

Decision 11-12-021 December 1, 2011

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

Order Instituting Investigation on the Commission's Own Motion into the Operations and Practices of Pacific Gas and Electric Company, Regarding the Gas Explosion and Fire on December 24, 2008 in Rancho Cordova, California.

Investigation 10-11-013  
(Filed November 19, 2010)

**DECISION AFFIRMING PENALTY, ADOPTING STIPULATIONS,  
AND CLOSING PROCEEDING**

**1. Summary**

This decision affirms a \$38 million penalty against Pacific Gas and Electric Company (PG&E) as a result of the natural gas explosion and fire that occurred on December 24, 2008 at 10708 Paiute Way in Rancho Cordova, California, which resulted in one fatality, other injuries and property damage. This decision also grants the June 20, 2011 Joint Motion of PG&E and the Consumer Protection and Safety Division (CPSD) "for approval of stipulation to order resolving investigation" and two related stipulations, one between PG&E and CPSD, and one between PG&E and The Utility Reform Network, with the \$38 million penalty amount.

Pursuant to the PG&E/CPSD stipulation, PG&E will not seek to recover from customers in rates any portion of the penalty and other costs associated with this decision. This decision closes the proceeding.

## **2. Background**

The background of this investigation is fully set forth in Decision (D.) 11-11-001 which is attached as Appendix A hereto and incorporated herein by reference. Below are the narrow facts relevant to this decision.

On June 20, 2011, Pacific Gas and Electric Company (PG&E) and the Consumer Protection and Safety Division (CPSD) filed a motion “for approval of stipulation to order resolving investigation.” The “Stipulation to Order Resolving Investigation” (PG&E/CPSD stipulation) was separately filed.<sup>1</sup> As part of the PG&E/CPSD stipulation, PG&E proposed to pay a penalty of \$26 million to the State’s General Fund.

PG&E and TURN entered into a separate stipulation. PG&E and TURN requested that in addition to approving the PG&E/CPSD stipulation, that the Commission approve the PG&E/TURN stipulation, which provides in part:

For purposes of its test year forecasts in PG&E’s next general rate case, PG&E shall exclude from Account 925 any amounts paid for claims or settlements related to the December 24, 2008 natural gas explosion in Rancho Cordova, California.

On September 29, 2011, the Presiding Officer issued his decision (Presiding Officer’s Decision) which denied the joint motion for adoption of the PG&E/CPSD stipulation, and the PG&E/TURN stipulation. The Presiding Officer’s Decision found that the stipulations would be reasonable but for the penalty amount. Pursuant to Rule 12.4 of the Commission’s Rules of Practice and Procedure, the Presiding Officer’s Decision proposed a \$38 million penalty,

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<sup>1</sup> This stipulation, as well as the stipulation between PG&E and The Utility Reform Network (TURN) are attached to D.11-11-001 as Appendices 2 and 3 respectively. D.11-11-001, including the appendices, is attached to this decision as Appendix A.

plus payment of CPSD's investigation and proceeding costs, and provided that PG&E, CPSD, and TURN may agree to accept the proposed penalty amount of \$38 million by filing a motion accepting it.

The Presiding Officer's Decision concluded that if the three parties agreed to accept the \$38 million penalty amount, the two stipulations would be found reasonable, consistent with the law, and in the public interest. The Presiding Officer's Decision gave PG&E, CPSD, and TURN 30 days from the date the Presiding Officer's Decision was served to file a motion accepting the proposed penalty amount of \$38 million. If such a motion were filed, the Presiding Officer would draft a proposed decision for Commission review to address the \$38 million penalty amount after the Presiding Officer's Decision becomes final.

On October 19, 2011, PG&E, CPSD, and TURN filed a joint motion accepting "the proposed penalty amount of \$38 million and jointly move the Commission to approve" the stipulations. The parties further state that "All other terms and conditions of the Stipulations remain unchanged, including PG&E's payment of CPSD's investigation and proceeding costs." This motion is unopposed.

Because no party filed an appeal of the Presiding Officer's Decision and no Commissioner requested review of it, the Presiding Officer's Decision automatically became a Commission order by operation of law as D.11-11-001. (*See* Pub. Util. Code §1701.2(a) and Rule 15.5 of the Commission's Rules of Practice and Procedure). Because it was unclear at the time the Presiding Officer's Decision mailed whether the parties would agree on the \$38 million proposed penalty, this subsequent decision is necessary to formally adopt the \$38 million penalty amount and to find the related stipulations reasonable, consistent with the law, and in the public interest.

### **3. Discussion**

D.11-11-001 is attached hereto and incorporated by reference herein. Based on the well reasoned analysis and discussion in D.11-11-001, we find that it is reasonable, consistent with the law, and in the public interest to approve the two stipulations, with a \$38 million penalty against PG&E. Other than the increased penalty amount, all other terms and conditions of the stipulations remain unchanged, including PG&E's payment of CPSD's investigation and proceeding costs. We make clear what is agreed to by the stipulations: that PG&E not seek to recover from customers in rates any portion of the penalty and other costs associated with this decision.

The 18 exhibits that were marked for identification at the July 29, 2011 evidentiary hearing are admitted into evidence.

### **4. Waiver of Comment Period**

This is an uncontested matter granting the relief requested. Accordingly, as provided by Rule 14.2 (c)(1) of the Commission's Rule of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

### **5. Assignment of Proceeding**

Timothy Alan Simon is the assigned Commissioner and John S. Wong is the assigned Administrative Law Judge (ALJ) in this proceeding. ALJ Wong was designated the presiding officer for this proceeding in the April 18, 2011 joint scoping memo and ruling.

### **Finding of Fact**

The June 20, 2011 PG&E/CPSD stipulation, and the June 20, 2011 PG&E/TURN stipulation, with the \$38 million penalty amount but in all other respects unchanged (including PG&E's payment of CPSD's investigation and

proceeding costs) are reasonable, consistent with the law, and in the public interest.

### **Conclusions of Law**

1. The June 20, 2011 joint motion of PG&E and CPSD to adopt the PG&E/CPSD stipulation; the June 20, 2011 PG&E/CPSD stipulation; and June 20, 2011 PG&E/TURN stipulation, with a \$38 penalty amount but in all other respects unchanged (including PG&E's payment of CPSD's investigation and proceeding costs) should be approved.

2. The 18 exhibits that were previously marked for identification were received into evidence.

3. This decision should be effective immediately in order to bring a timely resolution to this matter.

### **O R D E R**

#### **IT IS ORDERED** that:

1. The June 20, 2011 joint motion of Pacific Gas and Electric Company (PG&E) and the Consumer Protection and Safety Division (CPSD) for approval of stipulation to order resolving investigation; the June 20, 2011 PG&E and CPSD "Stipulation to Order Resolving Investigation"; and the June 20, 2011 PG&E and The Utility Reform Network "Stipulation to Order Resolving Investigation" are approved with a \$38 million penalty amount but in all other respects unchanged, including PG&E's payment of CPSD's investigation and proceeding costs. The two stipulations are attached as appendices to Decision 11-11-001 which is attached hereto as Appendix A.

2. Within 20 days of the effective date of this decision, Pacific Gas and Electric Company (PG&E) must pay a penalty of \$38 million to the State of California

General Fund. PG&E must pay this penalty by check or money order payable to the California Public Utilities Commission and delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, Cashiering Unit, San Francisco, CA 94012. PG&E must write on the face of the check or money order "For deposit to the General Fund per Decision 11-12-021, issued in Investigation 10-11-013."

3. Within 20 days of the effective date of this decision, or within 20 days of the Consumer Protection and Safety Division (CPSD) providing Pacific Gas and Electric Company (PG&E) with an accounting of such costs, whichever of these two events comes later, PG&E must pay CPSD's investigation and proceeding costs for this investigation, Investigation 10-11-013. PG&E must pay these costs by check or money order payable to the California Public Utilities Commission and delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, Cashiering Unit, San Francisco, CA 94102. PG&E must write on the face of the check or money order "Payment for the Consumer Protection and Safety Division's investigation and proceeding costs in Investigation 10-11-013 per Decision 11-12-021." On the same day it delivers the check or money order, PG&E must also notify the Director of CPSD by letter that it has done so and include a copy of the transmittal letter and check or money order in its notification to the Director of CPSD.

4. For purposes of its test year forecasts in Pacific Gas & Electric Company's (PG&E) next general rate case, PG&E must exclude from Account 925 any amounts paid for claims or settlements related to the December 24, 2008 natural gas explosion in Rancho Cordova, California.

5. Pacific Gas and Electric Company must not seek to recover from customers in rates any portion of the penalty or any portion of the funds PG&E pays for Consumer Protection and Safety Division's investigation and proceeding costs.

6. Investigation 10-11-013 is closed.

This order is effective today.

Dated December 1, 2011, at San Francisco, California.

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK J. FERRON

Commissioners

I will file a concurrence.

/s/ MARK J. FERRON

Commissioner

**Concurrence of Commissioner Mark J. Ferron on Item 44 (D.11-12-021),  
\$38 Million Penalty of PG&E for Gas Explosion and Fire at Rancho Cordova**

Frankly, I was shocked when I read this decision.

This horrible tragedy is the result of a long sequence of errors and misjudgments by PG&E – any one of which, if avoided, might have prevented the deaths and serious injuries in Rancho Cordova.

- The gas service representative who was dispatched to 10708 Paiute Way was thoroughly unequipped to deal with a gas leak. Having detected that there was gas in the area, the representative had no signage or barrier tape to warn residents that entry into the area of the leak could be hazardous. The home's occupants – Bill Paana, who was killed in the explosion, and his daughter and granddaughter who were severely injured – were away when the representative identified the gas, but returned to their home while the representative was waiting for reinforcements.
- The leak investigator, who was coming from another job, did not have a flame pack with him – a device used to find outdoor natural gas leaks – and had to go back to his field office to get one. But on his way to the field office, he got stuck in traffic, and then had to replace his faulty truck with another, etc.
- In the end, due to a whole sequence of muffed handovers, poor communication and human errors, a gas leak call that came in on Christmas Eve 2008 at 9:16 in the morning was not responded to properly over the next four hours, leading finally to the tragic explosion at 1:36 in the afternoon.

But this horror could reasonably have been foreseen by PG&E.

- The house on Paiute Way had had 5 previous gas leak work orders, and two gas leak repairs. A simple reference to this past work record could have indicated the extent of the problems at this address.
- Moreover, it transpires that the pipe used for the 2006 repairs at this house was made of plastic (polyethylene) of an inferior grade that was wholly unsuitable for use as a distribution line. PG&E's own report said that what had been installed "was packing material used



by the manufacturer in shipping gas pipe.” It’s also clear that the previous repairs at 10708 Paiute Way did not follow PG&E’s own procedures for ensuring that appropriate polyethylene pipe was installed and that the crew foreman’s supervisors failed in their oversight.

- And it turns out that PG&E already knew that it had a problem with plastic pipes of the 2006 vintage as a result of an accident at Elk Grove in October 2006, more than two years earlier. PG&E discovered that it had been installing plastic piping that the manufacture said did not meet specifications for proper wall thickness, and yet did nothing to locate the 664 defective installations from the time it learned of the problem in 2006 until after the Rancho Cordova explosion in 2008.

This does not strike me as the action of a utility concerned about safety. I know that since the explosion in Rancho Cordova, gas procedures have been tightened, and since the explosion in San Bruno, they have been tightened again. And, of course, there has been a re-organization of the company and PG&E’s senior management has been replaced. But, the lack of a safety culture at PG&E must change.

The utility is dealing with an extremely dangerous compound – natural gas – and a careful and methodical approach to safety in all aspects of its natural gas operation should be its first priority. I cannot stress this enough to PG&E management: Safety must come before **everything** else; it must be paramount; it must be what everyone thinks about every day, from the most senior executive down to the worker in the field.

PG&E has taken important first steps in this direction, but in the nine months that I’ve been here, PG&E has not yet demonstrated that this transformation has fully occurred. The decision before us today only underscores that our role as a regulator is to expect and enforce a culture of safety.

Regarding the amount of the penalty assessed for the tragedy in Rancho Cordova, the number is hard to assess one way or another. I don’t think we can or should use penalties from cases not involving personal injury and loss of life as the basis for judging a case where people die. Further, no one should assume that my vote today says anything either way about any penalty related to the explosion in San Bruno. The law has us look at each case on its own merits, and

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apply the following factors: 1) severity and gravity of the violation, 2) the utility's conduct to prevent, detect, disclose and rectify the violation; and 3) the utility's size and financial resources. Once the events in San Bruno are before us, we will consider those factors in light of what happened that day and in the period leading up to the explosion.

All of this said - I approve the decision, and especially congratulate the Administrative Law Judge - John Wong - for rejecting the \$26 million settlement and doing his own independent analysis to arrive at an appropriate penalty of \$38 million. Of course, I agree that shareholders and not ratepayers must bear the cost of the fine.

However, I do not think we can put Rancho Cordova to rest with this decision. We need to ensure that we have addressed adequately all of the problems that led to this disaster - - improper training and inadequate equipment for workers in the field, slow and ineffective responses to the report of gas odor, failure to follow internal procedures for pipe repair and installation, poor recordkeeping, the use of unsuitable pipe, and most critically, the failure to take a pro-active approach to safety issues.

Going forward, I want to understand what everyone involved is doing to address these issues. I will be coordinating with Consumer Protection and Safety Division in particular to determine next steps. I offer my support on this item.

Dated December 1, 2011 in San Francisco

/s/ MARK J. FERRON

Mark J. Ferron  
Commissioner