

SEP 16 1992

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

KERMIL R. KUBITZ



September 14, 1992

Steve Solomon
Chief Planner
Planning Division
City of South San Francisco
P.O. Box 711
South San Francisco, California 94083

Dear Mr. Solomon:

This is in response to your letter dated July 31, 1992 regarding Pacific Gas and Electric Company's (PG&E's) natural gas pipeline replacement project. You have asked about the role of the California Public Utilities Commission (Commission) in any environmental review of this project pursuant to the California Environmental Protection Act (CEQA) (Pub. Resources Code § 21000 et seq.).

In 1984, PG&E established a major program to eliminate, under a systemwide schedule, deteriorating gas transmission and distribution pipelines. PG&E's program called for the replacement of the pipelines over a 20-year period. In PG&E's 1987 general rate case, the Commission adopted PG&E's program and assigned the Commission's Safety Division to oversee the program. (Re Pacific Gas and Electric Company, D.86-12-096 (1986) 23 Cal.P.U.C.2d 149, 198-199.)

The Commission did not undertake any environmental review as part of that decision because the Commission only approved the manner in which PG&E would recover the expenses of the program, rather than construction of the replacement pipelines. Pursuant to Public Utilities Code section 1001, PG&E is not required to obtain a certificate of public convenience and necessity (CPCN) for the replacement program. Section 1001 requires utilities to obtain a CPCN for the construction of "a line, plant, or system, or any extension thereof." However, section 1001 does not require a CPCN for "an extension within any city or city and county within which it has lawfully commenced operations." Because PG&E's program is for replacement of pipelines within cities and counties in which it has already commenced operations, PG&E is not required to obtain Commission approval in order to commence construction of the replacement pipelines. Therefore, CEQA is not triggered by the program. (See Pub. Resources Code § 21000 et seq.)

Nevertheless, the Commission does regulate safety aspects of the pipeline replacement program. Under the Commission's General Order 112-D, PG&E must comply with requirements governing safety and design of utility gas systems. It is the understanding of

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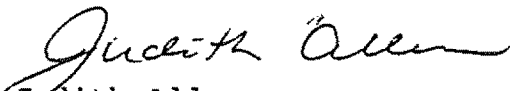
Legal Division that PG&E has been consulting with the Safety Division on an ongoing basis regarding this project.

Regarding the role of the local government in this project, the California Constitution provides that "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. XI, § 7.) Furthermore, a county or city "may not regulate matters over which the Legislature grants regulatory power to the Commission." (Cal. Const. Art. XII, § 8.) Local legislation has been found to be preempted if it enters an area fully occupied by general law, either expressly or by legislative implication. (Candid Enterprise, Inc. v. Grossmont Union High School Dist. (1985) 39 Cal.3d 878, 885.) Where local jurisdictions have attempted to impose regulations on utilities which conflict with the Commission's regulation, or where there is a need for consistent statewide regulations, California courts have held clearly and consistently held that the local laws are preempted. (Los Angeles Ry. Corp. v. Los Angeles (1940) 16 Cal.2d 779, 783-788; Harbor Carriers, Inc. v. City of Sausalito (1974) 46 Cal.App. 3d 773, 775.)

Under the foregoing standards, it appears that a local government would not have discretionary authority to approve or disapprove the gas pipeline project. It is my understanding that PG&E has attempted to work with local government agencies on this project in order to address their concerns. However, if you believe that there are deficiencies in the program, or that PG&E is not carrying it out in a reasonable manner, the appropriate course of action would be to bring the matter to the attention of the Commission, either informally or by way of a formal complaint against PG&E. (See H.B. Ranches, Inc. v. Southern California Edison Company, D.83-04-090 (1983) 11 Cal.P.U.C.2d 400.)

I hope that this information is of assistance to you. The informal opinions contained in this response are those of the Commission's Legal Division staff and are not binding on the Commission, which issues opinions only in formal proceedings. Please feel free to contact me at (415) 703-2053 if you have further questions regarding this matter.

Sincerely,


Judith Allen
Staff Counsel

cc: Steve Carlson, City of South San Francisco
Russell Copeland, CPUC Safety Division
Kermit Kubitz, PG&E