June 27, 2024

VIA EMAIL

Los Angeles City Councilmember Katy Yaroslavsky
Los Angeles City Councilmember Tim McOsker
Los Angeles City Councilmember Bob Blumenfield
Los Angeles City Councilmember Kevin De León
Los Angeles City Councilmember Nithya Raman

Re: Objection to termination of franchise agreement for Pacific Coast Energy Company; Energy & Environment Committee Meeting June 28, 2024, Agenda Item No. 1

Dear Chair Yaroslavsky and Councilmembers:

These comments are submitted on behalf of the California Independent Petroleum Association ("CIPA") and Pacific Coast Energy Company, LP ("PCEC") regarding the City of Los Angeles' ("City's") proposed Council motion 23-1352-S1 (the "Ordinance") to terminate the pipeline franchise held by PCEC granted pursuant to City Council Ordinance No. 184967 and servicing the West Pico Facilities (including both the drill and production sites) and impacting many other parties, including but not limited to royalty owners ("Decision"). In particular, these comments are intended to address the City's clear intent to shut down PCEC's operations at the West Pico Facilities by terminating this franchise.

The Decision Constitutes an Unconstitutional Taking of Private Property.

The Decision represents an unconstitutional and unlawful taking of private property without just compensation, in contravention of the United States and California Constitutions. The state and federal Constitutions prohibit government from taking private property for public use without just compensation. Cal. Const., art. I, § 19; U.S. Const., 5th Amend.; *Chicago, Burlington &c. R'd v. Chicago* (1897) 166 U.S. 226, 239 (applying the federal takings clause to the states). In *Penna. Coal Co. v. Mahon* (1922) 260 U.S. 393, 415 (*Penna. Coal*), the United States Supreme Court recognized that a regulation of property that "goes too far" may effect a taking of that property.

In determining whether a regulation of property "goes too far," when the regulation does not result in a physical invasion and does not deprive the property owner of all economic use of the property, a reviewing court must evaluate the regulation in light of the "factors" the high court discussed in *Penn Central Transp. Co. v. New York City* and subsequent cases. *Penn Central*

emphasized three factors in particular: (1) "[t]he economic impact of the regulation on the claimant"; (2) "the extent to which the regulation has interfered with distinct investment-backed expectations"; and (3) "the character of the governmental action." *Penn Central Transp. Co. v. New York City* (1978) 438 U.S. 104, 124. Subsequent cases, as well as a close reading of *Penn Central*, indicate other relevant factors such as whether the regulation affects the existing or traditional use of the property and thus interferes with the property owner's "primary expectation" (*id*. at 125, 136), and whether the regulation "permit[s the property owner] . . . to profit [and] . . . to obtain a 'reasonable return' on . . . investment." *Id*. at 136. Under these factors, regulations which significantly limit the uses of private property constitute a taking. Such changes require just compensation, as well as due process and public consultation. This is true, for example, of decisions to terminate or not to renew an existing license.

In addition, the United States Supreme Court has definitively established that a land use regulation "goes too far"—amounting to a facial taking of property—where it "denies an owner economically viable use of his land." *Lucas v. SC Coastal Council* (1992) 505 U.S. 1003,1016, citing *Agins v. City of Tiburon* (1980) 447 U.S. 255, 260. This occurs where a regulation, by implementation alone, leaves the property owner without "substantial economic use" of the affected property. *See Maritrans Inc. v. U.S.* (2003) 342 F.3d 1344, 1351-52. A facial taking analysis does not require a fact-based probe as set forth in *Penn Central.* Rather, the dispositive inquiry is "whether the mere enactment of the [regulation] constitutes a taking." *Agins*, 447 U.S. at 295, *abrogated on other grounds*; *see also Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency* (2002) 535 U.S. 302, 318.

The Decision would give rise to a claim for just compensation by PCEC, as well as royalty owners and potentially other parties or entities. The Decision severely restricts PCEC's ability to use its property at the West Pico Facilities and would materially infringe on its property rights and interests, up to and including completely eliminating the value of those rights. PCEC has no other means to export the natural resources produced at the site, an activity which is protected by the California Constitution.[1] Therefore, the Decision constitutes a taking and PCEC is entitled to just compensation.

In addition, the Decision constitutes a violation of PCEC's fundamental vested rights and due process rights. Under *Avco Community Developers, Inc. v. South Coast Regional Commission*, (1976) 17 Cal.3d 785 ("*Avco*"), where a permit holders make an investment in that permit, they possess vested legal rights. The doctrine of vested rights applies to use permits and the activities authorized thereunder. *See Hansen Brothers Enterprises v. Board of Supervisors*, (1996) 12 Cal.4th 533 ("Hansen"). And use permits confer vested rights. *HPT IHG-2*

[1] The City has not suggested any other method for bringing the crude oil PCEC extracts from the West Pico Facilities to market, whether by truck or by providing access to right-of-way for an alternative pipeline connection. To the contrary, the tone and content of the Ordinance makes it clear that the City intends to burden PCEC with whatever regulatory actions are necessary to halt further operations at the West Pico Facilities.

Properties Tr. v. City of Anaheim (2015) 243 Cal. App. 4th 188, 199 (where a CUP has been issued and the landowner has relied on it to its detriment, the landowner has a vested right.); *see also Malibu Mountains Recreation, Inc. v. County of Los Angeles* (1998) 67 Cal.App.4th 359, 367. The scope of the vested rights is the scope of activity authorized under the permit. *Santa Monica Pines, Ltd. v. Rent Control Bd*. (1984) 35Cal.3d 858, 865. PCEC reserves the right to further detail these claims at a later date, should the City move forward with the Ordinance.

* * *

It is our understanding that City officials have made clear that the Decision is being made in order to shut down PCEC's operations at its West Pico Facilities, an inappropriate purpose completely outside the scope of the City's authority to approve or reject such licenses. Further, the City has not conducted any substantive environmental analysis of the impacts of the Decision, nor has it received or reviewed any report from the City's Petroleum Administrator regarding appropriate options for termination of the franchise.

In addition to the legal impacts noted above, terminating PCEC's franchise will impact the City's budget. ***If the City Council adopts this Decision, the City will immediately owe PCEC in millions of dollars, in order to compensate PCEC for such a taking of private property. At a time when the City is experiencing a significant budget deficit, adding an additional debt of this magnitude would be an inappropriate and irresponsible use of taxpayer money.***

We appreciate your time and attention to this matter, and strongly urge the City to reverse course and abandon its unlawful and baseless efforts to terminate PCEC's license. PCEC is fully prepared to defend its legal rights by all available means.

Sincerely,

Klaus Hasbo, CEO
Pacific Coast Energy Company, LP

Rock Zierman, CEO
California Independent Petroleum Association

CC: Los Angeles City Council President Paul Krekorian
Eric Villanueva, Legislative Assistant