

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

Order Instituting Rulemaking on the
Commission's Own Motion to Adopt New
Safety and Reliability Regulations for Natural
Gas Transmission and Distribution Pipelines
and Related Ratemaking Mechanisms

R.11-02-019
(Filed February 24, 2011)

**JOINT MOTION OF THE STAFF OF THE CALIFORNIA
PUBLIC UTILITIES COMMISSION AND PACIFIC GAS
AND ELECTRIC COMPANY FOR APPROVAL OF
STIPULATION RE ORDER TO SHOW CAUSE**

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Pursuant to the direction of Administrative Law Judge (“ALJ”) Maribeth A. Bushey at the March 28, 2011 hearing on the Order to Show Cause (“OSC”), the Consumer Protection and Safety Division of the California Public Utilities Commission (respectively, “CPSD” and the “Commission”) and Pacific Gas and Electric Company (“PG&E”) jointly move the Commission to approve the stipulation and compliance plan filed by them on March 24, 2011 in resolution of the OSC.

I. INTRODUCTION AND SUMMARY OF STIPULATION

The stipulation CPSD and PG&E filed with the Commission reflects their mutual commitment to the safety of PG&E’s natural gas transmission system. The current records search is important to the future safety of PG&E’s transmission system. The validation of the maximum allowable operating pressure (“MAOP”) of PG&E’s “grandfathered” HCA pipelines¹ will provide added assurance to the public, the Commission and PG&E that those pipelines are operating at safe pressures. CPSD and PG&E agree it is important for PG&E to do this work as quickly as possible without sacrificing the quality that is vital for safety.

¹ The “HCA pipelines” are those in Class 3 and 4 locations and Class 1 & 2 high consequence areas.

If approved by the Commission, the stipulation will resolve the pending OSC. The OSC arose out of a perception by CPSD, expressed in the Executive Director's March 16, 2011 letter, that, in its March 15, 2011 report, PG&E "willfully" failed to comply with the Commission's directives to "aggressively and diligently" search for records and use those records to calculate the MAOP for its HCA pipelines. PG&E acknowledged in its March 21, 2011 supplement that its original report "failed to communicate both our commitment to safety and, more importantly, the full extent of the work we have done and are continuing to do to assure the public and ourselves that our pipelines are operating at safe MAOPs." The OSC directed PG&E to show cause why it should not be fined or otherwise punished for contempt and fined for failing to comply with Commission Resolution L-410 and R.11-02-019. (OSC, OP 1.)

The stipulation is in the nature of a consent decree,² meaning that PG&E does not admit any fault but agrees to do certain things pursuant to Commission order. The stipulation has two primary elements: (1) a penalty that addresses both the past and PG&E's continuing compliance; and (2) a forward-looking compliance plan, as follows:

- PG&E agrees to pay a penalty of \$6 million, \$3 million payable within 10 days of the Commission's approval of the stipulation, and up \$3 million payable in the event the Commission finds PG&E has inexcusably failed to meet a milestone in its compliance plan. (Stipulation, ¶¶ 3(a) & (b).)
- PG&E commits to a compliance plan that has milestones and deadlines that will result in the MAOPs of all PG&E HCA gas transmission pipelines without pressure tests being validated based on engineering calculations by August 31, 2011. (Id., ¶ 2

² A consent decree is a settlement contained in a court decree that obligates a party to take certain actions without admitting fault.

& Attachment 1.) The compliance plan prioritizes the MAOP validation work based on certain characteristics of the HCA pipe, with separate deadlines for each priority group. It requires PG&E to submit monthly reports to the Commission and to confer with CPSD regularly with respect to the MAOP validation process, any assumptions PG&E plans to use, and field work it plans to conduct to verify material properties.

The stipulation makes clear that PG&E will not seek to recover any portion of the penalty in rates and that the penalty is only applicable to PG&E's compliance with the Commission's directives concerning the National Transportation Safety Board ("NTSB") urgent safety recommendations. (Stipulation, ¶¶ 3(c) & (d).) It "does not limit the Commission's authority to impose additional penalties for any violation of law or regulations with regard to the Commission's investigation into the San Bruno pipeline rupture not related to completion of the Compliance Plan." (*Id.*, ¶ 3(c).) Finally, the compliance plan establishes that PG&E will reimburse the Commission for any fees, expenses or costs for consultants or experts retained by the Commission for implementing, monitoring and enforcement of the plan. Tom Bottorff, PG&E's Senior Vice President, Regulatory Relations, testified that PG&E's shareholders will bear these costs, not ratepayers. (R.T. 139-40.)

As shown in more detail below, the stipulation (and attached compliance plan) is reasonable in light of the OSC record, consistent with law, and in the public interest. CPSD and PG&E request that the Commission approve the stipulation and close the OSC.

II. STATEMENT OF FACTS

On January 3, 2011, the Executive Director directed PG&E to comply with two urgent safety recommendations from the NTSB as follows:³

³ On January 13, 2011, in Resolution L-410, the Commission ratified the Executive Director's directives, extending PG&E's compliance report filing to March 15, 2011. (OSC, p. 5.)

1. Aggressively and diligently search for all as-built drawings, alignment sheets, and specifications, and all design, construction, inspection, testing, maintenance, and other related records, including those records in locations controlled by personnel or firms other than Pacific Gas and Electric Company, relating to pipeline system components, such as pipe segments, valves, fittings, and weld seams for Pacific Gas and Electric Company natural gas transmission lines in class 3 and class 4 locations and class 1 and class 2 high consequence areas that have not had a maximum allowable operating pressure established through prior hydrostatic testing. These records should be traceable, verifiable, and complete. (P-10-2) (Urgent)

2. Use the traceable, verifiable, and complete records located by implementation of Safety Recommendation P-10-2 (Urgent) to determine the valid maximum allowable operating pressure, based on the weakest section of the pipeline or component to ensure safe operation, of Pacific Gas and Electric Company natural gas transmission lines in class 3 and class 4 locations and class 1 and class 2 high consequence areas that have not had a maximum allowable operating pressure established through prior hydrostatic testing. (P-10-3) (Urgent)

PG&E responded by letter on January 7, 2011. In this letter, PG&E stated that it recognized and supported the urgency surrounding these directives and was moving forward aggressively with its compliance efforts. PG&E expressed that the first step of such efforts was to “gather all hydrostatic and other pressure test information to verify which pipeline segments have had their maximum allowable operating pressure established through pressure testing.” PG&E stated that this record verification effort was a “substantial undertaking,” the results of which it would deliver to the Commission by March 15, 2011.

On February 1, 2011, PG&E provided the Commission with an update on its progress in fulfilling the directives of Resolution L-410. PG&E stated that the “foundational step” and “initial focus” of such compliance was the effort to collect, scan and index an estimated 1.25 million individual records from PG&E’s hardcopy files into an electronic database. This was

described as a first step which was “critical to the remainder of [PG&E’s] records verification and validation effort.” PG&E further explained that it would determine over the following six weeks the total number of miles for which it had “complete, verifiable and traceable records of prior pressure tests,” and would complete this “monumental effort” by March 15, 2011.

On March 15, 2011, PG&E submitted what it described as a status report on the first phase of its efforts to validate its gas transmission records and the MAOP of each of its gas transmission pipelines. This submission explained, among other things, the effort that PG&E had undertaken to identify complete, verifiable and traceable records of prior pressure tests for its pipelines, the results of such efforts, and PG&E’s intention to continue to search for relevant records and to complete its MAOP validation analysis by the end of 2011. PG&E believed, and continues to believe, that this submission was consistent with the commitments set forth in its January 7, 2011 and February 1, 2011 correspondence as well as other communications with the Commission.

CPSD believed, and continues to believe, that PG&E’s March 15, 2011 submission failed to fully comply with the requirements of Resolution L-410. Accordingly, the Commission’s Executive Director stated in a letter dated March 16, 2011 that CPSD would be recommending that the Commission issue an OSC why PG&E should not be fined for its (perceived) failure to comply with the Resolution. The Commission published a draft OSC that same day.

On March 21, 2011, PG&E filed a supplement to its March 15th report with the Commission (the “Supplement”). In addition to acknowledging that its prior submission had not effectively communicated PG&E’s commitment to safety and efforts to comply with the Commission’s directives, the Supplement provided additional detail on four subjects: (1) what PG&E had done and where it was in the process of gathering all the records needed to validate

the MAOP of its HCA pipelines; (2) what it was still doing and how rapidly it would complete the remaining work validating the MAOP of all of its pipelines (not just HCA pipelines where the MAOP was not established by pressure testing), starting with those for which it did not have pressure test records; (3) what near-term actions to enhance public safety PG&E was taking based on its records review; and (4) what longer term actions to enhance public safety PG&E was going to take.

On March 24, 2011, CPSD and PG&E reached agreement and filed the stipulation (and attached compliance plan) to resolve the OSC.

III. THE STIPULATION SATISFIES THE REQUIREMENTS OF RULE 12.1.

ALJ Bushey directed CPSD and PG&E to show that the stipulation meets the standard of review of Rule 12.1(d) of the Commission's Rules of Practice and Procedure. (R.T. 194.) That rule provides that the Commission will not approve a settlement unless it is reasonable in light of the record, consistent with law, and in the public interest. As discussed below, the stipulation (and attached compliance plan) satisfies each of these criteria.

A. The Stipulation Is Reasonable In Light Of The Record

As discussed above, CPSD and PG&E came to the stipulation with different views of the facts and PG&E's culpability. To use a metaphor, they were looking at things "through opposite ends of the telescope."

In a contempt proceeding, the Commission has said, "the procedural and evidentiary requirements are the most rigorous and exacting of all matters handled by the Commission." *In re S. Pac. Transp. Co.*, 6 CPUC 2d 336, 1981 WL 165224, at *3 (Cal. P.U.C. June 16, 1981). The burden of proof is higher than in any other type of proceeding before the Commission. *Id.*

The staff bears the burden of proving contempt beyond a reasonable doubt. *In re Facilities-based Cellular Carriers*, 57 CPUC 2d 176, 190 (Cal. P.U.C. 1994).

Proving contempt thus requires the staff to prove willfulness beyond a reasonable doubt. “For the Commission to find someone in contempt, the person’s conduct must have been willful in the sense that the conduct was inexcusable, or that the person accused of the contempt had an indifferent disregard of the duty to comply.” *In re Facilities-based Cellular Carriers*, 57 CPUC 2d 176, 205 (Cal. P.U.C. 1994) (citations omitted) (finding that telephone company’s actions were not willful or in knowing disregard of Rule 1). *See also In re Burns*, 161 Cal. App. 2d 137, 141 (1958) (“It is an essential element of contempt that the conduct of an accused must be willful in the sense that it is inexcusable.”); *Bd. of Supervisors v. Superior Court*, 33 Cal. App. 4th 1724, 1736 (1995) (“The facts essential to jurisdiction for a contempt proceeding are (1) the making of the order; (2) knowledge of the order; (3) ability of the respondent to render compliance; (4) willful disobedience of the order.”) (citations and quotations omitted).

Given the differing views of the facts and the standard of proof required, the OSC hearing would require substantial time and resources on the part of both CPSD and PG&E. Further, PG&E’s witnesses at the March 28, 2011 hearing affirmed that PG&E is working to comply with the Commission’s orders as quickly as possible without sacrificing the accuracy and reliability of the finished product. (R.T. ___.) Rather than engage in extensive litigation to determine whether the scope and speed of PG&E’s efforts and the clarity of its related communications with the Commission constitute an “indifferent disregard” of PG&E’s duty to comply with the Commission’s directive, both PG&E and the CPSD believe the focus should be on ensuring the accuracy of PG&E’s records and the future safety of its pipeline operations as

quickly as possible. This is achieved by implementing the proposed “very aggressive” yet achievable compliance plan to which the parties have agreed.

In addition, the penalty on which CPSD and PG&E have agreed is reasonable. CPSD’s position was that PG&E faced penalties “in the ballpark” of \$1 million per day from March 15 to March 21, 2011. (R.T. 169-70.) PG&E believes any penalty would be limited to \$20,000 per day under Public Utilities Code §§ 2107 and 2108. The agreed penalty – \$6 million, \$3 million of which may be forgiven – is nearly as much as CPSD could have obtained if it litigated the OSC and won.

B. The Stipulation Is Consistent Law

Attachment 1 to the stipulation sets forth a detailed timeline for PG&E’s compliance with the Commission’s directives. While PG&E believes that a monetary penalty is unwarranted, it agrees that the structure and amount of the penalty could be within the Commission’s discretion.

The stipulation is also consistent with law in what is specifically *not* encompassed within it. Commission Rule 12.1 provides that resolution of any proceeding “shall be limited to the issues in that proceeding and shall not extend to substantive issues which may come before the Commission in other or future proceedings.” As provided in paragraph 3(c), the penalty provided in the stipulation resolves only the narrow issues concerning PG&E’s March 15, 2011 submission and its compliance with the records and MAOP validation directives of Resolution L-410 and R.11-02-019. Questions regarding broader San Bruno issues or PG&E’s overall compliance with the law pertaining to safety are outside the scope of the stipulation, as required by Commission Rule 12.1.

C. The Stipulation Is In The Public Interest

PG&E and CPSD agree the MAOP validation work PG&E is doing is important to the future safety of PG&E's pipelines and to providing added assurance to the public, the Commission and PG&E itself that the MAOPs of its HCA pipelines are appropriate and safe. The compliance plan that is part of the stipulation enables PG&E and CPSD to focus together on this important safety work and provides the Commission and the public with the added assurance of knowing that PG&E is working to a tight time schedule.

The stipulation (and attached compliance plan) serves the public interest by addressing the two concerns underlying the OSC. First, it sets forth a comprehensive timeline for PG&E to complete the MAOP validation effort as quickly as possible without sacrificing the accuracy of its effort or the future safety of its pipeline operations. This achieves the primary function of the OSC and the broader proceeding in which it was issued, which is to ensure that PG&E is operating its gas pipeline system safely. As part of the work plan to which PG&E is committed, the stipulation establishes a series of formal and informal mechanisms by which PG&E will update and consult with CPSD regarding its progress on this project. These provisions will provide the Commission and the public with a great deal of information PG&E's efforts. CPSD believes PG&E failed to clearly and effectively communicate the scope and complexity of its compliance efforts (and the resulting timeline) prior to its March 15, 2011 filing. With the stipulation and compliance plan in place, the Commission will have a greater ability to review, monitor and oversee PG&E's compliance efforts in real time and at regular intervals.

Secondly, the stipulation serves the public interest by requiring PG&E to pay a penalty for what CPSD believes was a failure to comply with the Commission's directives by the March 15 deadline and by providing a mechanism for further penalties in the event of an unexcused failure by PG&E to meet the milestones set forth in the compliance plan.

The public interest in this proceeding should remain focused on ensuring the safety of PG&E's operations rather than seeking opportunities to extract the maximum theoretical penalty allowable under the Commission's rules. It would not serve the public interest to impose forward-looking penalties that would incentivize PG&E to move more quickly than is possible without sacrificing the accuracy and reliability of the finished product.

While PG&E does not concede any allegation of the OSC or admit any non-compliance with the Commission's orders, it agrees that the public interest is better served by payment of the agreed penalty and swift implementation of the compliance plan than by what Commissioner Florio accurately described as "months" of potential litigation regarding the OSC. (R.T. 192.) The public interest is best served by PG&E's commitment that both the proposed penalty and the Commission's costs of implementing, monitoring and enforcing the compliance plan will be borne by PG&E's shareholders rather than its customers.

CPSD and PG&E agree that the primary interest of the public, and the true focus of this proceeding, is ensuring the completeness and accuracy of PG&E's records and the future safety of its gas pipeline system. The proposed stipulation and compliance plan achieve those goals.

IV. CONCLUSION

The stipulation (and attached compliance plan) resolves a single matter: the OSC concerning PG&E's compliance with the Commission's directives to collect records and validate by engineering analysis the MAOPs of its HCA pipelines without pressure tests. The stipulation provides for both payment of a substantial penalty and a plan with enforceable milestones to complete this important safety work. It is reasonable in light of the record, consistent with law, and in the public interest. The Commission should approve the stipulation and close the OSC.

Respectfully submitted,

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