Decision **DRAFT DECISION OF ALJ PRESTIDGE** **(Mailed 7/8/2005)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Pipeline System LLC for Authorization to Increase Rates by Instituting a $0.10 per Barrel Temporary Surcharge on All Through Shipments of Crude Oil on its Line 63 System that have Receipt Points in the San Joaquin Valley and Delivery Points in the Los Angeles Basin in Order to Recover the Costs of Repairs and Other Expenses Resulting from Catastrophic Events Associated with the Extraordinarily Wet Winter of 2004/2005 and Request to Put Such Surcharge into Effect on an Expedited Basis.	Application 05-05-002 (Filed May 4, 2005)

DECISION GRANTING INTERIM APPROVAL OF TEMPORARY SURCHARGE

Summary

This decision grants the application of Pacific Pipeline System LLC (PPS) for authorization to impose a temporary surcharge of $0.10 per barrel on all shipments of crude oil that are received by PPS in the San Joaquin Valley and shipped through on its Line 63 trunk line to destinations in the Los Angeles Basin, in order to recover the costs of repairs to its Line 63 system and the clean-up and restoration of Posey Canyon Creek and Lake Pyramid that resulted from storms and landslides during the Winter of 2004-05. Although PPS may impose this surcharge immediately, we approve this surcharge on an interim basis only.

Under Public Utilities Code Section 455.3,[1] since we previously granted PPS a rate increase of 9.5% effective November 1, 2004,[2] PPS must obtain subsequent Commission approval of any surcharge that exceeds 1/2% of its existing rates by filing an advice letter with the Commission Energy Division, within 180 days of the effective date of this decision, and must reimburse shippers, with interest, for any part of the surcharge that is disallowed.

PPS may impose a surcharge that increases rates by no more than 1/2% pursuant to § 455.3 without the need to obtain additional Commission approval or to potentially reimburse shippers with interest for this portion of the surcharge.

Depending on the particular rates, the 10 cents per barrel surcharge will temporarily increase rates by 7 to 15%.

PPS may record its revenues and expenses related to this work in a Catastrophic Events Management Account (CEMA). However, PPS's may recover its costs that exceed ½% of its current rates only upon the approval of an advice letter by the Commission Energy Division, which shows that PPS' expenditures for pipeline repairs and related work were necessary and prudent, PPS must file this advice letter within 180 days of the effective date of this decision and that this rate increase is necessary and appropriate.

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[1] All subsequent Code references are to the Public Utilities Code.

[2] Decision (D.) 04-12-040.

Background

A. PPS and its Pipeline Systems

PPS owns and operates two separate common carrier crude oil pipeline systems. Each system has a separate set of tariffs on file with the Commission.

One system, Line 2000 or the Pacific System, consists of a 130 mile, 20-inch insulated pipeline that extends from Kern County to the Wilmington and El Segundo areas.

PPS' second system is the Line 63 system. The Line 63 system includes 118 miles of 16-inch and 14-inch trunk line from Kern County to the City of Carson, and has an average pumping capacity of approximately 105,000 barrels per day. The Line 63 system also includes gathering and distribution lines. The gathered oil is transported north to refineries in the Bakersfield area and south into the Los Angeles basin.

B. Damage to Pipeline 63 at Milepost 33.7 and the Environment Caused by the March 23, 2005 Landslide and Oil Release

According to the application, Winter 2004-05 was the second wettest winter in Southern California's history. The application states that as of May 2005, Los Angeles had already received more than 37 inches of rain, as compared with its seasonal norm of 15.14 inches. Sandberg, California, which is located near Pyramid Lake in the southern portion of the Tehachapi Mountains, received 24.79 inches of rain from December 2004 through February 2005, which is over three times its normal average rainfall for this three-month period. Increased rainfall in Southern California created super-saturated soils, which resulted in an unusually large number of landslides throughout Southern California in 2004-05.

On March 23, 2005, a landslide, which resulted from heavy rainfall in Southern California, damaged Line 63 at Milepost 33.7 on United States Forest Service (USFS) land. The landslide completely severed approximately 400 feet of Line 63, causing the discharge of approximately 3,400 barrels (142,800 gallons) of light crude oil. Much of the discharged oil flowed approximately 1.3 miles down Posey Canyon Creek and into a cove in Pyramid Lake. PPS immediately shut down the pipeline and began containment and clean-up activities, in cooperation with the Environmental Protection Agency (EPA), USFS, and local governmental agencies.

In order to mitigate the impact of this disaster on customers, PPS provided its shippers with an alternative means to transport light crude oil from the San Joaquin Valley to Los Angeles refineries on a temporary, emergency basis. This alternative consisted of transferring light crude oil from Line 63 to Line 2000 through an interconnection between the two lines at PPS's Grapevine Station. PPS made these shipments for customers on a space-available basis and charged the same rates as if the light crude oil had been shipped on Line 63.

On April 14, 2005, PPS received authorization to temporarily repair Line 63 so that the pipeline could be put back into service. Line 63 was returned to service on April 25, 2005. PPS is still evaluating plans for permanent repairs of Line 63 with USFS and other agencies.

PPS states that as of early June 2005, all of the surface oil has been removed from Posey Canyon Creek and Pyramid Lake. Additional environmental clean-up work that remains to be done includes removal of subsurface oil from approximately 1/2 mile of Posey Canyon Creek, a

large culvert under Interstate Highway 5, and from the bottom of Posey Cove in Pyramid Lake. PPS will undertake restoration of the environment and monitoring measures after EPA has approved the proposed work.

As of June 1, 2005, PPS had incurred approximately $10 million in expenses related to this work and anticipated that the remaining work and other expenses related to the oil spill will cost approximately an additional $3.5 million.[3]

C. Other Damage to Line 63 Resulting from Landslides and Unusually Wet Weather in Winter 2004-05

According to the application, the extremely wet weather in Winter 2004-05 caused additional landslides in Southern California that damaged other sections of Line 63, as follows:

- Mileposts 10.8 and 11.8 (Grapevine Creek) – In late February, 2005, storms caused severe erosion of the walls of Grapevine Creek, which undermined Line 63 between mileposts 10.8 and 11.8 and left the pipeline completely unsupported in three locations. PPS imported rock and fill and placed it under the pipe to stabilize the pipeline. PPS also used additional rock and fill to restore the creek to its previous alignment and placed rocks on the banks of the creek to prevent the creek from leaving its alignment in the future.

[3] PPS Supplement to Application, at pp. 1-2.

This work is now completed. The cost of these repairs was approximately $0.2 million.

- Mileposts 35.6 and 36.9 –Additional landslides in Winter 2004-05 threatened the stability of Line 63 at mileposts 35.6 and 36.9. Each site required construction of a temporary above-ground bypass and further geologic investigation. After the completion of the geologic studies, PPS will design and construct a permanent relocation of the pipeline at each location. The cost of these repairs is estimated to be $1.1 million.
- Milepost 40.5 - A landslide also threatened the stability of Line 63 at milepost 40.5. PPS needs to stabilize the area of the landslide and then replace a section of Line 63. The cost of this repair is estimated at $0.2 million.
- Other Anticipated Repairs – PPS has continued to perform additional geological studies on areas affected by landslides and potential landslides near Line 63 to identify additional areas that need corrective work to reduce the risk of damage to Line 63 in the future. As of June 1, 2005, these studies were not yet complete. However, in the application, PPS estimates the cost of additional geologic studies, pipeline testing, slope

stabilization and other storm related damage to be approximately $0.5 million.

D. Costs and Timetable for Project

PPS estimates that the total costs for the repair, restoration, clean-up and related work resulting from the storms and landslides in Winter 2004-05 will exceed $15 million.[4] PPS expects to recover approximately 9 million from its insurance company. However, PPS would remain responsible for approximately $5 million, which consists of a $2 million insurance deductible and approximately $3 million to repair and replace pipelines that are not covered by insurance.

PPS expects to complete all work by November 30, 2005, except for the monitoring of Pyramid Lake and the Posey Canyon Creek. The monitoring will take at least one and possibly several years, depending on the requirements of regulatory agencies.[5]

E. PPS' Request for Temporary Surcharge and Tracking and Payment of Costs through CEMA Mechanism

PPS has applied for authorization to impose a temporary surcharge of 10 cents per barrel on all Line 63 trunk line through shipments that are received by PPS in the San Joaquin Valley and terminate in the Los Angeles basin pursuant to § 455.3 in order to recover its costs that are not covered by insurance. PPS reasons that it is fair and equitable to require shippers which use this part of the system to bear the cost of the repairs and not to impose these costs on other shippers which

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[4] *See* Application at p. 5.

[5] PPS Supplement to Application at p. 6.

use more limited parts of the system. The proposed surcharge therefore would not apply to shipments made to destinations in the San Joaquin Valley or entirely within the Los Angeles Basin.

PPS proposes to establish a CEMA to track all of the costs associated with damage to the Line 63 system, the clean-up of Pyramid Lake and Posey Canyon Creek, and related expenses and payments received from insurance, oil spill trust funds, and revenues received from shippers as a result of the surcharge.

PPS further proposes to file quarterly reports with the Commission Energy Division (Energy Division) that show the expenses booked to the Line 63 CEMA, as well as the revenues received. PPS would notify the Energy Division when it believes that it has received sufficient revenues to completely offset the cost of this work and will discontinue the surcharge at that time.

PPS is requesting Commission authorization to impose the surcharge on an expedited basis, pursuant to § 455.3, in order to begin recovering its costs as soon as possible.

Discussion

A. PPS' Request for Interim Surcharge

Under § 455.3 and General Order (G.O.) 96-A, oil pipeline corporations may, after giving 30 days' notice to shippers and the Commission, change or increase their rates before obtaining Commission approval. The Commission may, however, suspend a rate change for up to 30 days after the date of the pipeline corporation's notice to shippers and the Commission. If the Commission suspends the rate change, oil pipeline corporations may put the new rates into effect after the

suspension period has expired, pending Commission review of the rate change. If the Commission subsequently disallows all or part of the rate change, the oil pipeline corporation must refund, with interest, any disallowed charges to affected shippers within 30 days of the date on

which the Commission's decision becomes final.[6] [7]

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[6] Section 455.3 states:

a.) Notwithstanding any other provision of law, including, but not limited to § 454, no later than January 1, 1998, the commission shall adopt rules and regulations that substantially revise the the manner in which oil pipeline corporations may change and use rates.

b.) The revised rules and regulations shall adhere to the following criteria:

(1) Pipeline corporations shall be required to give the commission and all shippers no less than 30 days' notice of rate changes.

(2) After the 30-day notice of rate change, pipeline corporations shall be permitted to change rates and use those rates prior to commission approval.

(3) The commission shall have authority to suspend a rate change and use of the changed rate for a period of time not to exceed 30 days from expiration of the 30-day notice period specified in paragraph (1).

(4) Pipeline corporations shall refund, with interest, any portion of the rate change that is subsequently disallowed by the commission to all shippers within 30 days of the commission's decision becoming final. Interest shall accrue from the date the new rate is first charged.

(5) Any increase in the shipping rate charged by an oil pipeline corporation prior to commission approval shall not exceed 10% per 12-month period.

c.) It is the intent of the Legislature that oil pipeline corporations be permitted to use new rates after the suspension of a rate change, if any, by the commission pursuant to paragraph (3) of subdivision (b) prior to commission approval, provided any disallowed portion of the new rate is fully refunded with interest. (Emphasis added.)

[7] In D.97-12-069, the Commission approved amendments to G.O. 96-A, Section VI, to reflect the enactment of § 455.3. The language of G.O. 96-A, Section VI, as amended, closely parallels that of § 455.3.

However, under § 455.3 and G.O. 96-A, Section VI, a pipeline corporation may not impose rate increases which, individually or cumulatively, exceed 10% within a 12-month period without first obtaining Commission approval.

Here, PPS gave the required 30-day notice of the proposed surcharge to shippers and the Commission. However, in D.04-12-040, the Commission granted PPS a 9.5% increase in its rates and charges for all crude oil transportation services on its Line 63 system based on PPS' increased costs, effective November 1, 2004. Therefore, PPS may not impose a surcharge which increases rates by more than 1/2%, without first obtaining Commission approval, until November 2005.[8] [9]

We will approve surcharge requested by PPS on an interim basis pursuant to § 455.3, in order to make resources available to PPS to complete the necessary work to repair and stabilize Line 63 and to clean up and restore Pyramid Lake and Posey Canyon Creek. No shipper has protested the temporary surcharge, and completion of this work will serve the interests of the public. PPS may put this surcharge into effect immediately. However, under § 455.3, PPS must file an advice letter to seek Commission approval of any portion of the surcharge that exceeds 1/2% of its current rates and if any portion of the surcharge is disapproved, PPS must reimburse shippers with interest for the disallowed charges. In order to facilitate prompt adjudication of the

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[8] The rate increase approved in D.04-12-040 reflected increases in PPS' expenses for rights of way and line leases, as well as increased costs for electricity.

[9] The Commission had previously approved a 5% increase in rates and charges for all crude oil transportation services on PPS' Line 63 system, effective October 1, 2000, in D.01-01-006.

requested rate increase, PPS shall file this advice letter with the Commission Energy Division by no later than 180 days after the effective date of this decision.

In applying for ongoing Commission approval of the surcharge, PPS must submit an adequate record to enable the Commission to determine whether this rate increase is necessary and appropriate. This information should include, but is not limited to:

- The extent to which PPS' current rates include a provision for these losses;
- The extent to which PPS' costs are covered by insurance;
- The exact costs incurred for each portion of the project;
- The reasonableness of PPS' costs for the repair, clean-up, and related work;
- Whether PPS has obtained any required environmental review or other governmental permits or authorizations necessary to perform the work;
- Whether all of PPS' costs for the repair of Line 63 and the clean-up of Pyramid Lake and Posey Canyon Creek resulted from the unusually wet winter and landslides in Winter 2004-05 or whether certain costs reflect the need for ongoing maintenance, repair, and replacement of sections of the pipeline;
- Whether PPS could reasonably have anticipated the weather of Winter 2004-05 and prevented or mitigated some of the damage;
- The length of time that Line 63 (or each affected portion of Line 63) has been in service, when Line 63 was installed, and the manner in which the location and method of installation for Line 63 were selected;

- Whether an increase in rates to cover these costs would be in the interest of shippers and the public.[10]

PPS may impose a surcharge that does not exceed 1/2% of its current rates without seeking further Commission approval, for the repairs and other work that are not yet completed. We will not suspend this rate increase as allowed by the statute.

PPS has stated that it will notify the Commission when it has received sufficient revenues to offset the costs of the repairs and the clean-up and restoration of Pyramid Lake and Posey Canyon and will refund any overcharges to shippers.

We caution PPS that our approval of the surcharge on an interim basis does not obligate the Commission to grant a surcharge that exceeds 1/2% of PPS' current rates and would remain in effect until PPS has recovered its costs for the repair of Line 63, clean-up and restoration of Pyramid Lake and Posey Canyon Creek, and related expenses. Moreover, in determining whether to allow PPS to impose the surcharge to recover its costs for work already performed, the Commission must guard against retroactive ratemaking.[11] Upon review of PPS' advice letter, we could disallow charges for certain work performed in the past on this basis.

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[10] In applying for a rate increase, the burden is on the utility to show by clear and convincing evidence that the rate increase is justified. The utility must present sufficient data to demonstrate to the Commission that the rate increase is warranted.

[11] *See* generally Southern California Edison Company v. Public Utilities Commission, 20 Cal. 3d 8l6, 817-18 (l978), Pub. Util. Code § 728.

B. Request to Utilize CEMA to Track and Pay Repair, Clean-up and Related Costs

In Resolution E-3238 (adopted in 1991), the Commission authorized the utilities to establish CEMAs, in order to record their costs related to (a) restoring utility service to customers; (b) repairing, replacing, or restoring damaged utility facilities; or (c) complying with governmental agency orders resulting from declared disasters. The utility may recover costs recorded in a CEMA through rates only upon a specific request by the utility, a showing of the reasonableness of these costs, and approval by the Commission.[12]

In Resolution E-3238, we limited the utility's use of CEMAs to situations that have been declared disasters by state or federal government officials. Resolution E-3238 states:

> Because the intent of such accounts {CEMAs} is to capture for consideration for later recovery only those costs associated with truly unusual, catastrophic events such as the Loma Prieta earthquake, their use will be restricted to events declared disasters by competent state or federal authorities. Other events not so officially

[12] The utility may request recovery of costs recorded in a CEMA through rates by a specific application for that purpose, in a general rate case or other ratesetting application, or for utilities eligible to request general rate increases by advice letter as specified in G.O. 96-A, Section VI, by filing an advice letter request with an appropriate showing. However, the mere fact that certain costs are recorded in a CEMA does not guarantee that the Commission will permit recovery of these costs in rates. In determining whether to allow recovery of costs recorded in CEMAs for repairs, restoration of service, and responses to governmental orders in declared disasters, the Commission must consider the extent to which the costs are covered by insurance, the level of loss already built into existing rates, and other circumstances relevant to the particular utility and event. (*See* Resolution E-3238 at pp. 2-3.)

> designated are outside the scope and intent of this authority and will not be considered for recovery under this mechanism.[13]

Similarly, we have interpreted subsequently enacted § 454.9, which requires the Commission to permit the utilities to record the type of costs specified in Resolution E-3238 in CEMAs, to apply only to events

[13] Resolution E-3238 at p. 2.

declared to be disasters by state or federal authorities.[14] [15]

Here, PPS has presented evidence which shows that in January 2005, the Governor declared the counties of Riverside, Santa Barbara, Los Angeles, Kern, San Bernardino, Orange and San Diego to be in a state of emergency, as a result of severe rainstorms that commenced in the area on December 28, 2004, causing flash floods, mudslides, the accumulation of debris, washed out and damaged roads and the loss of human life in Southern California. PPS therefore qualifies to utilize a CEMA to track and recover its costs for repairs and other work resulting from the heavy storms and landslides in Southern California in Winter 2004-05.

PPS shall establish a Line 63 CEMA that will track all of the costs, including clean up the Pyramid Lake oil spill, restoration costs associated with damage to the Line 63 system and related expenses. PPS shall include professional fees, reimbursements to USFS, consultant fees, permit

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[14] Section 454.9 states:

(a) The commission shall authorize public utilities to establish catastrophic event memorandum accounts and to record in those accounts the cost of the following:

(1) Restoring utility service to customers.

(2) Repairing, replacing, or restoring damaged utility facilities.

(3) Complying with governmental agency orders in connection with events declared disasters by competent state or federal authorities.

(b) The costs, including capital costs, recorded in the accounts set forth in subdivision (a) shall be recoverable in rates following a request by the affected utility, a commission finding of their reasonableness, and approval by the commission. The commission shall hold expedited hearings in response to utility applications to recover costs associated with catastrophic events.

[15] *See* D.01-02-075

fees, new right of way costs and short-term interest costs associated with any net undercollection in the CEMA. PPS shall also track and include as credits to the Line 63 CEMA all payments from insurance and oil spill trust funds, as well as revenues received from shippers as a result of the 10 cents per barrel surcharge.

PPS may not recover its costs for the work from the CEMA until the Commission Energy Division has approved an advice letter filed by PPS that demonstrates the reasonableness of these expenditures.

PPS shall notify the Commission Energy Division when it has received payments or collected sufficient revenues to completely offset the repairs and related expenses resulting from the storms and landslides in Winter 2004-05.

Conclusion

The application of PPS for authority to impose a 10 cents per barrel surcharge on all shipments of crude oil received by PPS in the San Joaquin Valley and shipped through on its Line 63 trunk line to destinations in the Los Angeles basin is approved on an interim basis pursuant to § 455.3. PPS may impose this surcharge immediately, but must seek subsequent Commission approval for any surcharge imposed that exceeds 1/2% of its current rates, by filing on advice letter with the Commission Energy Division within 180 days of the effective date of this decision. PPS shall be required to reimburse shippers, with interest, for any portion of the surcharge that is subsequently disallowed.

PPS may track and record its expenses for repairs to the Line 63 system, the clean-up of Pyramid Lake and Posey Canyon Creek, and related costs in a CEMA established for this purpose. However, PPS may

not recover their costs from the CEMA until the Commission Energy Division has approved an advice letter which demonstrate the necessity and reasonableness of these costs.

Categorization and Need for Hearings

In Resolution ALJ 176-3153, dated May 26, 2005, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(d) and Rule 77.1 of the Rules of Practice and Procedure. Pursuant to Section 311(g)(2), PPS agreed to reduced comment period of 7 days. Comments were received from PPS on July 15, 2005. We have made revisions throughout the draft decision in response to PPS' comments as appropriate.

Assignment of the Proceeding

The assigned Commissioner in this proceeding is Geoffrey Brown and the assigned ALJ is Myra J. Prestidge.

Findings of Fact

1. According to the application, Winter 2004-05 was the second wettest winter in Southern California's history.

2. According to the application, the storms that occurred in Winter 2004-05 caused extremely heavy rainfall and an unusually large number of landslides in Southern California as a result of super-saturated soils.

3. On March 23, 2005, a landslide seriously damaged PPS' Line 63 at Milepost 33.7 on USFS land in Southern California and completely severed approximately 400 feet of the pipeline, causing the discharge of approximately 3,400 barrels of light crude oil from the pipeline.

4. Much of the oil discharged from Line 63 at Milepost 33.7 as a result of the landslide flowed approximately 1.3 miles down Posey Canyon Creek and into a cove in Pyramid Lake.

5. In late February 2005, storms caused severe erosion of the walls of Grapevine Creek in Southern California, which undermined Line 63 between Mileposts 10.8 and 11.8 and left the pipeline completely unsupported in three places.

6. In Winter 2004-05, additional landslides in Southern California threatened the stability of Line 63 at Mileposts 35.6, 36.9, and 40.5, and necessitated additional repairs to Line 63 at these locations.

7. PPS is continuing to perform additional geological studies in areas affected by landslides and potential landslides near to Line 63 in order to identify areas that will need corrective work to reduce the risk of damage to Line 63 in the future.

8. PPS estimates that the total costs for the repair of Line 63, the restoration and clean-up of Pyramid Lake and Posey Canyon Creek, and related expenses resulting from the storms and landslides in Southern California in Winter 2004-05 will exceed $15 million.

9. PPS expects to recover approximately 9 million from its insurance company based on these losses.

10. PPS has a $2 million deductible on its insurance policy that provides coverage for this type of damage.

11. PPS expects to spend an additional $3 million not covered by insurance for the repair and replacement of certain pipelines.

12. PPS proposes to impose a temporary 10 cents per barrel surcharge on all shipments of crude oil received by PPS in the San Joaquin Valley and shipped through on its Line 63 trunk line to destinations in the Los Angeles basin in order to cover the costs of repairs to Line 63, the clean-up and restoration of Posey Canyon Creek and Pyramid Lake, and related work necessitated by the storms and landslides of Winter 2004-05.

13. PPS had already commenced and completed part of the work necessitated by the storms and landslides of Winter 2004-05 as of the date of this application.

14. According to the application, the proposed surcharge would increase PPS' rates by 7 to 5%, depending on the particular rate.

15. PPS gave 30 days' advance notice of the proposed surcharge to shippers and the Commission as required by § 455.3.

16. In D.04-12-040, the Commission granted PPS a 9.5% increase in its rates and charges for all crude oil transportation services on the Line 63 system, effective November 1, 2004.

17. No shipper has protested the proposed 10 cents per barrel surcharge.

18. PPS has not presented sufficient evidence for the Commission to determine whether a surcharge that exceeds 1/2% of PPS' current rates is warranted on a permanent basis until PPS has recovered the costs of the work necessitated by the storms and landslides of Winter 2004-05.

19. On January 15, 2005, the Governor declared that Kern and Los Angeles Counties were in states of emergency because of a series of

rainstorms that resulted in unusually heavy rains, causing flash flooding and mudslides.

Conclusions of Law

1. Under § 455.3, oil pipeline corporations may, after giving 30 days' notice to shippers and the Commission, change or increase their rates by an amount that does not exceed a 10% increase within 12 months, before obtaining Commission approval.

2. Under § 455.3, the Commission may suspend a rate increase imposed by an oil pipeline corporation for up to 30 days after the date of the oil pipeline corporation's 30-day notice to shippers and the Commission.

3. Under § 455.3, if the Commission suspends the rate change, oil pipeline corporations may put the new rates into effect after the suspension period has expired, pending Commission review of the rate change.

4. Under § 455.3, if the Commission subsequently disallows all or part of a rate change put into effect by an oil pipeline corporation prior to Commission approval, the oil pipeline corporation must refund any disallowed charges, with interest, to affected shippers within 30 days of the date on which the Commission decision becomes final.

5. Under § 455.3, an oil pipeline corporation may not increase shipping rates by more than 10% per 12-month period without prior Commission approval.

6. Under § 455.3, the Commission must determine whether it is appropriate to allow an oil pipeline corporation to retroactively charge and collect approved rate increases that exceed 10% in a 12-month period.

7. Since D.04-12-040 granted PPS a 9.5% rate increase for all crude oil transportation services on Line 63 effective November 1, 2004, PPS may not impose a surcharge that exceeds 1/2% of its current rates without first obtaining Commission approval, until November 1, 2005.

8. In an application for a rate increase, the burden is on the utility to show by clear and convincing evidence that the rate increase is justified.

9. In an application for a rate increase, the burden is on the utility to present adequate data to enable the Commission to determine whether the rate increase is justified.

10. Completion of the repairs of Line 63, the clean-up and restoration of Posey Canyon Creek and Pyramid Lake and related work necessitated by the storms and landslides of Winter 2004-05 is in the public interest because this work will reduce future risks of harm to Line 63, will help to maintain consistent service to shippers that utilize Line 63, and will mitigate environmental damage to Posey Canyon Creek and Lake Pyramid.

11. In determining whether to ultimately allow PPS to impose a surcharge for work already performed to repair the damage caused by the storms and landslides in Southern California in Winter 2004-05, the Commission must guard against retroactive ratemaking.

12. Under Resolution E-3238 and § 454.9, utilities may, under certain circumstances, record expenses related to the restoration of service to customers, the repair, restoration and replacement of utility facilities, and compliance with governmental orders that result from a catastrophic event which federal or state officials have declared to be a disaster in a CEMA.

13. Since on January 15, 2005, the Governor declared Kern and Los Angeles Counties to be in states of emergencies due to heavy rains, flash flooding, and mudslides, it is appropriate for PPS to establish and use a CEMA to track its costs for the repair of Line 63, the clean-up of Posey Canyon Creek and Pyramid Lake, and related work.

14. PPS may put the full 10 cents per barrel surcharge into effect immediately.

O R D E R

IT IS ORDERED that:

1. The application of Pacific Pipeline System LLC (PPS) for authorization to impose a 10 cents per barrel surcharge on all shipments of crude oil received by PPS in the San Joaquin Valley and shipped through on its Line 63 trunk line to destinations in the Los Angeles basin, in order to recover the cost of repairs to Line 63, clean-up and restoration of Posey Canyon Creek and Pyramid Lake, and related work necessitated by the storms and landslides in Southern California in Winter 2004-05, is approved on an interim basis.

2. PPS may impose the full surcharge immediately.

3. PPS may impose a surcharge that does not exceed 1/2% of its current rates to recover the above costs without further Commission approval. We will not suspend this surcharge pursuant to § 455.3.

4. If PPS wishes to impose any surcharge that exceeds 1/2% of its current rates between now and November 1, 2005 in order to recover the above costs on an ongoing basis, PPS shall apply for Commission approval

by filing an advice letter with the Commission Energy Division within 180 days of the effective date of this decision.

5. PPS shall establish a Line 63 Catastrophic Events Management Account (CEMA) that will track all of its costs for the work necessitated by the Winter 2004-05 storms and landslides in Southern California, including the clean-up and restoration of Pyramid Lake and Posey Creek Canyon, the repair of Line 63, and related expenses. PPS shall include professional fees, reimbursements to the United States Forest Service, consultant fees, permit fees, new right of way costs and short-term interest costs associated with any net undercollection in the CEMA. PPS shall also track and include as credits to the Line 63 CEMA all payments received from insurance and oil spill trust funds, as well as revenues received from shippers as a result of the 10 cents per barrel surcharge.

6. PPS may recover its costs for repair of Line 63, the clean-up and restoration of Pyramid Lake and Posey Creek Canyon, related work resulting from the storms and landslides in Southern California in Winter 2004 and 2005 from the CEMA only upon a sufficient showing in the advice letter to be filed with the Commission Energy Division that these costs are necessary and reasonable and approval of the advice letter by the Commission Energy Division.

This order is effective today.

Dated _____, at San Francisco, California 23