

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE 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
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CALIFORNIANS FOR RENEWABLE ENERGY'S REPLY BRIEF

/S/

Martin Homec
Attorney for Californians for Renewable Energy
P. O. Box 4471
Davis, CA 95617
martinhomec@gmail.com
(530) 867-1850
(530) 686-3968 Fax

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I. Introduction and Summary

CALifornians for Renewable Energy (CARE) hereby submits its reply brief pursuant to the requirements of the California Public Utilities Commission (CPUC or Commission)'s Rules of Practice and Procedure, Rule 13.11. CARE believes that the violations identified in this proceeding ignore the important issue of whether Pacific Gas and Electric Company's (PG&E)'s compliance with the applicable CPUC rules, orders, and regulations at the time of the alleged violations and under the oversight of the CPUC staff constitutes compliance with California Public Utilities (PU) Code section 451. The other (other than PG&E) parties' arguments don't consider the requirement of notice by the CPUC to PG&E of deficiencies and unsafe conditions before finding PG&E liable for damages caused by negligence during design, installation, and maintenance of utility owned facilities.

The CPUC's Consumer Protection and Safety Division (CPSD), now named the Safety Enforcement Division, presented testimony of its analysis of the state of records management within the Gas Transmission Division of Pacific Gas and Electric Company prior to the Natural Gas Transmission Pipeline Rupture and Fire, San Bruno, California September 9, 2010. This analysis listed violations of the California Public Utilities Code, CPUC General Orders, and the engineering requirements from the American Society of Mechanical Engineers (ASME).

CARE believes that the violations that occurred in the current regulatory climate are addressed in the common outline for the opening brief in Section V., Violations 12 – 14. The other violations haven't been developed properly because they do not explain what they would have cost the rate payers to implement and do not analyze the likely impact on the PG&E gas operations. CARE recommends that these undeveloped violations be the subject of a new proceeding directing the parties to address the viability of the PG&E gas system using different records management practices if the violations are to be the reason for penalizing PG&E for its records management actions.

CARE believes that the CPUC did not issue an order specifying the required practices for maintaining and managing PG&E's gas system records because the CPUC depended on periodic CPUC staff reviews of PG&E's records during rate making proceedings to ensure that PG&E was properly managing its records. In fact, the CPUC staff has had opportunities to review PG&E's records and records management practices since 1955 and never identified any

problems. The CPUC staff includes personnel with current status as professional engineers who reviewed everything and found nothing to be improper. Any finding of problems would be communicated to the CPUC commissioners who had the authority to order corrections and changes in record management practices and yet did not do so.

PG&E can be fined pursuant to PU Code section 451 for violating statutes, orders and regulations. The fact that the CPUC issued orders supporting its staff's findings after its staff reviewed PG&E's gas system means that PG&E was complying with PU Code section 451.

II. Legal Issues of General Applicability

CPSD wrote an opening brief addressing this principle on page 10 and cited *Lozano v. Pacific Gas and Electric Co.* (1945) 70 Cal.App.2d 415, 422 (Lozano) that discussed PG&E's legal duty in the context of electricity services. CPSD stated that PG&E's compliance with its obligation should be evaluated under the standard of: "what would a reasonable and prudent person have done in light of the facts known, or which should have been known, at the time the decision was made." D.94-03-048 (1994) 53 Cal.P.U.C.2d 452, 468

Line 132, a natural gas pipeline, was designed, installed, and operated pursuant to the CPUC oversight and inspections current at the time of its design, installation, and operation. CARE believes that PG&E thus was acting reasonably and prudently because additional inspection such as digging-up line 132 and unwrapping pipeline segments to inspect for welding flaws and leaks were not practices that gas pipeline operators performed. Yet this kind of additional inspection appears to CARE to be the only way that the San Bruno tragedy could have been prevented.

The CPUC staff could have insisted on thorough inspections at the time that the pipe was installed, but there is no record of this happening. The CPUC annual reports for the period in question didn't mention additional inspections and CARE could not find any CPUC decisions or orders directing PG&E to conduct such inspections. Additionally, PG&E would have incurred costs for these more thorough inspections and the CPUC would have been asked to allow PG&E to be reimbursed for these costs through rates, but CARE could find no such requests.

The Lozano case was different from the record keeping procedures and practices issues addressed in this proceeding because it found PG&E negligent of maintaining overhead electric

lines in a shipyard with moving overhead cranes. Line 132 was underground and CPSD appears to allege that PG&E had the same notice of gas pipelines that would leak in 2010 as they would have had of the immediate hazardous presented by overhead electric lines. CARE believes that this is not so. PG&E cannot be held to be negligent of something that a reasonable person would not know and could not know.

None of the case law interpreting section 451 specifically addresses the CPUC regulated utilities' gas issues. This could be because there have been no issues that courts have found clearly indicating gas utility wrong doing. CARE believes that the fact that most natural gas utility facilities are underground and not subject to daily observation means that courts haven't found an instance in which the utility company could have been found liable. While electric facilities are above ground and utility personnel are expected to observe and correct potentially dangerous conditions, this cannot be said of gas utilities.

The fact that section 451 does not describe more specific utility obligations does not negate or diminish PG&E's duty, but it does require consideration of the context of the obligations. Decision (D.) 61269 (1960) 58 Cal. P.U.C. 413, 420, Findings and Conclusions 8 states that "[T]he promulgation of precautionary safety rules does not remove or minimize the primary obligation of respondents [which included PG&E] to provide safe service and facilities in their operations." The Commission employed a safety staff and funded staff inspections during rate cases to oversee this obligation. According to the CPUC annual reports for the 1950s, this staff never found fault with PG&E's record keeping for Line 132 at the time that the pipe was purchased and stored or with the installation procedures used.

California PU Code section 451¹ states that PG&E is to provide utility service in a manner necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public. The CPUC is the State agency mandated to determine whether

¹ All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful.

Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities, as defined in Section 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.

All rules made by public utility affecting or pertaining to its charges or service to the public shall be just and reasonable.

PG&E provided utility service in the required manner. The CPUC's Gas Section inspected the facilities in question in this proceeding in 1956 or 1957², after they were installed and began operations, and determined that the pipeline facilities and their installation met the requirements of that time. Additionally, the CPUC required PG&E to provide reports prepared by qualified outside inspectors of inspections made at ten and twenty year intervals. The CPUC kept copies of these reports after reviewing and accepting them. Routine daily, weekly, monthly, quarterly, and annual inspections were made by the utility employees³ and not submitted to the CPUC.

III. Alleged Violations Predicated on the Reports and Testimony of Margaret Felts

A. Alleged Records Violations relating to Line 132, Segment 180, San Bruno Incident

Violation 1: Salvaged Pipe Records

CARE disagrees with this violation because there has been no showing that industry standards required the kinds of records described in the CPSD reports submitted as testimony in this proceeding. Simply making assertions of what record keeping could have been does not meet the standard necessary to demonstrate a violation of PU code section 451 or even a violation of good business practices.

The violations concerning the improper use of the Standard Material Yield Strength (SMYS) are clear violations of current standards. The standards were set in the 1955 American Society of Mechanical Engineers (ASME) code of industry standards for gas transmission operators, but were not specified as CPUC standards by any statute or CPUC regulation (General Order 112 was not adopted until 1961). In 1955, the ASME published ASME B.31.1.8 (which today is known as ASME B.31.8). These violations include improper recording of SMYS values exceeding the maximum allowed by 49 CFR 192.107 and the CPUC's General Order 112.

CPSD's description of Violation 1 describes the improper labeling of pipe segments with unknown characteristics at page 30 of its opening brief. However, CPSD does not address the manner in which it expected PG&E to use this information and it does not explain why the

² Public Utilities Commission Annual Report for 1956-1957 on page 53.

³ Public Utilities Commission Annual Report for 1949-1950 on page 57.

CPUC annual reports⁴ state that CPUC staff inspected the gas transmission line installation activities and found nothing wrong with them.

IV. Conclusion

CARE recommends that only the violations of a current nature be considered if there is to be no further evidence introduced of the CPUC regulatory climate at the time of the alleged violations because it is too difficult to determine what the CPUC might have done if presented with arguments about required record keeping methods in the 1950s when the pipe that is now PG&E gas transmission line 132 was installed.

The CPUC staff reviewed PG&E's gas system and its operations and maintenance costs during numerous proceedings since 1955 yet there were no reports or criticisms of the records management system or the integrity controls that PG&E used. CARE believes that this lack of enforcement activity at the time that the pipeline was constructed and began operating indicates that PG&E's operations complied with the industry standards for gas pipeline operations then in existence. While the CPUC has the authority to penalize PG&E for activities that the CPUC already approved, it is not a useful endeavor. The purpose of this enforcement action should be to prevent another event resulting in the injury and loss of life.

CARE believes that the violations that occurred in the current regulatory climate are addressed in the common outline for the opening brief in Section V., Violations 12 – 14. The other violations, haven't been developed properly because they do not explain what they would have cost the rate payers to implement and do not analyze the likely impact on the PG&E gas operations. CARE recommends that these undeveloped violations be the subject of a new proceeding directing the parties to address the viability of the PG&E gas system if the violations are to be the reason for penalizing PG&E for its records management actions.

Respectfully Submitted,

April 24, 2013

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Attorney for CALifornians for Renewable Energy
martinhomec@gmail.com
(530) 867-1850

⁴ P. 43, California Public Utilities Commission Annual Report, 1961- 62 Fiscal Year July 1, 1961 to June 30, 1962.