

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE THELTON E. HENDERSON, JUDGE

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 VS. ) NO. C 14-175 TEH  
 )  
 PACIFIC GAS AND ELECTRIC COMPANY, )  
 ) San Francisco, California  
 Defendant. ) Friday  
 ) June 17, 2016  
 ) 9:00 a.m.

EXCERPT OF PROCEEDINGS

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(Appearances continued, next page)

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Also Present: JAMES HAGGARTY, San Bruno  
Police Department

1 **FRIDAY, JUNE 17, 2016**

2 **EXCERPT OF PROCEEDINGS**

3  
4 **OPENING STATEMENT**

5 **BY MS. HOFFMAN:**

6 PG&E has a duty to follow certain minimum pipeline safety  
7 standards to protect life and property because its business  
8 involves flowing explosive material through pipelines in  
9 populated areas.

10 This case is about PG&E's pattern of criminal conduct not  
11 following these regulations by making deliberate and illegal  
12 choices.

13 (Demonstrative displayed)

14 On September 9th, 2010 there was a deadly gas pipeline  
15 explosion in a San Bruno neighborhood. This gas pipeline --

16 **THE COURT:** You may reposition yourself at any time  
17 if you need to see the exhibits.

18 **MR. BAUER:** Thank you.

19 **MS. HOFFMAN:** This gas pipeline, like all of its  
20 pipelines, PG&E had a duty to maintain.

21 An investigation followed this explosion revealing  
22 evidence you are going to see and you will hear over the next  
23 weeks, evidence that shows this pattern of criminal conduct of  
24 deliberate choices to not follow these minimum safety  
25 requirements.

1           You are going to see that PG&E knew that it needed to keep  
2 certain records in order to make engineering decisions to  
3 preserve the safety of its pipelines. It knew its records were  
4 inaccurate and had missing information, but it chose to still  
5 rely on those records and make decisions about the safety of  
6 the pipelines.

7           You're going to see that PG&E knew it had hundreds of  
8 unstable threats on its pipelines, threats that could lead to  
9 the failure of the pipeline, and it needed to test these  
10 pipelines to make sure they were still safe to operate.  
11 Instead of a test that it knew it would test the integrity of  
12 the pipeline, the safety of the pipeline to operate, it chose a  
13 cheaper test, a deliberate choice, that it knew could not.

14           And when the NTSB went to investigate, the National  
15 Transportation and Safety Board, after this explosion to make  
16 sure nothing like this happened again, you will hear that PG&E  
17 corruptly misled the NTSB investigators about these illegal  
18 choices. This case is about these deliberate and illegal  
19 choices and the cover-up of these choices.

20           Good morning, ladies and gentlemen. It's been a long  
21 week. Thank you. Thank you for listening to all of us. I'd  
22 like to reintroduce the United States -- the people  
23 representing the United States because it was awhile, awhile  
24 ago you misrepresentation met us. My name is Hallie Hoffman.  
25 I'm trying this case with Hartley West and Jeff Schenk. With

1 us at counsel table is Detective James Haggarty from the  
2 San Bruno Police Department and Beth Margen, who is our  
3 paralegal.

4 We will show you over these next weeks how PG&E knowing  
5 and willfully violated these minimum pipeline safety standards  
6 and PG&E endeavored to obstruct the National Transportation and  
7 Safety Board's investigation.

8 What I say, what the lawyers say is not evidence. You  
9 will see evidence in this case and you will hear it through  
10 witnesses and seeing documents up on that screen (indicating),  
11 and maybe even a stipulation.

12 What the lawyers say is also not the law. As you've heard  
13 this morning, only the judge can instruct you on the law. I am  
14 here today simply to give you an overview of the Government's  
15 case, of how we're going to prove these criminal counts to you  
16 beyond a reasonable doubt.

17 Before we get started -- oh, as we are starting, I would  
18 like to give you some background tools before we dive on into  
19 the counts. The counts that the Government is going to prove  
20 to you fall into three basic groups. The judge has instructed  
21 you that the Government has charged PG&E with 13 criminal  
22 counts. All of these counts fall into three groups.

23 The first group I'm going to talk to you about today  
24 involve crimes regarding recordkeeping. PG&E knew it needed to  
25 have certain information to make decisions about the safe

1 operation of its pipeline. PG&E knew its information was  
2 missing or inaccurate and still made decisions based on this  
3 faulty information.

4 The second group of counts involve unstable manufacturing  
5 threats. These are points of failure on the pipeline, places  
6 that the line could have problems. You're going to -- these  
7 counts involve PG&E not properly assessing these threats.

8 And the final count, which is Count One of our indictment,  
9 as the judge has instructed you, is a count regarding the  
10 cover-up of these choices. It is a count where PG&E -- the  
11 Government will show that PG&E deliberately misled the  
12 investigators about the explosion.

13 But I said I was going to give you some background tools,  
14 so let me go ahead and do that. This case is a case involving  
15 transmission gas pipelines in the Bay Area.

16 Technical difficulties.

17 (Demonstrative displayed.)

18 Transmission pipelines are pipelines, you will hear, that  
19 have highly pressurized gas through them.

20 This case is about six different pipelines, six different  
21 of these transmission pipelines: Line 132, that we already  
22 talked about which is the line that exploded, Line 109, Line  
23 153, Line 107, Line 191-1 and DFM1816-01. You're going to hear  
24 that all of these pipelines are transmission pipelines owned  
25 and operated by PG&E.

1           You will hear that pipelines aren't one continuous pipe.  
2 They are made up of smaller segments of pipe. And each of  
3 these smaller segments of pipe have different characteristics  
4 because these pipes were installed at different times.

5           You're going to hear that these pipe segments have  
6 different qualities. They can be made of different material.  
7 They may have a seam or not have a seam.

8           And you may be asking what a seam is. I expect you're  
9 going to hear evidence that when pipe is made, it's often made  
10 of a flat metal that is put into a circular shape (indicating).  
11 A seam runs along the length of the pipe holding it together.

12           You're going as to hear that there are many types of these  
13 seams. You're going to hear that these segments are put  
14 together by something called girth welds and that different  
15 pipes can have different characteristics based on what type of  
16 seam it has and what its girth weld is.

17           The judge has already instructed you on the Pipeline  
18 Safety Act to a certain extent. You're going to hear that the  
19 Pipeline Safety Act sets minimum safety standards that pipeline  
20 operators must abide by to protect life and property.

21           You're going to hear that this Pipeline Safety Act was  
22 modified in 2002 by the Pipeline Safety Improvement Act. This  
23 special set of regulations that came about in 2002 were  
24 regarded -- involved, excuse me, pipelines that ran through  
25 areas that were of high consequence. You'll hear people refer

1 to that as HCA, high consequence area. A high consequence area  
2 is an area where there is a dense population, where there can  
3 be injury to life and property if the line failed or exploded.

4 You're going to hear that these special set of regulations  
5 involved making sure that these pipelines running through these  
6 high consequence areas were safely operated because there would  
7 be a big problem if something happened to these pipelines.

8 You're going to hear that because it involved the  
9 integrity, maintaining the integrity of these pipelines, these  
10 pipeline regulations are called Integrity Management  
11 Regulations. I expect you're going to hear quite a bit about  
12 these Integrity Management Regulations. I can not emphasize  
13 enough that what you will hear is that these regulations are  
14 about lines, pipelines that run through these high consequence  
15 areas.

16 One other thing I want to talk about before we move on to  
17 the counts to which PG&E is tried, PG&E, the company, has been  
18 charged in this case. It is the company that the Government  
19 must show knowing and willfully violated these Pipeline Safety  
20 Act counts and corruptly misled the NTSB.

21 A company acts through its employees. You will hear that  
22 a company acts through its employees. So throughout the course  
23 of this trial you're going to hear a lot from PG&E employees  
24 and you're going to see a lot of emails from PG&E employees.  
25 Just remember, these are the words of the defendant at the time



1 observations are made.

2       Moving on. Let's talk about that first group of counts I  
3 was talking about, the counts involving recordkeeping. Very  
4 simply put, these counts involve -- what the evidence is going  
5 to show that PG&E did not have the records it needed to have,  
6 it was required to have, in order to make safety decisions  
7 about its pipelines. And even still and knowing that, knowing  
8 that it had those errors, it still went ahead and made the  
9 decisions.

10       The judge already discussed with you that in Count Two the  
11 Government is going to prove that PG&E beyond a reasonable  
12 doubt knowing and willfully failed to gather and integrate  
13 information. Again, the Government is going to show you that  
14 PG&E knew it had this duty to gather all the information,  
15 because it is through the gathering of the information it could  
16 decide how it needed to treat that pipe, whether or not that  
17 pipe was safe to operate.

18       I've already talked to you about some of the potential  
19 information that it would need to gather. Some of it includes  
20 information about the seam of the pipe, whether or not there  
21 has ever been a leak on the pipe. Because if there is a leak  
22 on the pipe evidence will show you that then you need to  
23 carefully examine the pipe to make sure it is still safe to  
24 operate.

25       PG&E told regulators, you will see and you will hear, that

1 it had integrated all this information about the pipes on its  
2 system through an integrated system called Geographic  
3 Information System, GIS. At the same time it was telling  
4 regulators that it had integrated all of its information, it  
5 was getting email after email from employees saying: There are  
6 tons of errors in our system. We have missing information. We  
7 have inaccurate information. Still, you will see that PG&E  
8 close to rely on that integrated system.

9       There is also counts that you will hear about, that the  
10 judge has told you about, that PG&E willfully and knowingly  
11 failed to maintain leak repair records. I've already discussed  
12 why a leak is vital to determining if a pipe is still safe to  
13 operate. The Code requires an operator to maintain these leak  
14 repair records that tell what caused the leak, what was the  
15 source of the repair.

16       There are two lines we've charged, Line 132 and Line 109.  
17 Both of those lines had leaks on the long seam. Yet PG&E,  
18 you'll see in the years leading up to the explosion, said there  
19 were no leaks on the long seam. We don't have any leaks on our  
20 long seam. And based on that, made decisions about how to  
21 evaluate Line 132 and Line 109.

22       Even after the explosion, you will see and you will hear  
23 that PG&E told the NTSB. We don't have leaks on those lines.  
24 Months later PG&E went back to the NTSB and they say: Oh, we  
25 do have a leak repair record for Line 132. And in explaining

1 why they originally said they did not, they said they looked  
2 for it, but they could not locate it.

3 PG&E also did not maintain leak repair records on Line  
4 109. And those leak repair records, after it had said there  
5 were no long seam leaks on Line 109, resurfaced a year and a  
6 half after the explosion. PG&E never told the NTSB: We  
7 actually had a leak on Line 109. The NTSB investigation by  
8 that time was over.

9 The other records that Counts Nine through Thirteen that  
10 the Court instructed you on, these are called strength test  
11 pressure records.

12 Let me take a step back. I have talked to you about how  
13 when there are certain threats on a line or potential failure  
14 points, an operator has a duty to assess those threats,  
15 determine their risks, and evaluate those threats to make sure  
16 that the pipeline can still operate.

17 I expect you're going to hear about different ways to test  
18 the pipeline. There is a method to -- and each of these  
19 different tests test different threats. For example, you will  
20 hear that if there is corrosion on a pipeline, there are  
21 certain tests that can test for corrosion. It's called  
22 external corrosion direct assessment.

23 But if you want to test the integrity of the pipeline,  
24 whether or not the pipeline can still safely operate, there are  
25 two options. You will hear something called a pressure test.

1 Now, this pressure test actually tests the amount of maximum  
2 pressure that can be sent through a pipeline. And you will  
3 hear from witnesses and see in exhibits that will probably be  
4 able to explain it better. But I expect you will hear that in  
5 order to do a pressure test, an operator has to close off a  
6 section of the pipe, remove the gas, put in a medium, typically  
7 water, raise the pressure on that to a certain level for a  
8 certain amount of time and see what cracks or failures happen.  
9 It then knows that if it runs pressure of gas through that  
10 pipeline at a lower amount, it is safe to operate. These  
11 pressure tests are the only tests that can test the strength  
12 pressure of a pipe.

13 The other method that I mentioned could test the integrity  
14 of pipe is something called in line inspection. This is -- in  
15 this circumstance you will hear that what an operator does is  
16 also take a section of pipe, close it off to the rest of the  
17 pipe, put in a device, a special tool that goes through with  
18 the gas in the pipe and collects data about the pipe as it  
19 travels through it. You will hear that this tool, as it's  
20 going through, kind of makes that [screeching sound] sound, so  
21 it's called a smart pig.

22 Getting back to the strength test pressure records. As I  
23 told you, these strength tests or these pressure tests are the  
24 only way to test the true strength of the pipe. Therefore, in  
25 1970 with the Pipeline Safety Act, they said: Okay, operators.

1 Now new pipe that you're putting -- installing into the ground,  
2 you have to have these pressure tests because that way we will  
3 know the maximum allowable pressure that can go through the  
4 pipes safely.

5 Well, what about all the pipes before 1970? Well, you  
6 will hear that those pipes were grandfathered in. They did not  
7 have to have these pressure tests. How do we know what maximum  
8 pressure can go through those pipes? Well, the regulations say  
9 that it can be what the maximum -- if you have a record of what  
10 the maximum pressure was in a five-year period before the  
11 regulations came about, that can be your maximum pressure. No  
12 time requirement. No safety of margin between how it was test.  
13 Just that at some point in time in those five years it hit that  
14 level and nothing happened. The pipeline didn't fail. Then  
15 we're going to say that's the maximum pressure. So those are  
16 for the lines before 1970.

17 But the lines after 1970 are supposed to have these  
18 pressure tests, so the law requires that you keep certain  
19 records about these pressure tests. You retain these records.  
20 Again, these are Counts Nine through Thirteen.

21 Evidence is going to show you that when PG&E has been  
22 asked about the missing records, it has said that it still has  
23 missing records on pipelines installed after 1970. You are  
24 going to see emails from -- written by PG&E employees saying:  
25 We are missing strength test pressure records for our

1 pipelines, for pipelines installed after 1970.

2 The next set of counts that we're going to talk about, the  
3 next set of crimes are these unstable manufacturing threats. A  
4 manufacturing threat is just one of those threats that can  
5 exist on a pipeline.

6 I'm sorry. I meant to cover this in the background  
7 section. But in order to assess the integrity of a pipeline,  
8 you have to evaluate whether or not threats exist on that  
9 pipeline. One of those threats is a manufacturing threat. A  
10 manufacturing threat, and specifically, has to deal with a  
11 threat that is inherent to the pipe; that appears from the  
12 manufacturer of the pipe. You're going to hear that the  
13 different seams, the age of the pipe, these are all -- could go  
14 to the manufacturing threats on the pipe.

15 You're going to hear that these manufacturing threats can  
16 be stable, even if they are on pipelines in high consequence  
17 areas, areas where a lot of people could get injured if  
18 something happened, even on pipelines that do not have one of  
19 those strength tests. But you're going to hear that they can  
20 be made unstable and active. And if they are made unstable,  
21 well, then an operator has to test the integrity of the pipe,  
22 make sure it is still safe to operate.

23 You're going to hear the only tests that can test the  
24 integrity, as I talked about, are ILI -- I'm sorry, the in line  
25 inspection or these pressure tests.

1           So what makes these manufacturing threats unstable and how  
2 are we going to show you that PG&E knew it had made these  
3 manufacturing threats unstable?

4           Well, the regulations say that pressure over the maximum  
5 pressure that the regulations allow on those pipes, if they  
6 overpressure the pipes, then those manufacturing threats become  
7 stable.

8           These are all threats on pipelines that are in these areas  
9 of high consequence. The operator must look at the five years  
10 before these lines are determined that they are in a high  
11 consequence and see what the maximum operating pressure was  
12 during those five years. It is from that, that if there is an  
13 overpressure, that the manufacturing threat becomes unstable.

14           You are going to see and hear that the regulations say any  
15 pressure amount over that maximum operating pressure. You're  
16 going to see that PG&E employees discuss this in emails. In  
17 one email a PG&E employee is reciting what a regulator has told  
18 them and says one pound over is one pound too much.

19           You're going to see documents reciting regulator guidance  
20 on these materials that say -- that regulator guidance that  
21 they cut and paste in their documents say any pressure  
22 increase, regardless of amount, will require that the segment  
23 be prioritized as high risk for integrity assessment. And,  
24 remember, integrity assessment requires this hydrotest or this  
25 in line inspection.

1           You're going to see that PG&E recorded all of these  
2 overpressures in spreadsheets. Yet, it chose not to prioritize  
3 these unstable manufacturing threats or do the proper test to  
4 test the pipe's integrity. Instead, it chose, it affirmatively  
5 chose to do a cheaper test, a test that did not test the pipe's  
6 integrity. Not doing the correct test, a test that would  
7 ensure the continued safety of the pipe, was a deliberate  
8 choice by PG&E.

9           I've told you that the choices were a pressure test or  
10 ILI. PG&E did not want to do either. It wanted to do this  
11 cheaper test. It -- so it chose to ignore overpressures on  
12 pipelines unless the pressure, overpressure, went more than  
13 10 percent over.

14           Where did it get this 10 percent? The evidence is going  
15 to show you that it says it got this 10 percent from a  
16 different part of the code, a code that does not deal with the  
17 integrity management of pipelines in high consequence areas.

18           What the Government will also prove, though, PG&E did not  
19 do this test. It did not even do this test on pipelines that  
20 were overpressured more than 10 percent over. You're going to  
21 see that evidence at DFM1816-01.

22           I have talked a lot about what the regulations required  
23 PG&E to do. I have said over and over that they knew they had  
24 to do it. But what is the Government's evidence that they know  
25 this and they willfully chose not to do this? You're going to



1 hear that PG&E lobbied for the language that was written in the  
2 regulations. And you're going to hear that when they did not  
3 like the language, they lobbied for its change.

4 You're going to see email after email that describes, that  
5 cites to the regulation, that discusses the regulation, and  
6 tells you everything that we have been talking about today.  
7 You're going to see these emails from senior gas engineers,  
8 from the V.P. of Gas Transmission and Distribution. From the  
9 manager of the Integrity Management Group. You're going to see  
10 these in PG&E documents that are provided to regulators to show  
11 it was in compliance with the regulations.

12 Ladies and gentlemen, in short, you're going to see that  
13 they knew exactly what they had to do, but they didn't like it  
14 so they chose not to do it.

15 The final count that we haven't talked about yet is the  
16 obstruction of the NTSB's investigation. As the Court has told  
17 you, this is Count One to the Government's indictment.

18 The National Transportation and Safety Board has a unique  
19 charge of going to an incident after the incident occurs,  
20 you'll hear, in cases where there is significant property and  
21 life damage. And it looked into the cause of the explosion in  
22 the Integrity Management Program to make sure something like  
23 this never happened again.

24 You'll hear how the NTSB was specifically interested in  
25 overpressurizations on lines in these densely populated areas

1 that had no pressure test.

2       You're going to hear that PG&E's practice of giving  
3 themselves a little bit of leeway was never disclosed to the  
4 NTSB. You're going to hear that PG&E had this practice. And  
5 how are you going to hear that it had this practice? You're  
6 going to hear it in its own words. You're going to see it in  
7 emails and in company documents. You're going to hear it  
8 throughout the testimony in this case.

9       I just want to talk about one example where you'll see  
10 that this plus 10 percent was, indeed, PG&E's practice. PG&E  
11 was concerned before an audit that happened months before the  
12 explosion. It was an audit that was going to be done by state  
13 regulators. You will hear that anticipation of the audit there  
14 was a spreadsheet created of all the unstable and active  
15 threats on its pipelines.

16       This spreadsheet showed 84 miles of pipeline in high  
17 consequence areas, areas where people can get hurt, that had  
18 never had a pressure test and where the pressure on that  
19 pipeline went over what was allowed making the manufacturing  
20 threats active.

21       You're going to hear -- I expect you will hear from a  
22 witness who says this was the highest concern going into the  
23 audit. You're going to see that there was a decision to make a  
24 document that attempted to justify these overpressures. You're  
25 going to see drafts of that document being sent around where

1 they are trying to excuse exceedences of less than 10 percent  
2 over and justify that they ignore these pressure increases.  
3 You're going to see drafts of this document where other  
4 employees put back in: Wait, any pressure is too much. Any  
5 pressure. And they actually put in the regulation and the  
6 guidance to the regulation.

7 I expect that you're going to hear from this senior  
8 engineer in risk management who wrote this document, and I  
9 expect you to hear that he felt so uncomfortable about this  
10 document that after the audit was over shredded it. Thanks to  
11 computers, you will still see the document.

12 So after the concern was raised about ignoring the  
13 10 percent overages, PG&E sends a letter to the NTSB.

14 Oh, and I apologize, I need to back up. PG&E had  
15 originally told the NTSB about this plus 10 percent practice  
16 and how it had told it -- the -- PG&E had been asked by the  
17 NTSB about whether or not it had any policies or documents that  
18 would show how it would maintain the maximum operating pressure  
19 on its pipelines. And in answer to that, it sent the NTSB  
20 something called a Risk Management Instruction that described  
21 how it maintained its maximum operating pressure. In that  
22 document, it had this plus 10 percent practice.

23 But when -- when concern was raised over this practice,  
24 PG&E sends a letter to the NTSB saying: Oh, wait a minute. We  
25 sent you the wrong version. That 10 percent practice, we have

1 no evidence that that is or ever was a policy in effect.

2 Now, ladies and gentlemen, I don't know -- the Government  
3 doesn't know about the correct cover page to that policy, but  
4 what we do know and what we are going to show you is that the  
5 10 percent practice was PG&E's -- the 10 percent practice was  
6 PG&E's practice for years. And when the NTSB was asking about  
7 it, it said: We do not know nor we have -- this was not nor  
8 has ever been our policy, in effect.

9 Ladies and gentlemen, motive is not an element of any  
10 crime the Government must prove to you. However, we expect  
11 that the evidence is going to show you that as PG&E was cutting  
12 its spending in areas that ensured the safe operations of its  
13 pipelines, at the very same time it was taking actions to  
14 maximize its profits for the corporation.

15 You're going to see this, in emails from different  
16 employees at PG&E. You are going to see emails that say such  
17 things as all who were involved at the time were very aware  
18 that these decisions were being made for financial, not  
19 technical reasons.

20 Ladies and gentlemen of the jury, you are going to see  
21 PG&E knew exactly what it had to do. It just didn't want to do  
22 it. And instead, it chose a cheaper method that did not ensure  
23 the safety of pipelines running through high consequence areas.

24 Thank you.

25 **THE COURT:** Thank you, Counsel.

