



# Pipeline Pathways

## Keeping Safety on the Map

### PG&E's Pipeline Pathways: Enhanced Safety for Natural Gas Transmission Pipelines

#### I. Purpose

The purpose of this document is to provide some background information regarding the authority granted to Pacific Gas and Electric Company (PG&E) to operate and maintain its natural gas transmission pipelines throughout its service area. As described below, PG&E constructs, operates and maintains its utility facilities under the regulatory oversight and jurisdiction of the California Public Utilities Commission (CPUC) as well as the federal government. The summary below is not exhaustive, but rather is intended to provide the basic regulatory framework and explanatory legal authority for PG&E's Pipeline Pathways maintenance work. PG&E values its relationship with local municipalities and will work closely with local officials to coordinate and communicate our pipeline safety activities.

#### II. Background

PG&E's natural gas transmission pipelines are typically located underground, either in easements, a type of right-of-way (ROW) in which a landowner grants rights to PG&E within designated strips of land, or within public streets pursuant to franchise agreements with cities and counties. PG&E depends on access to its ROWs in order to safely operate the pipeline system and perform all necessary inspection and maintenance activities. PG&E is in the process of implementing Pipeline Pathways, a multiyear program aimed at improving access to its 6,750-mile natural gas transmission system by working cooperatively with property owners and municipalities to remove any incompatible vegetation or structures located within the ROW. Structures and certain vegetation are generally not permitted within the ROW because they interfere with PG&E's ability to fulfill its regulatory obligation to maintain, inspect and safely operate the system.

While each easement may be worded differently in terms of specific restrictions, every easement grants PG&E the primary right to "install, operate and maintain" its natural gas pipelines. As the easement owner, PG&E receives not only the express rights conveyed in the easement agreement, but also those secondary or implied rights that are necessary and reasonable for the full enjoyment of the easement and consistent with the easement's purposes as incidental rights to the grant.<sup>1</sup> PG&E's franchise agreements likewise allow it to use public streets for transmitting and distributing gas and electricity to the public.

#### III. Regulatory Oversight

The California Constitution vests in the CPUC exclusive power and authority with respect to "all matters cognate and germane to the regulation of public utilities."<sup>2</sup> It also prohibits municipalities from regulating "matters over which the Legislature grants regulating power to the Commission."<sup>3</sup> California courts have repeatedly found that discretionary (as opposed to ministerial) regulation by local governments is preempted by the CPUC's jurisdiction because the construction, design, and safe operation of public utility facilities are matters of statewide concern.<sup>4</sup> The CPUC has recently reaffirmed that its authority preempts discretionary City and County grading and tree-removal ordinances with respect to natural gas projects of statewide concern.<sup>5</sup>

PG&E's gas pipeline facilities are regulated under the CPUC's General Order ("GO") 112-E, which contains the CPUC's requirements governing the design, construction, testing, operation and maintenance of gas pipeline systems. As the Commission stated in Decision 94-06-014, 55 Cal.P.U.C.2d 87, it "has authority over construction for utility purposes carried out by public utilities subject to its jurisdiction" and has "restated its exclusive jurisdiction over the location and construction of public utility facilities in numerous decisions."<sup>6</sup> In addition to the Constitutional authority cited above, "[t]he Commission is authorized by statute to 'do all things which are necessary and convenient in the exercise' of its power."<sup>7</sup>

The CPUC's GO 112-E incorporates the federal pipeline safety regulations found at 49 Code of

Federal Regulations, Part 192. Federal pipeline safety regulations provide the minimum safety requirements for pipeline facilities for the transportation of natural gas (49 CFR 192.1) and requires operators to take steps to safely operate pipeline facilities (see, e.g. 49 CFR 601 et seq.) and, among other things, to assess and manage potential threats to pipeline integrity (see, e.g. 49 CFR 901 et seq.). Of the many obligations imposed by California and federal pipeline safety laws, some examples include: conducting periodic patrols to observe the surface condition on and adjacent to the transmission line ROW (see 49 CFR 192.705); conducting surveys to look for natural gas leaks from its pipelines (see 49 CFR.706); and conducting continuing surveillance of its pipelines to look for, and take action on, certain conditions that can be observed on the right-of-way (see 49 CFR 192.613). To meet these requirements, the Pipeline Pathways program establishes standards that reduces risk from incompatible vegetation, provides safe access to allow for leak surveys, patrols and inspections, emphasizes the marking of the pipeline, and reduces the overall likelihood of third-party dig-ins.

#### IV. CEQA Review

While PG&E must comply with GO 112-E's detailed pipeline standards and requirements, it is not required to obtain a discretionary permit from the CPUC for the design, construction, testing, operation and maintenance of its existing gas pipeline systems.<sup>8</sup> However, PG&E may need to obtain a discretionary permit from another state agency for its Pipeline Pathways work. For example, although PG&E has adequate land rights under its easements to perform the Pipeline Pathways maintenance work, it may need to obtain permits under state environmental protection laws (e.g., CDFW incidental take permits ("ITP") under Cal. Fish and Game Code section 2081, CDFW Lake and Streambed Alteration Agreements ("LSAA") under Fish and Game Code section 1600, or water quality certifications from one of the Regional Water Quality Control Boards under Clean Water Act section 401). Whenever a discretionary approval from a governmental agency is required, that agency must comply with CEQA.<sup>9</sup> Depending on the lead agency's initial assessment of the potential environmental effects of the proposed project, the agency might prepare an EIR or an MND, or conclude that the project fits within one or more of CEQA's statutory or categorical exemptions.

Much of PG&E's Pipeline Pathways work will not trigger any discretionary governmental approvals as a result of its location, work methods, and environmental setting, and CEQA does not apply in the absence of a required discretionary governmental approval.<sup>10</sup> Nevertheless, PG&E will employ best management practices to avoid or minimize any environmental impacts even where no permits are required.

#### V. Discretionary Versus Ministerial Permits

Although discretionary local review is preempted by the CPUC, PG&E is committed to working cooperatively with local municipalities to address incompatible vegetation and structural encroachments, and will strive to coordinate activities with local officials. PG&E recognizes the need to obtain ministerial encroachment or grading permits related to its work activities. Ministerial permits are exempt from CEQA review.<sup>11</sup>

#### VI. For More Information

For more information regarding legal questions or comments, please contact PG&E Legal Counsel David Kraska at 415-973-7503.

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<sup>1</sup> See, e.g., *Pasadena v. California-Michigan Co.* (1941) 17 Cal.2d 576, 591-592; *Atchison T. & S. F. Ry. Co. v. Abar* (1969) 275 Cal. App.2d 456, 464.

<sup>2</sup> Cal. Const., art. XII, § 5; see also, e.g., *Pacific Tel & Tel. v. Eshleman* (1913) 166 Cal. 640, 652-660.

<sup>3</sup> Cal. Const., art. XII, § 8.

<sup>4</sup> See, e.g., *Southern Cal. Gas Co. v. City of Vernon* (1995) 41 Cal.App.4th 209; *Pacific Telephone and Telegraph Co. v. City and County of San Francisco*, 51 Cal.2d 766 (1959); *California Water and Telephone Co. v. County of Los Angeles*, 253 Cal.App.2d 16 (1967).

<sup>5</sup> D.13-11-023, \_\_\_ Cal.P.U.C.2d \_\_\_, at 53-56.

<sup>6</sup> D.94-06-014, 55 Cal.P.U.C.2d 87, at 10-12.

<sup>7</sup> Pub. Util. Code § 701.

<sup>8</sup> See Pub. Util. Code § 1001 (no CPCN is required "for an extension within or to territory already served by [a gas corporation], necessary in the ordinary course of its business"); GO 112-E (requiring filing with the CPUC a report of proposed installation 30 days prior to construction, which typically does not trigger any discretionary Commission action)).

<sup>9</sup> Pub. Res. Code, § 21080; see also Guidelines, §§ 15002, subd. (i), 15040.

<sup>10</sup> *id.*

<sup>11</sup> Pub. Res. Code § 21080(b)(1); CEQA Guidelines § 15268.