC's website at http://www.cpuc.ca.gov/NR/rdonlyres/74918150-01B9-4F9B-AC7C-BB9E558CD032/0/ltr_to_Kathleen_Morris_091611_PDF_version.pdf.)

The response from PHMSA has been just as disturbing. At the March 1, 2011 hearing conducted by the NTSB into the San Bruno incident, Linda Daugherty, PHMSA Deputy Associate Administrator for Policy and Program, stated that "*it is not the regulator's responsibility to assure that operators comply*. It is the operator's responsibility to assure that they comply." In light of PHMSA's frank and public disavowal of its responsibilities under the Act, and the CPUC's failure to review, much less correct, its own failings, the City sees no alternative to legal action to compel the CPUC and PHMSA to comply with their duties under the Act and to ensure pipeline safety.

In addition to the many examples provided in its July 14, 2011 letter, the City hereby alleges that the CPUC and PHMSA and the officials of these agencies have abdicated their legal obligations under the Act and continue to violate the Act in ways that include but are not limited to the following additional examples.

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1. The Broad Discretion Granted Pipeline Operators By PHMSA's Integrity Management Regulations And Safety Advisories, Combined With Illusory Oversight By PHMSA And The CPUC, Permit Operators To Disregard Pipeline Safety.

PHMSA's decision to establish safety standards through an integrity management or performance-based approach, and its issuance of advisory recommendations rather than mandates, allow pipeline operators to ignore pipeline safety with impunity. The combination of permissive standards and lax oversight by PHMSA and the CPUC renders any action taken by these agencies ineffective to ensure adequate pipeline safety.

The NTSB articulated this concern in its recent report when it expressed

strong doubts about the quality and effectiveness of enforcement at both the Federal and state levels. Although the CPUC and PHMSA have authority to enforce pipeline safety regulations, the organizational failures of PG&E seen in this accident suggest that some operators are able to ignore certain standards without concern for meaningful enforcement action against them. NTSB Report at 123.

a. PHMSA Has Failed to Develop and Enforce Regulations Satisfying Congress' Intent in Passing the Act.

When Congress passed the Act, its intent was to provide "adequate protection against risk to life and property posed by pipeline transportation and pipeline facilities by improving the regulatory and enforcement authority of the Secretary of Transportation." 49 U.S.C. § 60102(a)(1). Any safety standards promulgated must be: (A) practicable, (B) designed to meet the need for gas pipeline safety, and protecting the environment. 49 U.S.C. § 60102(b)(1). The regulations promulgated by PHMSA have failed to meet the need for pipeline safety.

Instead of developing and enforcing safety standards sufficient to protect against the risks created by the transportation of natural gas, PHMSA has developed a regulatory scheme that almost entirely delegates to pipeline operators the responsibility for safe operation and maintenance of pipeline facilities. This broad delegation itself violates the Act by essentially abdicating responsibilities that should be undertaken by federal or state agencies. Effectively, it makes the operators self-regulating, when the Act contemplated regulation by the agencies. Especially with regard to setting safety standards for operating practices and maintenance, it should be the agencies that decide what is safe, not the operators who lack the incentive to set rigorous standards that they will then have to meet. PHMSA also has not developed adequate protocols to measure the effectiveness of the operator's compliance with the performance-based regulations, or of the oversight of the pipeline operators exercised by its state certified partners.

b. PHMSA Has Delegated To Pipeline Operators Broad Discretion Over Whether To Continue Using Older Plastic Pipe Known To Be Susceptible To Cracking And Early Failure.

PHMSA's passive approach to pipeline safety standards is exemplified by its failure to mandate that operators of natural gas distribution lines monitor, identify and remove from their systems plastic pipe known to be susceptible to cracking and failure. For decades, these pipes have caused unnecessary death and property destruction.

Beginning in the 1970's, questions surfaced regarding the safety of certain types of plastic pipe used for natural gas distribution lines. In April 1998, the NTSB issued a special investigation report, "Brittle-Like Cracking In Plastic Pipe For Gas Service," which found that a particular plastic pipe made by Century Utility Products, Inc. had poor resistance to "brittle-like

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cracking under stress intensification," and that this defective condition had contributed to pipeline failure. The NTSB also found that much of the plastic pipe manufactured and used for natural gas service from the 1960's through the early 1980's may be susceptible to brittle-like cracking and failure. The NTSB recommended that PHMSA's predecessor, the DOT's Research and Special Programs Administration ("RSPA"), (a) require operators who have installed polyethylene gas piping manufactured by Century Utility Products, Inc. to develop a plan to closely monitor the performance of this piping and to identify and replace in a timely manner any piping that indicates poor performance, and (b) determine the susceptibility to premature brittle-like cracking of other types of older plastic piping, inform operators of its findings, and require operators to closely monitor the performance of older plastic pipes and replace any that indicate poor performance.

In response, RSPA issued two advisories in 1999 recommending, but not requiring, that pipeline operators monitor the performance of the Century Utility Products, Inc. pipe and other older plastic pipe. In response to RSPA's request that it classify its safety recommendation as "closed" on the basis of RSPA's advisories, the NTSB reminded RSPA that the NTSB had recommended that RSPA *require*, not recommend, that operators closely monitor Century and other older plastic pipe and replace any that indicates poor performance. In December 2009 -- over 11 years later -- PHMSA promulgated regulations mandating integrity management programs for distribution pipelines. The distribution integrity management program regulations ("DIMP"), 49 C.F.R. §§ 10145 et seq., finally require operators of distribution pipeline to identify and assess the risks associated with their pipeline systems, including risks from older plastic pipe known to be susceptible to brittle-like cracking and early failure. But PHMSA still does not mandate removal and replacement of such plastic pipe. Instead, PHMSA gives distribution line operators the same broad discretion to make safety determinations that it has long granted to transmission line operators.

As a result, plastic pipes known to be susceptible to brittle-like cracking continue to be used in distribution pipelines throughout California. PG&E alone has 1,231 miles of distribution pipeline using one such type of plastic pipe -- pre-1973 manufactured Aldyl-A. Not surprisingly, those pipelines fail regularly, resulting in serious damage and injury. Recently there was an explosion and fire caused by the failure of Aldyl-A plastic pipe. On August 31, 2011, gas from a crack in pre-1973 Aldyl-A plastic pipe filled a condominium in Cupertino, California, causing an explosion and fire to erupt only minutes after the resident had left the building. The resident narrowly escaped injury, but her home was completely destroyed. Subsequent investigation by PG&E found that the distribution pipe had failed and was leaking in at least seven separate locations.

Despite its statutory duty to enforce pipeline safety, PHMSA has never required pipeline operators to include in incident reports the presence of older plastic pipe such as pre-1973 Aldyl-A. Such information would permit PHMSA and the industry to better track and identify particular types of older plastic pipe that are susceptible to cracking and early failure. Nonetheless, PHMSA merely *encourages* pipeline operators to voluntarily submit data regarding plastic pipe failures to the Plastic Pipe Database Committee ("PPDC"), an entity established jointly by PHMSA and industry group American Gas Association. The PPDC keeps any data submitted by pipeline operators confidential and will not even share that data with PHMSA. In this way, PHMSA has failed to ensure adequate safety of distribution pipelines and has undermined its own ability to do its job by failing to collect information that would allow it to (a) analyze the extent to which older, suspect plastic pipe remains in use, and (b) determine whether particular types of older plastic pipe present a greater threat to safety.

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c. PHMSA And The CPUC Have Failed To Monitor The Integrity Of Pipeline Operators' Evaluations Of The Usefulness Of Automatic Shutoff Valves And Remote Controlled Valves In Protecting Lives And Property.

The NTSB has found that the use of automatic shutoff valves ("ACV") or remote controlled valves ("RCV") on line 132 in San Bruno would have allowed PG&E to shut off the gas flow to the rupture site within minutes after PG&E discovered the rupture, allowing emergency responders to extinguish the fire and aid injured persons more quickly. But PG&E had not installed ASVs or RCVs on its pipelines. As a result, gas continued to flow through the ruptured pipeline for more than one and a half hours before being shut off manually by PG&E responders, greatly increasing the heat, fire, injuries, death and damage that occurred.

Federal regulations give pipeline operators discretion to decide whether or not to install ASVs or RCVs, as long as they have considered a list of factors specified by regulation. 49 C.F.R. § 192.935(c). In their 2005 audit of PG&E's transmission line integrity management program, the CPUC and PHMSA found that PG&E had not even evaluated whether ASVs or RCVs would be effective to protect lives and property adjacent to PG&E's transmission lines. In response, PG&E prepared a memorandum, issued on June 14, 2006, that concluded that most of the damage from a pipeline rupture occurs in the first 30 seconds, and that installation of ASVs or RCVs would have "little or no effect on increasing human safety or protecting properties." PG&E's June 14, 2006 memorandum relied *solely* on one-sided industry studies and did *not* address any of the seven factors specified by 49 C.F.R. § 192.935(c). Nonetheless, neither the CPUC nor PHMSA required PG&E to consider the regulation's factors. As confirmed by the NTSB in its final report, the CPUC never followed up on its 2005 audit finding that PG&E had failed to evaluate the use of ASVs and RCVs as required by 49 C.F.R. § 192.935(c). NTSB Report at pp. 103, 120. "CPUC apparently did not evaluate the adequacy of [PG&E's June 14, 2006 memorandum]. If it did, it failed to identify the inadequate analysis and flawed conclusion that the use of ASVs would have little effect on increasing safety or protecting property."² NTSB Report at 120. If the CPUC and PHMSA had required PG&E to comply with federal regulations governing ASVs and RCVs, the damage in San Bruno would have been far less extensive.

2. The CPUC And PHMSA Continue To Allow PG&E To Evade Its Obligation To Conduct High Priority Assessment of The Integrity of Pipelines With Identified Manufacturing And Construction Defects, Or Other Potential Threats.

Both the CPUC and PHMSA have failed to enforce regulations governing older pipelines with known manufacturing and construction defects. Many of PG&E's pipelines on the San Francisco Peninsula were manufactured, constructed, and installed before the promulgation of regulations requiring pressure testing of new pipelines. These older pipelines are most likely to have been constructed with manufacturing and construction techniques that are especially susceptible to failure. Federal safety standards allow the continued use of such grandfathered pipelines, but upon the occurrence of events that raise issues regarding the integrity of these

² Earlier in its report, the NTSB reported its findings that the "total heat and radiant energy released by the burning gas was directly proportional to the time gas flowed freely from the ruptured pipeline" in San Bruno and "led to a significant increase in property damage," and compromised the protection that building structures provided to residents and their property. (NTSB Report at 102.)

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pipes, federal regulations mandate physical testing to ensure that the seams of these pipelines are stable and safe.

Federal regulations mandate that operators physically test the seam integrity of a pipeline segment with known manufacturing, construction or other threats if the segment's operating pressure exceeds the historic five year maximum, or any other segment in the system has experienced a seam failure. The regulations further require operators to make this assessment using "an assessment technology or technologies with a proven application capable of assessing seam integrity and seam corrosion anomalies." 49 C.F.R. § 192.917(e)(4).

Instead of making sure that PG&E complies with the federal testing requirements imposed on so-called "historic" pipelines, the CPUC and PHMSA have abdicated their legal obligation to enforce these regulations. Instead, the CPUC and PHMSA have allowed PG&E to evade pressure tests of its many miles of historic older pipelines even when the operating pressure on these lines has exceeded the historic five year maximum. As a result, PG&E continues to use historic pipelines known to have been subject to events that might trigger failure of manufacturing, construction or other defects, without testing the integrity of such pipelines' seams and risk. The City's July 14, 2011 letter described the CPUC's and PHMSA's tolerance of an unlawful integrity management instruction created by PG&E. This instruction, RMI-06 (Rev. 1) (marked as NTSB Exhibit 2-AG), absolved PG&E of any duty to assess the threat posed by pipe segments with known manufacturing, construction or other threats identified at 49 C.F.R. §§ 192.917(e)(3) and 192.917(e)(4) unless the operating pressure on such segments exceeded the five year maximum historic operating pressure by at least 10%. See July 14, 2011 letter at p. 9. By allowing PG&E to create its own standards that are less stringent than those already established under federal law, the CPUC and PHMSA themselves violated the law.

The City recently learned that on April 6, 2011, PG&E submitted to both the NTSB and the CPUC a different version of RMI-06, claiming that this new version was the final, approved instruction implemented by PG&E, and that PG&E had found no indication that the version with the 10% cushion was ever approved. However, PG&E's new version, also titled RMI-06 (Rev. 1), still violates federal pipeline safety regulations. This version is marked as NTSB Revised Exhibit 2-AG.

Under the new version of RMI-06, if the pressure on the pipeline exceeds the historic 5 year maximum pressure, PG&E will not conduct the mandatory physical assessment of the seam integrity of the affected pipe as required by federal regulations. Instead, PG&E will convene a committee to review the pipeline's characteristics. This proposed review – referred to by PG&E as an "Engineering Critical Assessment (ECA)" – requires only a review of the characteristics and pressure test history of the affected pipeline segments "to determine whether or not the seam related manufacturing threat has become unstable." Instead of performing an actual physical assessment of seam integrity as required by the regulation, PG&E proposes to convene a committee that will then determine whether PG&E should follow the law.

The CPUC and PHMSA have known about this new, and still unlawful, instruction since at least April 6, 2011. Nonetheless, neither has required PG&E to change the instruction or its practices. Further, PG&E has admitted "that the five-year MOP on HCA segments with a manufacturing or seam threat may have been exceeded" in certain instances. Under the federal regulation discussed above, this excess pressure triggers an obligation on the part of PG&E to assess the seam integrity through pressure testing. The CPUC knows that Lines 101, 109, and 132 contain segments with these "historic pipelines" and that, pursuant to the now disavowed earlier version of RMI-06, PG&E has spiked the pressure on these lines over the years without conducting physical tests of seam integrity. See City's July 14, 2011 letter at pp.8-10. Yet, the

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CPUC still has not demanded that PG&E conduct physical testing of seam integrity of these pipeline segments as required by federal regulation.

Despite the tragedy of San Bruno, and despite the bright light shone by the NTSB investigation on the failings of PG&E, the CPUC and PHMSA continue to allow PG&E to violate critical federal safety standards. In doing so, the CPUC and PHMSA not only violate their duties under the Act, they place people and property at risk of injury, destruction and death.

3. The CPUC Lacks Adequate Resources And Qualified Staff To Ensure Public Safety.

Under federal performance-based standards, a regulator must understand not only the operator's pipeline system but also the decision making process used by the operator. Thus, to meaningfully audit an operator, a regulator must determine not only whether the operator has an Integrity Management Plan, but also how the Integrity Management Plan was developed. Unfortunately, the CPUC has failed to devote the necessary resources or hire qualified staff with sufficient expertise to conduct meaningful audits of PG&E and take action to ensure that violations are corrected.

For example, the NTSB report noted that many of the deficiencies in PG&E's integrity management program were easy to detect, and should have been identified in the 2005 integrity management audit conducted jointly by PHMSA and the CPUC, or in the 2010 integrity management audit conducted by the CPUC alone. NTSB Report at 120. These deficiencies include significant gaps in PG&E's GIS data, a mismatch between PG&E's threat-weighting and its actual leak, failure and incident experience, and the inadequacy of PG&E's 2006 evaluation of the use of Automatic Shutoff Valves ("ASVs") and Remote Controlled Valves ("RCVs").

On October 11, 2011, the CPUC issued proposed Resolution ALJ-274 which, if adopted by the Commission, would delegate authority to the CPUC's Consumer Protection and Safety Division inspectors to issue citations for violations of pipeline safety standards, including imposition of maximum penalties for such violations. We approve of any effort by the CPUC to give its safety staff more authority to enforce pipeline safety. However, in addition to providing staff with additional authority, the CPUC also must ensure that its safety staff exercises the enforcement authority it already possesses. In that regard, we note that the CPUC still has not required that PG&E correct the serious deficiencies of its transmission integrity management practices noted in the CPUC's May 2010 audit. The CPUC safety staff does not need a delegation of additional authority in order to respond to PG&E's December 2010 correspondence regarding the audit findings, or to inform PG&E that it must correct the deficiencies noted in the May 2010 audit. The CPUC's continued failure to follow up on the serious safety violations identified in its IMP audit of PG&E more than 16 months ago demonstrates an ongoing failure to prioritize enforcement of pipeline safety that will undercut any delegation of new safety enforcement authority.

4. PHMSA Fails To Conduct Meaningful Evaluations of State Agency Enforcement.

PHMSA claims that it evaluates the adequacy of pipeline safety enforcement by certifying state agencies each year. However, these evaluations are nothing more than paper exercises that rubberstamp state agency enforcement efforts. As a result, failures by state agencies to enforce pipeline safety are not identified or corrected. For example, in October 2010, PHMSA conducted an evaluation of the CPUC's enforcement procedures and practices for the prior calendar year. Question 10 on page 22 of the evaluation asks "Has the state reviewed

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operator IMPs for compliance with Subpart O? (In accordance with State Inspection Plan)." The evaluator's notes answer this question by stating in relevant part: "Yes, the state verified that their operators, except Southwest Gas Company, have complied with Subpart O during their inspection reviews." Had PHMSA evaluators reviewed the written findings of the CPUC's May 2010 integrity management audit of PG&E, they would have realized that this statement is patently false. Indeed, the CPUC's May 2010 integrity management audit of PG&E found numerous violations by PG&E of the integrity management requirements of Subpart O that had not been corrected as of the October 2010 evaluation by PHMSA.

The deficiencies in PHMSA's October 2010 evaluation of the CPUC are not an isolated incident. As a result of its investigation of the San Bruno pipeline rupture, the NTSB concluded that "PHMSA's enforcement program and its monitoring of state oversight programs have been weak and have resulted in the lack of effective Federal oversight and state oversight exercised by the CPUC." (NTSB Report at 123.) The NTSB further concluded that "the ineffective enforcement posture of the CPUC permitted PG&E's organizational failures to continue over many years." (*Id.*) Nonetheless, PHMSA regularly gave the CPUC high scores on its annual evaluations, and characterized the CPUC as having "a good inspection program. They have good qualified engineers that are quite capable of doing inspections, investigations . . . with most programs." (Testimony of Zach Barrett, Director, State Programs, PHMSA, Transcript of March 2, 2011 Hearing before the NTSB, at 357.) These pro forma "evaluations" allowed the CPUC to shirk its duties under the Act and allowed PG&E to jeopardize lives and property by evading its obligations under the law.

Conclusion

The above facts demonstrate how the broad discretion delegated to pipeline operators under the federal regulations, combined with lax oversight by the CPUC and PHMSA, results in merely the illusion of enforcement of pipeline safety standards. The abdication by PHMSA, the CPUC and their respective officials of their duties under the Act endangers the lives and property of the millions of people who live in the San Francisco Bay Area, and, indeed, of the tens of millions of people who live in this State. Should you have any questions or wish to discuss this matter, please contact Kristine Poplawski of my office. Her contact information appears below.

Sincerely,


DENNIS J. HERRERA
City Attorney

Encl:

cc: James M. Pates (by first class mail and email, with enclosure)
Frank R. Lindh (by first class mail and email, with enclosure)

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EXHIBIT D

CITY AND COUNTY OF SAN FRANCISCO



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October 12, 2011

VIA CERTIFIED MAIL AND EMAIL

Frank Lindh, Esq.
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California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102

Re: San Francisco's Notice of Intent to Sue under the Pipeline Safety Act

Dear Mr. Lindh:

I write in response to your letter to Deputy City Attorney Kathleen Morris, dated September 16, 2011. First, I want to thank you and your team for meeting with my staff on September 20, 2011.¹ We appreciate the information you provided in your letter, at the meeting, and in response to our document requests under the Public Records Act. That information has been helpful, but it has not altered our view that significant changes in the Commission's regulatory oversight are required in order to meet the mandates of the Pipeline Safety Act (the "Act") and protect Californians from the dangers inherent in the operation of natural gas pipelines. Nor do we agree that the steps currently being taken by the Commission are adequate to address the concerns identified in our July 14, 2011 Notice of Intent to Sue under the Act. In fact, information we have reviewed during the past 60 days gives rise to additional concerns; for this reason we include with this letter a Supplemental Notice of Intent to Sue under the Act. We also include here a preliminary list of specific steps the Commission should take in the near term in order to begin to meet its obligations under the Act.

Your letter provided six reasons why you believe the City should not go forward with a lawsuit against the Commission under the Act. Much of the letter goes to your contention that the Commission is already pursuing all of the issues of concern to the City, and that the City can obtain the relief it seeks in a Commission proceeding. You reference the active investigation and rulemaking proceedings (I. 11-02-016, R. 11-02-019) and the future proceeding that the Commission expects to open on the causes of the San Bruno explosion. As you know, the City has been an active participant in the two dockets opened by the Commission in February 2011. In fact, the City was one of two parties who petitioned the Commission to open the proceedings in the first instance. Neither of those dockets, however, has focused in any sustained manner on the Commission's actions, omissions, or obligations under the Act; they are focused almost exclusively on PG&E. By contrast, the focus of the City's Notice of Intent to Sue letter is the failures of the Commission and federal regulators in enforcing the Act.

We do not suggest that the Commission focus less on PG&E. PG&E should be held directly responsible for its numerous failures that caused the San Bruno, Rancho Cordova, and

¹ As agreed at the meeting, we will treat the discussion there as a confidential communication in pursuit of settlement. We noticed that your letter has been posted on the Commission's website, so we do not consider it similarly confidential.

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other incidents. We are aware that a number of high-level Commission staff are working diligently in the rulemaking and investigation proceedings to investigate PG&E's failures and improve the safety of gas pipeline operations throughout the state. Our action to enforce the Act is not meant to and does not disparage those important efforts.

It is equally important for the Commission to recognize and acknowledge its own failures so that it can prioritize and develop an enforcement scheme with lasting changes that will ensure PG&E is fulfilling its obligations as a pipeline operator long after this matter is gone from the public eye. Your letter offers little assurance that the Commission has recognized or is correcting its failure to properly regulate pipeline safety. To the contrary, your statement that the Commission "is carrying out its statutory and regulatory responsibilities for pipeline safety in a manner that is not only lawful but exemplary" flies in the face of substantial evidence presented by the City, the National Transportation Safety Board, and the Commission's own Independent Review Panel ("IRP") that the Commission has not done its job. (September 16, 2011 letter, p. 1.) Similarly, the recent statements of Commission President Peevey to the Senate Energy, Utilities and Communications Committee attempting to blame others, including the Department of Finance, TURN and DRA, for the failure of the Commission to ensure pipeline safety raise serious doubt about whether the Commission is accepting responsibility for its own failures, including the failure to seek adequate funding in the Commission budget.² We are not aware of and you have not cited any proceeding where the Commission's failures are being addressed.

We understand that the Commission is privately considering necessary changes to its own operations, but these efforts do not provide an independent review or accountability. Moreover, the public has a keen interest in the Commission's safety and enforcement activities and a right to know what failings the Commission has identified and the changes it intends to make. Not only does the public rely on the Commission to effectively enforce the Act for its safety and quality of life, the public also pays for the Commission's work and pays substantial rates to PG&E for safe and reliable service. The effective enforcement of the Act by the Commission is just as essential to public safety as is PG&E's compliance with the Act, and the review of the Commission's enforcement efforts requires the same degree of independent investigation, analysis, and public scrutiny.

The only analysis we have seen of the Commission's own failure to adequately regulate PG&E's gas pipeline safety is included in the IRP Report. While that report is insightful and clearly indicates the need for improvement at the Commission, it is not independent of the Commission nor is it a comprehensive assessment of the Commission's gas pipeline safety regulation.

We have also reviewed the letter from the Commission's Executive Director, Paul Clanon, to Assemblyman Roger Dickinson, Chair of the Committee on Accountability and Administrative Review, dated September 15, 2011. In that letter, Mr. Clanon identifies a number of steps the Commission has taken or intends to take to improve its gas pipeline safety oversight and implement the recommendations in the IRP Report. These are important first steps, but as Mr. Clanon notes, "There is still much to be done." (September 15 letter, p. 2.) And, there is no indication that the Commission intends to seek the assistance of an independent, expert entity to comprehensively examine the Commission's gas safety oversight in a public proceeding.³ To be

² President Michael Peevey comments in the August 16, 2011 hearing in the Senate Energy, Utilities and Communications Committee.

³ The September 15, 2011 letter indicates the Commission's intent to engage the public on limited topics: "a public, stakeholder process to improve the integration of safety into

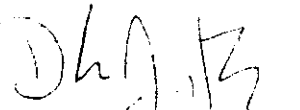
Letter to Frank Lindh, Esq.,
Page 3
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credible, any investigation must include an independent analysis and public participation and oversight. Only a thorough, independent, and public review of the Commission's gas safety enforcement will help ensure that PG&E, the Commission, and the State continue to appropriately prioritize gas pipeline safety.

Your September 16 letter also argues that a lawsuit by the City under the Act would be a waste of City and Commission resources.⁴ We understand keenly the reality of limited resources, but do not agree that efforts to ensure that regulators are performing their important public safety functions are a waste of resources given the devastating human and economic costs of pipeline accidents. Still, we have no desire to undertake the expense and time required for litigation if there is a better way to accomplish the objective of ensuring adequate enforcement by the Commission. We take seriously your suggestion that it might be more constructive to address this matter through means other than litigation and share your view that we "should concentrate our efforts and our resources on identifying what went wrong and how we can avoid these types of tragedies in the future." (September 16, 2011 letter, p. 5.)

In that spirit, we suggest in the attachment to this letter several immediate steps we believe the Commission should take in order to begin the process of fulfilling its duties under the Act. We remain willing to discuss these matters with you or others at the Commission. In the meantime we intend to continue our efforts to ensure that state and federal regulators enforce pipeline safety requirements in a robust manner that appropriately reflects the serious risks to the public posed by gas pipelines.

Very truly yours,



DENNIS J. HERRERA
City Attorney

cc: James M. Pates, Assistant Chief Counsel, PHMSA
Paul A. Clanon, Executive Director, CPUC
Michelle Cooke, Interim Director, Consumer Protection and Safety Division, CPUC
Julie Halligan, Deputy Director, Consumer Protection and Safety Division, CPUC
Harvey Y. Morris, Esq., CPUC Legal Division
Frederick Harris, Esq., CPUC Legal Division

ratemaking, and consider a periodic safety certification of each utility independent of all other considerations." (September 15, 2011, p.2) The table attached to that letter indicates the Commission will seek an independent auditor for the limited purpose of conducting "an independent management audit of the USBR organization."

⁴ To this point, you also argue that the City has been provided "all of the information your expert consultants reasonably need in order to perform an independent assessment of the safety" of the gas transmission lines within San Francisco. (September 16, 2011 letter, p. 4.) This statement suggests that you do not understand the purpose of our efforts to ensure the Commission enforces safety as required by the Act: local governments should not be required to retain experts and collect documents in order to ensure the safety of gas lines within their jurisdictions—that is the job of the Commission and PG&E.

ATTACHMENT

INITIAL STEPS THE COMMISSION SHOULD TAKE

A. Commit to a proceeding that will focus comprehensively on the Commission's gas pipeline safety enforcement, including identifying the Commission's role in contributing to recent gas pipeline failures, with the goal of improving the Commission's oversight and improving gas pipeline safety. The Commission should use such a proceeding to keep the public informed about the steps it is taking to implement the recommendations of the Independent Review Panel, such as those identified in the September 15, 2011 letter from Paul Clanon to Assemblyman Roger Dickinson.

B. Engage an independent agency or consultant with relevant expertise, to examine the Commission's role in contributing to recent gas pipeline failures, with the goal of improving the Commission's oversight and improving gas pipeline safety. This examination should go beyond examining the USRB or CPSD; it should include all aspects of the Commission's work at all levels in order to identify those factors at the Commission that prevent or discourage effective safety enforcement. This examination should result in a public, written report. The Commission should invite comment on the report, issue its own proposals for addressing the report, and invite comment on those proposals.

C. Commit to incorporating each of the NTSB recommendations. With assistance from PHMSA, perform an audit of all aspects of PG&E's gas operations (NTSB Recommendation P-11-22), and require PG&E to remedy all violations found (NTSB recommendation P-11-23). This type of audit presents both PG&E and the Commission a remedial opportunity to correct longstanding violations of the Act.

D. In addition to performing a comprehensive audit of PG&E (as recommended by NTSB), the Commission must immediately order PG&E to correct the many known deficiencies with PG&E's Integrity Management Program ("IMP"). The City has noted several significant flaws in PG&E's IMP that impact the safety of PG&E's gas pipelines and violate federal law. Further, there are many unresolved violations found in CPSD's 2005 and 2010 audits of PG&E's IMP. The Commission does not need to wait until it completes the extensive rulemaking it is now engaged in to address this issue. In particular, the Commission should address the following:

- Order PG&E to properly calculate whether a pipeline segment is located in a High Consequence Area. In the July 14, 2011 Notice of Intent to Sue letter, the City demonstrated that PG&E's IMP does not properly calculate the presence of High Consequence Areas ("HCAs"), a fundamental step in developing Integrity Management protocols.
- Order PG&E to properly identify and assess the risk of manufacturing and construction defects. As demonstrated in the Supplemental Notice of Intent to Sue, PG&E's internal IMP documentation still does not properly prioritize manufacturing and construction defects.
- Order PG&E to properly evaluate the need for Automatic Shutoff Valves and Remote Controlled Valves. New legislation passed by the Legislature requires the use of ASVs and RCVs.

E. Develop proper protocols for hydrotesting, use of in-line inspection, and external corrosion direct assessment ("ECDA"). The recent concern raised over PG&E's decision to perform hydrotests on pipeline segments most similar to the one that burst in San Bruno pursuant to an oral agreement with CPSD raises questions as to whether the Commission has provided sufficient written guidance to the utilities. The Commission should provide written procedures governing the appropriate uses and applications for hydrotests, in-line inspection and ECDA. If necessary, the Commission should look to PHMSA for guidance on the appropriate uses and applications of assessment technologies.

F. Increase the transparency between CPSD and the gas operators. When staff issues regulatory guidance it should be done in writing. PG&E's compliance with gas safety regulations and protocols is a serious and complex matter that should be treated as such. The recent example of the standards for performing hydrotesting indicates that CPSD did not formalize in writing the requirements for PG&E's hydrotesting program until September 12, 2011. Instead, PG&E performed hydrotests on some of the pipeline segments most similar to the one that burst in San Bruno pursuant to an oral agreement with CPSD. Predictably, the oral agreement led to regulatory ambiguity and some of the hydrotests performed were not preceded by a spike test, as directed by NTSB recommendation (P-10-4). Formalizing the regulatory guidance in writing creates accountability and avoids unnecessary confusion.

EXHIBIT E

PIPELINE AND HAZARDOUS MATERIALS SAFETY
 ADMINISTRATION
 OFFICE OF CHIEF COUNSEL
 1200 NEW JERSEY AVE, SE WASHINGTON, DC 20590
 ROOM E26-122

Fax: (202) 366-7041

FAX COVER SHEET

FAX NUMBER TRANSMITTED TO: 415-554-3985

To: Mr. Dennis Herrera
 Of: City and county of San Francisco
 From: James Pates Ass' Chief Counsel
 Client/Matter:
 Date: December, 01, 2011

DOCUMENTS	NUMBER OF PAGES*
	(Including Cover Sheet)

COMMENTS:

* NOT COUNTING COVER SHEET. IF YOU DO NOT RECEIVE ALL PAGES, PLEASE TELEPHONE US IMMEDIATELY AT (202) 366-4400.



U.S. Department
of Transportation

Pipeline and Hazardous Materials
Safety Administration

DEC 01 2011

1200 New Jersey Ave., SE
Washington, DC 20590

VIA FACSIMILE (415-554-3985) AND FIRST CLASS MAIL

Mr. Dennis Herrera
City Attorney
Office of the City Attorney
City and County of San Francisco
1 Dr. Carleton B. Goodlett Place
San Francisco, CA 94102

Re: Notice of Intent to File Suit under the Federal Pipeline Safety Act

Dear Mr. Herrera:

Our office discovered this week that the letter dated November 25 from our Chief Counsel, Vanessa Sutherland, to you inadvertently omitted two lines of text at the bottom of the first page. A corrected version of the letter is attached. Please discard the earlier version.

Thank you. If you have any questions about the letter, please feel free to contact me, at (202)-366-0331 or at james.pates@dot.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "James M. Pates".

James M. Pates
Assistant Chief Counsel for Pipeline Safety

cc: Frank Lindh, General Counsel, CPUC



U.S. Department
of Transportation

Pipeline and Hazardous Materials
Safety Administration

NOV 25 2011

1200 New Jersey Ave., SE
Washington, DC 20590

VIA FACSIMILE (415-554-3985) AND FIRST CLASS MAIL

Mr. Dennis Herrera
City Attorney
Office of the City Attorney
City and County of San Francisco
1 Dr. Carleton B. Goodlett Place
San Francisco, CA 94102

Re: Notice of Intent to File Suit under the Federal Pipeline Safety Act

Dear Mr. Herrera:

I am writing in response to your July 14, 2011 letter addressed to the U.S. Secretary of Transportation Ray LaHood and to Cynthia L. Quarterman, Administrator, Pipeline and Hazardous Materials Safety Administration and styled as a Notice of Intent to Sue (Notice). This Notice was later supplemented by a second letter dated October 12, 2011 (Supplemental Notice). Together, the two letters assert certain claims against the U.S. Department of Transportation (DOT), the Pipeline and Hazardous Materials Safety Administration (PHMSA), and the State of California Public Utilities Commission (CPUC) under the federal Pipeline Safety Laws.¹

The claims set forth by the City and County of San Francisco (City) arise out of a major accident that took place on September 9, 2010, in San Bruno, California, in which a 30-inch gas transmission pipeline operated by Pacific Gas & Electric Company (PG&E) exploded, destroying 38 homes and killing eight people. In the 14 months since the accident, the National Transportation Safety Board (NTSB), PHMSA, CPUC, and multiple other governmental agencies have been investigating the causes of the accident, taking steps to hold the responsible parties accountable, and seeking to identify the steps that can be taken to minimize the chances of similar accidents in the future.

In your Notice and Supplemental Notice (collectively, Notice), you allege that PHMSA and the CPUC have violated the federal Pipeline Safety Laws by failing to “enforce federal pipeline safety standards in a manner that provides ‘adequate protection against risk to life and property’ as required by the Pipeline Safety Act (the Act).”² You enumerate various federal safety standards that PG&E allegedly violated and that the CPUC and PHMSA allegedly have failed to enforce. The Notice threatens to file suit against both the State of California and the United States after the minimum 60-day period required under the “citizens suit” provision of federal law that allows any person, under certain circumstances, to file suit against any other person (including the U.S. Government) for violations of the federal Pipeline Safety Laws.³

¹ The Pipeline Safety Laws are located at 49 U.S.C. § 60101 *et seq.*

² Notice, at 1.

³ 49 U.S.C. § 60121.

First, let me assure you that PHMSA joins you in your desire to strengthen federal and state oversight of the country's oil and gas pipeline transportation system and to avoid a repeat of the tragic events in San Bruno. Although pipeline transportation is generally a very safe, economical means of meeting our country's energy needs, accidents do occur and serve as a powerful reminder that pipelines pose certain risks to people, property and the environment. It is understandable that the City seeks to do everything it can to protect the people of San Francisco from the possibility of future accidents.

Second, while we share your desire to strengthen pipeline safety, we respectfully take issue with the Notice. Upon review of the claims, we are certain that it fails to state a valid legal claim against PHMSA. If you should choose to move forward with litigation against PHMSA, the agency will vigorously defend its record of administering a strong federal-state pipeline safety program.

In fact, the Notice appears to be based on several misconceptions, notably that PHMSA has violated the Pipeline Safety Laws by allowing California to administer an intrastate gas pipeline regulatory program that does not adequately enforce minimum federal safety standards. In 1968, Congress adopted the Natural Gas Pipeline Act, which established a regulatory scheme that affirmed the states' primary role in inspecting, regulating, and enforcing safety standards on intrastate natural gas systems, particularly local gas distribution operators such as PG&E. While Congress directed DOT to promulgate minimum federal safety standards and allowed states to seek annual certifications from DOT to administer intrastate regulatory programs, the regulatory scheme was designed to encourage states to retain broad authority over the gas pipelines operating entirely within their borders.⁴

Under current law, PHMSA is actually prohibited from prescribing or enforcing safety standards and practices against intrastate pipelines that are subject to a certified state regulator. PHMSA's obligations in overseeing a certified state program are limited:

The Secretary may monitor a safety program established under this section to ensure that the program complies with the certification. A State authority shall cooperate with the Secretary under this subsection.⁵

If after receiving a certification the Secretary decides the State authority is not enforcing satisfactorily compliance with applicable safety standards prescribed under this chapter, the Secretary may

⁴ In adopting the 1968 legislation, Congress preserved a key role for states in pipeline safety enforcement because each state "is uniquely equipped to know best the special aspects of local pipeline safety which are particularly applicable to that community." H.R. REP. NO. 1390 (1968), *reprinted in* 1968 U.S.C.C.A.N. 3223, 3241.

⁵ 49 U.S.C. § 60105(e).

reject the certification, assert United State Government jurisdiction, or take other appropriate action to achieve adequate enforcement.⁶

For many years, the CPUC has served, under PHMSA certification, as the principal regulator of intrastate gas pipelines in California, including PG&E. PHMSA reviews the CPUC's certification annually and conducts performance and grant evaluations. PHMSA's most recent performance audit of the CPUC occurred in September 2011. The audit report has not been finalized but PHMSA continues to evaluate the State's program to determine whether the CPUC is "enforcing satisfactorily compliance with applicable safety standards."

A second major misconception is that PHMSA's integrity management program violates the Pipeline Safety Laws "by abdicating responsibilities that should be undertaken by federal or state agencies." Specifically, you allege that "PHMSA has developed a regulatory scheme that almost entirely delegates to pipeline operators the responsibility for safe operation and maintenance of pipeline facilities."⁷ You charge that "PHMSA's decision to establish safety standards through an integrity management or performance-based approach, and its issuance of advisory recommendations rather than mandates, allow pipeline operators to ignore pipeline safety with impunity."⁸

Please note that the framework for a performance-based integrity management regulatory system was established by Congress, not PHMSA.⁹ The Pipeline Safety Laws and regulations require that each operator of a gas pipeline located in a high-population area (i.e., a "High Consequence Area") conduct an analysis of the various risks faced by that particular line and adopt and implement a written plan to reduce those specific risks.¹⁰ Operators are required to identify and prioritize risks by collecting and integrating data on all pipeline threats, including corrosion, welding defects, and third-party damage. Operators are then required to conduct a "baseline assessment" of each pipeline segment. Any defective sections must be repaired or replaced pursuant to specific timelines set out in the regulations. If an operator identifies third-party damage, cyclic fatigue, manufacturing and construction defects, low-frequency electric resistance welded pipe, or corrosion, the regulations require operators to take specific actions to address such threats.¹¹

Operators must also identify and implement additional preventive and mitigative measures to further protect HCAs and enhance public safety. Examples of such measures include: installing

⁶ 49 U.S.C. § 60105(f).

⁷ Supplemental Notice, at 4.

⁸ *Id.*, at 4.

⁹ *See* 49 U.S.C. § 60109.

¹⁰ The term "High Consequence Areas" (HCAs) includes areas of increased population or sites frequented by the public, such as parks, where pipeline leaks or ruptures could have the greatest impact on public safety. 49 C.F.R. § 192.903.

¹¹ *See* 49 C.F.R. Part 192, Subpart O.

Automatic Shut-Off Valves or Remote Control Valves; implementing computerized monitoring and leak detection systems; replacing segments with heavier-wall pipe; conducting additional training; conducting drills with local emergency responders; implementing additional inspection and maintenance programs; and enhancing damage prevention programs. Gas pipeline operators were required to complete the baseline assessment of 50% of their HCA covered segments, beginning with the highest-risk segments, by December 17, 2007. Operators have until December 17, 2012, to complete assessments of the remaining covered segments. Once their baseline assessments have been complete, operators are then required to reassess the segments at specific intervals. PHMSA directly reviews an interstate operator's compliance with these requirements and monitors a certified state's enforcement of these standards with respect to intrastate operators.

Far from being what you term a "self-regulating" approach, the integrity management regulations require an operator to undertake a rigorous and sophisticated risk assessment of its higher-risk facilities and to take effective preventive and mitigative measures to protect those facilities and the public. It is a pipeline-specific approach that requires operators to recognize and address the unique risks faced by its pipeline system. For operators who fail to develop and implement an accurate and effective integrity management program, PHMSA takes vigorous enforcement action against interstate operators and assists states in taking similar action against intrastate operators.

Third, the San Bruno accident has prompted PHMSA to redouble its efforts to ensure that both the federal regulations and the state programs adequately address the safety issues raised by that failure. PHMSA's first investigator arrived in San Bruno on September 10, 2010, with a second arriving three days later. The PHMSA Administrator personally visited the incident site, where she witnessed the devastating consequences of the failure and met with her counterparts from the NTSB, the CPUC, and other Federal and State agencies. Further, over the past 14 months, PHMSA has taken a number of steps aimed at improving pipeline safety generally and protecting California residents in particular. These have included:

- Providing hundreds of man-hours in technical expertise, advice, and counsel to the NTSB and the CPUC in their investigations of the failure and potential enforcement actions;
- Alerting gas pipeline operators to some of the critical safety issues raised by the San Bruno failure, including: the need to make emergency response plans available to local emergency response officials; the need to perform detailed threat and risk analyses in their integrity management programs, especially when calculating Maximum Allowable Operating Pressure; the need for improved record-keeping, which is the foundation of effective integrity management programs; and the need for improved testing to detect seam-weld anomalies;¹²

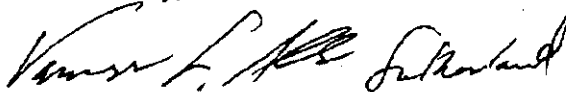
¹² See "Pipeline Safety: Emergency Preparedness Communications", 75 Fed. Reg. 67807 (November 3, 2010); "Pipeline Safety: Establishing Maximum Allowable Operating Pressure or Maximum Operating Pressure Using Record Evidence, and Integrity Management Risk Identification, Assessment, Prevention, and Mitigation," 76 Fed. Reg. 1504 (January 10, 2011); "Pipeline Safety: Notice of Public Meetings on Managing Challenges With Pipeline Seam Welds and Improving Pipeline Risk Assessments and Recordkeeping," 76 Fed. Reg. 30241 (May 24, 2011).

- Ensuring adequate implementation of PHMSA's new distribution integrity management requirements, which will, for the first time, extend federal integrity management principles to distribution pipelines;
- Conducting an assessment of the overall effectiveness of PHMSA's state certification and grant programs; and
- Issuing an Advance Notice of Proposed Rulemaking (ANPRM) on improving the safety of onshore gas transmission lines. This rulemaking seeks public comment on a broad range of possible regulatory changes, some of which relate directly to the San Bruno accident. These include: repealing the regulatory exemption from the hydrostatic pressure-testing requirements for pipelines installed prior to 1970; revising the definition of HCAs; imposing additional restrictions on the use of certain pipeline assessment methods; revising the requirements for mainline valves, including valve spacing and installation of remotely-operated or automatically-operated valves; modifying the corrosion control requirements for steel pipelines; revising the requirements for collecting, validating, and integrating pipeline data; and adopting new requirements for management of change and quality control.

This last initiative may be of particular interest to you and the citizens of San Francisco, since it raises the prospect of new federal regulations to address a number of issues implicated in the San Bruno accident. PHMSA encourages you to review this ANPRM and to submit comments. The comment period was recently extended until January 20, 2012. The ANPRM is available at docket # PHMSA-2011-0023 at www.regulations.gov.

In conclusion, PHMSA, the CPUC, and the City of San Francisco, as governmental entities with a common responsibility and desire to protect the public from unsafe pipelines, can and should work together to achieve the common goal of improving pipeline safety for the citizens of California. We believe this can best be achieved through working together in a collaborative, rather than adversarial, manner. We urge you to join us in this effort and welcome any suggestions you may have.

Sincerely,



Vanessa L. Allen Sutherland
Chief Counsel

cc: Frank Lindh, Esq., General Counsel, CPUC