

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.

Rulemaking 11-02-019
(Filed February 24, 2011)

**MOTION OF THE CONSUMER PROTECTION AND SAFETY DIVISION TO
ADOPT THE STIPULATION RE ORDER TO SHOW CAUSE BETWEEN
PACIFIC GAS AND ELECTRIC COMPANY AND THE CONSUMER
PROTECTION AND SAFETY DIVISION**

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I. INTRODUCTION

Pursuant to the Administrative Law Judge's Ruling at the March 28, 2011 hearing, the Commission's Consumer Protection and Safety Division ("CPSD" or "staff") hereby files this Motion to adopt the Stipulation Re Order to Show Cause" ("Stipulation") between Pacific Gas and Electric Company ("PG&E") and CPSD filed on March 24, 2011. As discussed below, the Commission should approve the Stipulation. The Stipulation proposes to resolve the limited issues that were the subject of the Commission's March 24, 2011 Order to Show Cause and, through the PG&E Compliance Plan for NTSB¹ Safety Recommendations ("Compliance Plan") which is part of the Stipulation, PG&E will meet specific directives in order to comply with the Commission's Resolution L-410. The Stipulation between CPSD and PG&E is procedurally proper, is reasonable in light of the record, consistent with the law, and in the public interest.

¹ National Transportation Safety Board.

II. DISCUSSION

A. Background

On March 24, 2011, the Commission issued an “Order to Show Cause Why Pacific Gas and Electric Company Should Not Be Found in Contempt, and Why Penalties Should Not Be Imposed, For Failure to Comply With Commission Order” (“Order to Show Cause”). *See* D.11-03-047. The Order to Show Cause was issued in response to PG&E’s March 15 filing in the above-docketed proceeding, entitled “Report of Pacific Gas and Electric Company on Records and Maximum Allowable Operating Pressure Validation” (“March 15 Filing”).

PG&E’s March 15 Filing was pursuant to Ordering Paragraph 3 of this Rulemaking and Commission Resolution L-410, which required PG&E to comply with certain urgent NTSB recommendations, including: (1) an “aggressive and diligent search” for records for pipelines in specified high consequence areas (“HCAs”) that do not have a maximum allowable operating pressure (“MAOP”) established through prior hydrostatic testing; and (2) calculation of a valid MAOP based on the weakest segment of the pipeline using the “traceable, verifiable and complete records” located. Ordering Paragraph 3 of this Rulemaking affirmed the extension of the February 1 deadline to March 15, 2011. The Order to Show Cause states, “it appear[s] PG&E presented no evidence that it aggressively and diligently searched as-built drawing and other records to obtain traceable, verifiable, and complete pipeline records upon which to determine a valid maximum allowable operating pressure for pipeline without records of pressure testing” as required by Commission directives. *See* D.11-03-047 at 14, Finding of Fact 4.

Staff believes that PG&E’s March 15 Filing did not comply with the Commission’s order in Resolution L-410 based on the NTSB’s urgent safety recommendations. (CPSD/Halligan, RT 166). PG&E takes a contrary position. (PGE/Bottorff, RT 152-157). However, in response to a March 16, 2011 letter

from Executive Director Paul Clanon to PG&E and following the publication of the draft Order to Show Cause, PG&E filed a “Request for Approval of Compliance Plan and Supplement to Report of Pacific Gas and Electric Company on Records and Maximum Allowable Operating Pressure Validation” on March 21 (“March 21 Filing”). Staff believes the March 21 Filing demonstrated an acknowledgement by PG&E that documentation of historical high operating pressure for pipelines did not constitute compliance with Resolution L-410, and PG&E’s commitment to search for records necessary to properly validate the MAOPs of its HCA pipelines and to identify inconsistencies between installed pipelines and as-built drawings or other source documents.² Following the March 21 Filing, staff met and conferred with PG&E to develop a more specific plan for PG&E to proceed as rapidly as possible with the NTSB safety recommendations. As a result, PG&E and staff agreed to the Compliance Plan, which was filed on March 24, 2011 as part of the Stipulation between PG&E and CPSD. PG&E and staff testified about the Stipulation at the March 28, 2011 evidentiary hearing.

B. The Stipulation Is Critical to the Safe Operation of PG&E’s Pipelines

As specified in the Compliance Plan, PG&E is continuing a process of collecting information critical to the safe operation of PG&E’s pipelines. It is a first step in redressing the inadequacy of PG&E’s pipeline records, including discrepancies between installed pipelines and as-built drawings. The Compliance Plan sets a new timetable for the search of PG&E records and computation of the MAOP, with monthly reporting requirements. Within five months, by August 31, PG&E must complete specific activities recommended by the NTSB and ordered by the Commission for 705 miles of pipeline that do not presently have hydrostatic

² See, e.g., PG&E March 21 Filing, pp. 1, 5 & 6. (For example, PG&E stated that its March 15 Filing “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.”)

pressure test records, including all “grandfathered” pipeline. *See* Attachment A to the Compliance Plan. The August 31 date is sooner than the deadline proposed at p. 17 of PG&E’s March 21 Filing, Q3 of 2011.

The milestones in the Compliance Plan can be reprioritized, if necessary, by the Commission’s Executive Director. This flexibility is necessary because, although this work is urgent, it also must be completed carefully and accurately, or we may find ourselves in the same situation in the future – critical information is not verified and records are not readily available – and this expensive and resource-intensive process will have not achieved the desired results. The information required by the Commission is essential for public safety. As CPSD Deputy Director Halligan testified:

I think this information that they will gather through this record search and through the process of validating the MAOP for all of their lines is going to allow the Commission and PG&E and other agencies involved to determine the scope and scale of any action that is necessary to ensure that future safety, and we need this information to make informed decisions in that regard.

And so because of that, we do view it as necessary to ensure the future safety of PG&E’s system. We believe they need to know what they have in the ground so they can make accurate integrity management assessment decisions and so we can decide what actions are necessary on which portions of their pipeline in the near – in the near future.

See CPSD/Halligan, RT 173-74.

The first priority under the Compliance Plan is to search for records and validate the MAOP of 152 miles of pipeline that PG&E has identified as most similar to the pipeline involved in the San Bruno explosion. The following priorities in the Compliance Plan relate to the types of pipelines described in

Priorities 2-4 at p. 17 of PG&E’s March 21 Filing, and include all pipelines for which PG&E does not have hydrostatic pressure test records.

PG&E indicated in its March 21 Filing that for many of its “grandfathered pipelines,”³ “we do not believe we will find ‘traceable, verifiable and complete’ records of every component.” March 21 Filing, p. 14. Accordingly, the Compliance Plan specifically requires that if PG&E does not have “traceable, verifiable and complete” records, and the MAOP calculation is based on assumptions regarding the weakest element of the pipeline segment, these assumptions must be specified in the electronic file and the calculation must note that it is based on these assumptions. Further, in no case can the MAOP be raised based on this exercise. *See* Compliance Plan, p. 3. These measures protect public safety.

The Compliance Plan also requires PG&E to submit monthly progress reports to Commission staff. PG&E must promptly reimburse the Commission for any fees, expenses or costs for consultants or experts retained by the Commission for implementing, monitoring or enforcement of the Compliance Plan. At the evidentiary hearing, PG&E Senior Vice President of Regulatory Relations Thomas Bottorff represented that PG&E shareholders, not ratepayers, would bear these investigation costs. *See* PG&E/Bottorff, RT 140.

The Stipulation proposes a fine of \$3 million to be paid by PG&E and not by its customers, with potential additional penalties of up to \$3 million for an unexcused failure by PG&E to meet the milestones set forth in the Compliance Plan, to determined by the Commission. At the evidentiary hearing, PG&E did not dispute CPSD Deputy Director Julie Halligan’s testimony that an unexcused failure, in the context of the Compliance Plan, will occur if PG&E has not previously obtained approval in advance from the Commission’s Executive

³ Grandfathered pipelines were installed prior to 1970 and do not have MAOPs based on design documents or hydrostatic pressure testing.

Director to reprioritize work or modify the schedule. *See* CPD/Halligan, RT 168-69.

C. The Stipulation Resolves the Narrow Issues Set in the Order to Show Cause and Does Not Judge PG&E’s Prior Recordkeeping Practice or Otherwise Effect Other Proceedings.

The Stipulation does not prejudice or impact other proceedings related to the San Bruno gas explosion or otherwise impact this Rulemaking. The Stipulation proposes to resolve just one issue in the Rulemaking: whether PG&E was in contempt and in violation of the Commission’s Resolution L-410 for failing to timely file what the CPUC ordered PG&E to file on March 15. The Stipulation only purports to resolve the narrow issues set in the Order to Show Cause:

The scope ...will be strictly limited to whether PG&E’s March 15, 2011 filing failed to comply with Commission Resolution L-410 and R.11-02-019 relating to the pipeline for which pressure test records could not be located. The appropriate penalties for any violations are within the scope of this hearing. Other issues related to this rulemaking are specifically excluded for the scope of this Order to Show Cause.

See D.11-03-047 at 12 (emphasis added). The Stipulation also expressly provides in Paragraph 3 (c): “The penalty specified above does not limit the Commission’s authority to impose additional penalties for any violation of law or regulation with regard to the Commission’s investigation into the San Bruno pipeline rupture not related to completion of the Compliance Plan.”

Accordingly, the Stipulation does not resolve other current or possible future potential proceedings concerning the San Bruno explosion, or prevent the Commission from imposing additional penalties or other remedies not related to completion of the Compliance Plan. The Stipulation does not impact the ongoing NTSB/CPUC Root Cause San Bruno investigation. The Stipulation does not impact the Commission’s *Order Instituting Investigation on the Commission’s*

Own Motion into the Operations and Practices of Pacific Gas and Electric Company with Respect to Facilities Records for its Natural Gas Transmission System Pipelines. (Docket No. I. 11-02-016). This Stipulation does not affect any forward-looking rules on recordkeeping that might be adopted in this Rulemaking. In the future, parties will have the opportunity to submit comments on issues identified in this OIR proceeding which will help form the basis of the Commission's future decision on recordkeeping. The Stipulation also does not affect potential litigation related to the San Bruno explosion by private parties for damages or other remedies or any prosecution, action or investigation for violations of applicable laws or regulations. *See, e.g., Hartwell v. Superior Court* (2002) 27 Cal.4th 256, 277; *People ex rel. Orloff v. Pacific Bell* (2003), 31 Cal.4th 1132, 1148-1151 (explaining that the Attorney General and district attorneys, as governmental entities, may prosecute utilities for penalties or other remedies for violations of law).

D. The Stipulation Between PG&E and CPSD is Procedurally Proper

The Stipulation between PG&E and CPSD is consistent with the Commission's policy that provides for stipulations between the Commission's enforcement staff and a utility where staff has alleged a violation of the Commission's rules or orders. The only parties that can properly settle these types of allegations, according to precedent, are the enforcement staff and the utility that has been charged with a violation of Commission rules.

In a decision involving the Gas Accords Proceedings, the Commission held that "the sanctity of the Commission's rules is not a matter that private parties or the ORA can settle. . . . Only the enforcement staff of the Commission (e.g., Consumer Services Division or other authorized enforcement staff) can negotiate a settlement with a utility involving a Rule 1 violation, subject to an independent determination by the Commission as to whether or not to approve the settlement."

D. 97-08-055, 1997 Cal. PUC LEXIS 763 at *73. In that proceeding the

Commission invalidated a portion of an multi-party settlement agreement (“Gas Accords”) which purported to settle PG&E’s alleged Rule 1 violations, because only the Commission’s enforcement staff is authorized to settle these violations: “when the Commission sees provisions settling Rule 1 violation allegations in a settlement involving private parties or the ORA, or any other provision parties have no authority to settle, we will disregard the provision and consider it an ultra vires or unauthorized act.” *See id.*

More recently, the Commission found that the only parties that can settle a Rule 1 proceeding are Commission staff and the utility. In the San Diego Gas and Electric (“SDG&E”) Sunrise Powerlink certificate proceeding, the Commission opened an adjudicatory Order to Show Cause phase on alleged Rule 1 violations.⁴ The Commission limited participation in the Order to Show Cause phase of the proceeding to CPSD and SDG&E. *See* D. 09-07-018, 2003 Cal. PUC LEXIS 659 at * 3.⁵ Similarly, it is appropriate here for CPSD and PG&E to propose a resolution of the Commission’s March 24, 2011 Order to Show Cause.

E. The Stipulation is Reasonable in Light of the Record, Consistent With the Law, and in the Public Interest

The Commission should adopt the Stipulation because, consistent with Commission precedent, the Stipulation is reasonable in light of the record, consistent with the law, and in the public interest. *See* D. 09-07-018, 2003 Cal. PUC LEXIS 659 at *9. CPSD believes the Stipulation is reasonable in light of the record. The Compliance Plan clearly provides for PG&E to meet the NTSB safety

⁴ *See* In the Matter of the Application of San Diego Gas & Electric Company for a Certificate of Public Convenience and Necessity for the Sunrise Powerlink Transmission Project, Application (A.) 06-08-010.

⁵ It should be noted that in D.09-07-018 the Commission found that while their advisory staff who were witnesses could not also advise the Commission on the adjudicatory phase of the proceeding, they were “not limited in continuing to advise their Commissioners” on the other phases of the proceeding. *See id.* at *3.

recommendations on an aggressive, but reasonable, schedule. The Stipulation includes milestones to complete the NTSB recommendations to first diligently search for records, and then calculate an MAOP for certain designated lines. Any calculations based on assumptions because records ultimately cannot be located by PG&E must be clearly specified in the electronic file. The lines are designated by four different priorities in order of what PG&E and CPSD believe are the most important lines to inspect. PG&E provided extensive testimony on the record gathering and testing processes at the March 28 hearing and testified that it believes it can meet the milestones set out in the Compliance Plan. (PGE/Johnson, RT 32). Therefore, the Stipulation is reasonable in light of the record.

The Commission has statutory authority under sections 2107 and 2108 of the Public Utilities Code to impose a penalty of up to \$20,000 per day for each offense. The stipulated penalty is a compromise, and a \$3 million penalty represents a \$500,000 penalty for each day from March 15 until March 21, when PG&E filed its Request for Approval of a Compliance Plan. The Stipulation provides for potential additional penalties of up to \$3 million for failure to successfully complete the Compliance Plan. PG&E agreed that it would not seek to recover any part of the penalty from customers in rates. *See* Stipulation, ¶ 3 (d).

The Stipulation is also consistent with the law. While parties may disagree on whether or not PG&E's March 15 Filing complied with Commission Resolution L-410, the Stipulation provides for PG&E to complete necessary record collections and MAOP validation by August 31 – several months in advance of the proposal in PG&E's March 21 Filing. The Stipulation allows CPSD and PG&E to avoid litigation regarding the OSC, to focus efforts on compliance with the Commission's directives, and to move forward to redress the inadequacies in PG&E's recordkeeping and to verify the condition of PG&E's pipeline. These are critical and urgent steps essential in order for the responsible agencies to make informed decisions and recommendations regarding integrity management and future safety. Finally, the Stipulation is in the public interest.

The Stipulation accomplishes the Commission's urgent and immediate goal of a records search and MAOP validation. However, the Stipulation does not give PG&E a clean bill of health for pipeline integrity and safety. It is simply an interim remedial measure.

Respectfully submitted,

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