



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
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APPLICATION FOR CERTIFICATION FOR THE
MARIPOSA ENERGY PROJECT
MARIPOSA ENERGY, LLC

DOCKET No. 09-AFC-3

RULING ON MOTION TO SUBPOENA PG&E

At the March 7, 2011, Evidentiary Hearing in the above-captioned matter, the Committee heard an oral motion to subpoena representatives of PG&E brought by Intervenor, Rob Simpson, regarding the safety of the natural gas pipeline (Line 002) that would serve the proposed Mariposa Energy Project (MEP). Intervenor, Jass Singh, joined in Mr. Simpson's motion.

Title 20 of the California Code of Regulations § 1203 (b) empowers the presiding member to "issue subpoenas and subpoenas duces tecum at the direction of the commission, on his motion or upon application of any party. The application of a party shall be supported by a declaration of good cause."

Mr. Simpson stated on the record as the basis for his motion that none of the witnesses called by any of the parties had actually "looked at" the pipeline or reports done on it and that the witnesses called to testify regarding MEP impacts to Line 002 lacked expertise to opine on the safety of the pipeline. Mr. Simpson argued that since PG&E owns the pipeline and supplies the natural gas, they should be required to testify to the safety of the pipeline. Mr. Simpson concluded that the Committee "should either make a determination that the pipeline is not safe or make a subpoena and call PG&E to testify." (3/7/11 RT 337:9 – 338:8.)

Applicant countered that their witness was an undisputed expert on issues of pipeline safety who had headed the federal agency that oversaw pipeline safety for many years. (Director of Office of Pipeline Safety in U.S. Department of Transportation [Ex. 68].) Applicant's witness testified to the safety of the line and the safety of interconnecting this project to the PG&E system. Applicant further argued that the Energy Commission does not have regulatory jurisdiction over PG&E and that if a subpoena were to issue, PG&E could successfully resist it. (3/7/11 RT 338:11 – 339:5.)

In support of Mr. Simpson's motion, Intervenor, Rajesh Dighe, argued that Applicant's expert did no risk analysis on Line 002 and Intervenor, Jass Singh, argued that Applicant's expert did not review the maintenance records for Line 002. (3/7/11 RT 339:25 – 340:12.)

The Applicant countered that their witness testified that he was aware of the current condition of Line 002 because he reviewed the pig results. (3/7/11 RT 341:1–7.)

Mr. Simpson reiterated his position that only PG&E could answer questions on the condition of Line 002. (3/7/11 RT 340:16 – 21.)

Scott Galati, an attorney representing PG&E appeared at the Evidentiary Hearing to explain that his client would not participate in the hearing because there are already three other pending administrative actions relating to the safety of PG&E's pipelines: two before the California Public Utility Commission (CPUC) and one before the National Transportation Safety Board (NTSB), concerning the deaths caused by the explosion of a PG&E gas pipeline in San Bruno. Mr. Galati argued that until there is evidence that the MEP actually impacts the PG&E system, the Energy Commission's jurisdiction does not reach beyond the point of interconnection. Mr. Galati declared unequivocally that PG&E "would object and resist any subpoena to participate beyond that point of interconnection." (3/7/11 RT 343:11 – 346:17.)

The Committee took the motion under submission.

DISCUSSION OF GOOD CAUSE

As an initial matter, we confirm that our licensing jurisdiction over related facilities such as fuel lines extends up to the first point of interconnection (Tit. 20 Cal.Code Regs. § 1702(n)), and that our findings and conclusions with respect to the safety and reliability of the MEP include the site and related facilities up to that point. It is undisputed that Line 002, which is the subject of Mr. Simpson's motion, is beyond that point.

That said, we also acknowledge that any certification of MEP must include a finding and conclusion on whether MEP will avoid any substantial adverse environmental effects, and that that analysis includes the consideration of potentially significant impacts on the environment beyond our jurisdiction. [See § 1702(u), "impact area" means the area which is potentially affected by the construction, modification and operation of a site and related facilities.] Potentially significant impacts may include those effecting the public health and safety.

Thus, the relevant inquiry for this Committee is whether Mr. Simpson has established good cause to conduct additional Evidentiary Hearings, including the issuance of a subpoena upon PG&E, to address the question of whether the construction, modification and operation of MEP may result in substantial adverse environmental effects as a result of its interconnection with Line 002.

The evidentiary record contains testimony from three witnesses regarding the safety of Line 002 in relationship to MEP: Cesar de Leon for the Applicant, Rick Tyler for Energy Commission Staff, and Intervenor, Robert Sarvey, offering himself as an expert on PG&E's Line 002. (2/25/11 RT 244:6 – 292:10, 3/7/11RT 310:14-385:7, 7/11RT 388:20-403:5.)

Testimony of Cesar de Leon

According to his curriculum vitae, Cesar de Leon has over 40 years of experience in pipeline safety engineering, which included serving as Director of Office of Pipeline Safety in U.S. Department of Transportation (DOT), now known as Pipeline and Hazardous Materials Safety Administration (PHMSA). Among other things, Mr. de Leon directed the issuance and enforcement of design, construction, operation, and maintenance regulations for all gas transmission, gas distribution, and petroleum pipelines, including LNG regulations (includes 49 CFR Parts 190 through 199); directed cooperative Federal/State pipeline safety program & associated grant-in-aid program; directed or co-directed over 60 pipeline research projects; directed DOT inspection of construction & initial operation of the Trans-Alaska Pipeline System and has testified on pipeline safety before U.S. Congress, state legislatures, and U.N. organization. Mr. de Leon's curriculum vitae states that pipeline failures, deaths, & injuries were each reduced about 50 percent during his 23 years with the Office of Pipeline Safety. (2/25/11 RT 244:6 – 246:19, Ex. 68.)

Mr. de Leon's testimony indicated that he was aware of the pigging results on Line 002. (2/25/11 RT 269:22 – 272:4.) He testified that typically, gas pipelines are not at significant risk of failure from the pressure-cycle-induced growth of original manufacturing-related or transportation-related defects. He averred that there are no known incidents involving failure of steel natural gas transmission pipe from the pressure-cycle-induced growth of original manufacturing-related or transportation-related defects. Mr. de Leon testified that Line 002 has been pressure tested to establish the Maximum Allowable Operating Pressure (MAOP), so there is no basis to conclude that these additional stresses from the cycling of the project will cause the PG&E line to fail. Mr. de Leon concluded:

- (a) the combined pressure cycles from MEP and the Tracy Peaker Project will not affect the pipeline;
- (b) the pipeline is not prone to corrosion;
- (c) that reported remedial action in 2001 was in conformance with the Federal regulations and industry practice and does not indicate any problems with Line 002;
- (d) notwithstanding the accident in San Bruno, pipelines have an excellent safety record and the safety record continues to improve;
- (e) industry standards and practices for pipeline separation within pipeline corridors avoid the concerns that Mr. Sarvey raised regarding the proximity of Line 002 to other nearby lines;
- (f) hot taps to be performed are a common and safe pipeline practice that is subject to requirements in the Federal regulations; and
- (g) pipelines in this country have a good safety record and that safety record continues to improve. (Ex. 68.)

Finally, Mr. de Leon testified that although power plant pulling gas from the pipeline (cycling) may decrease transient pressure in the area of the interconnection, it would have no effect on Line 002, regardless of the condition of the pipeline. (2/25/11 RT 277:19 – 280:7.)

The Committee finds that Cesar de Leon qualifies as an expert to testify on impacts from the MEP's interconnection to the pipeline.

Testimony of Rick Tyler

Rick Tyler testified that he is a mechanical engineer with the California Energy Commission in the field of evaluating hazardous materials and worker safety issues for about 25 years. He deals with flammable materials, toxic materials, and pressurized systems such as gas pipelines, pressure vessels, and various types of hazardous materials. (3/7/11 RT 311:21 – 312:2, Ex. 301.)

Mr. Tyler testified that the natural gas pipeline will be constructed and operated in accordance with the CPUC General Order 112 standards and the Federal Department of Transportation regulations, Title 49, Code of Federal Regulations (CFR), Parts 190, 191, and 192. He concluded that existing LORS are sufficient to ensure minimal risks of pipeline failure. Further, he reviewed the gas pipeline route and determined that it is on private land that is in agricultural use. He determined that there is no potential for impact on the public along the new pipeline route. He concluded that the pipeline does not require further mitigation. (Ex. 301.)

Mr. Tyler testified that any pressure fluctuations in any pressurized system, and particularly within the context of natural gas pipeline, would have no consequence in the absence of pressure fluctuations that exceeded the MAOP or the safe design level of pressure for that pipeline. (3/7/11 RT 317:17 – 317:22.)

He testified further that, in addition to any regulatory program that CPUC runs as far as inspections, the primary responsibility rests with PG&E for maintenance and safety of that line. He described an extensive program that requires pigging and other inspection activities on the part of PG&E, and stated that since Line 002 was built in the 1970s it complies with modern state of the art codes. Mr. Tyler concluded that there is no significant risk that this interconnection is going to cause a failure of Line 002. (3/7/11 RT 348:14 – 25.)

The Committee finds that Rick Tyler qualifies as an expert to testify on impacts from the MEP's interconnection to the pipeline.

Testimony of Robert Sarvey

Robert Sarvey earned his B.A. in Business Administration from California State University Hayward in 1975 and his M.B.A. from California State University Hayward in 1985. He has participated in numerous proceedings at the California Energy Commission and the California Public Utilities Commission (CPUC), including CPUC Proceeding C. 07-03-006, where he negotiated a settlement with PG&E to voluntarily revoke Resolution SU-58 which

was the first pipeline safety waiver of GO 112-E granted in the State of California. He provided risk assessment information that was critical in the adoption of the Settlement Agreement with PG&E which, among other issues, resulted in PG&E agreeing to withdraw its waiver application and agreeing to replace the 36-inch pipeline under the sports park parcel after construction. (Ex. 400.)

At the Prehearing Conference, Mr. Sarvey stated, "I wouldn't say I'm an expert on the PG&E gas system, but I would say I'm an expert on Line 002." (2/7/11 RT 20:19-20.) At the Evidentiary Hearing, Mr. Sarvey testified that he had no academic training in gas pipeline construction and operation, and no professional experience in gas pipeline construction and operation other than participating in the CPUC proceeding involving Line 002 and Line 401. (3/7/11 RT 388:25 – 389:10.)

Mr. Sarvey described the condition of Line 002 and testified that in 2001, pigging resulted in observations of some "wall loss" but that the pipeline was subsequently repaired. He testified that years before these repairs were made, there were two leaks found in Line 002 in the 1990s, but it later came to light on cross examination that the leaks were caused by gunshots, not corrosion. (Ex. 405, p. 1, 3/7/11 RT 391:5 – 391:23.)

Mr. Sarvey testified that a corridor of three pipelines run through the community of Mountain House and the proposed Ellis housing subdivision in Tracy. They are PG&E Line 002, PG&E Line 401 (built in 1993) and a liquid petroleum line built by Chevron in 1950. Mr. Sarvey testified to a significant risk when pipelines operate in close proximity to areas occupied by the public. He opined that the presence of the three pipelines triples the consequences of a failure of Line 002. (Ex. 405, pp. 1 -2.)

Mr. Sarvey concluded that the combination of the MEP and Tracy Combined Cycle Power Plant and their impacts to the "degraded" PG&E Line 002 are not addressed or analyzed in Staff's testimony. He stated that a significant increase in natural gas volume will occur because of the addition of the MEP and the conversion of the Tracy Peaker Project to combined cycle. He opined, "that pipeline pressure fluctuations from the cycling of these projects will cause additional stress to Line 002. Given the significant risks of a natural gas line failure as evinced by the recent San Bruno tragedy, this impact needs to be addressed. We certainly cannot rely on PG&E's incomplete and inaccurate records and inadequate safety practices." (Ex. 405, p. 4.)

The Committee agrees that Robert Sarvey is not an expert on pipelines generally, but nevertheless finds that portions of Mr. Sarvey's testimony may be relevant.

Analysis of Testimony and Whether Good Cause To Issue A Subpoena Has Been Shown

We note from the outset that neither Mr. Simpson nor Mr. Singh called any witness to testify about the safety of Line 002. Instead, Mr. Simpson's sole argument in support of his motion for a subpoena seems to be that the witnesses called by *other* parties lacked expertise to testify to the safety of Line 002 and the impact of the construction and operation of the MEP upon that line. As discussed above, however, the Committee finds that Mr. de Leon and Mr. Tyler do indeed have the necessary expertise.

Of the seven Intervenor, the only Intervenor to call a witness on pipeline safety was Mr. Sarvey. Mr. Sarvey expressed unhappy surprise when he attempted to move new evidence into the record which he claimed needed to be authenticated by a PG&E witness. The new evidence was not listed in Mr. Sarvey's Prehearing Statement. (3/7/11 RT 320:25 – 334:10.) Neither Mr. Sarvey nor any of the Intervenor made any request whatsoever that the Committee subpoena PG&E in their Prehearing Statements or at the Prehearing Conference. In fact, Mr. Sarvey was expressly invited to contact both PG&E and the CPUC at the Prehearing Conference but apparently opted not to do so. (2/7/11 RT 21:15-22:7.) Mr. Simpson's oral motion to subpoena PG&E was not made until well into the evening on the third day of a three day Evidentiary Hearing.

In deciding whether Mr. Simpson has established good cause for the Committee to issue a subpoena, the Committee has already determined that two witnesses called possess the expertise needed to testify regarding the impacts of the MEP on the PG&E pipeline. We also note that Mr. Simpson and the other intervenors had a full and fair opportunity to conduct cross-examination both of those witnesses. We find that there is sufficient evidence in the record regarding the potential impacts to the public health and safety from MEP's interconnection to Line 002 (see Tit. 14 Cal. Code Regs., § 15384).

Further, the Committee has engaged in a balancing test in weighing the benefit of issuing a subpoena to PG&E against the prejudice to the Applicant who has already suffered substantial delays in their Application for Certification. Without a specific declaration describing the clear value of additional testimony from PG&E and coupled with the untimely motion for the subpoena, scale tips in favor of the Applicant all the more. For all the foregoing reasons, we find that the request lacks good cause and, accordingly, **DENY** the motion.

It is so **ORDERED**.

Dated: March 28, 2011, at Sacramento, California.



KAREN DOUGLAS
Commissioner and Presiding Member
Mariposa AFC Committee



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FOR THE **MARIPOSA ENERGY PROJECT**
(MEP)

Docket No. 09-AFC-3

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(Revised 3/18/2011)

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DECLARATION OF SERVICE

I, Maggie Read, declare that on March 29, 2011, I served and filed copies of the attached Ruling on Motion to Subpoena PG&E, dated March 28, 2011. The original document, filed with the Docket Unit, are accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: [\[http://www.energy.ca.gov/sitingcases/mariposa/index.html\]](http://www.energy.ca.gov/sitingcases/mariposa/index.html). The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

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I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

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Maggie Read
Hearing Adviser's Office