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PUBLIC UTILITIES COMMISSION
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April 30, 2015

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RE: California Public Utilities Commission Decision 15-04-024 (issued April 9, 2015) Imposing $1.6 Billion in Fines and Remedies on Pacific Gas and Electric Company

The purpose of this letter is to inform you of the California Public Utilities Commission's (Commission's) punitive intentions when it imposed a total of $1.6 billion in fines and remedies on Pacific Gas and Electric Company's (PG&E's) shareholders for violations related to PG&E's gas transmission pipeline and related operations. We also want to express our hope that any attempt by PG&E to deduct any of these costs will be disallowed on the basis of their punitive nature.
The Commission's final decision, Decision 15-04-024 (issued April 9, 2015) was issued in three adjudicatory proceedings.[1] This penalty is the largest ever imposed by this Commission, and one of the largest imposed on a utility in the United States. The penalty is, in its entirety, intended to be punitive, and it is based on our findings that PG&E committed 2,425 violations occurring over many years, resulting in a total of 18,447,803 days in violation. No part of the penalty is intended to be compensatory in nature. Among the Commission's findings was that PG&E had not made the proper investments in gas transmission infrastructure, even though it had been charging customers rates to

[1] The three adjudicatory proceedings are: Investigation 12-01-007, Investigation 11-02-016, and Investigation 11-11-009.

recover the costs of investment and safety improvements. As a result of PG&E's long-standing and compounding violations of laws, a high-pressure natural gas pipeline ruptured on September 9, 2010 in a residential neighborhood in San Bruno, California and caused the loss of eight lives, 58 casualties, the destruction of 38 homes, and damage to 70 other homes.

The Commission has broad authority under the California Constitution and Public Utilities Code to do "all things ... necessary and convenient" to regulate the rates and safe operation of public utilities.[2] Given the severity, longevity, and extensiveness of PG&E's offenses, as well as PG&E's subsequent actions that were themselves separate violations and that served to reinforce the underlying violations, the Commission deemed it necessary to impose a severe penalty.

Under the Public Utilities Code section 2107, the Commission is empowered to impose a fine of $500 to $50,000 for each violation.[3] Under Public Utilities Code section 2108, each day the violation continues is a separate and distinct offense and thus liable for a separate fine. Fines imposed under Public Utilities Code sections 2107 and 2108 are to be paid to the State of California's General Fund. If the Commission were to impose the statutory fines for each violation, the range of potential fines that could be imposed is from $9.2 billion to $254.3 billion.[4] Such a large fine would have exceeded PG&E's ability to pay or finance the penalty.

It is critical to understand the underlying rationale for the penalty the Commission ultimately adopted and by extension the context of PG&E's violations. The Administrative Law Judges (ALJs) presiding over these investigations had initially proposed a $950 million fine that would be deposited into the General Fund, plus other remedies for a total penalty of $1.4 billion. PG&E's customers had for decades been paying rates with the costs of gas infrastructure and safety improvements built into those rates. Unfortunately, during all those years, PG&E was not properly directing the monies collected through customer rates into safety investments. As a penalty, therefore, such a large fine to the General Fund as the ALJs recommended would not rectify PG&E's past failure to invest in gas safety.

Every dollar the Commission ordered that shareholders pay in this final decision was intended to penalize PG&E for its egregious actions and legal violations, even when the Commission's order committed a majority of the penalty to financing equitable remedies and safety improvements. The Commission, calling upon its broad constitutional and statutory authority to impose equitable remedies on utilities in lieu of statutory fines, chose to divert a large portion of the proposed General Fund fine to investment in pipeline safety. The Commission's redirection of penalty monies thus lowered the General Fund fine, not because the Commission wanted to reduce the punitive impact of the final penalty and remedy. Quite the contrary, the Commission intended to increase the punitive impact on PG&E by increasing the total penalty amount – from the ALJs' recommended $1.4 billion to the Commission's final decision at $1.6 billion. The nature of the Commission's order is therefore most emphatically not compensatory, even though the de facto result of the final decision would bring

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[2] Pub. Util. Code § 701.
[3] Prior to 2012, the range of fines for each violation was $500 to $20,000.
[4] Decision 15-04-024, *mimeo*, at 79.

PG&E's system up to the standard that its customers should have been enjoying but for PG&E's illegal actions.[5]

The matter of the tax consequences of such an important equitable remedy was not litigated in our proceedings. One consideration that prevented the CPUC from litigating this matter was the uncertainly as to how the IRS/BOE/FTB would dispose of an attempt to deduct the costs of complying with an order of equitable remedies.

It is critical that you understand the Commission's intention with this order – to penalize PG&E for its long-standing and egregious violations of law. We fully intended and hope that any attempt by PG&E to deduct any of the costs of complying with the Commission's final decision be clearly and decidedly disallowed on the basis of their punitive nature. We would be most interested in assisting you in identifying these costs – particularly if PG&E defers attempts to deduct the costs until a later date, or else spreads the attempts to deduct expenditures over a long period of time. If helpful, we could order PG&E to segregate and highlight in their tax filings to you those expenditures intended to be punitive.

Sincerely,

MICHAEL PICKER
PRESIDENT

Catherine J.K. Sandoval

CATHERINE J.K. SANDOVAL
COMMISSIONER

Carla Peterman

CARLA PETERMAN
COMMISSIONER

LIANE RANDOLPH
COMMISSIONER

[5] PG&E's expenditures to comply with Decision 15-04-024 will not necessarily be limited to utility plant, equipment, or operations and maintenance costs, but may include costs to acquire or lease real property or franchises, such as utility rights-of-way, operations yards, or offices.