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Decision 97-01-043 January 23, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Selwyn and Loretta Vos,

Complainants,

vs.

Pacific Gas and Electric Company,

Defendant.

ORIGINAL

Case 95-09-030
(Filed September 5, 1995)

INTERIM OPINION

Procedural Background

Selwyn and Loretta Vos (Vos) filed this complaint on September 5, 1995. In it, the Vos assert that Pacific Gas and Electric Company (PG&E) violated various required mitigation measures when it built its Bethany compressor station as part of the PG&E natural gas pipeline expansion project (Application (A.) 89-04-033). This complaint is virtually identical to a complaint filed by the Vos on December 20, 1993 (Case (C.) 93-12-022). The Commission dismissed the 1993 complaint on May 2, 1994 in response to a request from the Vos (See Decision (D.) 94-05-003). In its answer to the current complaint, PG&E asserted that the current action is "explicitly and definitively barred by the terms of an agreement entered into by the parties." The agreement was incorporated into the final order for judgment in an eminent domain action before the Alameda County Superior Court on May 10, 1994 (No. V-004043-1). Pursuant to the settlement, PG&E paid the Vos a total of $155,000: $125,000 to settle an eminent domain action arising from the PG&E natural gas pipeline project (A.89-04-033) and $30,000 for agreeing to dismiss both their formal complaint before this Commission (C.93-12-022) and a related informal complaint. In addition, the Vos agreed to refrain from filing any future actions relating to the pipeline. After entering into this agreement, the Vos filed the request for dismissal that resulted in D.94-05-003. Based on these facts, PG&E has filed a Motion to Dismiss the current complaint. We will resolve that motion below.

In the current complaint (as well as the 1993 complaint), the Vos assert that PG&E violated several of the mitigation measures required as part of the Certificate

of Public Convenience and Necessity (CPCN) granted by this Commission for the pipeline expansion project in D.90-12-119. After addressing PG&E's Motion to Dismiss, we will consider each of the assertions raised by the Vos.

Motion to Dismiss

PG&E argues that with the refiling of their complaint, the Vos have violated the terms of the April 21, 1994 Settlement Agreement and Release in which they accepted $30,000 in exchange for their agreement not to "file or refile any additional action before the CPUC on any issues relating to or arising out of the PG&E-PGT pipeline construction project." This agreement was offered to Superior Court Judge Mark Eaton as part of the resolution of an eminent domain proceeding pending before him. Before the judge, counsel for the Vos received from his clients an assurance that they understood and accepted the terms of the agreement. In a letter sent to Administrative Law Judge Bertram Patrick seeking dismissal of the 1993 complaint, the Vos stated that they "agree that they will not file or refile any additional action before the CPUC on any issues relating to or arising out of the PG&E-PGT Pipeline Construction Project." The letter appears to bear the signature of both Mr. and Mrs. Vos.

The Vos have subsequently asserted that they did not understand that they had agreed to refrain from bringing additional complaints before this Commission related to the pipeline project. They also assert that PG&E pressed them into agreeing to withdraw their 1993 complaint by threatening to prolong the pending eminent domain proceeding. Regardless of these assertions, it is evident that the Vos did understand or should have understood that they were forming a commitment to refrain from litigation of this type before the Commission. However, it is also evident that the agreement would serve to limit this Commission's jurisdiction if it precluded us from reviewing PG&E's compliance with our order approving the pipeline expansion project and requiring the mitigation measures that are of concern to the Vos. The agreement between the Vos and PG&E was not submitted to this Commission for its approval. We must determine, therefore, whether or not an action of a civil court is binding upon this Commission when its effect is to limit the Commission's jurisdiction.

Prior to action by the Commission, a superior court may have jurisdiction to determine rights among parties before it and to render a judgment binding among the parties. However, a later decision by the Commission, within its jurisdiction, will

have the effect of superseding the prior judgment of the superior court. Hickey v. Roby, 273 Cal. App. 2d 752, 764 (1969). The Commission explained the principle announced in Hickey in its 1981 decision, Perotta v. Jones, 6 CPUC 2d 701 (1981). Sunseri sued Jones Water Company for refusing to provide domestic water service. At trial, the superior court found for defendant Jones on contractual grounds, denying Sunseri domestic water service. However, in a later proceeding, the Commission declared that the Jones Water Company was a public utility. The Commission stated that notwithstanding the prior ruling of the superior court, Sunseri could now apply for, and be entitled to, domestic water service. 6 CPUC 2d at 708.

The principle announced in Hickey also applies to the instant case. The Commission clearly has jurisdiction over the PG&E pipeline expansion project. A superior court cannot circumvent or impede the Commission in the exercise of its constitutional jurisdiction over public utilities. Ventura County Waterworks Dist. No. 12 v. Susana Knolls Mut. Water Co., 7 Cal. App. 3d 672 (1970). Although the superior court's adoption of the settlement between the Vos and PG&E might bind the parties before the Commission acts, the Commission is not precluded by a superior court judgment from hearing their complaint.

PG&E argues that the common law doctrine of res judicata bars the Commission from hearing the Vos' claim, citing Taylor v. Pacific Gas & Electric Company, 56 CPUC 173 (1958).[1] However, PG&E does not address the differences between Taylor and the instant case.

Taylor is distinguishable, as it involves a claim in an area of concurrent jurisdiction between state courts and the Commission. In Taylor, the claimant brought a rate reparation claim before the Commission which had previously been litigated in municipal court. Taylor claimed that the utility should have advised him that he could avail himself of lower rates. The Commission held that where the court and Commission exercise concurrent jurisdiction, a ruling by the court will have res judicata effect.

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[1] PG&E cites the Commission's decision in Desert Express, 56 CPUC 1 (1957) as articulating the common law principle of res judicata. However, that decision concerned the issue of whether the doctrine applies to Commission decisions, not whether the decision of a lower state court binds the Commission.

While a final judgment by a court of competent jurisdiction bars a party from seeking further relief from the Commission based on the same claim, res judicata does not bar the Commission from considering all claims which fall within its constitutional jurisdiction. The Commission in Taylor expressly recognized this distinction. It distinguished the complainant's simple rate reparation claim -- where the Commission shared jurisdiction with the courts -- from cases concerning excessive charges or discrimination -- where the Commission has exclusive jurisdiction. The Vos claim that PG&E did not comply with this Commission's mitigation requirements contained in the environmental impact report (EIR) for the pipeline expansion project falls within the exclusive jurisdiction of the Commission. Thus, the action of the superior court in adopting the agreement does not preclude us from hearing the concerns raised by the Vos. We have the responsibility to enforce the conditions attached to the permits we issue and would be remiss if we ignored potentially valid concerns raised by affected parties. We will not consider any reparations for the Vos'. Our interest at this point is solely in considering PG&E's compliance with the Pipeline Expansion Project EIR mitigation measures. Essentially, the Vos' bring this case to us as citizen prosecutors. We will examine the evidence before us in that light.

If we find in this case sufficient concern about PG&E's behavior in relation to the Vos', we should also be concerned that this may not be an isolated problem. In that case, we will direct staff to consider an OII to consider PG&E's actions in a broader context. The Vos' should not be expected to carry the burden of investigating potential violations beyond their immediate circumstances.

Specific Complaints

Failure to Resolve Development Plan Conflict by Mutual Agreement

Since 1988, the Vos have owned the property adjacent to the compressor station.

Mitigation Measure 27 states:

> "Where the proposed project would be located in new right-of-way in an area planned for development and would be incompatible with the plans of the development project, the applicant shall contact landowners to resolve any conflict through mutual agreement. Develop a form letter to inform property owners of their rights."

This measure further states that it "would be complied with if all development plan conflicts are identified and resolved."

The Vos argue that in order to comply with this mitigation measure, PG&E should have found out what the Vos intended to do with their land, informed them of the company's plans, and worked with them to resolve any potential conflicts.

The Vos state that they planned to build a permanent retirement residence and an agricultural building on their property. The agricultural building was built in 1991. In May 1990, PG&E met with county officials to discuss building the compressor station on the neighbor's property. During the same month, PG&E informed the Vos of its plans to run the pipeline through a portion of their land, but did not mention that a compressor station would be built on the adjacent parcel. PG&E received a CPCN to build the pipeline and compressor station on December 27, 1990. On January 24, 1991, PG&E notified the Vos' neighbor of its intention to acquire the neighbor's property for the construction of a compressor station. The following Spring, the Vos talked to PG&E's land agent (Mr. Hirko) about their plans to place a septic drain field in the ground near the pipeline. Hirko mentioned nothing about the compressor station. Later, PG&E did build the compressor station on the neighbor's property and placed it directly across the street from the Vos' land.

In keeping with their development plans, the Vos posted a Conditional Use permit in May 1991. Alameda County sent copies of this posting to adjacent property owners by mail. In response to receiving such a notice, the Vos' neighbor informed them of PG&E's plans to construct the compressor station on the adjacent land. The Vos asked Hirko if this was true. According to the Vos, he assured them that the compressor station would not be built on the adjacent land, but would be built on a parcel in Contra Costa County. On August 14, 1991, the Vos discussed the compressor station with another land agent, Jim Armstrong. He acknowledged that PG&E was trying to purchase the neighbor's land, but left the Vos with the impression that in all probability, the compressor station would be located on the Contra Costa County site. He mentioned that the neighbor was very reluctant to sell, but did not mention that PG&E intended to invoke its power of eminent domain to force a sale or acquire the land through a court proceeding. By February 1992, PG&E's discussions with the Vos about the compressor station were more direct. At that time, Hirko stated in a letter to the Vos that "[t]he compressor station, as currently designed, will occupy 40 acres of the 100 acre parcel on the corner of Brun and Kelso..." and went on to describe the structures that would be built.

There is no dispute that as of February 1992, the Vos were aware of PG&E's plans to build the compressor station on the neighboring land. At issue is whether PG&E had an obligation to inform the Vos at an earlier date of its intention to construct the compressor station on the neighboring land, whether PG&E had adequately explored the Vos' plans for the development of the land, and whether PG&E had an obligation to work with the Vos to resolve any incompatibilities in their respective plans.

The facts as they have been presented show that PG&E was less than forthright with the Vos about the company's plans. Whether or not the Vos had specific development plans on file, it was unreasonable for PG&E to ignore the possibility that the compressor station could interfere with the Vos' use of their land. Pursuant to Mitigation Measure 27, PG&E had an obligation to plan its new development in a responsible manner. It is not responsible planning to fail to consider the likely uses of neighboring land, to fail to specifically inform neighbors of the company's plans before they are largely locked into place and to evade specific questions that, if answered in a frank manner, could enable affected neighbors to meaningfully participate in the planning process.

It is not surprising that PG&E did not know of the Vos' plans because they apparently had not asked them what they intended to do with the land across the street from the company's prospective compressor station. PG&E suggests that it was not at fault for failing to know about the Vos' development plans earlier in the company's planning process because the Vos' "development plans were not on file when the compressor station site was discussed with the Alameda County Department of Public Works, May 31, 1990, nor were they on file in December 1990 when the compressor station site was approved." However, PG&E's obligation to seek out this information in a more assertive manner is implicit in Measure 27, since the company could hardly be assured that its plans were not incompatible with those of others unless it took steps to learn what plans others might have. In addition, this obligation is made explicit when read with Measure 32, which states, in part, that PG&E must "negotiate with land managers, landowners and easement holders to identify all potential land use conflicts." Because PG&E did not acknowledge to the Vos that it was intending to place a compressor station across the street until well into the company's planning process, it cannot be found to have negotiated with the Vos for the purpose of identifying all potential land use conflicts.

In defense of its handling of this situation, PG&E makes much of the fact that Mitigation Measure 27 is found under the heading "Land Use - Urban Resources," arguing that since the Vos' land is located in an area that is primarily agricultural, PG&E was not required to work with the landowners to resolve potential land use conflicts. This argument is not persuasive. First, the mitigation plan does not define "urban resources" for the purposes of limiting the application of this mitigation measure.[2] Second, it would make no sense for the EIR to create obligations to avoid conflicts with one type of development plan but not with others. The "Urban Resources" heading does not appear to make that distinction. Rather, it appears to separate concerns related to dwellings and other structures from those addressed in the other land use categories: "Mineral Resources" and "Recreational Resources." Finally, Measure 32, part of which creates an obligation to negotiate with landowners "to identify all potential land use conflicts," is found under a heading ("Plans and Policies") that would not suggest any such limitations.

In sum, PG&E did not work cooperatively with the Vos to explore the impacts of its planned compressor station on the use of their land, despite the fact that the Vos' parcel is directly across the street from the station. This failure to consult with the Vos is inconsistent with the intent and instructions contained in the mitigation plan.

Failure to Notify Local Residents of Construction Activity

Mitigation Measure 28a instructs PG&E to do the following:

> "Two weeks in advance and by direct contact, notify all permitted users, landowners and land managers along the right-of-way and residents within 660 feet of the right-of-way whose safety, property, business, or operations might be affected by any construction activity. Notify all local residents of construction activity through the local media."

The Vos state that they were never notified of the construction of the compressor station across the street from their property. As a result, they argue, they were denied the opportunity to have direct contact with the construction project manager about the scope of the facilities and to request the Commission's assistance in

[2] The draft EIR does contain definitions for rural and urban uses, but those definitions do not provide "bright line" distinctions. "Rural" is defined to include "low density residential areas that allow limited agricultural uses," while "urban" encompasses "residential, commercial and industrial uses" (Draft EIR, p. 3D-1). A home being built on the Vos' land could arguably fit in either category.

obtaining information about the compressor station. PG&E appears to concede that it never notified the Vos of its construction plans related to the compressor station.

The company reports that "[i]n general, defendants complied with this mitigation measure by notifying land owners, users and managers along the right-of-way; however, it was determined that once the construction was separated from a property by a public road, the contemplated disruptions were usually minimized and no additional notice was required." Since the Vos' property is separated from the compressor site by a street, it would appear to fit within the exception set forth by PG&E. However, the mitigation measure makes no such exception. The measure talks about landowners whose property is within a specific linear proximity to the right-of-way. It does not talk about only those landowners whose property is on the same side of the street as the right-of-way. PG&E's distinction fails on the facts, as well, since the pipeline right-of-way runs through the Vos' property on its way to the compressor station. PG&E further asserts that it met its responsibility to provide construction notice through the local media and presents the text of a classified advertisement that it ran in the local newspapers. However, the notice does not discuss a compressor station.

What is at issue with the implementation of this mitigation measure is common sense and common courtesy. People with property close to a construction site ought to have an opportunity to discuss, understand, and plan for the implications of construction activity well in advance of its occurrence. The Vos' land faces directly on to the compressor station construction site. They had every reason to expect that they would be consulted before construction began and Mitigation Measure 28a offered assurance that they would be. In this instance, PG&E failed to comply with its mitigation requirements.

Failure to Comply with Relevant Plans and Policies

Mitigation Measure 32 required PG&E to do as follows:

> "To ensure that all relevant plans and policies are complied with during construction and operation of the pipeline project and that all permits are obtained from local jurisdictions, consult with all local jurisdictions and administrative agencies; review plans, policies, and regulations; and negotiate with land managers, landowners, and easement holders to identify all potential land use conflicts.
>
> "Obtain from each local jurisdiction and administrative agency a list of all permits required and relevant plans and

> policies to be complied with during construction and operation of the pipeline project...."

The Vos assert that PG&E failed to obtain local permits. However, the Vos have not shown that PG&E was required to obtain any local permits. Thus, there is no reason to find that PG&E has failed to comply with this portion of Mitigation Measure 32. The Vos assert that PG&E failed to negotiate with landowners to identify all potential land use conflicts. We addressed this issue above.

In the context of this mitigation measure, the Vos also raise a fundamental question about the placement of the compressor station within the 100-acre parcel set aside for that purpose. In its application, PG&E stated that although it needed approximately 20 acres for a compressor station site, it would acquire a 100-acre site and use the remaining 80 acres as a buffer area. In a newspaper article published while the application was pending, there was discussion about the noise that would be created by the compressor station. Roland Young, the project manager for the pipeline expansion project, was quoted as saying, "[i]t would be so well buffered and designed that it shouldn't cause a problem."

It was in the context of PG&E's proposal to "buffer" the 20-acre compressor station within a 100-acre parcel that the Commission approved the EIR. Once the project was approved, PG&E elected to place the compressor station in a corner of the 100-acre parcel. The Vos raise this issue as a failure to comply with mitigation requirements. However, it does not technically relate to mitigation. Because the buffer area was part of the proposed project design, it would have been considered prior to the designation of mitigation requirements. Nonetheless, the underlying question focuses on the same concern. By building the compressor station on the corner of the parcel rather than enveloping it in undeveloped land, did PG&E fail to build the project as it asserted it would when it sought Commission approval?

The arguments of the parties, in this regard, rely on varying interpretations of what "buffer" means in the context of this process. The Vos argue that a buffer would surround the compressor station with land that would never be developed, and that by doing so, PG&E would achieve the greatest possible separation between the compressor station, neighboring landowners, and the public. This separation would help answer safety and security issues related to the compressor station.

PG&E's own definition is consistent with these goals. The company cites a feasibility study for the compressor station, completed in 1988, in which PG&E stated that "the acquisition of land in addition to that required for the compressor station will maximize the opportunities to reduce conflicts with adjacent development, the unused portion of the land will buffer the site from adjacent uses." Although PG&E did not emphasize safety and security issues, it did suggest that the purpose of the buffer area would be to increase the distance between the compressor station and others in the area. When it put pencil to paper, however, PG&E chose to place the station at the point closest to the path of the pipeline, which also happened to be in the corner of the parcel closest to the Vos' property. Certainly, PG&E did not use the buffer to increase the distance between the compressor station and the Vos' adjacent land.

This fact alone suggests that PG&E did not provide a buffer around the plant, as it said it would. The burden shifts to PG&E to demonstrate that it nonetheless acted in a manner consistent with its application and the EIR. PG&E has presented no evidence to suggest that it tried to provide the buffer that it had promised. Instead, PG&E states that "[t]he choice of the word 'buffer' to describe the portion of the property outside of the compressor station fence was obviously a poor one." The company went on to explain that it had to buy a 100-acre parcel because the county would not allow them to buy anything smaller, but that PG&E never represented that it would locate the compressor station in the geographic center of the parcel. The latter statement appears to be true. However, PG&E did represent that it would use the extra land in the parcel to maximize the opportunity to reduce conflicts with adjacent development.

As discussed above, PG&E did not enter into a discussion with the Vos that would have enabled it to understand the Vos' development plans and allow the plant's adjacent neighbors to help the company identify the optimal site for the compressor station. The fact that the station was then situated on the portion of the parcel closest to the Vos makes this omission even harder to defend. Other than arguing that it had no obligation to confer with the Vos (an argument we have rejected), PG&E offers no defense for this omission. The resulting picture is one in which PG&E failed to confer with all adjacent landowners, as required in the Mitigation Plan and failed to use the excess land to maximize the opportunity to reduce conflicts, as it said it would.

The remaining question is what to do about it, and here, the options are not favorable. The compressor station is up and running. The Vos would have us require that PG&E now create the buffer that it had earlier promised. Yet, there are only two apparent means for doing this. One would involve moving the compressor station, an option that is fraught with difficulties. Most significantly, it is not evident that there is any better place, within the parcel, to site the plant. To the east of the station site is a stream bed. To the north are wetlands. Most of the remainder of the property is used by its prior owners as grazing land. Even with the aid of the additional information the Vos have obtained through discovery in this proceeding, they have not suggested that there is a preferable place to site the station within the parcel. In addition, the expense, disruption, and potential additional environmental impacts related to dismantling the existing station and building a new one are unknown. It is possible that the cure could be worse than the problem. With such uncertainty, it would not be appropriate for us to order a change. In the absence of any promising new sites for the station, we see no benefit to further studying the impacts resulting from a change.

The second apparent option would be to require that PG&E enlarge its land holdings around the perimeter of the existing site in order to provide an appropriate buffer. We will not require this. In order to create a buffer on the Vos's side of the station, PG&E would have to acquire the Vos' property. Far from providing for the Vos the peace of mind that would enable them to build the home that they envisioned, it would preclude them from building on that site. In addition, the record does not demonstrate that there is a problem that would be appropriately addressed by enlarging the buffer zone. The Vos raise concerns about safety and security, but do not demonstrate that any particular buffer area, or any buffer area at all, is required to alleviate those concerns. Finally, lingering in the shadows of this discussion are issues related to loss of property value and appropriate levels of compensation. These are questions for the courts. It is also for the courts to determine if rights and responsibilities related to the impacts from the existence of the compressor station are resolved with finality in the civil settlement.

Failure to Blend Aboveground Structures with Natural Surroundings

Mitigation Measure 101 required PG&E to design and locate new facilities in a manner that blends into the existing environment. As part of its effort to do so,

PG&E built the compressor station in such a manner that the top of the tallest building is below the street level and it painted the facilities in earthen tones. In presentations made before and after the approval of the project, PG&E stated that it intended to surround the compressor station with 14 acres of landscaping (including 56 trees and 55 shrubs). The Vos report that planting were undertaken as part of the construction project, but PG&E did not care for and encourage the development of the trees and shrubs. Photographs provided by PG&E show that there are no trees or shrubs surrounding the station today. The result is that the station is a stark presence in an otherwise-agricultural setting. We will require that PG&E once again provide landscaping designed to substantially hide the plant from view as the vegetation matures. No later than 60 days after the date of this decision, PG&E shall present to the Commission a design and schedule for the landscaping and create a fund to provide for continuing maintenance sufficient to encourage plant growth and maintain the aesthetics of the landscaping.

Failure to Mitigate for Cumulative Risks to Public Safety

Mitigation Measure 5 requires that PG&E develop and implement an emergency preparedness plan. PG&E reports that it maintains a site-specific plan for the compressor station. Without specific reference to that plan, the Vos raise several concerns about the adequacy of PG&E's emergency preparedness:

1. Natural Gas Releases

The Vos report that there are natural gas odors emanating from the facility, that there are no warning signs indicating dangers associated with these odors and that they have been unable to receive answers when they have inquired about the odors. The Vos want to know if these odors suggest the existence of a dangerous situation. PG&E responds that there is incidental release of natural gas that occurs and that during maintenance, PG&E evacuates gas from the compressor station. In such circumstances, which occur at least once a month, natural gas is vented to the atmosphere for approximately 11 minutes. PG&E states that it attempts to personally contact each affected neighbor at least one week in advance and that if this fails, the company's personnel attach a handout to the door. Apparently, this approach is not getting sufficient information to the Vos. We will direct PG&E to report to the Commission's Utilities Safety Branch on its success in notifying those who live in the

vicinity of the compressor station and to work with the Vos to develop a specific plan for providing them with the information they require.

2. Fire Protection

The Vos express concern that in the absence of the construction of fire breaks, PG&E has not taken adequate steps to prevent a grass fire from spreading from the plant to neighboring land. As PG&E points out, the Commission considered this concern and adopted Mitigation Measure 42b, which concludes that it is preferable to provide a vegetation-free set-back behind the compressor station fence as opposed creating a fire break. PG&E reports that it maintains that setback. Thus, PG&E appears to be in compliance with the EIR in this regard. The Vos also question the lack of a water supply on the compressor station site for fighting fires. PG&E has not addressed this issue. We will ask the Commission's Utilities Safety Branch to investigate this concern and report back to us if further steps are suggested.

3. Vandalism

There is no staff on-site at the compressor station. The Vos report that because of its proximity to public roads, the station has been subject to several acts of vandalism and theft. PG&E argues that its security system is more than adequate. We have no basis for assessing this claim and will direct the Utilities Safety Branch to investigate this concern, as well.

4. Alarms

The Vos report that alarms at the compressor station go off at all hours of the day and night. PG&E has not responded to the Vos' concerns about these occurrences. We will ask the Utilities Safety Branch to investigate and report on this matter.

5. Emergency Response

The Vos report that the fire and law enforcement departments that would serve the area near the compressor station in the event of an emergency are too distant from the station to provide a timely response. We need more information on this issue, as well, and will direct the Utilities Safety Branch to investigate and report back to us.

Conclusion

With the assistance of the Vos, we have found several instances in which PG&E failed to comply with the EIR and Mitigation Program for this project. Most significantly, PG&E failed to speak frankly and promptly with the Vos about the

company's plans to build a compressor station across the street from their property and failed to take the Vos' development plans into account when siting the compressor station. In addition, PG&E failed to provide a buffer area around the compressor station, as it said it would. The question that remains is how to take steps to ensure that PG&E will more completely comply with such requirements in the future. Pursuant to Public Utilities Code § 2107, we have the authority to penalize PG&E for its failure to comply with Mitigation Measures 27 and 28a.

For its failure to resolve development plan conflicts by mutual consent (Measure 27), we conditionally fine PG&E for each day between the date that PG&E informed the Vos' neighbor of its intention to build the compressor station (January 24, 1991) and the date that PG&E first discussed the compressor station with the Vos (February 1992). This potential fine totals $790,000 amounting to $2,000 for each of the 584 days during this period. This amount represents the maximum daily fine allowed by law during this period, because prior to January 1, 1994, § 2107 provided for a maximum fine, per violation, of $2,000. PG&E was in violation of this mitigation measure each day that it failed to work with the Vos to identify and resolve development conflicts.

For its failure to notify the Vos of anticipated construction activity at least two weeks in advance of construction, we conditionally fine PG&E $280,000. This represents a $20,000 fine (the maximum level then allowed by law) for each day prior to the initiation of construction of the compressor station during which PG&E was in violation of its notice requirement.

We do not at this time know whether PG&E's actions in violation of the EIR mitigation measures 27 and 28a were isolated and specific only to this case, or if such actions were systematic and widespread. The level of fine we ultimately impose will depend upon the repetitiveness and severity of PG&E's actions.

Finally, we are concerned that violations of our mitigation orders such as the Vos have brought to our attention in this proceeding may have occurred elsewhere on the project. We will ask the Enforcement Branch of the Consumer Services Division to investigate all such occurrences and report to us within 90 days. The investigation should be limited to mitigation measures 27 and 28a, or mitigation measures directly linked to these.

If we discern a pattern of noncompliance, we will direct staff if necessary to prepare an Order Instituting Investigation (OII). We will not hesitate to impose up to

the largest possible fine for each incident. We will not limit the total potential fine to the limit that could be imposed for the violations in this decision. On the other hand, if PG&E's violations of the EIR mitigation measures are found to be limited to the Vos' situation, we will consider the appropriate level of fine in that light (which may be significantly less than the legal maximum of $1,070,000). If an investigation is opened into these matters, we will consolidate this complaint with the investigation in order to preserve the record developed herein.

Findings of Fact

1. The Vos did understand or should have understood that they were forming a commitment to refrain from litigation of this type before the Commission.

2. The agreement not to file a complaint before this Commission would serve to limit this Commission's jurisdiction if it precluded us from reviewing PG&E's compliance with our order approving the pipeline expansion project and requiring the mitigation measures that are of concern to the Vos.

3. PG&E failed to appropriately consider the likely uses of neighboring land, failed to specifically inform neighbors of the company's plans before they are largely locked into place, and evaded specific questions that, if answered in a frank manner, could have enabled effected neighbors to meaningfully participate in the planning process.

4. Because PG&E did not acknowledge to the Vos that it was intending to place a compressor station across the street until well into the company's planning process, it cannot be found to have negotiated with the Vos for the purpose of identifying all potential land use conflicts.

5. The Vos were not notified of the construction of the compressor station across the street from their property two weeks in advance of construction.

6. The Vos assert that PG&E failed to obtain local permits; however, the Vos have not shown that PG&E was required to obtain any local permits.

7. PG&E did not provide a buffer around the plant, as it said it would.

8. Plantings were undertaken as part of the construction project, but PG&E did not care for and encourage the development of the trees and shrubs.

9. The compressor station is a stark presence in an otherwise agricultural setting.

10. Although PG&E states that it attempts to personally contact each affected neighbor at least one week in advance of natural gas releases and that if this fails, the company's personnel attach a handout to the door. Apparently, this approach is not getting sufficient information to the Vos.

11. The Vos question the lack of a water supply on the compressor station site for fighting fires; PG&E has not addressed this issue.

12. The Vos report that because of its proximity to public roads, the station has been subject to several acts of vandalism and theft; PG&E argues that its security system is more than adequate.

13. The Vos report that alarms at the compressor station go off at all hours of the day and night; PG&E has not responded to the Vos' concerns about these occurrences.

14. The Vos report that the fire and law enforcement departments that would serve the area near the compressor station in the event of an emergency are too distant from the station to provide a timely response.

Conclusions of Law

1. The action of the superior court in adopting the settlement agreement does not preclude us from hearing the concerns raised by the Vos.

2. PG&E's failure to consult with the Vos is inconsistent with the intent and instructions contained in the mitigation plan.

3. PG&E failed to comply with its mitigation requirements to provide advance notice of construction activity.

4. The Commission should require that PG&E once again provide landscaping designed to substantially hide the compressor plant from view as the vegetation matures.

5. We should direct PG&E to report to the Commission's Utilities Safety Branch on its success in notifying those who live in the vicinity of the compressor station of scheduled and emergency natural gas releases and to work with the Vos to develop a specific plan for providing them with the information they require.

6. We should ask the Commission's Utilities Safety Branch to investigate the adequacy of on-site water and report back to us if further steps are suggested.

7. We have no basis for assessing the adequacy of compressor station site security and should direct the Utilities Safety Branch to investigate this concern.

8. We should ask the Utilities Safety Branch to investigate PG&E's use of on-site alarms.

9. We need more information on emergency response plans and should direct the Utilities Safety Branch to investigate and report back to us.

10. Pursuant to Public Utilities Code § 2107, we conditionally penalize PG&E up to $1,070,000 for its failure to comply with Mitigation Measures 27 and 28a. The final amount of fines, if any, that we assess against PG&E shall be addressed in a subsequent order in this proceeding.

11. We should ask the Enforcement Branch of the Consumer Services Division to investigate all possible additional violations of our mitigation orders on this project and report to us within 90 days.

INTERIM ORDER

IT IS ORDERED that:

1. Within 90 days of the effective date of this order the Enforcement Branch of the Consumer Services Division shall report to the Commission all additional violations of our mitigation orders with respect to this project.

2. The Commission's Utilities Safety Branch shall investigate the various safety issues discussed in this order and report its findings to the Commission in this docket. The Utilities Safety Branch should include, in this report, its recommendations for further action.

3. No later than 60 days after the date of this decision, PG&E shall present to the Commission a design and schedule for the landscaping of the compressor station

site as discussed in this order, and create a fund to provide for continuing maintenance sufficient to encourage plant growth and maintain the aesthetics of the landscaping.

This order is effective today.

Dated January 23, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners