



CITY ATTORNEY DENNIS HERRERA NEWS RELEASE

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Herrera urges CPUC to investigate deadly San Bruno gas line explosion

City Attorney joins TURN in calling for a 'thorough, transparent investigation' by the commission that regulates California's utilities

SAN FRANCISCO (Jan. 26, 2011)—City Attorney Dennis Herrera today joined a respected consumer advocacy organization in urging state regulators to launch a public investigation into the rupture and explosion of a PG&E gas pipeline that killed eight people and destroyed dozens of homes in San Bruno, Calif. last September. In separate petitions to the California Public Utilities Commission, San Francisco and The Utility Reform Network, or TURN, called for a formal investigation into the pipeline disaster that will coordinate relevant issues and allow participation by the public and public agencies. The petitions assert that such a comprehensive inquiry is necessary to protect public safety; ensure the safe, reliable delivery of natural gas statewide; and provide a public forum to assess the investigation's sufficiency and recommended regulatory changes.

“Californians have a vital interest in a thorough, transparent investigation into the San Bruno tragedy by the commission charged with regulating California's utilities,” said Herrera. “It is certainly important for the federal government to investigate. But that is not sufficient to fully apprise our state regulators and citizens of what must be done to protect public safety in the years to come. The CPUC has an essential role to play in aggressively policing utilities that could pose deadly risks, and to make sure tragedies like the PG&E gas line explosion never happen again.”

A day after the Sept. 9, 2010 explosion and fire, a federal investigation into the deadly San Bruno incident was launched by the National Transportation Safety Board, which has since issued preliminary findings highly critical of PG&E together with numerous urgent safety recommendations. The NTSB is an independent agency under the U.S. Department of Transportation whose mandate includes determining the probable cause of pipeline accidents that involve a fatality or substantial property damage. However, NTSB does not regulate public utilities. In calling for a formal, public investigation by the CPUC, Herrera and TURN cited the commission's obligation to ensure the immediate safety of California residents, to determine whether other gas lines in the state may be at risk for similar catastrophic failure, and to apply lessons learned from the San Bruno disaster to all California utilities.

The motion was filed in the “Application of PG&E for Authority, Among Other Things, to Increase Rates and Charges for Electric and Gas Service Effective on January 1, 2011,” Application 09-12-020, filed Dec. 21, 2009. A copy is available on the City Attorney's Web site at <http://www.sfcityattorney.org/>.

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

Application of Pacific Gas and Electric Company for Authority, Among Other Things, to Increase Rates and Charges for Electric and Gas Service Effective on January 1, 2011.

Application 09-12-020
(Filed December 21, 2009)

Order Instituting Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Service and Facilities of Pacific Gas and Electric Company.

Investigation 10-07-027
(Filed July 29, 2010)

**MOTION OF THE CITY AND COUNTY OF SAN FRANCISCO FOR
A PUBLIC INVESTIGATION INTO THE EXPLOSION OF PG&E'S GAS
PIPELINE IN SAN BRUNO AND THE ADOPTION OF
ADDITIONAL PROCEDURES TO ENSURE PUBLIC SAFETY**

I. INTRODUCTION

The City and County of San Francisco (the "City") requests that the California Public Utilities Commission (the "Commission") open a public investigation into all aspects of the September 9, 2010, gas explosion in San Bruno in order to protect the public and ensure the safe and reliable delivery of natural gas.¹ The explosion and resulting fire in San Bruno was a horrible event that claimed the lives of eight people,

¹ The City submits this motion pursuant to Rules of Practice and Procedure 11.1, 5.1, and 1.2. The City supports the similar request filed today by The Utility Reform Network ("TURN"). The City has filed this request in the dockets identified above because I. 10-07-027 provides an appropriate existing forum for the investigation requested herein.

injured dozens of others, and destroyed many homes. The Commission has described this event as the most catastrophic transmission pipeline explosion in California history.²

Now, nearly five months later, there are still more questions than answers as to the cause of the explosion and the reliability and safety of Pacific Gas and Electric Company's ("PG&E") gas transmission system.³ The public has a keen and legitimate interest in a thorough and expeditious investigation that identifies the cause of this disaster and the steps necessary to prevent future ones. Local governments, in particular, are anxious to both prevent future disasters and obtain adequate information so that first responders and the public are prepared in case of emergencies. The Commission can best address those interests and fulfill its own constitutional and statutory mandates by opening a formal, public investigation which will coordinate the Commission's activity, provide opportunities for interested parties to participate as appropriate, and ensure timely progress in the investigation of this catastrophe.

II. THE COMMISSION SHOULD OPEN A PUBLIC INVESTIGATION

1. Opening a public investigation is consistent with the Commission's constitutional and statutory mandate.

The California Constitution and Legislature have given the Commission broad powers in order to ensure the safe and reliable provision of essential services at reasonable rates. Public Utilities Code⁴ Section 451 requires utilities to provide "adequate, efficient, just, and reasonable service, instrumentalities, equipment, and

² Resolution L-403, September 23, 2010, p. 2.

³ For example, in recent months, both regulators and the public have expressed concern over the accuracy of PG&E's record keeping. This stems from the National Transportation Safety Board's ("NTSB") preliminary finding that although PG&E indicated that the pipeline in the area of the rupture was a seamless pipe, it was instead, at least in part, constructed of longitudinal seam-welded pipe.

⁴ Subsequent statutory references are to the Public Utilities Code unless otherwise specified.

facilities, . . . as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.”⁵ The Commission has noted that “a utility which provides adequate service is in compliance with laws, regulations and public policies that govern public utility facilities and operations. . . . adequate service encompasses all aspects of the utility’s service offering, including but not limited to safety, reliability, emergency response, public information services and customer service.”⁶ Further, Section 761 charges the Commission with the responsibility to correct and prevent unsafe utility practices.

Article XII, Section 2 of the California Constitution specifically identifies investigation as one of the Commission’s powers. In addition, Section 315 directs the Commission to investigate the cause of all accidents on utility property:

The commission shall investigate the cause of all accidents occurring within this State upon the property of any public utility or directly or indirectly arising from or connected with its maintenance or operation, resulting in loss of life or injury to person or property and requiring, in the judgment of the commission, investigation by it, and may make such order or recommendation with respect thereto as in its judgment seems just and reasonable.

The Commission issued Resolution L-403 “to ensure the safety of the residents of the City of San Bruno and the people of California” and announced several specific actions, including formation of an independent panel to report back to the Commission on the explosion.⁷ The Commission also found that it had jurisdiction over this incident

⁵ Under the Public Utilities Act, the Commission’s primary purpose is to “insure the public adequate service at reasonable rates without discrimination.” *Pac. Tel. & Tel. v. Pub. Util. Comm’n*, (1950) 34 Cal.2d 822, 826; *Pac. Tel. & Tel. v. Pub. Util. Comm’n*, (1965) 62 Cal.2d 634, 647; *City and County of San Francisco v. Pub. Util. Comm’n*, (1971) 6 Cal.3d 119, 126.

⁶ *Interim Order on Storm and Reliability Issues*, Decision No. 04-10-034, 2004 Cal. PUC LEXIS 506, at p. *8.

⁷ Resolution L-403 at pp. 1-2. In Resolution L-405, the Commission authorized the panel to hire expert consultants outside the normal state contracting requirements.

under California and federal laws.⁸ The Commission clearly has recognized that an investigation is necessary here, but it has not yet instituted a formal, public investigation.⁹ Given the catastrophic nature of this event, the potential for gas pipeline safety issues to impact other communities, the technical complexity of gas pipeline safety, and the large impact on ratepayers and utilities, the Commission should open an investigation now.¹⁰

2. A public investigation is necessary and consistent with the Commission’s consumer protection role.

The public has a strong and legitimate interest in understanding what caused this event and what steps should be taken to avoid other catastrophes. Local governments are obligated to protect the safety of their citizens and must ensure that local agencies have the information necessary to help them avoid or respond effectively to disasters involving utility facilities. Ratepayers also have a strong interest in the rate impacts of this event, including the costs associated with PG&E’s response to the San Bruno disaster and the system-wide costs of remedial measures to avoid such events in the future.

The provisions governing the Commission’s authority reflect the impact of the Commission’s work on the public. While the Commission is empowered to adopt its own rules, that power is subject to “statute and due process.”¹¹ The Legislature is empowered

⁸ *Id.* at pp. 2-3.

⁹ Resolution L-403 authorized only a fact-finding investigation, and contemplated that other “proceedings may follow but are not part of the ordered investigation in this Resolution.” *Id.* at pp. 1-2.

¹⁰ In *Order Instituting Investigation Into the Power Outage Which Occurred on December 8, 1998 on Pacific Gas & Electric System*, (I. 98-12-013) the Commission issued an Order Instituting Investigation (“OII”) one week after a major electrical outage on PG&E’s system. In other cases, the Commission has issued an OII after a report by CPSD was completed. *See generally* I. 05-03-011, I. 01-08-029. In this case, for the reasons discussed in this motion, the Commission should commence a public investigation now, without further delay.

¹¹ California Constitution Article XII, § 2.

to confer additional authority and jurisdiction upon the Commission, consistent with the purpose established in Article XII of the Constitution.¹² Among the statutes adopted under this authority are many specifying the “due process” to be used by the Commission in carrying out its responsibilities.¹³ The law is clear that the Commission, as a state agency, is to conduct its business in public. The Bagley-Keene Open Meeting Act states:

It is the public policy of this state that public agencies exist to aid in the conduct of the people's business and the proceedings of public agencies be conducted openly so that the public may remain informed.

In enacting this article the Legislature finds and declares that it is the intent of the law that actions of state agencies be taken openly and that their deliberation be conducted openly.

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.¹⁴

Moreover, the Commission’s important consumer protection responsibilities¹⁵ encompass more than just investigating the underlying cause of a utility disaster, requiring also that the Commission inform the public of what steps the Commission is taking to ensure safe and reliable utility service and provide for meaningful public participation.¹⁶

¹² California Constitution Article XII, § 5.

¹³ *See, e.g.*, Sections 306(a)-(b), 311(d)-(e), and 311.5.

¹⁴ Government Code § 11120.

¹⁵ *See, e.g.*, Decision No. 99-09-028, (I. 98-12-013), 1999 Cal. PUC LEXIS 635 at p. *22-23, (recognizing Commission’s consumer protection mandate in investigating a major electrical outage on PG&E’s system).

¹⁶ The opportunity for elected officials, local governments, ratepayer groups, individual members of the public, and other interested parties to participate in the Commission’s investigation of the San Bruno explosion has so far consisted largely of speaking for a few moments during the public comment portion of Commission business meetings. Although the opportunity to speak directly to Commissioners is important, it is not a substitute for the process by which the Commission typically conducts its business—that is, through formal proceedings where relevant issues can be addressed in a reasoned manner.

Opening a public investigation will provide a meaningful opportunity for interested parties to be heard.¹⁷ Equally important, a thorough public investigation will provide confidence to the public, local governments, and the Legislature that the Commission is aggressively protecting the health and safety of California citizens.

3. A coordinated Commission forum is needed to ensure a timely and thorough investigation.

The Commission responded quickly to this tragedy by ordering PG&E to take certain actions and provide information and has continued to issue additional directives.¹⁸ The Commission also created an Independent Review Panel of experts to conduct a factual investigation and make recommendations to the Commission. In addition, the NTSB immediately began an investigation of the accident.¹⁹ As further detailed by TURN in its motion filed today, the number and variety of issues and activities related to the San Bruno explosion requires coordination by the Commission.

Commencing a formal, public investigation now will avoid the delay that occurred in investigation of the Rancho Cordova gas explosion in December 2008. There, even though Commission staff assisted the NTSB with the investigation and issued its own report, there was no apparent follow-up to examine the report and

¹⁷ Such an investigation will not require the disclosure of otherwise confidential or proprietary information as the Commission already has procedures and templates in place to prevent such disclosure. *See Order Instituting Rulemaking to Implement Senate Bill No. 1488 (2004 Cal. Stats., Ch. 690 (Sept. 22, 2004)) Relating to Confidentiality of Information*, (R. 05-06-040).

¹⁸ *See, e.g.*, Resolution L-403 at pp. 3-4, and Resolution L-410, January 13, 2011, at p. 5.

¹⁹ *See* NTSB Advisory: NTSB Launches Team to Investigate Apparent Gas Pipeline Explosion in California, September 10, 2010. Pursuant to 49 Code Fed. Reg. §§ 800.1, 800.3, the NTSB is an independent agency established to promote transportation safety and is responsible for investigating transportation accidents, including pipeline accidents. This is distinct from the Commission's obligations to regulate the investor owned utilities.

implement appropriate measures. Only recently has the Commission opened an investigation related to that event.²⁰

By opening an investigation of the San Bruno explosion now, the Commission will provide a procedural home for the various fact finding and other exercises the Commission is currently undertaking. Opening a formal proceeding with an Administrative Law Judge and Assigned Commissioner will also help ensure that the Commission investigation and consideration of appropriate next steps is pursued expeditiously. Once the investigative reports are completed the Commission will need to assess the sufficiency of the reports and determine further procedures. At a minimum, PG&E and other interested parties should be afforded the opportunity to review and comment on those reports.

As part of a formal investigation, the Commission will be able to establish a scope and a schedule for the investigation to ensure that all relevant issues are considered in an appropriate manner. The investigation should consider at least the following:

- The root cause of this accident, safety of PG&E's gas system, whether and to what extent PG&E's other gas lines are at risk of similar or related incidents and whether PG&E is in compliance with statutes and rules for the design and operation of its gas system;
- The accuracy of PG&E's records, including the requirements contemplated in Resolution L-410;
- Appropriate operational/design remedies to ensure gas system safety for PG&E and application of lessons learned to all California utilities;
- Whether the Commission should modify its gas pipeline safety rules to exceed the standards required by the Pipeline and Hazardous Materials Safety Administration to protect the public;
- Whether this accident indicates a need to modify the Commission's practices for investigating and regulating the safety of gas and other utility facilities;
- The level of information on gas facility location and condition that should be available to local governments and public agencies responsible for public safety;
- Allocation of cost responsibility for the costs of the San Bruno catastrophe and remedial measures designed to prevent future gas incidents; and

²⁰ *Order Instituting Investigation and Notice of Hearing*, I. 10-11-013 (issued November 19, 2010).

- Appropriate penalties and other sanctions against PG&E.

While the Commission is addressing some of these concerns already, the City requests that the Commission coordinate its efforts in one public proceeding “to promote the health, safety and convenience of PG&E customers, employees, and the public.”²¹

III. CONCLUSION

In view of the devastating consequences of this event, the urgent need to understand the causes of the explosion, and the Commission’s obligation to ensure safe and reliable operation of PG&E’s gas transmission system, the Commission should open a formal, public investigation without further delay.

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Respectfully submitted,

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²¹ I. 98-12-013, 1998 Cal. PUC LEXIS 980, at p. * 1.