

**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)

**PACIFIC GAS AND ELECTRIC COMPANY'S RESPONSE TO MOTION
OF THE CITY OF SAN CARLOS AN ORDER DIRECTING PG&E TO
MAINTAIN REDUCED PRESSURE ON NATURAL GAS PIPELINE 147
AND TO COMPENSATE THE CITY OF SAN CARLOS FOR ALL ITS
COSTS ASSOCIATED WITH PARTICIPATION IN R.11-02-019**

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PG&E welcomes the participation of the City of San Carlos in these proceedings, and looks forward to the City's constructive contribution toward the shared goal of assuring its citizens that Line 147 is safe and fit for service.

The Commission should, however, deny San Carlos' motion. ALJ Bushey has already established an appropriate process to recertify the safety of Line 147. There is no legal or factual basis for the Commission to order PG&E to pay San Carlos' attorneys' fees and other costs of participating in these proceedings.

1. There Is No Basis To Change The Procedure For Assessing The Safety Of Line 147

At the October 21, 2013 prehearing conference (P HC) attended by Assigned Commissioner Florio, ALJ Bushey adopted a procedure for the Commission's consideration of the safe operating pressure of Line 147. That procedure and schedule are as follows:¹

November 12	SED files & serves its concurrence & report on the investigation of Line 147
November 18	Evidentiary hearing, cross-examination of PG&E witnesses, Kirk Johnson, Sumeet Singh & Michael Rosenfeld
November 22 (tentative)	Proposed decision mailed
December 2 (tentative)	Comments on PD
December 5	Commission decision

¹ PHC-3 R.T. 110-11.

Also at the PHC, ALJ Bushey accepted PG&E’s voluntary agreement to operate Line 147 at a pressure not to exceed 125 pounds per square inch gauge (psig) except under emergency conditions.²

San Carlos’ motion, served the day after the PHC , does not show good cause to jettison the procedure adopted by ALJ Bushey. ³ In fact, the motion does not mention or address that procedure. San Carlos could have made all its arguments at the PHC. To the extent it did, ALJ Bushey overruled them. To the extent San Carlos did not, it should not get a second bite of the apple by filing a motion the next day. There is no reason to reconsider ALJ Bushey’s ruling establishing the procedure for the Commission’s consideration of Line 147.

Nor does San Carlos address PG&E’s voluntary agreement to operate Line 147 at a pressure no greater than 125 psig. San Carlos asks the Commission to order that Line 147 “remain isolated and its pressure remain at 125 psig.” ⁴ As a matter of simple physics, the stress on the pipe in Line 147 is the same whether it is sitting “isolated” at 125 psig or operating at 125 psig.

Following the PHC, Line 147 does not have to be “isolated,” and San Carlos has not shown a factual basis for the Commission to order that the line be “isolated.” San Carlos does not address the risk of customer curtailments, including a hospital and core customers, its proposal would create. San Carlos has failed to carry its burden to prove good cause for the order it seeks.

2. There Is No Legal Basis To Require PG&E To Pay San Carlos’ Litigation Costs

Citing Public Utilities Code sections 701 and 6296, San Carlos asks to be treated like the Commission’s staff, whose costs PG&E previously agreed to pay at the Commission’s request. ⁵

² PHC-3 R.T. 68-69, 71, 75.

³ San Carlos originally attempted to file the motion on October 11, but the Docket Office rejected it. When San Carlos refiled on October 22, the Docket Office docketed the motion with the original October 11 date.

⁴ Mot. at 4.

⁵ See I.11-02-016 at 14 (“The Commission also intends to establish promptly whether PG&E agrees to reimburse the state for the cost accrued by the Commission staff or by its consultants for its San Bruno investigation of recordkeeping and for any other matters pertaining to San Bruno, and for prosecution of the investigation.”) (emphasis added).

San Carlos is not Commission staff and, as it recognizes, Public Utilities Code section 1801, *et seq.* specifically denies it intervenor compensation.⁶

Section 701 cannot trump the specific provisions of section 1801, *et seq.* San Carlos cites *Consumers Lobby Against Monopolies v. CPUC*, 25 Cal. 3d 891, 905 -907 (1979), for the proposition that the Commission may order its costs paid under its “equitable powers.”⁷ *Consumers Lobby* does not go so far as San Carlos suggests. The Supreme Court’s holding in that case was narrow and inapplicable here: “We conclude that the commission has jurisdiction to award attorney fees and costs pursuant to the equitable ‘common fund’ doctrine in quasi-judicial reparation proceedings, but not in quasi-legislative rate-making proceedings.” 25 Cal. 3d at 897 (emphasis added). This is not a reparation proceeding, and there will be no “common fund.”

The Supreme Court’s decision in *Assembly v. Public Utilities Commission*, 12 Cal. 4th 87 (1995), rejected the interpretation of Public Utilities Code section 701 urged by the City. In *Assembly*, the Commission, like San Carlos, argued that section 701 was an “open-ended grant of authority.” *Id.* at 103. In that case, the Commission had directed that more than \$42 million of refunds it had ordered Pacific Telecommunications to pay be “allocated toward school telecommunications infrastructure development and consumer education.” *Id.* at 90. Notwithstanding the Commission’s broad ratemaking authority under the State Constitution and section 701, the Supreme Court held that the Commission’s action violated Public Utilities Code section 453.5 (requiring refunds to be paid to customers) and thus had to be set aside. The Court said this about the Commission’s reliance on section 701 to justify its action:

The Commission finally relies upon section 701 as conferring an “open-ended grant of authority to the Commission” with respect to the use of funds such as the 14.6 percent interest differential. To the contrary, that statute does not grant the Commission any authority to circumvent the requirements of section 453.5 that govern the use of these funds. Section 701 provides that “[t]he commission may supervise and regulate every public utility in the

⁶ Mot. at 8 -9. On the basis that it is the “guardian of public welfare and safety of its residents and visitors,” San Carlos asserts its participation is “not optional,” but “compelled” by PG&E’s claimed shortcomings. *Id.* at 7. Even if this were true, it does not entitle San Carlos to an order for PG&E to pay its costs of participating here any more than it would justify compelling PG&E to pay San Carlos’ costs of participating in PG&E’s general rate case to protect the “public welfare of its residents” in PG&E’s rates.

⁷ Mot. at 10.

State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.” Past decisions of this court have rejected a construction of section 701 that would confer upon the Commission powers contrary to other legislative directives, or to express restrictions placed upon the Commission’s authority by the Public Utilities Code . (See, e.g., *Pacific Tel. & Tel. Co. v. Public Util. Com.* (1965) 62 Cal.2d 634, 653 [44 Cal.Rptr. 1, 401 P.2d 353] [“Whatever may be the scope of regulatory power under this section, it does not authorize disregard by the commission of express legislative directions to it, or restrictions upon its power found in other provisions of the act or elsewhere in general law.”].)⁸

The Legislature responded to the 1979 *Consumers Lobby* decision by adopting the intervenor compensation provisions of the Public Utilities Code. In those provisions, as San Carlos concedes, the Legislature expressly denied the Commission the authority to award compensation to “any state, federal, or local government agency, any publicly owned public utility, or any entity that, in the commission’s opinion, was established or formed by a local government entity for the purpose of participating in a commission proceeding.”⁹ This specific statute limits the Commission’s use of its section 701 powers to require PG&E to pay San Carlos’ fees and costs.

Finally, Public Utilities Code section 6296 is part of the statute governing franchises between utilities and municipalities. It provides: “The grantee shall indemnify and hold harmless the municipality and its officers from all liability for damages proximately resulting from any operations under the franchise.” This is a contractual provision. The Commission has long held it has no jurisdiction to adjudicate contract disputes, and thus there is no basis to ask the Commission to apply section 6296 to require PG&E to pay the City’s fees and costs to participate in this proceeding. *E.g., Windmill v. Alco Transportation Co.*, D.86-05-044, 1986 Cal. PUC LEXIS 321 at *9 (“The Commission has no jurisdiction to hear and determine contract disputes.”). The issues of what are “damages” and whether they “proximately result[ed] from any operations under the franchise” are predicate facts that are not for the Commission, but for a court to determine after a trial.

⁸ 12 Cal. 4th at 103 (emphasis added).

⁹ Pub. Util. Code § 1802(b)(2).

Conclusion

PG&E welcomes the City of San Carlos' participation in these proceedings. San Carlos has, however, failed to provide either a factual or a legal basis for its motion, and the motion should be denied. ALJ Bushey has already established a reasonable procedural approach and schedule to assess the safety of Line 147, and there is no basis or need for the Commission to change that process. Nor should the Commission award the City compensation by requiring PG&E to pay the City's costs of participating.

Respectfully submitted,

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