

Decision 87 10 082 OCT 28 1987**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )	
Standard Pacific Gas Line )	
Incorporated for a certificate of )	Application 86-08-038
public convenience and necessity )	(Filed August 22, 1986)
to replace and enlarge pipeline )	
facilities. )	

OPINIONI. Summary

We grant the Motion For Expedited Approval of Emergency Replacement of Four Miles of Pipeline and Exemption from Environmental Requirements filed by Standard Pacific Gas Line, Inc. (StanPac).

II. Background

StanPac originally filed with the Federal Energy Regulatory Commission (FERC) an application for authority to replace sections of its StanPac No. 2 (SP-2) pipeline. On December 4, 1985, this Commission issued Resolution No. L-234 asserting jurisdiction over StanPac and requiring StanPac to obtain a certificate of public convenience and necessity (cpcn) before commencing reconstruction of the SP-2 pipeline. StanPac then petitioned the FERC to allow the withdrawal of its FERC application. In May, 1986, the FERC approved the withdrawal of StanPac's application.

StanPac then filed Application (A.) 86-08-038 with this Commission to replace 17.4 miles of its SP-2 pipeline, consisting of two segments of existing 22" and 26" diameter pipe (one segment

of 3.5 miles and one of 13.9 miles) with 36" diameter pipe, pursuant to General Order 112-D.

El Paso Natural Gas Company, Kern River Gas Transmission Company (Kern River), and Mohave Pipeline Company (Mohave) filed protests to A.86-08-038 alleging inadequate notice and failure to comply with environmental review procedures.

On November 14, 1986, the Commission issued an Interim Opinion, Decision (D.) 86-11-076, ordering StanPac to provide proper notice of A.86-08-038 and to submit a Proponent's Environmental Assessment (PEA) as required by Rule 17.1. The Commission also ordered that StanPac could make emergency repairs within the existing right-of-way as long as the Commission staff concurred that the repairs were necessary.

On March 25, 1987, the Commission issued D.87-03-080 clarifying the term "existing right-of-way" used in D.86-11-076. The Commission held that the existing right-of-way included a 35-foot adjacent strip of right-of-way acquired by StanPac in 1985. The Commission went on to order StanPac to amend A.86-08-038 to include all planned improvements to the entire SP-2 pipeline system from Brentwood terminal to Panoche junction and to file an amended PEA.

StanPac has yet to file an amended application or an amended PEA. On August 10, 1987, StanPac filed a Motion For Expedited Approval of Emergency Replacement of Four Miles of Pipeline and Exemption From Environmental Requirements (Motion). StanPac stated in its Motion that the four mile segment should be replaced and back in full operation by November 1, 1987. Mohave filed an Opposition to this Motion on August 18, 1987.

At a prehearing conference on September 18, 1987, the Administrative Law Judge (ALJ) informed StanPac that Public Utilities Code Section 311(d) precludes the Commission from issuing a decision sooner than 30 days following the filing and service of the ALJ's proposed decision. The ALJ concluded that the Commission

could not issue a decision by November 1, 1987 if an evidentiary hearing was held. To accommodate StanPac's desire for an expeditious decision, the ALJ allowed StanPac to submit additional information to support its Motion in the form of affidavits. The ALJ stated that the affidavits should address three basic questions:

1. Why the repair of the four mile segment of the SP-2 pipeline qualifies as a sudden, unexpected emergency event;
2. Why there is a clear and present danger of a loss of public service facilities; and
3. Why it is impractical or uneconomic to patch or repair the pipeline in its present right-of-way.

The ALJ further stated that since the protestants would not be able to test this supplemental information through cross-examination in an evidentiary hearing that the affidavits should present a showing that is complete and persuasive.

StanPac submitted affidavits of David D. Craig, Nancy B. Ridgway, and Trista Berkovitz by September 29, 1987. Mohave and Kern River filed a response and opposition to these affidavits by October 8, 1987. StanPac filed a reply to Mohave and Kern River on October 14, 1987. The Commission staff submitted affidavits of Yim Gee and Jean Jarjoura.

### III. StanPac's Showing

Through affidavits StanPac addresses the three questions stated by the ALJ. Affiant David D. Craig, Senior Gas Engineer and Project Manager for StanPac, addresses safety concerns and the emergency nature of the need for replacing the four mile section of pipeline. Affiant Trista Berkovitz, Supervising Gas Transmission Engineer, addresses the impact on utility customers if emergency replacement is not timely approved. And affiant Nancy Ridgway,

Planning Analyst and Project Manager for the PEA, addresses the environmental aspects of placing the pipe in a new right-of-way versus replacing the pipe in its present right-of-way.

A. The Emergency Nature of the Repair

StanPac asserts that the four mile section of pipeline was scheduled to be replaced in 1986 as part of a 13.9 mile replacement job. Engineering, land acquisition and other project activities necessary for construction of the 13.9 mile project were completed in 1986.

After StanPac filed its cpcn application with the Commission in August, 1986, the Commission's safety branch asked StanPac to expose the pipe at several locations for visual inspection. This inspection at MP 118.85, in the subject four mile section, disclosed that the pipe was in poor condition due to extensive corrosion.

StanPac maintains that the results of this particular inspection were unexpected since it conducts an annual leak survey and ongoing review of pipeline conditions. StanPac had anticipated that only minor sleeve repairs would be required to maintain normal operations. Instead, StanPac replaced 30 feet of pipeline at MP 118.85.

StanPac states that its most recent leak survey showed 4 new leaks on the pipeline within 3 miles. StanPac asserts that this survey coupled with the results of the inspection at MP 118.85 made it suddenly apparent that the four mile section of pipe was undergoing active corrosion and should be immediately replaced.

StanPac has lowered the operating pressure of the pipe from 500 psig to 450 psig. StanPac states that this is the maximum pressure that the most severely corroded areas of pipe can safely withstand.

StanPac asserts that further pressure reductions may ultimately become necessary to protect life and property if corrective action is not taken.

**B. Potential Loss of Service**

Pacific Gas and Electric Company (PG&E)<sup>1</sup> has analyzed the impact on customers of lowering the line pressure to a maximum of 450 psig on the four mile section of pipe between Mileposts 118 and 122. PG&E concludes that the reduced maximum pressure is likely to result in curtailment of customers in the Modesto area during winter, peak-demand conditions. PG&E states that a curtailment of at least 22,000 Mcf/day could occur for a few days this winter. This curtailment could result in lost revenues to PG&E of \$100,000.

PG&E asserts that the total peak demand for the Modesto area for the 1987-1988 winter is estimated to be about 5,000 Mcf/hour. PG&E believes this estimate is conservative since it is based upon 1985 numbers of high priority customers. The demands of lower priority customers were based upon historical loads with the addition of a new cogeneration load of 430 Mcf/hour.

If StanPac is not granted permission for emergency replacement of the four miles of pipe, then PG&E will plan to curtail a number of interruptible customers in the Modesto area as a precautionary measure to maintain reliable service to higher priority customers.

**C. Impracticality of Repair in Present Right-of-Way**

StanPac states that patching, installing sleeves, and replacing small sections is not practical. StanPac maintains that the pipe has deteriorated to the point that the replacement of entire sections of pipe is the only feasible repair.

StanPac seeks permission to place the replacement pipe in a new right-of-way, 800 to 1000 feet to the west of the existing pipeline. StanPac asserts that the cost of replacement in the

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<sup>1</sup> PG&E owns 6/7 of StanPac, and Chevron U.S.A. owns the remaining 1/7. Thus, the interests of PG&E are virtually coincident with those of StanPac.

current right-of-way would exceed the cost of installation in the new right-of-way. Damage to crops and orchards is estimated at \$352,000 in the current right-of-way and only \$110,000 in the new right-of-way. The total cost estimate for replacing the four mile section is \$3,663,000 in the old right-of-way and \$3,180,000 in the new right-of-way.

StanPac also points out that construction in the new right-of-way will have fewer environmental impacts than replacement in the present right-of-way. Fewer trees would be removed, less agricultural land would be used, and two crossings over the California Aqueduct would be eliminated.

#### IV. Kern River's Opposition

Kern River argues that StanPac has not shown facts sufficient for an emergency exemption from California Environmental Quality Act (CEQA) requirements. Kern River points out that StanPac has relied upon an exemption from CEQA requirements for "emergency repairs necessary to maintain services," or for "specific actions, necessary to prevent or mitigate an emergency." (Public Resources Code Sec. 21080(b)(2) and (4).)

"'Emergency' means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services." (Public Resources Code Sec. 20060.3.) Kern River concludes that StanPac must show that the present circumstances involve (1) an "occurrence" which was (2) "sudden" and (3) "unexpected," and which (4) involves "a clear and imminent danger" and (5) demands "immediate action to prevent or mitigate loss of...essential public services."

Kern River further argues that the scope of the term "emergency" is extremely narrow. (Western Mun. Water Dist. v Superior Court (1986) 187 Cal. App. 3d 1104, 1111, 232 Cal. Rptr.

359, 362.) Kern River notes that the court found that the Sec. 21060.3 definition limits an emergency to an "occurrence" and not a condition, and that this occurrence must involve a "clear and imminent danger."

Kern River maintains that the condition of the SP-2 pipe between MP 118 and 122 is neither a sudden nor an unexpected occurrence. Kern River points out that there is a long history of leaks on this pipeline, extending back to 1979. Kern River asserts that this type of condition should be addressed in full compliance with the usual protections provided by CEQA.

Even if the condition of the four mile segment was considered a sudden and unexpected occurrence, Kern River points out that the only claimed consequence of reducing the pipeline pressure to 450 psig is the curtailment of service to low priority customers in the Modesto area for approximately two days during the coming winter.

Kern River submits that StanPac's showing does not satisfy the emergency test. Moreover, Kern River asserts that there are at least two alternatives available to supply the Modesto area during winter peak. Kern River suggests that the pipe could be closed at MP 122 and service to the region south of that point could be provided from PG&E's Line 300 via Panoche junction. Alternatively, a pressure regulator could be placed just south of the Vernalis Tap, thus allowing maintenance of pressure up to 500 psig at the Vernalis Tap while reducing pressure to 450 psig on the four mile segment. Kern River attached to its opposition papers an affidavit of Debora H. York, a Planning Engineer for Tenneco Gas Transportation Company, to support its suggestion that alternatives are available to StanPac.

Kern River asks the Commission to deny StanPac's Motion and instead to entertain a motion by StanPac for authority to install a second pressure regulator in the vicinity of MP 122.

### V. Mohave's Response

Mohave submits that StanPac has not met its burden of showing that replacement of the four mile segment of SP-2 qualifies under the emergency exemption of Public Resources Sec.

21080(b)(2)(4). Mohave observes that SP-2 can be safely operated at a pressure of 450 psig by StanPac's own admission. Therefore, the real question according to Mohave is whether StanPac or PG&E can continue to serve its customers at that operating pressure during the coming winter.

Mohave asserts that StanPac's demand forecasts for the Modesto area are inadequate as they are based upon inaccurate or contradictory assumptions. Mohave points out that StanPac in other correspondence on the load served by the SP-2 pipeline stated that cannery loads are expected to rise approximately twenty percent. Yet StanPac's affiant Trista Berkovitz states that the canneries will not be in operation this coming winter.

Mohave also asserts that the new cogeneration load assumed by StanPac to come on line in the winter may well be delayed beyond the winter season. Mohave has contacted the developers of this cogeneration facility and learned that initial start-up and testing may not begin until late January or February, with full operation scheduled for 30 days later. Moreover, Mohave states that the operation of this cogeneration facility is constrained by the availability of electrical transmission capacity in the area. Mohave is informed that to remove this transmission constraint, PG&E must install a transformer at the Tesla substation, a project which may not be completed until March or April 1988. Given these uncertainties, Mohave concludes that it is questionable that the full cogeneration load assumed by StanPac will exist in January or February 1988.

Mohave also criticizes StanPac's showing on the available sources of gas for the Modesto area. Mohave notes that Line 108 is



connected to PG&E's Valley Gas System and that numerous additional local sources of gas feed into the Vernalis Station. Mohave asserts that since StanPac has not mentioned these alternative sources of gas in its analysis, one cannot tell if StanPac has provided a realistic estimate of the true situation.

Mohave concludes that the only emergency claimed by StanPac is a possible curtailment of service in the Modesto area between December 1987 and February 1988 if the pipeline pressure remains at 450 psig. Mohave asserts that StanPac's affidavits do not adequately show that this curtailment must occur. And even if one assumes a curtailment may occur in the winter, Mohave submits that the consequence of a limited number of alternate-fuel customers switching to oil for a few hours or days does not qualify for an emergency exemption under CEQA.

#### VI. Positions of the Commissions's Staff

At the prehearing conference staff counsel stated that the Public Staff Division (PSD) and the Evaluation and Compliance Division (E&C) had made separate reviews of StanPac's Motion and had individual positions.

PSD's Energy Resources Branch at the prehearing conference stated that it was neutral because it was unable to determine whether the alleged curtailment of customers in the Modesto area qualifies as an emergency exemption from CEQA on a legal or a factual basis. However, after reviewing the submittals of StanPac, Kern River, and Mohave, PSD modified its position to oppose StanPac's Motion. PSD states that StanPac has not shown in its affidavits sufficient circumstances to justify a finding of "emergency" under CEQA.

PSD's Fuels Branch also submitted the affidavit of Jean Jarjoura, Associate Utilities Engineer. Affiant Jarjoura analyzed data obtained from PG&E and concluded that continued operation of

the SP-2 pipeline at 450 psig is likely to cause curtailment to customers in the Modesto area. Jarjoura also stated that the extent of any curtailment is dependent on the actual temperatures in the winter.

E&C's Service and Safety Branch submitted the affidavit of Yim Gee, Senior Utilities Engineer. Affiant Gee after reviewing StanPac's records and inspecting the pipe condition has concluded that an emergency condition does exist. Gee states that it is possible that under present operating conditions the pipe may fail and cause a massive traffic jam on Interstate 5 and pollution of the California Aqueduct. Gee also agrees with StanPac that the most practical approach is to replace the corroded pipe with pipe in the new right-of-way.

#### VII. Discussion

The emergency exemption from CEQA has been interpreted by the courts to be extremely narrow. Construction of the statute is to give meaning to each word of the Public Resources Sec. 21060.3 definition of "emergency." (Western Mun. Water Dist. v Superior Court, supra.)

Section 21060.3 provides that:

"'Emergency' means a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. 'Emergency' includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage."

The record in this case must meet every element of the Legislature's detailed definition of "emergency." Since evidentiary hearings were not held, the affidavits should disclose

substantial information that is complete and persuasive. Unfortunately, StanPac's affidavits attempt to establish the existence of an emergency by focusing primarily upon a possible curtailment of low priority customers for a few days in the winter. This emphasis is misplaced. If an emergency exemption from CEQA were allowed for such a limited curtailment, then virtually any utility project could escape the environmental requirements of CEQA by a mere allegation of anticipated unmet need of current or new customers. Such an exception would swallow up the rule.

The declaration of our Service & Safety Branch properly focuses upon the safety-related facts in the current situation which convince us that an emergency exists. The discovery that this section of pipe was so badly corroded that it required immediate action -- as a first step, the lowering of its operating pressure -- was sudden and unexpected, although the general deterioration of the pipe was of course well known. The Branch states that the pipe may fail under the present operating conditions, that is, at the already-reduced pressure of 450 psi. As both the Branch and StanPac have averred, the consequences of a pipe failure are clear and are potentially very serious. The California Aqueduct, the Chevron oil pipeline, farmland, equipment, and Interstate 5 all could be adversely affected. Although the record shows that the possibility of human injury from a failure is low, there is no doubt that a failure would result in damage to property and in disruption to essential public services such as the Aqueduct and Interstate 5. In recognition of the safety concerns expressed by the Service & Safety Branch we find that an emergency exemption from CEQA is necessary "to prevent or mitigate the loss of, or damage to, life, health, property, or essential public services." We conclude that an exemption to CEQA is appropriate with reluctance and only in view of the emergency circumstances, as we believe the Legislature has clearly expressed a policy strongly

favoring environmental impact review before projects are undertaken.

Findings of Fact

1. StanPac has filed affidavits showing that if the SP-2 pipeline is operated at 450 psig pressure in the four mile segment between MP 118 and MP 122, several large interruptible customers may be curtailed for several days this winter.

2. PSD's Service and Safety Branch has filed an affidavit stating that due to concerns with the safety of this pipeline segment under current operating conditions, it recommends that StanPac be allowed to construct new pipe in the new right-of-way.

Conclusions of Law

1. The possibility of a temporary interruption of service to low priority customers that have alternatives available to them does not meet the Section 21060.3 emergency definition of "loss of ...essential public services."

2. The safety concerns raised by the Service and Safety Branch meets the Section 21060.3 emergency definition of "loss of, or damage to, life, health, property, or essential public services."

O R D E R

IT IS ORDERED that the Motion for Expedited Approval of Emergency Replacement of Four Miles of Pipeline and Exemption from Environmental Requirements filed by Standard Pacific Gas Line, Inc. is granted and that Standard Pacific Gas Line, Inc. is authorized to replace four miles of the SP-2 pipeline, located between Mileposts 118 and 122, in the new right-of-way.


This order is effective today.

Dated OCT 28 1987, at San Francisco, California.

STANLEY W. HULETT  
President

DONALD VIAL  
FREDERICK R. DUDA  
G. MITCHELL WILK  
JOHN B. OHANIAN  
Commissioners

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY.

  
Victor Weisser, Executive Director  
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