

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 to Determine Violations of Public Utilities Code Section 451, General Order 112, and Other Applicable Standards, Laws, Rules and Regulations in Connection with the San Bruno Explosion and Fire on September 9, 2010.

I.12-01-007
(Filed January 12, 2012)

(Not Consolidated)

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)

(Not Consolidated)

Order Instituting Investigation on the Commission's Own Motion into the Operations and Practices of Pacific Gas and Electric Company's Natural Gas Transmission Pipeline System in Locations with Higher Population Density.

I.11-11-009
(Filed November 10, 2011)

(Not Consolidated)

**CALIFORNIANS FOR RENEWABLE ENERGY MOTION
FOR JUDGMENT ON THE PLEADINGS IN THESE PROCEEDINGS**

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I. Introduction

Pursuant to Rule 11.1(a) of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure (Rules), CALifornians for Renewable Energy (CARE) hereby submits this motion for judgment on the proceedings. The assigned Administrative Law Judges (ALJ) s ruled on July 31, 2014, that pursuant to Rule 13.14 and the Scoping Memos issued in the above-captioned proceedings, the records have been submitted in these investigations, and that the records have been submitted in Investigation (I.) 12-01-007, I. 11-02-016 and I.11-11-009.

CARE asks that judgment be entered consistent to CARE's pleadings in these proceedings because no party has opposed the pleadings submitted by CARE.

II. Discussion

CARE has been a party to the I. 11-02-016 since the beginning including participating in the prehearing conferences, the evidentiary hearings and writing an opening brief and a reply brief. CARE also participated in the arguments concerning the procedural recommendations for the above captioned proceedings.

CARE believes that there has been a major omission of the arguments filed in these proceedings because the parties have not evaluated the fact that the Commission's Annual Reports from the 1948 to 1961 period are the official history of the Commission's actions at the time that the gas transmission facilities in question were manufactured and installed.

CARE believes that the violations identified in the proceedings 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 Public Utilities Commission Annual Report issued in 1957 stated on page 53 that the Gas Section had enforced these new standards by a physical examination of all the regulated facilities to determine whether PG&E fully complied with General Order 94-A. Other Commission annual reports from the time period beginning in 1948 when the pipeline segments were manufactured until 1961 when the Commission adopted gas pipeline standards show that the Commission has overseen the installation and operation of PG&E's gas pipeline facilities.

CARE believes that the Commission did not issue an order specifying the required practices for maintaining and managing PG&E's gas system records because the Commission depended on periodic staff reviews of PG&E's records during general rate cases to ensure that

PG&E was properly managing its records. In fact, the Commission staff has had opportunities to review PG&E's records and records management practices since 1955 and never identified any problems. The Commission 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 commissioners who had the authority to order corrections and changes in record management practices and yet did not do so.

CARE doesn't believe that the CPUC regulatory process was subverted when line 132 was constructed and began operation. 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 parties' witnesses made statements of violations of business and operations records that were not evaluated according to traditional CPUC ratemaking criteria and so may or may not be applicable to PG&E's gas system operations. The CPUC has always, according to all of CARE's findings, evaluated proposals to modify PG&E's operations by first determining the effect on the workability of PG&E's system and also the cost to the ratepayers. The CPUC today should not fine PG&E without knowing how PG&E's operations would have performed if PG&E's record keeping practices in the 1950s that are cited as violations by the parties to this proceeding had been different.

The CPUC's 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.

III. Legal Issues of General Applicability

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.

The Commission's Consumer Protection and Safety Division (now renamed Safety and Enforcement Division) (CPSD) wrote an opening brief filed on March 25, 2013, 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 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

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.

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

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.

CONCLUSION

CARE asks that the above recommendations be ordered and the above captioned proceedings be ended in the way that best benefits the ratepayers. The ratepayers should not have to pay for anymore proceedings. Instead, the money being spent should be spent on improving, maintaining, and operating the natural gas system in the most efficient and safe manner possible.

Respectfully submitted,

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