

Mr. Jerry R. McLeod
Vice President and General Manager
Pacific Gas & Electric Company
245 Market Street, Room 904
San Francisco, CA 94106

Re: CPF 52022

Dear Mr. McLeod:

Enclosed is the Final Order issued by the Associate Administrator for Pipeline Safety in the above-referenced case. It makes a finding of violation and assesses a civil penalty of \$7,500. The penalty payment terms are set forth in the Final Order. Your receipt of the Final Order constitutes service of that document under 49 C.F.R. § 190.5.

Sincerely,

Gwendolyn M. Hill
Pipeline Compliance Registry
Office of Pipeline Safety

cc: Joseph S. Englert, Jr., Esq.
Law Department

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
OFFICE OF PIPELINE SAFETY
WASHINGTON, DC 20590

In the Matter of)	
)	
Pacific Gas & Electric Company,)	CPF No. 52022
)	
Respondent.)	
)	

FINAL ORDER

On August 19, 1992, pursuant to 49 U.S.C. § 60117, a representative of the Office of Pipeline Safety (OPS), initiated an investigation of Respondent's report of an incident involving its pipeline system. As a result of the investigation, the Director, Western Region, OPS, issued to Respondent, by letter dated October 15, 1992, a Notice of Probable Violation and Proposed Civil Penalty (Notice). In accordance with 49 C.F.R. § 190.207, the Notice proposed finding that Respondent had violated 49 C.F.R. § 191.5, and proposed assessing a civil penalty of \$7,500 for the alleged violation.

Respondent responded to the Notice by letter dated November 19, 1992 (Response). Respondent contested the allegation, offered information to explain the allegation, and requested that the violation be withdrawn. Respondent has not requested a hearing and therefore has waived the right to one.

FINDING OF VIOLATION

According to Respondent's telephonic report, the incident occurred on August 15, 1992 at approximately 10:30 p.m. (PST)¹ in Fresno, California. The Notice alleged this incident met the reporting criteria in 49 C.F.R. § 191.3, and was not reported telephonically to the National Response Center (NRC) until August 18, 1992 at 2:38 p.m. (PST). Respondent reported the incident approximately 64 hours after discovery. The Notice alleged a violation of 49 C.F.R. § 191.5 based on Respondent's failure to provide the NRC a telephonic notice of the incident "at the earliest practicable moment following discovery."

According to 49 C.F.R. § 191.5, each operator must, at the earliest practicable moment following

¹ The Notice alleged the accident occurred on August 16, 1992, however this date was based on using Eastern Standard Time rather than local time.

discovery of an "incident", as defined in 49 C.F.R. § 191.3, telephonically relay certain information to the NRC. An incident is defined by 49 C.F.R. § 191.3 as:

(1) an event that involves a release of gas from a pipeline or of liquefied natural gas or gas from an LNG facility and

* * * *

(ii) Estimated property damage, including cost of gas lost, of the operator or others, or both, of \$50,000 or more.

Respondent denied the allegation and stated that it did not immediately recognize that the incident was reportable, and thus submitted a report only when it became clear that a telephonic report was required. Respondent claimed that "PG&E had reasonable cause to initially believe that natural gas was not involved in the incident and, based upon fire damage alone, that there was not \$50,000 in property damage." (Response, page 1).

Respondent submitted a company report describing the incident. The report indicated that on Saturday August 15, 1992, at approximately 10:15 p.m. (PST), Respondent was notified of a building fire and the possibility that the fire involved gas. An employee was immediately dispatched to the scene and surveyed the area for gas. On Sunday August 16, 1992 at 1:00 a.m. (PST), a fireman reported smelling gas. The gas was traced to a 2-inch plastic gas main approximately 100 feet from the site of the fire. Approximately three hours later at 4:19 a.m. (PST), Respondent's employees successfully isolated the main.

On Monday August 17, 1992, Respondent performed some additional leak surveys and discovered gas leaking near the basement of the building where the fire occurred and at a nearby customer's house line. According to the report, at 5:00 p.m. (PST) on August 17, 1992, "it was concluded that the explosion may have involved natural gas . . . Since the information leading to the determination that the incident should be reported came in late in the day and there was some confusion as [to] the amount of damage, the DOT was not notified until the next day [August 18, 1992]." (Report of PG&E Gas Incident - Fresno, California - August 15, 1992). The same report, however, indicates that a PG&E employee was told on Monday August, 17 that damages might exceed \$600,000, a figure well above the \$50,000 threshold reporting requirement for incidents involving gas.

Historically, OPS has taken the position that incidents meeting the telephonic reporting criteria should be reported within one to two hours following their discovery. When OPS discovers that an operator has not submitted a telephonic report within one to two hours following discovery of an incident, it does not always issue a notice of probable violation. Instead, OPS determines whether the operator had time to gather the essential information and whether the telephonic report was subsequently filed within a reasonable amount of time. Upon discovery of an incident, the operator must provide all available information and submit, as required, any follow-up reports.

If an operator's subsequent investigation reveals that an event, which was reported initially as "incident," is actually a nonreportable event, the operator should, in writing, retract its incident report at the address provided in 49 C.F.R. § 191.7. However, OPS recognizes there will be occasions immediately following an incident where it is impossible for the operator to gather the essential information.

In reviewing this case, it appears that PG&E officials needed more than one to two hours to determine if the accident was reportable. The question is whether Respondent was justified in waiting until Tuesday August 18, 1992 (approximately 64 hours after the incident occurred) to report the incident. Although some delay was justified, the record supports the conclusion that Respondent had an opportunity to gather the essential information and submit a telephonic report at least one day prior to the time that it actually contacted the NRC. Following completion of the additional leak surveys on Monday August 17, a telephonic report should have been filed. Moreover, it appears that the incident could have been reported early on the morning of Sunday August 16 after a fireman reported smelling gas and Respondent's employees isolated the 2-inch plastic gas main. The gas main isolation took place approximately 6 hours after the incident occurred.

Based on the information in the record, I find that the August 15, 1992 accident involving Respondent's pipeline system was an "incident" as defined in 49 C.F.R. § 191.3, and that Respondent did not report this accident to the NRC at the earliest practicable moment following discovery. Accordingly, I find Respondent violated 49 C.F.R. § 191.5.

This finding of violation will be considered a prior offense in any subsequent enforcement action taken against Respondent.

ASSESSMENT OF PENALTY

Under 49 U.S.C. § 60122, Respondent is subject to a civil penalty not to exceed \$25,000 per violation for each day of the violation up to a maximum of \$500,000 for any related series of violations.

49 U.S.C. § 60122 and 49 U.S.C. § 190.225 require that, in determining the amount of the civil penalty, I consider the following criteria: nature, circumstances, and gravity of the violation, degree of Respondent's culpability, history of Respondent's prior offenses, Respondent's ability to pay the penalty, good faith by Respondent in attempting to achieve compliance, the effect on Respondent's ability to continue in business, and such other matters as justice may require.

The Notice proposed assessing a civil penalty of \$7,500. Respondent's argument that its delay in reporting the incident was justified because "the cause of the incident and amount of damages were still unclear" is not consistent with the information provided in its own report of the incident. Respondent's report clearly indicates that there were signs of a gas release prior to the day that the incident was reported. Concerning the cost of property damage, Respondent indicated in its

report that one of its employees was told on August 17, 1992 that water damages might exceed \$600,000. Respondent's argument that its delay in reporting the incident was justified based on its mistaken belief that a report was not required because "based on fire damage alone" (Response, page 1) there was not \$50,000 in property damage does not justify mitigating the civil penalty. The reporting criteria found in section 191.3 clearly encompasses more than property damage caused by fire. In addition, I have reviewed Respondent's compliance history and find that Respondent was previously found in violation of 49 C.F.R. § 191.5 (CPF Nos. 50002, 50012).²

Accordingly, having reviewed the record and considered the assessment criteria, I assess Respondent a civil penalty of \$ 7,500. I find Respondent has the ability to pay the assessed civil penalty and the penalty will not effect Respondent's ability to continue in business.

Payment of the civil penalty must be made within 20 days of service. Federal regulation (49 C.F.R. § 89.21(b)(3)) require this **payment be made by wire transfer**, through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. **Detailed instructions are contained in the enclosure.** After completing the wire transfer, send a copy of the **electronic funds transfer receipt** to the **Office of the Chief Counsel (DCC-1)**, Research and Special Programs Administration, Room 8405, U.S. Department of Transportation, 400 Seventh St., S.W., Washington, D.C. 20590-0001.

Questions concerning wire transfers should be directed to: **Valeria Dungee**, Federal Aviation Administration, Mike Monroney Aeronautical Center, Financial Operations Division, (AMZ-320), P.O. Box 25770, Oklahoma City, OK 73125; **(405) 954-4719**.

Failure to pay the \$7,500 civil penalty will result in accrual of interest at the current annual rate in accordance with 31 U.S.C. § 3717, 4 C.F.R. § 102.13 and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be charged if payment is not made within 110 days of service. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Attorney General for appropriate action in an United States District Court.

Under 49 U.S.C. § 190.215, Respondent has a right to petition for reconsideration of this Final Order. The petition must be received within 20 days of Respondent's receipt of this Final Order and must contain a brief statement of the issue(s). The filing of the petition automatically stays the payment of any civil penalty assessed. All other terms of the order, including any required corrective action, shall remain in full effect unless the Associate Administrator, upon request, grants a stay.

The terms and conditions of this Final Order are effective upon receipt.

² These two CPF numbers refer to a consolidated case.

Richard B. Felder
Associate Administrator for Pipeline Safety

Date Issued: 05/09/1997