

**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)

**COMMENTS OF THE GREENLINING INSTITUTE ON THE  
ORDER TO SHOW CAUSE**

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**I. Introduction**

Pursuant to the Assigned Commissioner's Ruling Setting Oral Argument Before the Commission, Designating Presiding Officer for Order to Show Cause Issues and Scheduling Report to Commission from Pacific Gas and Electric Company ("OSC"), the Greenlining Institute ("Greenlining") submits this Response to the Motions of Pacific Gas and Electric Company ("PG&E") and the Consumer Protection and Safety Division ("CPSD") to adopt the proposed Stipulation re Order to Show Cause ("Stipulation").

Greenlining's main objectives in this proceeding are 1) to ensure safe and reliable conditions for PG&E's natural gas transmission and distribution pipelines and, 2) to ensure that ratepayers do not unreasonably bear the costs PG&E will incur in the months and years to come. In pursuit of the first objectives – safety and reliability – Greenlining urges the California Public Utilities Commission ("the Commission") that it need not bind itself to the terms of proposed Stipulation. Acceptance of the Stipulation closes the book on the issues raised by the Commission in the OSC, and accedes to an accelerated process for receiving fines from PG&E and a delineated schedule for PG&E's continued search for records and other means for

establishing the maximum allowable operating pressure (“MAOP”) on its high consequence pipelines.

However, neither the resolution of the contempt proceeding in this manner nor the schedule in “PG&E’s Compliance Plan for NTSB Safety Recommendations” (“Compliance Plan”) appear to be in the best interests of safety. They also do not appear to be in the interest of public confidence, either in PG&E or in California’s regulated utility system. Greenlining urges the Commission to continue its process for determining whether PG&E was and is in contempt of Resolution L-410 and to keep this contempt finding open and ongoing, as an incentive to PG&E to more quickly comply with the Commission’s and the National Transportation Safety Board’s (“NTSB’s”) Safety Recommendations.<sup>1</sup>

## **II. PG&E’s Compliance Plan Does Not Comply with the NTSB Safety Recommendations.**

Acceptance of the Stipulation and the \$3 million fine would mean the Commission acquiesces to PG&E’s Compliance Plan.<sup>2</sup> The Commission would be bound by the terms of the Stipulation and would be unable to seek any penalties or other regulatory action against PG&E for any failures to comply with the instructions in Resolution L-410, so long as PG&E meets the milestones contained in its Compliance Plan.<sup>3</sup> The finality provided by the Stipulation and the Compliance Plan – as well as the accelerated receipt of \$3 million in fines – would be worth

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<sup>1</sup> These Safety Recommendations were contained in a NTSB letter to Christopher Johns, President, PG&E, dated January 3, 2011.

<sup>2</sup> See Stipulation, ¶3b.

<sup>3</sup> See *id.*, ¶¶3b,3c: “The penalty specified above 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.” (emphasis added). See also *id.*, ¶4 “Upon Commission approval of this Stipulation, the OSC proceeding shall be closed.” The Compliance Plan purports to establish PG&E’s compliance with Resolution L-410. Thus, acceptance of the Stipulation and the Compliance Plan would preempt any further Commission enforcement of Resolution L-410, as long as PG&E meet the milestones found within the Compliance Plan.

considering if the Compliance Plan actually met the requirements of Resolution L-410 and the NTSB's Safety Recommendations. However, the Compliance Plan clearly does not fulfill the Recommendations.

Resolution L-410 and the NTSB's Safety Recommendations require PG&E to do two things. The first is to “[a]ggressively and diligently search for all as-built drawings, alignment sheets, and specifications, and all design, construction, inspection, testing, maintenance, and other related records” for all transmission lines in identified high consequence areas that have not had MAOP established by hydrostatic testing. PG&E is then instructed to use these “traceable, verifiable and complete records” to determine the valid MAOP for these pipelines. If these records are unavailable, PG&E is instructed to determine the MAOP “with a spike test followed by a hydrostatic pressure test.”<sup>4</sup>

The Commission established that PG&E's proposed process for determining MAOP, set forth in its March 15, 2011 “Report of PG&E on Records and MAOP Validation” (“PG&E March Report”), failed to comply with these Safety Recommendations. The Commission rejected PG&E's proposal that it could meet the above requirements by *instead* determining MAOP based on historical high operating pressure.<sup>5</sup> PG&E now asks the Commission to reverse its earlier rejection of PG&E's plan and to accept a determination of MAOP based not on “traceable, verifiable and complete records” or by a spike test followed by a hydrostatic pressure test, as required by the NTSB, but rather based on “assumptions” about pipeline components.<sup>6</sup> It is not clear what kind of assumptions would be made, under what circumstances they would be made, and how they would be arrived at.

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<sup>4</sup> See NTSB Safety Recommendations P-10-2, P-10-3 (Urgent), P-10-4; *see also* Resolution L-410, pp. 1-2.

<sup>5</sup> See D.11-03-047, p. 10, citing PG&E March Report, p. 7.

<sup>6</sup> See Compliance Plan, p. 2.

As such, PG&E's Compliance Plan clearly does not meet the requirements of the NTSB Safety Recommendations. This alone clearly indicates that the question of whether PG&E was willfully noncompliant is far from resolved. Being that the question is still open, the Commission must not approve an agreement that would close it on PG&E's own terms.

### **III. PG&E's Compliance Plan Would Allow Safety Considerations to Be Based on PG&E's Unchecked "Assumptions."**

Under the terms of PG&E's Compliance Plan, PG&E could determine MAOP based on "assumptions" PG&E makes "based on the material specifications at the time those materials were procured, sound engineering judgment, and conducting excavation and field testing of pipeline systems as appropriate."<sup>7</sup> While excavation and field testing sound like a sound basis for determining MAOP, the Compliance Plan establishes that such excavation and field testing would be done by PG&E only on a case-by-case basis. Thus, PG&E could choose to rely only on the records of materials to make its assumptions. In the evidentiary hearing on the Order to Show Cause, PG&E made clear that these assumptions may include assuming that pipeline components installed during a certain time period would be the same type as those purchased during a similar time period, even though PG&E could not be certain that they actually were the same components.<sup>8</sup> As such, through the Compliance Plan PG&E asserts that it is unnecessary to know what components *actually* are in use. It contends that it is instead sufficient to just *assume* what is in use. The NTSB, through its directive to locate records of *actual* system components, clearly does not believe that such assumptions are sufficient, and neither should this Commission.

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<sup>7</sup> *See id.*

<sup>8</sup> *See* Transcript of March 28, 2011 Evidentiary Hearing on the Order to Show Cause ("OSC Transcript"), p. 80:8-25.

The Compliance Plan clearly establishes that PG&E’s assumptions would be unchecked by any outside authority. The Compliance Plan states that it will “consider any recommendations made by Commission staff”<sup>9</sup> regarding its assumptions. Although these provisions pay lip service to Commission authority, essentially PG&E is free to make whatever assumptions it chooses about its pipelines and have these assumptions – whatever they might be – unconditionally pre-stamped with Commission approval as part of PG&E’s “Compliance Plan.”

The Commission noted that the NTSB required the use of “traceable, verifiable and complete records” because of its concern over the inaccuracy of PG&E’s records related to the San Bruno pipeline.<sup>10</sup> However, in its Compliance Plan, PG&E asks the Commission to allow it to not only rely on untraceable, unverifiable and incomplete records, but also to allow PG&E to make unchecked assumptions about these records in order to determine MAOP. Commission acceptance of the Stipulation and Compliance Plan, then, would ignore the NTSB’s concern over the inaccuracies of PG&E’s records and directly contravene the NTSB’s insistence on “traceable, verifiable and complete records” or spike and hydrostatic testing. To do so would be the height of irresponsibility, in actuality and in the watchful eye of the public.

Approval of the Stipulation and the Compliance Plan now, so early in this process, would cede discretion and authority to determine what is safe and what is not to PG&E. If the Commission has any doubt in its mind as to whether this is the responsible course of action for it to take, as the body constitutionally responsible for protecting the public and the public good, it must not approve this Stipulation and Compliance Plan. The Commission cannot allow

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<sup>9</sup> See Compliance Plan, p. 2.

<sup>10</sup> See D.11-03-047, p. 10; see also NTSB Safety Recommendation, p. 2. The NTSB notes that PG&E’s as-built drawings and alignment sheets marked the San Bruno pipe as seamless, when in fact it was constructed with longitudinal seam-welded pipe.

regulation of safety to be handed over to PG&E, especially considering PG&E's track record to date on such matters.

#### **IV. The Commission Cannot Abdicate its Authority Over Safety Regulation.**

In order to grant the motions for acceptance of the Stipulation, the Commission must find that it is in the public interest to allow safety regulation to be based on the unchecked assumptions of a regulated utility, as described above. The Commission *must not* make this finding. The Stipulation and Compliance Plan provide a measure of finality, accelerated receipt of a \$3 million fine and a schedule for PG&E's "compliance" with safety recommendations. However, all of this is predicated on giving PG&E final approval over assumptions it may make to determine MAOP. This tradeoff of proper safety regulation is not worth \$3 million, nor is it even worth a speedy resolution of this portion of the proceeding. If PG&E insists that it receive final authority over safety, the Stipulation must be rejected.

The Commission has other options besides acceptance of the Stipulation. It may press for a revised agreement with PG&E that does not give PG&E final authority over safety decisions and verification. Such an agreement could still establish a schedule for PG&E's compliance with Resolution L-410, subject to a fine for its tardy compliance. Most importantly, the Commission must retain authority over what processes are proper for validating MAOP.

If PG&E is not amenable to such a modified agreement, the Commission may proceed with its Order to Show Cause to find PG&E in contempt of Resolution L-410 and R.11-02-019. The Commission has already provided an evidentiary hearing regarding the Order to Show Cause on the finding of Contempt.<sup>11</sup> The evidence is fairly clear that PG&E has not complied with Resolution L-410. As such, a finding of contempt may be reached without, as PG&E

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<sup>11</sup> See D.11-03-047, pp. 11-12. See also OSC Transcript, p. 1:4-10.

claims, violating due process. Thus, PG&E would be in a continuing violation of the provisions of Resolution L-410, with a fine of up to \$20,000 per day or more.<sup>12</sup>

Although a finding of a continuing violation would not provide the finality of the Stipulation, or the accelerated delivery of a \$3 million fine, it would have other advantages. As the finding of a violation under Cal. Public Util. Code §§ 2107 and 2108 would be an open-ended continuing violation, PG&E would have a daily incentive to fully and timely comply with the Commission's safety requirements. Rather than being bound by a Stipulation and Compliance Plan that gives it no authority over the methods PG&E will utilize to determine MAOP, the Commission could – and must – insist on sound methods.

No matter the course the Commission takes, it must not abdicate its authority over safety regulation, as it would if it accepts the Stipulation and Compliance Plan.

## **V. Conclusion**

Commission Executive Director Paul Clanon, whose staff negotiated this Compliance Plan and Stipulation, has publicly called for culture change at PG&E. This Stipulation, however, does not indicate culture change. The Commission must ask itself whether this deal truly represents the best interests of California and its residents, and whether it truly stands a chance of spurring the culture change that is so clearly required here. If the Commission believes any less, if it has *any* doubt that \$3 million and a cold statement of non-admission of fault will turn this ship in the direction of safety and responsibility, it is duty-bound to reject the Stipulation. Rejecting the Stipulation leaves options open. Approving the Stipulation says to PG&E “we believe you were not at fault.” Moreover, the “resolution” it would provide to the issue of record

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<sup>12</sup> PG&E's failure to comply with Resolution L-410 may be considered a single continuing violation subject to a daily \$20,000 fine, or it may be found to consist of several continuing violations, each one subject to a daily \$20,000 fine. See Cal. Public Util. Code §§ 2107, 2108.



production will be hollow and would not address the urgent safety concerns underlying the OSC and, indeed, the entirety of this proceeding. As such, Greenlining urges the Commission not to approve the Stipulation and Compliance Plan.

Respectfully submitted,

Dated: April 8, 2011

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