

BEFORE THE PUBLIC UTILITIES COMMISSION
OF STATE OF CALIFORNIA

Order Instituting Investigation on the
Commission's Own Motion into the
Operations and Practices of Pacific Gas and
Electric Company with Respect to Facilities
Records for its Natural Gas Transmission
System Pipelines.

I.11-02-016
(Filed February 24, 2011)

**LEGAL DIVISION'S NOTICE AND DISCLOSURE OF SAFETY
EVIDENCE AND COMPANION MOTION
FOR PUBLIC RELEASE OF EVIDENCE**

I. INTRODUCTION

By this pleading, the Legal Division ("LD") notifies the parties in this proceeding and the gas safety rulemaking, R. 11-02-019, that a significant safety issue has arisen in the San Bruno investigation and, we believe, in the Commission's gas system safety rulemaking, R.11-02-019. The issue pertains to newly discovered evidence, and is critical to both a retrospective review of PG&E's safety and to the future safety of California's entire gas infrastructure that will be affected by the rulemaking.

Because of this notification, and pursuant to Rule 11.1 of the Commission's Rules of Practice and Procedure, Legal Division also moves for a ruling allowing all parties to disclose to the public each record discovered within the course of I.11-02-016, unless Pacific Gas and Electric Company ("PG&E") marks a particular record as confidential under Public Utilities Code §583 and/or General Order 66(c), and unless PG&E also provides a fact specific and legally valid written justification upon each record marked confidential for keeping that particular record confidential.

II. BACKGROUND

The Commission opened the instant OII against PG&E to determine whether the named Respondent, PG&E, violated any provision or provisions of the California Public Utilities Code, Commission general orders or decisions, or other applicable rules or requirements pertaining to its record keeping practices for its gas service and facilities. The proceeding will review PG&E's compliance with applicable statutes, rules and orders governing the requirements for accurate record keeping that were required to establish the safety of PG&E's gas transmission pipeline Line 132. This is the line that ruptured on September 9, 2010, killing eight persons. Moreover, the OII will examine the adequacy of PG&E's record keeping practices for all of the other pipes in its gas transmission system. The investigation will also determine whether PG&E's record keeping practices for its entire gas transmission system have been unsafe and therefore in violation of the law.¹

A. Newly Discovered Evidence

LD has recently discovered new evidence that raises significant issues pertaining to past and future PG&E gas transmission safety. Because of legitimate public concern about these matters, the urgent need to ensure that other facilities within PG&E's gas transmission system are safe, the Commission's strong interest in seeing that the issue of PG&E's compliance with applicable requirements is thoroughly vetted, and because parties are working to analyze these issues, LD believes it should alert the parties to the evidence now.

The evidence relates to two matters. First, LD has located PG&E documents that appear to demonstrate PG&E's historic re-use of salvaged or junked transmission pipe. These documents clearly raise serious safety concerns both for the future, and for past safety, including the causes of the San Bruno pipe rupture. The National Transportation

¹ I.11-02-016, "Order Instituting Investigation on the Commission's Own Motion into the Operations and Practices of Pacific Gas and Electric Company with Respect to Facilities Records for its Natural Gas Transmission System Pipelines.", February 24, 2011, Page 1.

Safety Board (“NTSB”) has been unable to certify the provenance of the ruptured pipe, or whether any pups that made up the pipe had previously been used elsewhere in PG&E’s system.² Moreover, we believe that PG&E cannot accurately certify that no other re-used and/or deficient transmission pipe remains in its service.

The other matter pertains to documents demonstrating that PG&E has accepted known poor and marginal welds, and then placed pipes with these poor or marginal welds into service on Line 132. These documents are consistent with NTSB findings.³ Indeed, the NTSB determined that PG&E was aware as early as 1948 that it had placed transmission pipes into service on Line 132 with poor welds in them. This information, along with the NTSB conclusion that “it is probable that additional longitudinal seam weld defects have remained in service since 1948”,⁴ leaves significant past and future safety problems to consider and resolve.

B. The Need to Release and Consider Public Information Quickly

The documents and evidence referred to above are clearly relevant and important to both past and future gas transmission safety. Both aspects of safety are important to the public and to media, such as newspapers and television, that inform the public. Both aspects of safety are also important to parties to this investigation and to the gas safety rulemaking proceeding.

LD discovered the documents showing pipe re-use and pipe weld flaws within a data base provided by PG&E entitled “ECTS”. ECTS contains thousands of documents, primarily job files or folders. Many of the documents in the data base are quite old, including the ones pertaining to weld flaws and to re-use of pipe. The weld flaw document dates from 1948, and the pipe re-use documents are approximately dated

² “Pacific Gas and Electric Company Natural Gas Transmission Pipeline Rupture and Fire San Bruno, California September 9, 2010, Accident Report”, National Transportation Safety Board, Adopted August 30, 2011, pp. 93-95.

³ Ibid. at 25 and 111.

⁴ Ibid.

between 1948 and 1956. Most documents on the ECTS data base are in PG&E “job files”. These folders are one of PG&E’s primary sources of records about the pipes and other facilities it has in the ground. Each and every document in PG&E’s ECTS data base has been provided to LD with a section 583 confidentiality claim attached to it.

This investigation proceeding and the rulemaking have attracted vigorous and diverse party participation and raise important public interest and gas safety concerns. Blanket confidentiality assertions in the ECTS or any other PG&E data base impede efficient and timely sharing of important safety information with other interested parties and with the public. Therefore, LD requests that the propriety of blanket confidentiality claims be discussed and if necessary, argued at the November 1 prehearing conference. We respectfully request that a ruling be issued that (1) places an immediate burden on PG&E to justify confidentiality treatment for any data or information, whether in ECTS, any other PG&E data base, or elsewhere and that (2) permits LD to distribute to any party or person copies of all documents that have not been justified as confidential.

C. Consistent Procedural History

Already during the course of this proceeding, Administrative Law Judge Yip-Kikugawa (“ALJ”) has denied Respondent’s motion to file its Records Retention Policy under seal. Instead, the ALJ only allowed Respondent to redact the names and contact information of non-management employees contained in the supporting documents of this policy.⁵ We believe that LD’s request is consistent with that ruling.

⁵I.11-02-016, “Administrative Law Judge’s Ruling Denying Pacific Gas and Electric Company’s Motion for Leave to File Confidential Information Under Seal”.

III. ARGUMENT: THE COMMISSION SHOULD ALLOW PARTIES TO I.11-02-016 TO DISCLOSE EACH RECORD DISCOVERED IN THE COURSE OF THIS PROCEEDING TO THE PUBLIC UNLESS PG&E HAS PROVIDED A SPECIFIC JUSTIFICATION FOR WHY THAT PARTICULAR RECORD SHOULD BE CONFIDENTIAL UNDER PUBLIC UTILITIES CODE SECTION 583 OR GENERAL ORDER 66(C).

Unless PG&E provides a written, fact specific, and legally valid justification why a particular record should be confidential under Public Utilities Code §583 or General Order 66(c), then a party who discovers that particular record should be allowed to share information from it with the public for several reasons. First, the Commission has already authorized a policy favoring disclosure of PG&E's pipeline records in pre-adjudicatory proceedings unless PG&E can provide a legally valid justification for confidentiality.⁶ Second, a blanket rule favoring disclosure could facilitate faster sharing of information in order to meet immediate public safety concerns regarding PG&E's gas pipelines and will increase public confidence that all aspects of this disaster are being thoroughly investigated. Third, such a rule would allow parties to expeditiously share some information while still following the strict ex parte rules associated with this adjudicatory proceeding. Each of these points shall be discussed in order.

⁶ Resolution Number L-403, "Directives of the California Public Utilities Commission Pursuant to California Constitution, Article 12, Sections 1-6, Public Utilities Code Sections 315, 451, 701, and 702, to Investigate the Facts Surrounding the Explosion and Fire of Pacific Gas and Electric Company's Natural Gas Transmission Line No. 132, To Make an Immediate Assessment of the Safety of PG&E's Other Gas Transmission Lines, to Establish an Independent Review Panel to Assist in the Fact-Finding Investigation of the San Bruno Explosion and the Overall Safety of PG&E's Gas Transmission Lines in California, to Ratify the Mandatory Instructions of The Executive Director's Previous Emergency Mandates to Investigate the San Bruno Incident (Including, Reduction of Pressure in Line 132, Required Inspections and, Surveys, and the Preparation of Plans), to Make All of the Utility's Employees and Contractors Available for Fact-Finding Investigatory Interviews, and to Preserve Accident Records and General Records Regarding the Safety and Integrity of Line 132.", September 23, 2010, Ordering Paragraph Number 7, Conclusion of Law Number 10, and Finding of Fact Number 8.

1. The Commission Has Already Authorized a Policy Favoring Full Disclosure of PG&E’s Records for Pre-Adjudicatory Proceedings

In its pre-adjudicatory investigation regarding Line 132 and PG&E’s other gas transmission lines, the Commission already requires PG&E to follow the same requirements as those requested in this motion. Specifically, any time PG&E asserts a document produced to the Commission is confidential, it must mark each page as “Confidential Under §583”, and also “must provide a justification for its confidential treatment”.⁷ The only reason this resolution does not apply to the present proceeding is because it is adjudicatory rather than pre-adjudicatory. However, the present proceeding has the exact same substantive concerns that prompted the Commission to enact Resolution L-403.

2. The Requested Rule Could Facilitate Faster Sharing of Information In Order to Meet Immediate Public Safety Concerns.

Given the pressing public need to know whether and where any deficiencies exist in the current PG&E system of transmission lines, the requested policy would allow for sharing of some information in an expedited matter. Moreover, this policy would still allow PG&E to select which of its particular documents should be kept confidential. Consistent with the guidance issued in Resolution L-403, Legal Division believes that such records should still remain confidential as long as PG&E provides a legally valid justification for that.⁸

⁷ Id. These points of authority also requires that “any document designated by PG&E for protection as confidential must not already be available to the public.”

⁸ Id. at 6.

3. A Presumption That Documents Can Be Disclosed Would Allow Parties to Share Needed Information Quickly While Respecting the Strict Ex Parte Rules Associated with This Adjudicatory Proceeding.

Rule 8.3 of the Commission's Rules of Practice and Procedure prohibits ex parte communications in adjudicatory proceedings, such as the present one. However, Public Utilities Code section 583 provides that anything protected as confidential under its authority can only be made public by order of the Commission, or by a Commissioner or in the course of a hearing or proceeding. Given the ban on ex parte communications in this proceeding, the requested rule would allow a party to expeditiously share some records with the public without filing a motion or pleading first.

We cannot overemphasize the importance of the prompt release of safety information to the public and to parties. If we continue with the current rule, important safety information will not be released until a ruling on confidential information in LD's February report. Delaying disclosure until that time would be counterproductive and may impede the Commission's resolution of this investigation, and would inappropriately limit the ability of parties in this case to conduct productive discovery on this vitally important subject.

IV. LEGAL DIVISION REQUESTS AND EXPEDITED SCHEDULE TO ADDRESS THIS MOTION

Pursuant to Commission Rule of Practice and Procedure 11.1(e), Legal Division requests that the ALJ provide an expedited schedule for PG&E to respond to this motion. In order to facilitate a ruling on this motion while still following ex parte rules, Legal Division respectfully requests that PG&E be required to respond to the present motion by October 26, 2011, and also respectfully requests a ruling at the pre-hearing conference scheduled for November 1, 2011.

V. CONCLUSION

For all of the reasons stated above, Legal Division respectfully urges the Commission to allow all parties to disclose a record discovered within the course of this proceeding unless PG&E marks that particular record as confidential pursuant to Public

Utilities Code Section 583, and unless PG&E obtains a Commission order that it has demonstrated a fact specific and legally valid justification for identifying such a record as confidential.

Respectfully submitted,

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