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January 26, 2018

By Email

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

Re: Response to SED's December 27, 2017 letter regarding the October 24, 2014 Bakersfield Incident

Dear Mr. Bruno,

Thank you for your letter of December 27, 2017, and for extending the opportunity for PG&E to respond to January 26, 2018.

As detailed below, PG&E seeks further clarification on SED's finding of a noncompliance with Government Code Section 4216 as it relates to the first USA ticket (#0422144), as well as on its direction to PG&E to submit a revised PHMSA F 7100.2 form.

(a) Modification of excavation area during field meeting and PHMSA Form

PG&E does not dispute that the first USA ticket called in by Big N Deep Excavation included both sides of the irrigation canal, and that the originally delineated excavation area included the site of the October 24, 2014 dig-in. PG&E has provided testimony supporting its position that the area of excavation in the first ticket was modified during a timely field meeting between representatives of the excavator and PG&E prior to the start of excavation. PG&E also provided evidence that the excavator called in a second USA ticket covering the east side of the canal, where PG&E's Line 300A is located, evidencing that the excavator knew it had modified the first USA ticket during the field meeting and needed to call in a new USA ticket to work on the east side of the canal. SED's letter indicates that it finds the current testimony on the field meeting to be conflicting and not determinative of this factual issue, and requests that PG&E submit a revised PHMSA F 7100.2 form to PHMSA with a copy to SED to include details on PG&E's failure to provide markings in response to USA ticket 0422144.

In light of the declaration from PG&E's employee testifying that the field meeting and change to the excavation area did occur as previously described, the sworn testimony of Big N Deep

employee/operator Russ Martin that foreman Jeremy McCarthy told him he was only going to excavate west of the canal in connection with the first ticket, which is consistent with PG&E's understanding following the field meeting, the Kern County Fire Investigation report finding that the operator Russ Martin struck Line 300A when plowing "with the full knowledge he was not to continue excavating until the line was marked by PG&E," and the ongoing factual discovery efforts in the litigation related to the 2014 Bakersfield incident, PG&E is concerned that it cannot accurately state in a filing to PHMSA that it failed to provide markings in response to the first USA ticket without properly qualifying this statement. To address this concern while still complying with SED's directive, PG&E proposes to include the following statement: *"PG&E has been directed by the Safety and Enforcement Division of the California Public Utilities Commission (CPUC) to submit a supplemental F 7100.2 form to PHMSA regarding this incident that indicates PG&E failed to provide markings in response to USA ticket 0422144. PG&E continues to dispute this characterization, which is the subject of ongoing litigation with the excavator. PG&E will revise this form again after the conclusion of that litigation in order to reflect any factual finding regarding fault for this dig-in incident."*

Further, given that this factual dispute is still being litigated and discovery in the civil action remains open and active, PG&E requests that SED delay its final determination until additional deposition testimony and written discovery is developed and/or the Superior Court resolves the factual disputes. Whether Big N Deep was at fault for the October 24, 2014 dig-in is a central issue in this litigation and additional, sworn factual information continues to be developed as part of the discovery process. PG&E will provide copies of all depositions and relevant written discovery responses if SED is amenable to holding off on a final determination until the record is complete and/or the Court resolves the factual disputes.

(b) Notification of change to excavation area – clarification of SED's position requested

PG&E understands SED's finding of noncompliance to be based in part upon the belief that, even if the field meeting occurred and the delineated area was modified during that meeting, PG&E should have notified a specific person at Big N Deep Excavation. While Cal. Govt. Code Section 4216.3(a)(1) in effect at that time required an operator to "advise the person who contacted the center,"¹ Cal. Govt. Code, General Provisions, Section 17 defines "Person" to include "any person, firm, association, organization, partnership, limited liability company, business trust, corporation, or company." SED appears to be interpreting "Person" to mean only an individual person. PG&E is concerned that this interpretation is contrary to the California Government Code and impractical, in that an operator cannot be reasonably expected to notify a specific person at an excavation company of any field meeting change. The specific person who called in the ticket may be a clerk who is not aware of the details of the work, or may be on vacation, out sick, on

¹ Note that this requirement existed in Cal. Govt. Code Section 4216.3(a)(1) at the time of 2014 dig-in incident, but no longer exists in the current version of this section, which clarifies that the operator must "provide information to an excavator where the operator's active or inactive subsurface installations are located." See Cal. Govt. Section 4216(a)(1)(A)(ii), effective January 1, 2017 per Senate Bill 661 (emphasis added).

leave, or no longer employed by the excavator. PG&E respectfully requests that SED clarify its position in this regard to provide operators clarity on this topic going forward.

(c) Conclusion

PG&E requests that SED consider the following:

1. PG&E's proposed revision to the PHMSA F 7100.2 form.
2. A delay in the final determination on this incident until factual discovery is concluded in the ongoing litigation between Big N Deep Excavation and PG&E and/or the Superior Court resolves the factual disputes.
3. Clarification of the interpretation of the former Govt. Code Section 4216(a)(1) in light of the definition of "Person" in Govt. Code Section 17 to provide all operators clarity going forward.

Please let me know if you have any questions or would like to get together to discuss PG&E's requests in greater detail.

Sincerely,

/s/ Mike Bradley
Senior Manager, Compliance

cc: Dennis Lee, CPUC
Aimee Cauguiran, CPUC
Terence Eng, CPUC
Susie Richmond, PG&E