

From: Prosper, Terrie D.
Sent: 9/13/2012 2:05:00 PM
To: Prosper, Terrie D. (terrie.prosper@cpuc.ca.gov)
Cc:
Bcc:
Subject: CPUC Letter to S.F. City Attorney re: Cast Iron Gas Pipe Replacement

Please see the letter below from the General Counsel of the California Public Utilities Commission sent today to the San Francisco City Attorney regarding cast iron gas pipe replacement in San Francisco.

Please let me know if you have any questions.

Terrie

September 13, 2012

Hon. Dennis Herrera

City Attorney

City and County of San Francisco

City Hall, Room 234

1 Dr. Carlton B. Goodlett Place

San Francisco, CA 94102

Re: San Francisco Cast Iron Gas Pipe Replacement

Dear Mr. Herrera:

In April 1906, the City of San Francisco was substantially destroyed in a catastrophic fire triggered by ruptured gas lines after a massive earthquake. Today, San Francisco faces a clear and present danger from cast iron pipes of the kind that ruptured and exploded in Allentown, Pennsylvania, in February 2011.

Under the direction of our Commission, gas utilities throughout California have been replacing cast iron pipe, to address the danger posed by this obsolete technology. When this program began in 1985, the local gas utility, Pacific Gas and Electric Company, had nearly 830 miles of cast iron pipe in its system. Thanks to the replacement program, less than 50 miles of such pipe remains in the entire State of California.

It has come to our attention that 43 miles of this dangerous pipe remains buried in the streets of San Francisco. PG&E is prepared to complete this work, and indeed our safety staff have informed me they would have done so by now. The utility company, however, has been barred by the City's Department of Public Works from completing this important safety project, due to a City street paving ordinance.

I am writing to tell you that the City's street paving ordinance is preempted by our Commission's plenary jurisdiction over pipeline and gas utility safety, under federal law (in particular the Pipeline Safety Act, 49 U.S.C §§ 60104(c) and 60105, and the Natural Gas Act, 15 U.S.C. §§ 717(b) and (c)), and under State law, in particular the California Constitution^[1] and the California Public Utilities Code.^[2]

The law on this subject is not in doubt. As I hope you will quickly recognize, the City's street paving ordinance is preempted, and therefore of no lawful effect, as applied to a Commission-regulated utility embarked on a Commission-supervised pipeline safety initiative.

I urge you, therefore, to instruct the City Department of Public Works to stand down and allow the utility, with all due dispatch, to complete the replacement of the remaining 43 miles of cast

iron pipe located in the City and County of San Francisco.

On behalf of our safety engineers, we request the opportunity to meet with the City, along with PG&E, to develop a schedule for prompt replacement of this cast iron pipe in San Francisco.

We will appreciate your prompt attention to this urgent matter.

Sincerely,

Frank Lindh

General Counsel

Cc: Brigadier General (CA.) Emory “Jack” Hagan, Director, Consumer Protection and Safety Division, California Public Utilities Commission, San Francisco

Nick Stavropoulos, Senior Vice President of Gas Operations, Pacific Gas and Electric Company, San Francisco

[1] Cal. Const., art. XI, § 7 (“[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.”) Cal. Const., art. XII, § 8 (“as to matters over which the [Commission] has been granted regulatory power, the [Commission]’s jurisdiction is exclusive”); *Southern Cal. Gas Co. v. City of Vernon* (1995) 41 Cal. App. 4th 209, 215.); *Leslie v. Superior Court* (1999) 73 Cal. App. 4th 1042, 1046 (citations omitted) (“[t]he powers granted by the [Commission], including its rules and regulations, constitute general state laws. Accordingly, counties may not enforce local regulations that conflict with rules and regulations of the [Commission].”); “A conflict exists if the local legislation duplicates, contradicts, or enters an area fully

occupied by general law, either expressly or by legislative implication. . . . [L]ocal legislation is contradictory to general law when it is inimical thereto.” *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal. 4th 893, 897 (citations omitted) (internal quotation omitted).

[1] Pub. Util. Code, § 701

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[2] Pub. Util. Code, § 701