

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

Order Instituting Investigation on the
Commission's Own Motion into the Operations
and Practices of Pacific Gas & Electric
Company's Natural Gas Transmission System in
Locations with Higher Population Density.

I.11-11-009
(Issued November 10, 2011)

RESPONSE OF THE CITY AND COUNTY OF SAN FRANCISCO

I. INTRODUCTION

Pursuant to the January 22, 2014 Administrative Law Judge's Email Ruling, the City and County of San Francisco submits this Response to the City of San Bruno's Motion for an Order to Show Cause Why Pacific Gas and Electric Company Should Not Be Held in Violation of Commission Rules of Practice and Procedure 1.1 or 12.1 or in the Alternative, in Contempt of Commission, and for Sanctions and Fees as Appropriate (San Bruno Motion).

San Francisco supports the San Bruno Motion and believes that it identifies ample conduct by PG&E demonstrating disregard for the Commission's Rules of Practice and Procedure, the respect due the assigned Administrative Law Judge, the Commission and the parties to the Class Location OII. From PG&E's addendum, it is clear that PG&E knew that citation #13-005 overlapped significantly with the Class Location OII.¹ As PG&E stated, "[g]iven the substantial overlap between the subject matter of the Citation and the subject matter of the Class Location OII, PG&E respectfully urges the Commission to take into account PG&E's \$375,000 payment submitted to day in connection with assessment of any subsequent penalty in the Class Location OII."² In other words, PG&E proposed that the fine paid in the Citation could offset any violations in the Class Location OII stemming from its failure to maintain a continuing surveillance procedure. And yet, when PG&E submitted this

¹ See Exhibit C to San Bruno's Motion.

² *Id.*

addendum, it did not provide notice to the assigned ALJ, the Commission more broadly or the parties to the Class Location OII.

When PG&E recognized the “substantial overlap” between the proposed citation and the Class Location OII, it should have taken steps to inform the assigned ALJ and the parties to the Class Location OII of the similarity between the alleged conduct and the payment towards citation #13-005. Instead, PG&E attempted to resolve a portion of the claims asserted in the Class Location OII through the citation process without notice to any parties other than SED. The language PG&E used in the addendum makes clear that PG&E was preserving its right to argue later that any penalty based on a failure to have a continuing surveillance program in the Class Location OII was invalid because PG&E had already paid a citation for those violations in Citation #13-005. It is not inconceivable that in doing so PG&E was hoping to set the Commission up for legal error.

The Commission should not countenance such deceptive behavior. Under Rule 1.1, all parties have a continuing obligation “to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law.” In this instance, PG&E’s conduct fell below the level of respect due the assigned Administrative Law Judge, the assigned Commissioner, and the parties to the Class Location OII.

This incident further demonstrates the importance of San Bruno’s repeated call for an independent monitor. In light of PG&E’s conduct and the Commission’s own recognized absence of leadership in the Safety Division as noted by outgoing Commissioner Ferron³ and the recent resignation of the Safety Enforcement Division’s Director,⁴ the Commission should seek the assistance of an independent third party to ensure the sanctity of the Commission’s deliberations over the natural gas pipeline safety investigations and prevent any attempts to unjustly influence the Commission through related proceedings or otherwise. By doing so, the Commission can take a concrete step

³ See Comm. Ferron Speech (“I believe that our desire to create a stronger safety culture is real but, sadly, we have not had the right caliber of management to implement this effectively.”) <http://www.cpuc.ca.gov/NR/rdonlyres/D32220D6-0C9B-4413-A6F6-87C65E44AF2F/0/99FinalCommissionerReport140116.pdf>.

⁴ <http://www.sfgate.com/news/article/Embattled-state-regulator-over-PG-amp-E-retires-5166240.php>.

toward improving its safety culture, ensure that all parties respect the procedures and rules intended to ensure a fair and just result, and begin the process of repairing the public confidence in the Commission.

Dated: January 30, 2014

Respectfully submitted,

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By: _____ /s/

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