

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; Notice of Opportunity For Hearing; and Order to Show Cause Why the Commission Should Not Impose Fines and Sanctions for the June 19, 2012 Incident at the Kern Power Plant.

FILED
PUBLIC UTILITIES COMMISSION
AUGUST 28, 2014
SAN FRANCISCO OFFICE
I.14-08-022

ORDER INSTITUTING INVESTIGATION, ORDER TO SHOW CAUSE
AND NOTICE OF HEARING

I. INTRODUCTION

A contract worker was fatally injured on June 19, 2012, while dismantling an unused fuel oil tank at the retired Kern power plant owned by Pacific Gas and Electric Company (PG&E). By this Order, the Commission institutes a formal investigation to determine if PG&E violated State requirements, including Public Utilities Code Section 451, Commission rules, general orders or decisions, or other applicable laws, rules or regulations for:

- Failing to maintain a safe system,
- Improperly delegating its duty to maintain a safe system to a third party contractor, and
- Failing to adequately investigate incidents to identify and implement corrective actions.

Respondent PG&E is subject to the Commission's jurisdiction, its general orders, rules, and decisions, and State law. These provisions, among other things (1) require PG&E to ensure that demolition work performed on its property is conducted safely, (2) prohibit delegation of this duty to a contractor, and (3) require that safety

incidents are adequately investigated to identify and implement effective corrective actions to improve safety and reduce the likelihood of future incidents.

This order provides notice that the Commission will set a hearing to determine if PG&E has violated the Commission's general orders or other applicable authority governing the demolition of the fuel tanks that resulted in the fatal injury.

Based on a report prepared by the Commission's Safety and Enforcement Division (SED) and PG&E documents cited therein, the Commission has good cause to find that PG&E violated State requirements, including Public Utilities Code Section 451, by failing to ensure that the Kern fuel tanks were safely demolished and by failing to adequately investigate the June 19, 2012 incident. The contractor used an unsafe method to demolish the tanks, creating a dangerous condition at the Kern plant. PG&E failed to conduct adequate contractor project safety review and oversight. PG&E failed to accurately and adequately evaluate safety in contractor bid proposals and failed to ensure that the demolition was done safely. This Order Instituting Investigation (OII) orders PG&E to appear and show cause why the Commission should not investigate the June 19, 2012 incident under Public Utilities Code section 315 and why the Commission should not make a finding that PG&E violated (1) Public Utilities Code section 451 by failing to furnish and maintain equipment and facilities to promote the safety of its patrons, employees and the public; and (2) Decision (D.) 04-04-065 by unlawfully delegating responsibility for safely demolishing the fuel tanks to an outside contractor.

II. BACKGROUND AND SUMMARY OF SED REPORT

PG&E hired Cleveland Wrecking Company (Cleveland) to dismantle four empty fuel storage tanks at its retired Kern power plant in Bakersfield, California. On June 19, 2012, four workers were demolishing one of the tanks, which was 40 feet high by 120 feet in diameter, by cutting sections of the tank with a torch and then folding sections inside the tank with an excavator. From inside the tank, two workers stood on elevated man lifts to torch-cut the top half of the tank wall in 20-foot-high sections. Once the workers finished a vertical section cut, a third worker in an excavator pushed the top wall section from outside the tank to fold it into the tank, reducing the tank section height

by half. The crew used this method to cut down three sections. On the fourth section, the torch cutter who sustained the fatal injuries made a vertical cut just above a rectangular tank access opening cut the previous day. The torch cutter signaled completion of the cut, and the excavator pushed in. But this time, not only did the newly cut section fold in, but the portion of the tank wall from which the section was cut collapsed inward as well. The collapsing wall struck the man lift carrying the torch cutter. The lift overturned and fell to the ground. The worker did not survive the injuries.

SED investigated the incident to (1) identify potential causes; (2) ensure that PG&E conducted a thorough root cause analysis, and (3) ensure that PG&E used the root cause analysis to determine corrective actions that PG&E should take to reduce the risks and the likelihood of similar incidents in the future. SED's conclusions are summarized below.

SED determined that the incident was immediately caused by the collapse of the fuel tank wall on the man-lift carrying the worker. SED found that several factors contributed to the incident, including PG&E's failure to:

- Accurately and adequately evaluate safety in contract bid proposals;
- Provide adequate contractor project safety review and oversight;
- Evaluate safer alternatives to workers manually torch cutting unsupported, weakened tank walls from an elevated man-lift.

SED determined that PG&E:

- Sought to delegate its duty to maintain a safe system to a third party contractor;
- Failed to monitor and achieve a safety culture at Kern necessary to proactively identify and mitigate hazards; and
- Failed to conduct a prompt and thorough incident root cause analysis to identify and implement effective corrective actions to improve safety and reduce the likelihood of future incidents.

SED repeatedly asked PG&E to conduct a root cause analysis of the incident. In November 2012, PG&E submitted a report prepared by Cleveland and its parent company, URS Corporation. It was labeled a root cause analysis, and included an updated demolition plan. PG&E also submitted a PG&E report which proposed corrective actions that PG&E said it would consider for its Contractor Safety Program Initiative. PG&E referred to its report as PG&E's root cause analysis for the incident. SED found these reports had shortcomings, and failed to provide an adequate or comprehensive root cause analysis for this incident, needed to identify a complete set of root causes and appropriate corrective actions for PG&E.

Eventually, PG&E hired Bureau Veritas (BV) to conduct a root cause analysis. SED did not receive BV's report until March 2013 – nine months after the incident. BV's investigation and root cause analysis were largely limited to PG&E's contractor selection process. This narrow inquiry reduced the safety benefits that would come from identifying a full and complete set of corrective actions for PG&E. Still, within the limited scope of its report, BV found a number of deficiencies and areas for improvement in PG&E's contractor safety management systems. Among other findings, SED and BV found that PG&E did not adequately validate bidders' self-reported safety data, which resulted in an inaccurate assessment of the bidders.

SED's report concludes that PG&E (1) violated California Public Utilities Code Section 451, which requires every public utility to furnish and maintain its facilities as necessary to promote the safety of its employees, patrons and the public and (2) improperly delegated to an independent contractor the duties or liabilities imposed on PG&E by state law and Commission rules, general orders and decisions.

III. INITIATION OF INVESTIGATION

The Commission institutes this formal proceeding pursuant to

- Public Utilities Code Section 315, which requires the Commission to investigate accidents on a public utility's property or arising from or connected with its maintenance or operation, resulting in loss of life or injury to a person or property.

- Rule 5.1 of the Commission's Rules of Practice and Procedure to consider the allegations in the SED Report and any other relevant evidence to determine if PG&E and its officers, directors, and managers, violated any provisions of the California Public Utilities Code, Commission general orders or decisions, or other applicable standards laws, rules or regulations in connection with the Kern incident.

The SED report provides us with sufficient evidence and good cause to commence a formal investigation to determine if such violations have occurred and, if so, to consider a proper remedy for such violations. We will specifically consider whether and, if so, what monetary fines and other remedies are appropriate. A violation of the Public Utilities Code or a Commission decision or order is subject to fines of \$500 to \$50,000 for each violation, for each ongoing day, pursuant to Sections 2107 and 2108. The Commission may order the implementation of operational and policy measures designed to prevent future incidents pursuant to Public Utilities Code Section 761.

We are also concerned by PG&E's apparent (1) lack of interest in investigating the root causes of this incident as evidenced by its nine month delay in providing SED with a root cause analysis and (2) focus on reducing liability at the expense of assessing risks and mitigating hazards.

PG&E has an obligation to maintain its facilities in a safe manner pursuant to State law, California Public Utilities Code Section 451 and Commission decisions. Maintenance includes demolition of its facilities. PG&E has a non-delegable duty to ensure that potentially hazardous work performed on its property is conducted in a safe manner. Demolition of a power plant is a hazardous activity. The California Supreme Court and this Commission have both determined that the duty imposed upon a utility by statute and Commission order cannot be delegated to an independent contractor to insulate the utility from liability. *Snyder v. Southern California Edison Co.*, 44 Cal.2d 793, 799-801 (1955); *Southern California Edison Co. D. 04-04-065*, 2004 Cal. PUC Lexis 207; *Southern California Edison Co. D. 00-06-038*, 2000 Cal. PUC Lexis 257.

IV. PRELIMINARY SCOPING MEMO

Rule 7.1(c) provides that an OII shall attach a preliminary scoping memo. The following discussion meets this requirement.

A. Issues

This investigation will focus on the Kern incident to determine if PG&E has violated laws, general orders, regulations, rules or other requirements. The Commission has broad authority to impose fines and other remedies if the violations are proven. We emphasize that the Commission's remedial powers are not limited to its authority to impose civil penalties. We place PG&E on notice that the Commission may consider ordering it to implement SED's recommendations to improve and ensure system-wide safety and reliability.

The scope of this proceeding may include, but will not be limited to, the following areas and issues:

- PG&E's role in the Kern June 2012 incident;
- PG&E's compliance with state laws, general orders, regulations and rules including, without limitation Public Utilities Code Section 451;
- Whether any of PG&E's acts or omissions contributed to the incident;
- What actions PG&E has taken, or should take, to prevent another incident from occurring;
- The necessary breadth of those actions, including whether they should be area-specific or system-wide; and
- Any fines or penalties that the Commission believes should be imposed on PG&E for any possible violations that are proven as a result of this investigation.

We invite parties to comment on the range of issues identified above and to make recommendations regarding additional issues to be included in this proceeding. In their comments, parties may state objections to the order regarding the need for hearing, issues to be considered, or the proposed schedule.

B. Category of Proceeding and Need for Hearing

Rule 7.1(c) provides that an OII shall determine the category of the proceeding and preliminarily determine the need for hearing. This Investigation is characterized as adjudicatory, as that term is defined in Rule 1.3(a). We expect disputed issues of material fact over which the parties will seek to cross-examine others. Therefore, we preliminarily determine that a hearing will be needed.

C. Schedule

Pursuant to Rule 7.6(a), appeals of the categorization of this investigation, if any, are to be filed and served within 10 days of the date this OII is issued.

Responses on this preliminary scoping memo may also be filed and served within 10 days of the date this OII is issued. Replies to responses may be filed and served within 5 days of the due date for responses.

A prehearing conference (PHC) will be scheduled shortly after receipt of comments on the preliminary scoping memo. We expect that the assigned Commissioner may refine the issues to be addressed when ruling on the final scoping memo.

Appeal of Categorization	10 days after issuance of this OII
Responses on scope and issues in Preliminary Scoping Memo due	10 days after issuance of this OII
Replies to Comments on issues in Preliminary Scoping Memo due	5 days after Responses are due
Prehearing Conference	To be scheduled by the assigned Administrative Law Judge
Commission Decision issued	To be determined in the final scoping memo

V. Parties and Service List

PG&E is named as a respondent to this investigation. SED is named as a party to this proceeding.

The initial service list for this proceeding is set forth in the Ordering Paragraph. This list includes PG&E and SED. The official list will be replaced after the PHC. All respondents shall be parties to the proceeding. All other persons or entities wanting to be included in the service list should take additional steps to add their names to the service list.

All filings in this proceeding may be made electronically according to Resolution ALJ-188 and served consistent with Rule 1.10. Consistent with those rules, a hard copy of all pleadings shall be concurrently served on the assigned Administrative Law Judge.

VI. Public Advisor

Any person or entity interested in participating in this investigation who is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor's Office in San Francisco at (415) 703-2074, (866) 849-8390, or email public.advisor@cpuc.ca.gov; or in Los Angeles at (213) 576-7055, (866) 849-8391, or email public.advisor.la@cpuc.ca.gov. The TTY number is (866) 836-7825. Written communication may be sent to the Public Advisor, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, CA 94102.

VII. Intervenor Compensation

A party that expects to request intervenor compensation for its participation in this rulemaking shall file its notice of intent to claim intervenor compensation in accordance with Rule 17.1 of the Commission's Rules of Practice and Procedure.

VIII. Ex Parte Communications

Pursuant to Rule 8.2(b) ex parte communications in this investigation are prohibited.

Therefore, **IT IS ORDERED** that:

1. In accord with Rule 5.1 of the Commission's Rules of Practice and Procedure, the Commission institutes this Order Instituting Investigation and Order to Show Cause on its own motion to evaluate the report of the Safety and Enforcement

Division and to determine whether Pacific Gas and Electric Company, and its officers, directors and managers (collectively, PG&E) violated any provision of the California Public Utilities Code, Commission General Orders or decisions, or other applicable standards, laws, rules or regulations in connection with the fatal injury at PG&E's Kern power plant on June 19, 2012.

2. PG&E is a respondent to this Investigation and shall be subject to Commission orders in this matter.

3. A copy of SED's confidential report entitled "Investigation of the June 19, 2012, Fatality at the Kern Power Plant Owned by Pacific Gas and Electric Company" will be made an exhibit in this proceeding. The Executive Director shall cause a copy of this confidential report to be served by certified mail on respondent PG&E. SED shall file a public version of this report in this proceeding, with confidential information redacted as needed, no later than 14 days after this OII is issued.

4. The preliminary scope of issues for this Investigation is as stated in the body of this Order.

5. PG&E is hereby given notice that fines may be imposed in this matter pursuant to Public Utilities Code Sections 2107 and 2108.

6. PG&E is hereby given notice that the Commission may order the implementation of operational and policy measures designed to prevent future incidents pursuant to Public Utilities Code Section 761.

7. This proceeding is classified as adjudicatory, as that term is defined in Rule 1.3(a) of the Commission's Rules of Practice and Procedure. Under Rule 7.6, this Order is appealable only as to category no later than 10 days after the date of this Order.

8. Parties shall file responses on the scope and issues identified in the preliminary scoping memo within 10 days of the date this Order is issued.

9. Parties may file replies to responses on the scope and issues identified in the preliminary scoping memo within 5 days of the date the responses are due.

10. The assigned Commissioner or Administrative Law Judge (ALJ) may adjust the schedule identified here.

11. Parties serving documents in this proceeding shall comply with Rule 1.10 regarding electronic service. Any documents served on the assigned Commissioner or ALJ shall be both by e-mail and by delivery or mailing a paper format copy of the document.

12. A party that expects to request intervenor compensation for its participation in this investigation shall file its notice of intent to claim intervenor compensation in accordance with Rule 17.1.

13. Ex parte communications are prohibited as set forth in Rule 8.2(b).

14. The service list for this proceeding is set forth below. This list includes the respondent Pacific Gas and Electric Company and the Commission's Safety and Enforcement Division. Persons may seek party status by oral motion at the Prehearing Conference or hearing, by written motion, or as directed by the ALJ.

15. Pursuant to Public Utilities Code Section 583, the Commission authorizes the disclosure of information obtained from PG&E in data responses or other communications to staff provided pursuant to Public Utilities Code Section 583 and General Order 66-C, to the limited extent that such information is stated above.

16. The Executive Director shall cause a copy of this Order to be served by certified mail on Respondent PG&E and a hard copy to each person listed below:

Christopher P. Johns, President
Pacific Gas and Electric Company
77 Beale Street
San Francisco, CA 94105
cpj@pge.com

Brian K. Cherry
Vice President, Regulatory Relations
Pacific Gas and Electric Company
77 Beale Street, Room 1087
San Francisco, CA 94105
Bkc7@pge.com

Denise Tyrrell, Acting Director
Safety and Enforcement Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Denise.tyrrell@cpuc.ca.gov

Iryna A. Kwasny, Staff Attorney
Safety and Enforcement Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
iak@cpuc.ca.gov

Charlotte F. TerKeurst, Program Manager,
Safety and Enforcement Division
Electric Safety and Reliability Branch
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Charlotte.terkeurst@cpuc.ca.gov

This Order is effective today.

Dated August 28, 2014 at San Francisco, California.

MICHAEL R. PEEVEY
President
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
CARLA J. PETERMAN
MICHAEL PICKER
Commissioners