



CITY ATTORNEY DENNIS HERRERA NEWS RELEASE

FOR IMMEDIATE RELEASE
WEDNESDAY, OCTOBER 17, 2012

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Herrera: mediator from utilities' law firm risks legitimacy of CPUC's PG&E proceeding

U.S. Sen. George Mitchell's firm, DLA Piper, is adverse to S.F. in litigation, claims several utilities among its clients

SAN FRANCISCO (Oct. 16, 2012)—City Attorney Dennis Herrera today expressed serious concerns about the California Public Utilities Commission's unilateral appointment of former U.S. Senator George Mitchell to mediate a settlement of enforcement actions against Pacific Gas and Electric Company over the deadly September 2010 explosion of its natural gas pipeline in San Bruno, Calif. Mitchell currently serves as chairman emeritus of DLA Piper LLC, an international law firm that represents multiple parties currently involved in separate litigation against the City and County of San Francisco. The firm's utility sector clients include Southern California Edison and Exxon Mobil.

"I have the highest regard for U.S. Sen. George Mitchell, and I greatly admire him for a distinguished public service career that includes major diplomatic achievements in Northern Ireland and the Middle East," said Herrera. "But the legitimacy of an enforcement action involving one of the deadliest gas pipeline catastrophes in California history must be beyond reproach. What's at stake in these proceedings is the safety of millions of Californians, and they deserve a process untainted by the appearance of utility industry bias. I don't doubt Sen. Mitchell's integrity or good intentions. But the fact is, he leads a law firm that is both adverse to San Francisco in litigation, and that represents major gas utilities involved in cases before the CPUC. Moreover, the commission's decision to unilaterally appoint a mediator raises larger questions about why the CPUC elected to appoint an outside mediator in the first place. It's possible that mediation could prove helpful. But it is far more important that CPUC live up to its obligations as an industry regulator that protects the public interest."

Herrera has been sharply critical of the CPUC following revelations from an independent review panel's 2011 investigation into the San Bruno tragedy, which concluded that the commission's "culture serves as an impediment to effective regulation," and which went on to fault state regulators who "did not have the resources to monitor PG&E's performance in pipeline integrity management adequately or the organizational focus that would have elevated concerns about PG&E's performance in a meaningful way." In July 2011, Herrera initiated steps to sue the CPUC along with federal regulators for failing to reasonably enforce federal gas pipeline safety standards as required by the U.S. Pipeline Safety Act. Herrera later elected to omit CPUC as a defendant after the commission showed signs of progress.

DLA Piper LLC contacted Herrera's office last Friday, before the CPUC announced its appointment of Mitchell to serve as mediator, to inform city lawyers about litigation and other matters in which DLA

[MORE]

Piper is currently adverse to the City and County of San Francisco. Those cases include litigation involving hotel chains and airlines.

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October 17, 2012

Michael R. Peevey
President
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Michel Peter Florio
Commissioner
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: Commission's Unilateral Designation of Mediator for the
San Bruno-Related Proceedings

Dear President Peevey and Commissioner Florio:

We, the City of San Bruno, the City and County of San Francisco, the Utility Reform Network, and the Division of Ratepayer Advocates, are writing to you to express our deep concern regarding the Commission's unilateral and behind-closed-doors appointment of Senator Mitchell, and his law firm, DLA Piper, as mediators for the San Bruno Explosion-Related Proceedings.¹

Specifically, the following circumstances regarding DLA Piper's appointment as mediators concern us:

1. The Commission has acted unilaterally to appoint this mediator, at this time without regard to the views of the undersigned parties. In contrast, we have learned that PG&E's consent to DLA Piper as mediator was secured last week. As full-fledged participants in these cases and the negotiations, we are shocked that we were not provided the same option as PG&E to assent to this choice of mediator. The Commission is sending the clear message that PG&E's views matter, and the views of San Bruno, San Francisco, DRA and TURN do not.

¹ Order Instituting Rulemaking 11-02-019; Order Instituting Investigation 12-01-007; Order Instituting Investigation 11-02-016; Order Instituting Investigation 11-11-009

2. Typically, mediators are chosen with the consent of the parties to ensure that all parties have trust in the process. Here, we start from a position of deep distrust when our litigation adversary was given veto power over the mediator and we were not even consulted.
3. We do not question Senator Mitchell's ability or integrity. Rather, we are concerned that he and his law firm have previously represented public utilities, including Southern California Edison Corporation (which President Peevey once headed). Moreover, one of the DLA Piper partners who will be most active in the mediation has represented WorldCom in a white collar criminal defense case highly similar to what PG&E faces: being simultaneously subject to a criminal investigation and civil penalties. Under these circumstances, we question whether DLA Piper and its chosen attorneys will be able to be impartial mediators
4. We believe this unilateral action by the Commission will only slow down existing negotiations, which is in no one's interest.

For all of these reasons, we call on you to rescind the appointment of DLA Piper as mediators. If the Commission wishes to encourage the parties to use mediation, such mediation should be voluntary, and with a mediator chosen with the consent of all parties.

Sincerely,

Connie Jackson, City Manager

City of San Bruno

Austin Yang, Deputy City Attorney

City and County of San Francisco

Thomas J. Long, Legal Director
The Utility Reform Network

Joseph P. Como, Acting Director
The Division of Ratepayer Advocates

Cc: Commissioner Sandoval
Commissioner Ferron
Commissioner Simon

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