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Appeal
By
C.I. Donald
July 17, 2012

of
Presiding Administrative Law Judge's Decision
To
Deny the Complaint and Close the Proceeding

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CPUC Case No. (C.) 11-09-005
Charles I. Donald vs. Pacific Gas & Electric Company
(Case Originally filed September 8, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
Case No. (C.) 11-09-005
Originally filed September 8, 2011

Complainant's Appeal
of the Presiding Officer's
Decision Denying the Complaint
and
Closing of the Proceeding

****
July 17, 2012

Background:

On March 27, 2012 an Evidentiary Hearing was held before ALJ Yacknin to consider Issues #3 & #4 of the original Scoping Memo.

On April 24, 2012 (prior to the Hearing) the Pacific Gas & Electric Company, Defendant in the Action, submitted an Opening Brief containing testimony that would be considered at the March 27th Hearing. A copy of the Brief was furnished to me, C.I.Donald, the Complainant in the Action.

Believing that the Original Complaint (and subsequent stipulations) had fully described the facts of the Case, I did not submit an Opening Brief.

On May 7, 2012, I did submit, in response to the PG&E Brief, a "Complainant's Reply Brief" intended to clarify and rebut improper implications resulting from cross-examination by PG&E's attorney, Mr. Grant Guerra, and also to refute erroneous statements made by PG&E's Employee, Mr. Joseph Fong.

On May 15, 2012, PG&E submitted a "Motion to Strike" portions of my Reply Brief. Although PG&E purportedly served me with a copy of their Motion to Strike, I did not receive a copy the Motion, neither electronically (by e-mail), nor by hard-copy via US Postal Service. Earlier Discussions had set a tentative schedule of "early July" for a Final Decision to be made by CPUC.

By July 8, 2012, being apprehensive about the lack of formal notice of the specific Decision date, I made inquiry to the CPUC staff and found that the Decision had been made on June 18, 2012, and that the last date to submit an Appeal would be July 18th.

By e-mail request to the CPUC Docket Office (and, as a result of exemplary instructions from Ms. Annalissa Herbert of that office) I managed to download a copy of the previously-unreceived Decision from the CPUC e-files. As a result of my close attention to the tentative Case schedule, and with highly appreciated cooperation from the PUC staff, I have been able to prepare and submit this Appeal before the July 18th cut-off date.

Items Stricken from the Records:

The striking of portions of the Complainant's Reply Brief of May 7, 2012 (paragraph 4, ibid); the reintroduction of portions of a Joint Stipulation (Sept. 8, 2011) regarding conductor clearances at #176 Bulkley Ave; the "leading" questions by PG&E's attorney during cross-examination; the unjustified allegations of burden-of-proof; and the"lack-of-standing" to discuss Property Rights, have led to a serious neglect of the basic hazard that was the focus of Complaint No. C11-09-005.

These issues are discussed in more detail here:

Item 1 - Stricken Portions of the Complainant's Reply Brief

a) Qualifications of C.I.Donald.
During cross-examination at the Evidentiary Hearing on March 27, 2012, Mr. Guerra focused his beginning questions regarding the clearances at the wooden pole adjacent to #176 Bulkley Ave. This issue had been removed from consideration under the terms of the Joint Stipulation of September 8th. However the readmission, by the Presiding Officer, of certain evidence that had been part of the Joint Stipulation, permitted Mr., Guerra to procedurally bring that specific pole back into question. Mr. Guerra then began questioning my qualifications by attempting to show that I had not shown that that particular pole should be specifically subjected to seismic analysis.

The Joint Stipulation had acknowledged that pole #176, which had been an issue during the Original Scoping Memorandum of November 15, 2011, was no longer an issue, but Mr. Guerra continued to question my qualifications to cite seismic issues in general in the context of only that particular pole.

My concern for Seismic Stability was, at this point in the Hearing, in the context of a very heavily top-loaded pole at #237 San Carlos Ave. in Sausalito. This pole is shown in exhibit 4-c of the Attachments to my Direct Testimony of February 16, 2012). This pole is directly in the 12kV distribution system serving the "B" pole at #176 Bulkley Ave. Prior to installation, in 2008, of additional (underground) circuits to serve the hazardous "A"-"B" span, this pole had been of relatively minor seismic concern.

In 2008, as part of a National Park Service mandate to relocate high-voltage transmission lines out of the Marin Headlands National Park, new heavy equipment (transformers, circuit breakers, insulators, etc) were added to the pole in this residential area. Photographs of the pole were presented as attachments 3-c and 3-d to the Direct Testimony (which has now been stricken from the Case records by the CPUC Presiding Officer's Decision of June 18, 2012). The conductors from this pole were recently the cause of a fire in an overhanging tree

In my legal-naiveté, I had expected Mr. Guerra to continue his cross examination to the question of the Pole at #267. However, Mr. Guerra (a very competent trial lawyer) didn't want to go there with his questioning, so he stopped his cross examination at that point without ever having mentioned either the #237 pole or the 2008 undergrounding of improvements in Sausalito streets. The resulting impression, in the records of the proceedings, is that my 60 years of broad Civil Engineering experience in the power utility industry were irrelevant to the correction of the potential hazard posed by the "A"-"B" span of 12kV conductors.

b) Erroneous Statements by Mr. Joseph Fong.
One of the salient points made by Donald (Complainant) during the Scoping Session and during subsequent preliminary Hearings, was that the "A"-"B" Span was hazardous and, as a result of underground improvements made in 2008, these poles and conductors could be removed from the system with no reduction in Quality of service to the community; the terminology used was that the span was overly "redundant," and no longer necessary.

The exact date of the construction of the hazardous "A"-"B" span is not known, but it had been in existence for several years before June of 2000 when, as reported by the owner of immediately adjacent property, the conductors had collapsed and set fire to the roof of his building.

In the first paragraph on page 6 of PG&E's Opening Brief (for the March 27th Evidentiary Hearing) Mr. Fong stated that the span "...is not redundant because it replaced the main feeders that formerly served the area and that had been on lattice-steel tower, which had been removed from service."

In 2005 the National Park Service mandated the removal of eight steel towers from the Marin Headlands area (reference: e-mail letter from Mr. Steve Kasierski January 13, 2012 - (reference: Exhibit 4-a-1 - attachment to Direct Testimony by C.I. Donald Feb.14, 2012). The steel towers, however, were not physically removed from the Park until 2008. The year 2000 existence of the "A"-"B" span cannot therefore be logically considered as a replacement for distribution lines that were not removed from service until nearly a decade later.

This discrepancy in Mr. Fong's statement, which evidenced a lack of precise knowledge of the 12kV distribution system to which he was testifying, was stricken from the Case record by the Presiding Officer's Decision of June 18, 2012. This striking of Mr. Fong's incorrect information left the false impression that PG&E had installed the "A"-"B" span as an improvement to the safety and reliability of the system, when, in fact, it was made entirely unnecessary by the construction of the underground improvements

Statements Relating to the Lack of Property Rights:

The PG&E Motion to Strike Portions of the Complainant's Reply Brief (May 15, 2012 page 4, Item C, first paragraph) states that the ALJ granted PG&E's Motion to Strike Donald's statements (the assertion of a violation or absence of a Franchise rights or private easements) on the grounds that Donald lacked "standing" to assert such claims because he was not the owner of such properties.

The POD dated June 18, 2012, stated that: "Donald renews his assertion that PG&E is operating on public Property in the absence of both a franchise agreement with the City of Sausalito, or a private easement over private property".

It must be pointed out, in this Appeal, that both of the two above assertions contain misstatements.

Donald did not claim that PG&E was operating on Public land in violation of a valid franchise agreement; his statement was, rather, that ***PG&E does not have a franchise to operate on this "public land" because it is not public land,*** and further, that ***PG&E could offer no evidence of agreements with the owners of the private property.*** The argument seemed to be that Donald couldn't talk about the land because he had no property interest, but PG&E, who also has no property interest, could construct and maintain a high-voltage transmission line on it.

A) absence of a Franchise. Direct contract with the City of Sausalito; with the PG&E law Department; and with the California Public Utilities Commission, brought about answers that none of them they could not find copies of such a franchise in their files.

Early in the preliminary hearings, Mr. Guerra brought forth a copy of a 1953 City of Sausalito Ordinance (No. 459) that referred to the Franchise, but the Franchise document, per se, could not be produced. The City of Sausalito could not find a copy in their files; PG&E did not respond; The California Public Utilities Commission (Legal Division) responded saying that the Franchise Document had probably been destroyed in accordance with their 30-year Records Retention Policy.

In addition to the fact that the original Franchises could not be found, the California Public Utilities Code, as amended in 1951 and following years, was specifically "restructured" so as to supercede all previous exclusive franchise agreements; franchise rights are now regulated and adjudicated under the terms of the California Public Utilities Code. Electrical Power is presently Generated, Transmitted and Distributed by non-exclusive business entities.

b) Easements over Private property. Searches of the Marin County Recorder's files revealed only one (very defective) private easement over one of the four privately-owned parcels involved in the present CPUC action.

Re: Claim of "Standing" by C.I. Donald to request CPUC action to resolve the Hazardous Conditions adjacent to #176 Bulkley Ave.

a) **C.I. Donald, the Complainant**, is a resident/property owner in the City of Sausalito; Marin County; in State of California; and in the United States of America. He pays taxes to the City, County, State, and Federal Government. These taxes support the City Staff, the County Board of Supervisors, the State Government (including the operations of the Public Utilities Commission), and the Governmental operations of the Nation.

This multi-level Citizen status strongly implies that under Amendment #1 of the Constitution of the United States, he is entitled to: "*.....petition the Government for a redress of Grievances.*" Donald therefore asserts that the hazard posed by the 12kV electrical Transmission line between poles "A"-"B," (which has a history of having, in fact, previously collapsed and set fire to the structure below) is a public hazard, and is within his authority as a Citizen to bring before a government agency (in this case the California Public Utilities Commission).

b) Private Property Rights: Donald does have a written Power of Attorney to represent the owner (Mr. Robert Mitchell) of the property at 833 Bridgeway in matters before the CPUC. No. 833 is one of the private properties lying below the 12kV "A"-"B" span.

Request to CPUC:

Striking portions of the submissions by Donald of his qualifications in regard to Industry seismic practices, and making unjustified claims of his absence of "standing" in regard to Property interests, --- while allowing erroneous statement made by the Defendant, PG&E, to stand, has created a serious unbalance of facts in the Records of the Proceedings.

PG&E's May 15, 2012 Motion-to-Strike was not received by Donald in a timely manner that would allow time for a more detailed rebuttal.

Therefore, in accordance with Rule 14.4 of the CPUC Rules of Practice and Procedure, this document is an Appeal to rescind the Decision of ALJ Hallie Yacknin to Deny Complaint No. (C.)11-09-005 filed by Charles I. Donald on September 8, 2011.

It is further requested that PG&E's Motion of May 15, 2012 to Strike Portions of the Complainant's Reply Brief be denied, and that the Case not be closed.

If, for CPUC non-discretional Procedural reasons, the Decision of the ALJ cannot be Voided or denied, it is Requested that all Case Records be made available to the Members of the Utilities Commission, and that the matter be remanded to the Commission's Electric Safety and Reliability Branch for consideration of a possible Alternate Resolution.

Submitted by:

Charles I. Donald
Complainant in the Case (C.) 11-09-005
254 Spencer Ave.
Sausalito, CA 94965

July 17, 2012

CERTIFICATE OF SERVICE

I, Charles I. Donald, am the Complainant in the CPUC Case No. (C.) 11-09-005
(Charles I. Donald vs. Pacific Gas & Electric Company)
Case originally filed September 8, 2011

On July 17, 2012, I served a copy of:

Complainant's Appeal
of the Presiding Officer's
Decision Denying the Complaint

Two Bound Copies were hand-delivered to ALJ Hallie Yacknin in San Francisco.
Two Bound Copies were hand-delivered to the CPUC Docket Office in San Francisco.
One Bound Copy was delivered to Commr. Michel Florio in San Francisco.
One Bound Copy was hand -delivered to CPUC Engineer Alok Kumar in San Francisco.
One Bound Copy was hand-delivered to Attorney Grant Guerra at the PG&E mail Room
Copies of the Appeal were delivered electronically (E-mail) to:

akg@cpuc.ca.gov
case.admin@sce.com
cem@newsdata.com
GxGw@pge.com
Lisa.tobias@sce.com
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This certificate was executed on July 17, 2012

Charles I. Donald

Charles I. Donald

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