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**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<br>(Filed February 24, 2011) |

# REPLY OF THE CITY OF SAN CARLOS TO PACIFIC GAS AND ELECTRIC COMPANY'S RESPONSE TO MOTION OF THE CITY OF SAN CARLOS FOR AN ORDER DIRECTING PG&E TO MAINTAIN REDUCED PRESSURE ON NATURAL GAS PIPELINE 147 AND TO COMPENSATE THE CITY OF SAN CARLOS FOR ALL ITS COSTS ASSOCIATED WITH PARTICIPATION IN R.11-02-019

STEVEN R. MEYERS
BRITT K. STROTTMAN
Meyers, Nave, Riback, Silver, & Wilson
555 12th Street, Suite 1500
Oakland, CA 94607
Phone: (510) 808-2000
Fax: (510) 444-1108
E-mail: smeyers@meyersnave.com

GREGORY J. RUBENS
Aaronson, Dickerson, Cohn & Lanzone
939 Laurel Street
San Carlos, CA 94070
Phone: (650) 593-3117
Fax: (650) 637-1401
Email: grubens@adcl.com

Attorney for the CITY OF SAN CARLOS

November 7, 2013

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

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Pursuant to Rule 11.1(f) of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure ("Commission Rules"), the City of San Carlos ("San Carlos") submits its reply to Pacific Gas and Electric Company's ("PG&E") response to City of San Carlos' motion for an order directing PG&E to maintain reduced pressure on natural gas pipeline 147 and to compensate the City of San Carlos of all its costs associated with participation in the Order to Show Cause in R.11-02-019. Specifically, San Carlos requests that the Commission, pursuant to its equitable powers[1] to reimburse San Carlos for all costs the City incurs in connection with this matter. In a telephone conversation on November 4, 2013, Administrative Law Judge Bushey authorized the City of San Carlos to submit its reply.

[1] *See, e.g.* Cal. Pub. Util. Code § 701 and *Consumers Lobby Against Monopolies v. CPUC*, 25 Cal. 3d 891, 905-907 (1979).

## I. SAN CARLOS' REQUEST FOR COMPENSATION FOR ITS COSTS

In its response to San Carlos' request for compensation for its costs in participating in these proceedings, PG&E emphatically states, "[T]here is no legal or factual basis for the Commission to order PG&E to pay San Carlos' attorneys' fees and other costs of participating in these proceedings."[2] In support of this conclusion, PG&E cites the language of Section 1801 et seq. of the Public Utilities Code,[3] which the Legislature adopted in response to the Supreme Court decision in *Consumers Lobby Against Monopolies v. CPUC*, 25 Cal.3d 891 (1979), which statutorily disclaims any state, federal, or local agency entitlement to Intervenor Compensation. In its motion, San Carlos expressly acknowledged the clear language of the Intervenor Compensation Rules, but sought to point out the inherent inequity of the CPUC recovering its "costs" accrued by the Commission staff, staff attorneys, and its consultants for all expenses in the Order to Show Cause ("OSC") in R.11.02.019[4] and yet the victim of PG&E's misrepresentations is not entitled to the same consideration. We do not seek "Intervenor Compensation," but equitable recovery and compensation under Public Utilities Code Section 701.

Here is where PG&E's logic goes astray. There can be no question that San Carlos is an "Interested Party" to these proceedings. Even PG&E acknowledges this fact: "PG&E welcomes the participation of the City of San Carlos in these proceedings, and looks forward to the City's constructive contribution toward the shared goal of assuring its citizens that Line 147 is safe and fit for service."[5] What distinguishes this particular proceeding however from the quasi-

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[2] PG&E Response to Motion to the City of San Carlos, page 1.

[3] So-called "Intervenor Compensation Rules."

[4] Motion for PG&E to Reimburse Expenses Incurred Through the Commission's Order to Show Cause at 1 (October 1, 2013).

[5] PG&E Response to Motion to the City of San Carlos, page 1

*legislative* ratemaking intervention that the Intervenor Compensation Rules were crafted to address and which further distinguishes *Assembly v. Public Utilities Commission* 12 Cal.4th 87 (1995) is that, through its genesis lies in the Pipeline Safety Enhancement Plan ("PSEP") ratemaking case, this OSC proceeding is indeed quasi-judicial. The integrity and efficacy of the Commission proceedings have been contemptuously and callously injured by PG&E's wrongful conduct. This OSC proceeding is in its nature civil contempt and the Commission's actions are in order to protect the judicial process and punish conduct that harms the credibility of the institution. As such, there is broad authority to impose sanctions. In the Proposed Decision, Administrative Law Judge Bushey stated:

> "Therefore, we find that the document presented by PG&E for filing with the Commission on July 3, 2013, did not clearly convey the nature of the facts set forth within, and created a false impression of insignificance. Such a false impression could have misled the parties and the Commission."[6]

In the Proposed Alternate Decision, Commissioner Ferron was particularly harsh in stating:

> "It is not credible that PG&E engineers and executives did not recognize the provocative nature of these facts in light of the intense public interest in natural gas pipeline safety."[7]

We recognize that these proposed decisions are just that and have not been adopted by the Commission, however, we cite to them solely to point out that this is not "rate-making,", nor rate reparations, but essentially civil contempt of court proceedings where the already broad and extensive equitable powers of the Commission may be employed to protect the integrity of the legal process and where findings of fact and conclusions of law will be adopted in support of appropriate punishment. That word "punishment" itself is key to this matter because a rule or a

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[6] Administrative Law Judge Bushey Proposed Decision at p. 11 (October 30, 2013).
[7] Commissioner Ferron Alternative Proposed Decision at p. 9 (November 4, 2013).

rate derive from legislative matters, whereas punishment derives from judicial actions.

San Carlos would prefer to expend its scarce resources on serving its residents.[8] If the Commission can impose a $6,750,000 million dollar fine (as Administrative Law Judge Bushey proposes) or a $17,250,000 million dollar fine (as Commissioner Ferron proposes), it has the inherent equitable authority to grant the motion of the City of San Carlos. Given that PG&E has brought this debacle upon themselves, it should in good conscience not oppose San Carlos' motion. Further opprobrium from the residents of San Carlos is not conducive to its corporate rehabilitation.

## II. SAN CARLOS' REQUEST THAT THE COMMISSION ORDER PG&E TO MAINTAIN LINE 147 AT A REDUCED DISTRIBUTION LINE PRESSURE OF 125 PSIG

In its motion dated October 11, 2013, San Carlos requested that the Commission order PG&E to maintain a lower, distribution level pressure of 125 PSIG on Line 147 until Commission staff and Intervenors in R.11-02-019 can independently assess whether Line 147 is indeed safe.

San Carlos is aware that Administrative Law Judge Bushey ordered PG&E to operate Line 147 at a pressure not to exceed 125 pounds per square inch gauge (PSIG) at the prehearing conference on October 21, 2013. Although served on October 22, 2013, San Carlos' motion to reduce operating pressure on Line 147 is dated October 11, 2013, pre-dating Administrative Law Judge Bushey's decision by ten days.

San Carlos looks forward to an exhaustive and comprehensive review of Line 147 to determine whether it is safe and if so, at what operating pressure.

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[8] See list of City of San Carlos' reductions of staff and services at: www.cityofsancarlos.org/depts/administrative/finance/budget/default.asp, Adopted Budget Update FY 2013-2014, page 9, PDF page 13, see Exhibit A.

## III. CONCLUSION

San Carlos' participation in the bifurcated Line 147 proceedings is not optional for the City. As a result, the costs associated with City staff time, City attorneys and special counsel, and necessary consultants and experts will not be incurred by San Carlos voluntarily, but out of necessity in order to participate fully in the Order to Show Cause proceedings of R.11-02-019. But for PG&E's inaccurate records and utilization of faulty materials in Line 147 and wrongful conduct, San Carlos would not be compelled to participate in R.11-02-019, and therefore suffer harm in the form of additional, otherwise unnecessary expense. For the reasons set forth herein, San Carlos respectfully requests that the Commission direct PG&E to compensate the City for all costs incurred in associated with its participation in R.11-02-019.

Respectfully submitted,

/s/ Steven R. Meyers

Steven R. Meyers

STEVEN R. MEYERS
BRITT K. STROTTMAN
Meyers, Nave, Riback, Silver, & Wilson
555 12th Street, Suite 1500
Oakland, CA 94607
Phone: (510) 808-2000
Fax: (510) 444-1108
E-mail: smeyers@meyersnave.com

GREGORY J. RUBENS
Aaronson, Dickerson, Cohn & Lanzone
939 Laurel Street
San Carlos, CA 94070
Phone: (650) 593-3117
Fax: (650) 637-1401
Email: grubens@adcl.com

Attorney for the CITY OF SAN CARLOS

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# EXHIBIT A

2008 ballot. The measure failed forcing the City to face a $3 million dollar deficit in FY 2009-2010.

To that end, the City has taken the following steps over the last three years:

- Laid off 7.8 full-time positions (including 2 Fire employees);
- Reduced professional services contracts and reorganized City functions;
- Eliminated the Healthy Cities Tutoring Program and Special Needs Programs that were run by the Parks and Recreation Department;
- Outsourced the City's payroll services to a private firm;
- Outsourced the City's parks maintenance services to private firms;
- Outsourced some of the City's building maintenance functions;
- Outsourced the City's police protection services to the County of San Mateo Sheriff's Office;
- Contracted with the San Mateo County Communication for dispatch and 911 services;
- Contracted with the City of Redwood City for fire services;
- Contracted with the County of San Mateo for code enforcement services; and
- Contracted to provide recreation services for the City of Half Moon Bay.

**Public Safety Restructuring & Funding**

In FY 2009-2010 rapidly rising annual costs to provide emergency and fire services in San Carlos led to discussions with the Belmont-San Carlos Fire Department (BSCFD) Board about potential amendments to the JPA funding formula and service levels to reduce costs. Representatives of the JPA Fire Board were unable to reach agreement on possible cost reduction strategies. As a result, the City Council began the process to dissolve the BSCFD JPA.

After a year of reviewing different proposals and options for fire services, in April 2011 Council directed staff to begin negotiations with the City of Redwood City to develop a hybrid fire department. The hybrid fire department was formed in October 2011 and once fully implemented was estimated to save the City approximately $1 million annually. Under the terms of the agreement, Redwood City will provide fire management oversight; including the Fire Chief, Deputy Fire Chief and Battalion Chiefs, and San Carlos will hire the firefighters, paramedics, inspector and an emergency preparedness coordinator. In addition to the cost savings associated with sharing the management with Redwood City, Council adopted a salary and benefit package for firefighters similar to that offered to other San Carlos employees and found in other local communities.

In the first year of this transition, the City Council received a report from the Fire Chief regarding the staffing situation in San Carlos. The Chief stated at that time that staffing was at a tipping point due to the number of vacancies and lack of trained personnel in the department. From the period of October 1, 2011 to July 9, 2012, the department had 4 resignations, 3 of whom were tenured employees from the former Belmont-San Carlos Fire JPA. The Chief stated that the major factor driving the turnover and the lack of lateral applicants was directly related to the compensation package and salary level.

As a result of the staffing issues and concerns, at the July 9, 2012 Council meeting, Council gave the authority to the City Manager to begin discussions with Redwood City on what a full service option would look like. In February of 2012, the City Council directed the City Manager to begin