

Judge won't step between legal fight over tests at gas pipeline explosion site

By Marc Benjamin

A fireball erupts after a large gas pipeline exploded at a gun range in Fresno on April 17..

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- *Judge said state rules prohibit him from issuing order*
- *Lawyers say most issues have been clarified*
- *Videotaping remains a sticking point for utilities commission*

A Fresno County judge refused to intervene Thursday in a legal fight over testing of the damaged pipeline from last month's natural gas explosion at the Fresno Sheriff's Foundation shooting range.

Judge Mark Snuffer said a restraining order was beyond the jurisdiction of a superior court judge, but "I certainly understand the reasons why the plaintiffs might be seeking it."

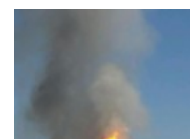
The California Public Utilities Commission has hired a Menlo Park consultant to test the damaged pipeline beginning Monday. Pacific Gas & Electric Co. is paying for the tests, which could last several weeks.

Thirteen people were injured in the blast. Two Fresno lawyers who represent some of the injured, Butch Wagner and Warren Paboojian, wanted the judge to ensure that they could have their own experts present at testing, and create guidelines for confidentiality and videotaping the investigation. They have said they fear the testing will destroy evidence.

But Mitchell Shapson, an attorney for the PUC, said any order from the judge would "interfere with the commission's lawful investigation."

In his legal brief, Shapson said the state Public Utilities Code does not give a superior court the ability "to interfere in any way with the commission in the performance of its official duties."

On April 17, a PG&E pipeline exploded in a fireball at the shooting range as a county employee using a front-loader worked on a berm and jail inmates were doing grounds maintenance.



Wagner represents five of the injured inmates and Paboojian represents one. A lawyer also was retained for the county employee who was driving the front-loader when the pipeline exploded.

Exponent, the contractor for the investigation, plans to take photographs but videotape is not typically part of the process, Shapson said. It's possible Exponent could videotape on Monday, the first day of testing, he said.

Lawyers on all sides said they are continuing to discuss terms for testing and making the investigation public.

Wagner said he is not opposed to waiting until the investigation is finished to reveal its details. The investigation could be done as early as next month, but he still wants the investigation videotaped.

"I don't know why anyone wouldn't want to videotape it," Wagner said following the hearing.

Dennis Ellis, PG&E's lawyer, said the report can be made public once it's complete.

Responding to Wagner's and Paboojian's concerns, Ellis said, "the pipe will not be destroyed."

He said Wagner's and Paboojian's two experts were never told they couldn't attend the investigation.

"If a party wants to have their expert present that will be allowed," Ellis said, but he said the number of experts would be limited to one per test.

Shapson, the PUC's lawyer, said that under terms of its agreement with PG&E the utility pays for the investigation by Exponent and the Public Utilities Commission conducts the testing.

In this case, Shapson said, the state is allowing more opportunities than normal.

In most cases, "there is nobody allowed at these tests ... it's part of an investigation."

The state will allow experts to be there and allow the experts to watch the investigation and take pictures as long as they don't interfere, Shapson said. He said experts can suggest more tests beyond what's planned.

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