

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
(Filed February 24, 2011)

**MOTION TO COMPEL
AND RE-OPEN THE RECORD OF THE
SAFETY AND ENFORCEMENT DIVISION**

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Pursuant to Rule 11.3(a) of the Commission's Rules of Practice and Procedure ("Rules") and Public Utilities Code ("Pub. Util. Code") sections 314, 314.5, 581, 584, and 701, the Safety and Enforcement Division ("SED") hereby moves for an order to compel Pacific Gas and Electric Company ("PG&E") to produce a response to Data Request ("DR") 99.¹ Moreover, pursuant to Rule 13.14, SED requests that the California Public Utilities Commission ("Commission") re-open the record for the limited purpose of supplementing it with PG&E's response to DR 99. DR 99 simply updates the record to test a defense that PG&E itself raised.

PG&E has for many years been required by federal and state law to conduct testing of all new transmission pipe installations.² Federal and state laws have also required that PG&E create and retain, for the service life of the pipe, the records of those

¹ DR 99 is provided as Attachment A.

² See 49 CFR Sections 192.503, 192.505 and 192.507, and Commission General Order 112E, Sections 101.2 and 141.1.

tests.³ SED and other parties allege that on multiple thousands of occasions, PG&E has failed to create, or maintain, records of tests required by law to be conducted at installation and before service.⁴ By August 2012,⁵ PG&E admitted that it had not located tens of thousands of test records for pipe segments still in service.⁶

Nonetheless, PG&E continues to deny that violations are established.⁷ PG&E's defense is based on its assertion that the company is still searching for the documents and hopes to find them.⁸ By now, almost four years after San Bruno, the Commission is entitled to know once and for all whether PG&E has located any or all of the 23,761 strength test pressure records of pipe segments it identified in class 3 and 4 areas (populated areas) as “not yet found.” Production of the information will enable the Commission to assess whether evidence exists to support PG&E’s defense. PG&E should be compelled to answer SED DR 99, and the record should be re-opened to enable the Commission to properly assess a defense that PG&E itself raised and asserted.

I. FACTUAL AND PROCEDURAL BACKGROUND

On July 19, 2012, Consumer Protection and Safety Division (“CPSD”)⁹ and The Utility Reform Network (“TURN”) issued a joint data request asking PG&E to provide a list of pipe segments for which PG&E lacked a post-installation strength test record.¹⁰

³ See 49 CFR Section 192.517, and Commission General Order 112E, Sections 101.2 and 141.1.

⁴ See SED Opening Brief, March 25, 2013, Violation 18, pp. 101-109; See also TURN Opening Brief, March 25, 2013, Violation 18, pp. 22-25.

⁵ PG&E could not locate these records almost two years after the San Bruno rupture and a year and a half after it was directed by the NTSB and this Commission to search for test records and other records to validate MAOP for pipes in populated areas.

⁶ TURN Ex. 4. See also PG&E Opening Brief, March 25, 2013, p. 2, fn 7.

⁷ PG&E Opening Brief, March 25, 2013, p. 2, fn 7.

⁸ Ibid.

⁹ CPSD is now known as SED.

¹⁰ See TURN Ex.4.

PG&E issued a data response on August 30, 2012, indicating that it lacked strength test records for 23,761 pipe segments covering more than 435 miles.¹¹ PG&E's data response also indicated that its effort to identify such pipe segments was ongoing and would not be completed until 2013.¹² The data response is in the record,¹³ and constitutes significant evidence in support of the allegation of SED and other parties that PG&E has on thousands of occasions violated state and federal law requiring utilities to retain all hydrotest records for the life of the pipe installed.¹⁴

Similarly, PG&E's opening brief asserted a defense to the assertion that PG&E violated the law by lacking 23,761 strength test pressure records of natural gas transmission pipe segments in class 3 and 4 high consequence areas on the grounds that it "has not given up looking for these records and still hopes to find them."¹⁵ On May 7, 2014, SED's DR 99 asked PG&E a series of questions designed to obtain PG&E's current status on its August 30, 2012 list of pipe segments lacking strength test records.¹⁶

Pursuant to Rule 11.3, SED met and conferred with PG&E on May 8, 2014 to discuss the data request. On May 14, 2014, PG&E emailed SED in writing a response ("PG&E Response") stating that it would not answer DR 99 on the grounds that the record in the present proceeding is closed, that final exhibits were admitted into the record on January 22, 2013, and that discovery is no longer available to any of the parties, including SED.¹⁷ PG&E's email referenced a website, which it characterized

¹¹ Ibid..

¹² Ibid.

¹³ Ibid.

¹⁴ See SED Opening Brief, March 25, 2013, Violation 18, pp. 101-109; See also TURN Opening Brief, March 25, 2013, Violation 18, pp. 22-25.

¹⁵ PG&E Opening Brief, March 25, 2013, p. 2, fn. 7.

¹⁶ See Attachment A.

¹⁷ See Attachment B, email from PG&E to SED, dated May 14, 2014.

as an SED review of PG&E's MAOP validation effort.¹⁸ The referenced website does not satisfy SED's request for the missing records, because it does not provide a listing of the test records, if any, that PG&E has located since its August 2012 Data Response.

II. THE COMMISSION SHOULD GRANT THE MOTION TO COMPEL

PG&E's own opening brief notes,

“The evidence also shows that PG&E has not located a number of pressure test records that, by regulation, it should have. Ex. TURN-4. As David Harrison testified, PG&E has not given up looking for these records and still hopes to find them. Joint R.T. 256 (PG&E/Harrison). Thus, the evidence falls short of proving that PG&E has failed to retain any particular pressure test record it is required by law to have.”¹⁹

In other words, PG&E's defense against the asserted violation regarding its lacking of tens of thousands of strength test pressure records is that it simply has not found them yet. Almost two years after PG&E provided TURN EX.4 as a Data Response, SED merely seeks to determine whether PG&E has now found any of the strength test pressure records it asserted it had not yet found in 2012. PG&E's data response to DR 99 is necessary in order for the Commission to assess the veracity of PG&E's defense, including the status of PG&E's efforts to continue to look for and find its missing strength test pressure records.

PG&E's May 7 response to SED DR 99 (“PG&E's Response”) did not answer the questions in that DR. Moreover, PG&E's Response also does not appear to voice an objection.²⁰ Instead, PG&E's Response referenced a website, which it characterized as

¹⁸ The website PG&E provided was https://www.pge.com/regulation/PSEP-Update/Reports/SED/2014/PSEP-Update_Report_SED_20140425_303366Atch04_304079.pdf.

¹⁹ PG&E Opening Brief, March 25, 2013, p. 2, fn. 7.

²⁰ See Attachment B.

an SED review of PG&E's MAOP validation effort.²¹ However, SED carefully reviewed the link PG&E's Response provided and found nothing addressing the status of PG&E's efforts to find its missing strength test pressure records for 23,761 pipe segments in class 3 and 4 high consequence areas.

III. SED REQUESTS THE COMMISSION RE-OPEN THE RECORD FOR THE SPECIFIC AND LIMITED PURPOSE OF ALLOWING PG&E'S RESPONSE TO DR 99 INTO EVIDENCE

PG&E's Response asserts that the record in I.11-02-016 is closed.²² Regardless of whether the record has been closed for general purposes, PG&E has created the necessity of SED DR 99 and for supplementing the record with PG&E's response to it. Hence, SED requests the Commission re-open the record pursuant to Rule 13.14.

Rule 13.14(b) provides in part that,

“A motion to set aside submission and reopen the record for the taking of additional evidence, or for consideration of a settlement under Article 12 shall specify the facts claimed to constitute grounds in justification thereof, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing. It shall contain a brief statement of proposed additional evidence, and explain why such evidence was not previously adduced.”

In this case, there is a “material change of fact” since conclusion of hearings. Specifically, PG&E should know by now whether or not it found the 23,761 strength test pressure records of pipe segments it identified in class 3 and 4 areas as “not yet found.” This information is material and necessary because it will enable the

²¹ The website PG&E provided was https://www.pge.com/regulation/PSEP-Update/Reports/SED/2014/PSEP-Update_Report_SED_20140425_303366Atch04_304079.pdf.

²² See Attachment B.

Commission to assess PG&E's defense that the evidence falls short of proving that it has not given up looking for these records.²³

IV. CONCLUSION

For the reasons asserted above, SED respectfully requests that the Commission compel PG&E to answer SED DR 99. SED also respectfully requests that the Commission re-open the record to this proceeding for the purpose of adding PG&E's compelled response to DR 99.

Respectfully submitted,

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May 30, 2014

²³ For PG&E's defense, see PG&E Opening Brief, March 25, 2013, p. 2, fn. 7.