



December 11, 2017

By Email

Mr. Ken Bruno
Program Manager
Gas Safety and Reliability Branch
Safety and Enforcement Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: Response to October 21, 2017 Closure Letter for the Notice of Probable Violation (NOPV) Issued for the October 24, 2014 Bakersfield Incident

Dear Mr. Bruno:

This letter responds to the Safety and Enforcement Division's (SED) letter dated October 21, 2017 notifying Pacific Gas and Electric Company (PG&E) that, unless PG&E can provide additional evidence to dispute SED's Notice of Probable Violation (NOPV) in connection with the above-referenced incident, SED intends to close its investigation and determine any resultant enforcement action.

PG&E thanks SED for the opportunity to respond further with respect to the above referenced matter, as well as SED's willingness to meet on December 6, 2017 to discuss PG&E's planned Closure Letter response in detail.

Background

Excavator Jeff Alexander, d/b/a Big N Deep Agricultural Development ("Alexander" or "excavator") requested and received from Underground Service Alert of Northern California (USA) two excavation notification tickets in connection with the proposed excavation near Stine Rd and Houghton Rd in Bakersfield, California in October 2014: (1) USA Ticket No. 0422144, and (2) USA Ticket No. 441996.

In its Closure Letter, SED focuses on PG&E's response to the first ticket (No. 0422144), and does not appear to contend that PG&E failed to respond properly to the second ticket (No. 441996). SED concludes that "PG&E failed to respond to an Underground Service Alert (USA) request for locate and mark, and carry out the requirements of its damage prevention procedures for critical facilities which resulted in excavation damage to transmission line L-300A," and that "the PG&E facilities damaged in the incident were within the area of excavation contained in USA ticket 0422144." See October 21, 2017 Summary of Investigation Findings at pp. 1, 4.

PG&E respectfully disagrees with SED's position. As detailed below, the sworn testimony and documentary evidence demonstrate that PG&E complied with California Government Code Section 4216.3(a)(1) in its response to USA Ticket No. 0422144.

I. PG&E complied with California Government Code Section 4216.3(a)(1)(A) in its response to USA Ticket No. 0422144.

As summarized in PG&E's attached amended response to the May 27, 2015 NOPV:

"...Although PG&E's Line 300A is located in the excavation area originally identified in Ticket No. 422144, during an onsite meeting on October 13 an excavator representative informed PG&E's locator that the excavation area would be more limited than had been described in the USA ticket. Specifically, the excavator representative informed PG&E's locator that the agricultural ripping activity would occur only on one side of an irrigation canal (the west side), not on both sides as had been indicated in the USA ticket. PG&E's locator correctly informed the excavator representative that PG&E did not have any gas facilities on the west side of the canal where the excavator representative indicated they would be working, and subsequently responded to the USA ticket by indicating "PG&E has determined that there is no conflict with our facilities at this excavation site." Although PG&E's locator did not document this onsite field meeting in detail as part of the USA ticket response, noting only that there had been "Direct contact with excavator," the excavator representative has confirmed that the PG&E locator's account of the onsite meeting and the resulting modification of the excavation area is accurate. For this reason, PG&E previously responded to the NOPV by stating: "PG&E received USA ticket 422144. There were [no] PG&E facilities in that area, and therefore PG&E did not perform locate and mark on that ticket."

PG&E's response to USA Ticket No. 0422144 complied with Section 4216.3 for two reasons. First, PG&E's locator timely responded to the proposed excavation site pursuant to USA Ticket No. 0422144 and, in an onsite meeting with representatives of the excavator, learned the proposed excavation would be limited to the west of an irrigation canal on the property. Changes to the delineated excavation site commonly occur during field meetings. Based on this revised information and as confirmed by sworn testimony and documentary evidence, PG&E's locator correctly advised the excavator representatives that Big N Deep's excavation, limited to the west of an irrigation canal, would not affect any PG&E subsurface installations.

Second, based on PG&E's understanding from direct communications at the onsite meeting with excavator representatives that the proposed excavation was to be limited to an area where PG&E operated no transmission facilities, PG&E positively responded to USA Ticket No. 0422144 to advise the excavator that PG&E does not operate any subsurface installations that would be affected by the proposed excavation. See Cal Gov. Code § 4216.3(a)(1) (2014).

1. The sworn declaration of PG&E employee Carlos Hernandez and entries on USA Ticket No. 0422144

The documented entries by PG&E employee Carlos Hernandez on USA Ticket No. 0422144, as well as Mr. Hernandez's sworn declaration establish PG&E's compliance with Section 4216.3(a)(1). On October 10, 2014, Underground Service Alert of Northern California issued USA Ticket No. 0422144 to excavator Jeff Alexander. USA Ticket No. 0422144 reflected a start date of October 15, 2014. *See* USA Ticket No. 0422144.

According to his sworn, written declaration, on October 13, 2014, PG&E employee Carlos Hernandez responded to the Stine and Houghton area in Bakersfield, California in response to USA Ticket No. 0422144. *See* Declaration of Carlos Hernandez dated January 12, 2016 at para. 2. He went to the west of an irrigation canal located on the property where he saw three excavation workers along with a backhoe. *Id.* Mr. Hernandez conversed with these three men, from whom he determined that excavation would only occur on the field west of the canal under USA Ticket No. 0422144. *Id.*

On October 14, 2014, Mr. Hernandez then documented his contact that occurred the previous day with the excavation workers in a note on USA Ticket No. 0422144. *Id.* at para. 3. Based on his discussion with the excavation workers, and his determination that PG&E had no facilities located in the area west of the canal, Mr. Hernandez then sent an email to BIGNDEEPAG@YAHOO.COM stating the proposed excavation job west of the canal, as identified by the excavation workers on the field the day before, presented "NO CONFLICT" with PG&E underground transmission facilities, and noting that there had been "Direct contact with excavator." *Id.* at paras. 3-4. USA Ticket No. 0422144 reflects Mr. Hernandez's documentation:

10/14/2014 10:35:49 AM: Responded
Details: **NO CONFLICT**; added by KetS GT, **located by Carlos Hernandez**, Locate Time: {2014-10-14 17:25:39}, Units of Work: 0.25
User: PGE\czh2
Area Premarked? Yes
Un-Locatable? No
Heavy Equipment?
No
Facility Type - GT: Yes
Facility Type - GD: No
Facility Type - ET: No
Facility Type - ED: No
Facility Type - FIBER: No
Time Arrived: 10/13/2014 02:25:00 PM
Time Departed: 10/14/2014 07:27:03 AM
Weather: dry; Surface: asphalt
Gas Footage: 0; Electric Footage: 0
Line Number: ; MP:

Critical Facility? No; Standby? No
Method used: Conductive
Conductive Type: ETS
Any other Means? No; Method:

Notes: Direct contact with excavator.

See USA Ticket No. 0422144 (emphasis added).

2. The sworn deposition testimony of Operator Gerald Martin

Excavation operator Gerald Martin's sworn deposition testimony confirms PG&E's proper response to USA Ticket No. 0422144. Gerald Martin testified under oath that the proposed excavation was limited to the west side of the canal.

Q. All right. So let me just try and be clear on this.

When you first got out to the site, you thought you were just going to be on the west side of the canal.

A. Yes, sir.

Q. And who told you that?

A. Well, Jeremy [Alexander's foreman, Jeremy McCarthy] was out there when I started the job. He came out there and that's when I started. He was out there when we started the job, and that was the job I was going to do.

Q. And so Jeremy told you you were going to rip west of the canal?

A. Yeah, we were going to do the piece on the west side of the canal.

See Deposition of Gerald Martin dated January 8, 2016 at pp. 58:13-60:22.

In this sworn testimony, Mr. Martin, the operator that performed Alexander's excavation pursuant to USA Ticket No. 042214, corroborates Carlos Hernandez's sworn declaration that excavation operators informed him at an onsite meeting that their proposed excavation was limited to west of the irrigation canal. Thus, Mr. Martin's sworn testimony also confirms and verifies the basis upon which Mr. Hernandez properly responded to USA Ticket No. 0422144 with "NO CONFLICT."

Additionally, as discussed at our meeting on December 6, 2017, no law, regulation, or damage prevention policy requires PG&E to contact a specific excavator representative regarding any changes to the delineated excavation area communicated during a field meeting. *See generally* Cal Gov. Code §§ 4216 et seq (2014); 8 CCR § 1541 (2014). For example, if Excavator Representative A calls in the ticket and PG&E's locator is subsequently informed during a field meeting by Excavator Representative B that the excavation area will be

smaller than what had been originally called in, PG&E's obligation is to note that positive contact had been made and to locate and mark its facilities in the revised area as appropriate. PG&E is not required to continue to locate and mark the originally designated area, even though the excavator representative has informed PG&E that excavation activity will not occur in all areas. PG&E also is not required to contact a specific person at the excavator to confirm the field meeting information. To require otherwise would put PG&E in the unworkable position of confirming all information conveyed to it onsite by an excavator representative. Instead, the onus is on the excavator representatives to coordinate regarding the information conveyed, and to inform PG&E promptly if there has been a miscommunication of some sort.

II. Insufficient Evidence to Support Finding of Violation

For the reasons summarized above, SED's position appears to be based on insufficient evidence to support a finding of violation by PG&E. SED states PG&E violated Government Code Section 4216.3(a)(1) because PG&E "failed to provide documentation demonstrating" its claim that the excavator "verbally informed PG&E that the excavation site was smaller than what was stated on USA Ticket No. 0422144"; and because, due to "conflicting statements provided by the Third Party Excavator and the Operator, SED cannot determine the version of events that occurred in the field on October 14, 2014 in connection with USA Ticket No. 0422144, or on October 23, 2014 in connection with USA Ticket No. 0441996." See October 21, 2017 Summary of Investigation Findings at p. 3, 4.

PG&E respectfully disagrees with SED's position. As outlined above, the sworn, corroborated testimony and documentary evidence demonstrate PG&E's compliance with California Government Code Section 4216.3.

SED bases its finding that PG&E violated 49 CFR §192.605(a), 49 CFR §192.614(a), 49 CFR §192.614(c) on the same grounds that it found PG&E violated California Government Code Section 4216.3. Because PG&E committed no violation in connection with its response to either USA Ticket No. 0422144 or USA Ticket No. 441996, PG&E respectfully submits it also committed no violation of 49 CFR §192.605(a), 49 CFR §192.614(a), or 49 CFR §192.614(c).

PG&E is also filing an amended response for this NOPV; please see attachment:
Amended 2014 Bakersfield NOPV response.doc.

Sincerely,

/s/ Mike Bradley
Senior Manager, Compliance

Attachments