



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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Order Instituting Rulemaking on the
Commission's Own Motion to Adopt
New Safety and Reliability Regulations
for Natural Gas Transmission and
Distribution Pipelines and Related
Ratemaking Mechanisms.

Rulemaking 11-02-019
(Filed February 24, 2011)

**CITY OF SAN BRUNO'S RECOMMENDATION ON THE STIPULATION RE
ORDER TO SHOW CAUSE BETWEEN PACIFIC GAS AND ELECTRIC
COMPANY AND THE CONSUMER PROTECTION AND SAFETY DIVISION**

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April 8, 2011

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OF THE STATE OF CALIFORNIA**

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I. INTRODUCTION

Pursuant to the Commissioner Florio's "Ruling Setting Oral Argument Before the Commission" dated March 30, 2011, designated party the City of San Bruno (the "City") hereby files this recommendation on the Proposed Stipulation Re Order to Show Cause" ("Stipulation") between Pacific Gas and Electric Company ("PG&E") and Consumer Protection and Safety Division ("CPSD") filed on March 24, 2011.

The City does not take a position on whether the California Public Utilities Commission (the "Commission") should approve the Stipulation. If approved, however, the City respectfully asks the Commission to change one of the provisions of the Stipulation, namely Paragraph 3(a): "\$3 million will be paid to the State General Fund within ten (10) days of the Commission's approval of this stipulation without modification." It is the City's position that the fine should be dedicated to and used for

gas pipeline safety and inspection, perhaps by directing PG&E to retain independent third party inspectors/auditors for this purpose. Alternatively, the fine should be paid to a special fund of the Commission in order that it may retain additional independent third party inspectors/auditors. The use of the fine to address public safety is in accordance with the Commission's stated mission, case law, and weighs in favor of public interest.

II. DISCUSSION

A. Background

On March 24, 2011, an "Order to Show Cause Why Pacific Gas and Electric Company Should Not Be Found in Contempt, and Why Penalties Should Not Be Imposed, For Failure to Comply With Commission Order" ("Order to Show Cause") was issued against PG&E. The Order to Show Cause is based on PG&E's March 15, 2011 filing pursuant to Ordering Paragraph 3 of Rulemaking and Commission Resolution L-410, requiring PG&E to comply with NTSB's urgent recommendations, including: (1) an "aggressive and diligent search" for records for pipelines in specified high consequence areas ("HCAs") that do not have a maximum allowable operating pressure ("MAOP") established through prior hydrostatic testing; and (2) calculation of a valid MAOP based on the weakest segment of the pipeline using the "traceable, verifiable and complete records" located.

The Order Show Cause addresses PG&E's failure to comply with the Commission's directives and specifically states that "it appear[s] PG&E presented no evidence that it aggressively and diligently searched as-built drawing and other records to obtain traceable, verifiable, and complete pipeline records upon which to determine a

valid maximum allowable operating pressure for pipeline without records of pressure testing.” See D.11-03-047 at 14, Finding of Fact 4. As a result of meetings and negotiations between the CPSD and PG&E, both parties agreed to a “Compliance Plan,” which was ultimately filed on March 24, 2011. In its Motion to Adopt the Stipulation filed on March 30, 2011, the CPSD urged the Commission to approve the Stipulation based on the argument that the Stipulation is “critical to the safe operation of PG&E’s pipelines.”

B. Discussion

The Stipulation includes provisions relating to the fine(s) levied against PG&E and the distribution of said fines under Paragraph 3(a). This section states in pertinent part:

3. PG&E agrees to pay a penalty of \$6 million, as follows:

- a) \$3 million will be paid to the State General Fund within ten (10) days of the Commission’s approval of this stipulation without modification.
- b) Payment of the remaining \$3 million will be suspended pending PG&E’s completion of the Compliance Plan. Upon any unexcused failure of PG&E to meet a milestone set forth in the Compliance Plan, PG&E will pay such portion of the remaining \$3 million as the Commission may find to be appropriate to the State General Fund within ten (10) days of the Commission decision finding such unexcused failure. If PG&E successfully completes the Compliance Plan, the remaining \$3 million shall be forgiven.

The City acknowledges that California Public Utilities Code Section 2104 provides that “[a]ll fines and penalties recovered by the state in any action, together with the costs thereof, shall be paid into the State Treasury to the credit of the General Fund.”

However, California courts have long held that the Commission’s powers are broad and should be liberally construed. *Pacific Bell Wireless, LLC v. Public Utilities Com’n of State of Cal.* (2006), 140 Cal.App.4th, 718, 736; *Consumers Lobby Against Monopolies v. Public Utilities Com.* (1979) 25 Cal.3d 891. Accordingly, the Legislature enacted Public Utilities Code Section 701, granting the Commission broad authority to “do all things, whether specially designated in [the Public Utilities Act] or addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction” *Id.* at 736, citing *Consumers Lobby, supra*, 25 Cal.3d at 905-906, emphasis added. However, any additional powers that the Commission exercises “must be cognate and germane to the regulation of public utilities . . .” *Consumers Lobby, supra*, 15 Cal.3d at 905-906.

Here, the Commission’s stated mission is to serve “the public interest by protecting consumers and ensuring the provision of *safe*, reliable utility service and infrastructure at reasonable rates, with a commitment to environmental enhancement and a healthy California economy”¹ (emphasis added). The requirement that the fine be designated to public safety either in the form of PG&E independent third party inspectors/auditors or additional Commission inspectors/auditors specifically and directly addresses the Commission’s mission. Accordingly, the use of the fine to address pipeline safety is “cognate and germane” to the regulation of utilities. Clearly, the numerous and extensive gas pipeline safety concerns and proposed rules addressed in the Commission’s Order Instituting Rule Making in this matter at hand further evidences the need for more inspections, which necessitates additional financial resources. Case law also supports

¹ See <http://www.cpuc.ca.gov/PUC/aboutus/pucmission.htm>

this position as the Commission has the authority to “do all things” which are necessary to exercise its power.

The City of San Bruno undoubtedly has an urgent interest in the public safety of its residents and has the duty to protect that interest. The City also needs to restore the basic sense of safety and security for its residents as portions of Line 132 remain in use. Specifically, the City looks to the Commission as the authority for regulation of utilities in our State to issue improved and more rigorous regulations relating to pipeline safety. Accordingly, the City respectfully asks the Commission to direct that any fine resulting from this Order to Show Cause be distributed to the Commission so that it may retain additional inspectors, mandate that PG&E retain an independent inspectors/auditors, and/or authorize any action in its discretion that addresses pipeline safety. This reallocation of money will serve the public interest and is in accordance with the Commission’s mission to provide the safe operation of public utilities.

Respectfully submitted,

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April 8, 2011

CERTIFICATE OF SERVICE BY ELECTRONIC MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of Alameda; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is 555 12th Street, #1500, Oakland, California, 94607

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

On April 8 , 2011 I served a true copy of :

**CITY OF SAN BRUNO'S RECOMMENDATION ON THE STIPULATION RE
ORDER TO SHOW CAUSE BETWEEN PACIFIC GAS AND ELECTRIC
COMPANY AND THE CONSUMER PROTECTION AND SAFETY DIVISION**

BY E-MAIL OR ELECTRONIC TRANSMISSION: serving the enclosed via e-mail transmission to each of the parties listed on the official service list (attached) for **R.11-02-019** and **I.11-02-016** with an email address.

BY MAIL: by placing the enclosed the document for collection and mailing, in the course of ordinary business practice, with other correspondence, enclosed in a sealed envelope, with postage fully prepaid, addressed to those parties listed on the official service list (see attached) for **R.11-02-019** and **I.11-02-016** without an email address.

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

Executed in Oakland, California on April 8, 2011.

/s/ Kathy Thomas
Kathy Thomas

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