

Decision 12-09-010 September 13, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Charles I. Donald,

Complainant,

vs.

Pacific Gas and Electric Company (U39E),

Defendant.

Case 11-09-005
(Filed September 8, 2011)

(See Appendix A for a list of appearances.)

MODIFIED PRESIDING OFFICER'S DECISION DENYING COMPLAINT

This decision denies the complaint. The proceeding is closed.

Background

This complaint concerns Pacific Gas and Electric Company's (PG&E) 12 kilovolt (kV) distribution line near 176 Bulkley Avenue in Sausalito and PG&E's rights generally to place and operate its facilities in Sausalito. Complainant Charles I. Donald (Donald) alleges that the facilities create an electrical hazard and that PG&E may be operating either in violation or in the absence of a franchise agreement with the City of Sausalito or, to the extent that the facilities are located on private property, in violation or in the absence of an easement.

The assigned Commissioner's November 15, 2011, scoping memo determined that Donald lacks standing to bring this complaint with respect to the allegation that PG&E may be operating on public property either in violation or in the absence of a franchise agreement with the City of Sausalito because he is not the public owner of the property at issue, and lacks standing to bring this complaint with respect to the allegation that PG&E may be operating either in violation or in absence of an easement over private property because he is not the owner of the private property at issue.

The scoping memo identified the following issues to be determined in this proceeding:

1. Is the clearance between PG&E's 12 kV distribution equipment and the residence at 176 Bulkley Avenue in violation of General Order (GO) 95 and/or industry standards?
2. Is the service drop to the residence at 176 Bulkley Avenue in direct contact with surrounding vegetation in violation of GO 95 and/or industry standards?
3. Is there excessive mass attached to the distribution pole near 176 Bulkley Avenue in violation of GO 95 and/or industry standards?
4. If so, should PG&E be ordered to remedy the violation by bringing the facilities into compliance or by removing or undergrounding the facilities?¹

An evidentiary hearing was held on March 27, 2012. Although the schedule of the proceeding provided for the filing of concurrent opening and

¹ By joint stipulation filed February 7, 2012, PG&E and Donald stipulated that issues 1 and 2 should be treated as informally resolved and withdrawn. However, as Donald nevertheless offered testimony and argument on these issues, we address them as well.

reply briefs (Reporter's Transcript (RT) 65-66), only PG&E filed an opening brief on April 24, 2012, and Donald filed a reply brief on May 7, 2012, upon which the matter was submitted.

PG&E filed a motion to strike portions of Donald's reply brief on May 15, 2012, to which no response was filed.

Discussion

There is no longer a dispute with respect to whether the condition of the existing pole line facilities violates GO 95. The uncontroverted evidence, including Donald's testimony acknowledging a December 22, 2011, report by Consumer Protection & Safety Division verifying their condition, is that the clearance between the distribution line and residence at 176 Bulkley Avenue, the clearance between the distribution line and surrounding vegetation, and the amount of mass attached to the distribution pole currently meet the applicable clearance and loading provisions of GO 95. (*See, e.g.,* Exhibit 3 at 2 of 5, and RT 32:21-28 and 33:1-5.)

Donald claims that, nevertheless, the distribution pole has excessive mass in violation of industry standards, making the facilities vulnerable to collapse in the event of a seismic event, and that industry standards would require a structural engineer to evaluate, on a pole-by-pole basis, how the pole line facilities would respond to an earthquake. (Exhibit 1 at 2; RT 34:27-28, 35:1-8, and 36:3-10.) The record does not demonstrate that such industry standards exist.

Donald testified that the Institute of Electrical and Electronics Engineers (IEEE) has a body of research and promulgated standards for seismic analysis of wood poles (Exhibit 1, at 2), and that, in his former capacity as Chief Civil Engineer for the Southern California Edison Company (SCE), it would have been his practice to require a structural engineer to conduct a seismic analysis of all

wood poles. (RT 36:3-10 and 39:12-40:8.) However, on cross-examination, Donald could not identify any such IEEE analysis or standard (RT 37:17-28, 38:1, 38:6-16, 38:26-28, 39:1-3) and testified that he did not know whether any other similar professional organization has issued any such standard (RT 39:4-8). Furthermore, Donald did not know if SCE's current practice is to conduct seismic analyses of wood poles. (RT 39:1-8.)

In his reply brief, Donald notes that, as in any other field of professional expertise, the standards of engineering practice are created and constantly changed based upon ongoing scientific research and dissemination of that research. Donald asserts new facts that research by the University of California's Earthquake Engineering Research Center, and its use by practicing engineers, effectively sets the industry standards for seismic design in the State of California, nation and world. As evidence of such an industry standard for seismic analysis of wood poles, Donald attaches to his reply brief a brochure for the Pacific Earthquake Engineering Research Center and selected pages from a 2005 report by the Center entitled "Seismic Qualifications and Fragility Testing of Line-Break 550 kV Disconnect Switches." (Donald reply brief at 2-3 and attached Exhibits 1-A, 1-B, 2-A, 2-B and 2-C.) In addition, Donald provides new evidence to support his assertion that IEEE is vitally involved in the setting of seismic design standards for a variety of electrical distribution system features. (Donald reply brief at 5 and attached Exhibit 2-D.)

By motion filed May 15, 2012, PG&E moved to strike this new evidence included in and attached to Donald's reply brief. The motion is granted and the argument and attached material is stricken. As the Administrative Law Judge (ALJ) advised at the prehearing conference (RT 60) and at the conclusion of the evidentiary hearing (RT 58:13-59:8), the time and place for taking evidence is at

evidentiary hearing. It would be unduly prejudicial to allow the complainant to present new evidence after the adjournment of evidentiary hearings and in reply briefs, thereby denying the defendant of any opportunity to cross-examine or rebut the evidence.

In his reply brief, Donald asserts new facts that he has 60 years of design, planning and management of hydroelectric, fossil-fueled and nuclear power plants that extends beyond his former employment with SCE, including engineering employment with the Los Angeles Department of Water and Power, the California Department of Water Resources, the City of Bangkok, the City of Belvedere, and as a private consultant for a five-power plant project for the Turlock Irrigation District, the Bangladesh Water & Power Development Agency, and the Government of the Philippines, as well as for small power plants in Salem, Massachusetts and Fairbanks, Alaska. Donald argues that this experience demonstrates his credentials to speak authoritatively about the present-day seismic design standards in the power industry. Donald also complains that the Presiding Officer denied him the opportunity to present his credentials in testimony at the evidentiary hearing. (Donald reply brief at 3-4.)

By motion filed May 15, 2012, PG&E moved to strike this new evidence of Donald's credentials. The motion is granted and the material is stricken. As the Presiding Officer advised at the prehearing conference (PHC RT 60:1-25) and again at evidentiary hearing (RT 19:9-23), and pursuant to Rule 13.8(a), prepared testimony shall constitute the entirety of the witness's direct testimony and shall include any exhibits in support of that testimony and, in the case of an expert witness, a statement of the witness's qualifications. Donald had the opportunity to present his credentials in his prepared testimony, and did so. (Ex. 1 at 2.) Donald's attempt to augment his testimony on his credentials in response to the

Presiding Officer's question asking Donald to specify the "common practice" to which he referred in his prior answer was non-responsive to the question.

(RT 34.) In any event, Donald was afforded a later, additional opportunity to testify to his credentials under cross-examination regarding the basis for his statement that the seismic analysis of wood poles is a professional standard, and did so. (RT 39:9-28.)

In his reply brief, Donald argues that PG&E witness Fong's statement that the "A/B" pole line is not redundant is not credible, and that removal of the span would not lessen the quality of service in the area. (Donald reply brief at 5.) The question of whether the "A/B" pole line is redundant goes to the issue of whether PG&E should be ordered to remove the facilities to remedy the alleged violation of GO 95 or industry standards. As we do not find PG&E to be in violation of GO 95 or industry standards, we do not reach this issue.

In his reply brief, Donald suggests that the Commission should amend GO 95 to include seismic considerations. (Donald reply brief at 5.) This issue is beyond the scope of the complaint proceeding, which by definition concerns an allegation that a public utility is in violation of an existing law or order. (*See* Rule 4.1(a).) To the extent that Donald seeks to have the Commission amend GO 95 to include seismic considerations applicable to all distribution poles under the Commission's jurisdiction, the procedural vehicle for pursuing such amendment is a petition for rulemaking. (*See* Rule 6.3.)

In his reply brief, Donald renews his assertion that PG&E is operating on public property either in violation or in the absence of a franchise agreement with the City of Sausalito, or in violation or in the absence of an easement over private property. By its May 15, 2012, motion, PG&E moves to strike this discussion for being beyond the scope of issues in the proceeding. As discussed above, the

assigned Commissioner's November 15, 2011, scoping memo determined that Donald lacks standing to bring this complaint with respect to the allegation that PG&E may be operating on public property either in violation or in the absence of a franchise agreement with the City of Sausalito because he is not the public owner of the property at issue, and lacks standing to bring this complaint with respect to the allegation that PG&E may be operating either in violation or in absence of an easement over private property because he is not the owner of the private property at issue. We hereby affirm these determinations, and strike the discussion of the issue from Donald's reply brief.

Assignment of Proceeding

Michel P. Florio is the assigned Commissioner and ALJ Hallie Yacknin is the presiding officer.

Findings of Fact

1. The condition of the distribution pole line facilities at 176 Bulkley Avenue, Sausalito, California complies with GO 95.
2. The record does not support a finding of an industry standard for condition of distribution poles or a finding that the condition of the distribution pole line facilities at 176 Bulkley Avenue, Sausalito, California violates such industry standard.
3. The record does not support a finding of an industry standard requiring the testing of the seismic structural design of individual distribution poles or a finding that PG&E violated such industry standard.

Conclusions of Law

1. Donald filed an appeal of the Presiding Officer's Decision (POD) on July 17, 2012, and PG&E file a response to the appeal on July 31, 2012. Donald asserts that the Presiding Officer erred in striking extra-record material attached

to Donald's post-hearing briefs, and that the POD errs in its determination that Donald lacks standing to assert claims relating to PG&E's operation without a valid franchise or easement. Donald's assertions of error are without merit.

2. Donald lacks standing to bring this complaint with respect to the allegation that PG&E may be operating on public property either in violation or in the absence of a franchise agreement with the City of Sausalito because he is not the public owner of the property at issue, and lacks standing to bring this complaint with respect to the allegation that PG&E may be operating either in violation or in the absence of an easement over private property because he is not the owner of the private property at issue.

3. The following portions of Donald's reply brief should be stricken:

- a. The 12 paragraphs on pages 2 to 3 under the heading "In Regards to Industry Standards for Seismic Safety" and materials attached as Exhibits 1-A, 1-B, 2-A, 2-B and 2-C.
 - b. The three paragraphs on page 5 under the heading "Use of IEEE Standards" and materials attached as Exhibit 2-D.
 - c. The 11 paragraphs on pages 3 to 4 under the heading "Complainant's Credentials To Authoritatively Cite Industry Standards."
 - d. The third through fifth paragraphs on page 6 under the heading "In Regard to Conductor Clearances at 176 Bulkley Avenue."
4. The complaint should be denied.
5. The proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. The following portions of Charles I. Donald's reply brief are be stricken:
 - a. The 12 paragraphs on pages 2 to 3 under the heading "In Regards to Industry Standards for Seismic Safety" and materials attached as Exhibits 1-A, 1-B, 2-A, 2-B and 2-C.
 - b. The three paragraphs on page 5 under the heading "Use of IEEE Standards" and materials attached as Exhibit 2-D.
 - c. The 11 paragraphs on pages 3 to 4 under the heading "Complainant's Credentials To Authoritatively Cite Industry Standards."
 - d. The third through fifth paragraphs on page 6 under the heading "In Regard to Conductor Clearances at 176 Bulkley Avenue."
2. The complaint is denied.
3. Case 11-09-005 is closed.

This order is effective today.

Dated September 13, 2012, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners

APPENDIX A

***** PARTIES *****

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(END OF APPENDIX A)