

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Kenneth and Jennifer Marsden,

Complainants,

vs.

Pacific Gas and Electric Company,

Defendant.

Case 04-12-023
(Filed December 28, 2004)

SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER

Summary

Pursuant to Rules 6(b)(3) and 6.3 of the Commission's Rules of Practice and Procedure, this ruling sets forth a preliminary procedural schedule, assigns a presiding hearing officer, and addresses the scope of the proceeding following a prehearing conference (PHC) held before the assigned Administrative Law Judge (ALJ) on February 7, 2005.

Background

The ultimate issues in this proceedings concern the relocation of a natural gas line on the Marsdens' property in Woodside, California, which provides residential service to them and to the residents of an adjacent home. This non-standard service arrangement occurs pursuant to an unrecorded revocable license granted to Pacific Gas and Electric Company (PG&E) by the prior owners of the Marsdens' property.

The parties agree about the material facts that underlie their dispute and most of these facts appear to be documented in letters or other writings

appended to the complaint. The facts show that as condition of a November 2002 building permit for an addition to the Marsdens' house, the Town of Woodside required the Marsdens to ensure continued gas service to their neighbors. Because the gas line ran under the footprint of the proposed extension, the Marsdens contacted PG&E about its relocation. In January 2003, PG&E's engineer advised them the utility was responsible for the costs of the relocation and discussed two routing alternatives, one of which would move the service interconnection with the neighbors off the Marsdens' property and into the residential street. Later that month the Marsdens advised PG&E by letter that they preferred this option. After PG&E obtained permits for the work in July 2003, PG&E told the Marsdens that it had erred and that under Gas Rule 16, the tariff governing gas service extensions, they must pay for relocating the gas line.

Thereafter the matter escalated in ways that need not be summarized here. However, when the parties were unable to reach any resolution during 2004, the Marsdens filed this complaint. The extension to their house is now finished and the gas line runs underneath it.

Scope of the Proceeding

The Marsdens ask the Commission to consider their situation under the "Exceptional Cases" provision of PG&E's tariff (Gas Rule 16.H.). They want PG&E, at its cost, to relocate the gas line off their property. This option has higher construction costs than rerouting the gas line on the Marsdens' property. PG&E contends that regardless of the option chosen, the Marsdens must pay for it (Gas Rule 16.F.2.b). Moreover, if the Marsdens reroute the gas line on their property, PG&E contends they must grant PG&E a utility easement along the path of the line. (Gas Rule 16.A.10).

No discovery is pending and none is anticipated. The parties are prepared to file a joint statement of stipulated facts, concurrent with the distribution of

Complainants' initial prepared testimony. The parties agree that the legal and policy issues necessary to decide this case include:

- Agency—whether, or to what degree, the PG&E engineer was authorized to speak for PG&E when he told the Marsdens that PG&E would relocate the gas line at its cost.
- Whether a legal agreement about the relocation of the gas line existed between PG&E and the Marsdens.
- Application of legal and equitable doctrines (wavier, estoppel) to the facts of this case.
- Application of Gas Rule 15.A.10, F2.b and H to the facts of this case.

A further issue, should PG&E be determined to be responsible for the costs of the gas line relocation, is whether the costs should be borne by ratepayers or shareholders.

Potential for Settlement

The parties' negotiations during 2004 (before the complaint was filed) did not lead to settlement, but they believe mediation of this dispute could be fruitful. They have asked the ALJ to arrange for their participation in the Commission's voluntary mediation program. I share the ALJ's view that a mediated resolution of this case may be preferable to continued litigation. I urge both parties to seriously explore whether a mutually acceptable settlement of this matter is possible, after considering the risks and costs of litigation and the strengths and weaknesses of their own positions.

If the parties settle this case, Complainants should advise the ALJ and request, in writing, that the Commission dismiss this case.

Schedule

If the parties are unable to settle this case, the following schedule will apply.

March 15, 2005	Joint stipulation of facts filed. Plaintiffs' initial prepared testimony served.
March 28, 2005	Defendant's rebuttal prepared testimony served.
April 4, 2005	Plaintiffs' reply prepared testimony (optional) served.
April 26, 2005, 9 a.m.	Evidentiary hearing in Commission courtroom, San Francisco.
Date to be determined at evidentiary hearing	Concurrent opening briefs filed.
Date to be determined at evidentiary hearing	Concurrent reply briefs filed; case submitted.
Approx 30 days later	Draft decision placed on Commission public meeting agenda.
W/in 60 days of submission	Presiding officer's decision filed (Pub. Util. Code § 1701.2(a)).

It is my goal to close this case within the 12-month timeframe for resolution of adjudicatory proceedings, under Pub. Util. Code § 1701.2(d). At this point, I see no reason that timeline cannot be followed.

Preparation of Exhibits and Procedures at Evidentiary Hearing

Parties must follow the Commission's Rules of Practice and Procedure, as modified or clarified by the ALJ's directives in Appendix A to this ruling. Procedural questions may be addressed to the ALJ (xjv@cpuc.ca.gov) or the Commission's Public Advisor.

Category of Proceeding and Need for Hearing

This ruling confirms this case as an adjudication. The preliminary determination, in the Instructions to Answer, that hearings are necessary is affirmed.

Assignment of Presiding Officer

ALJ Jean Vieth will be the presiding officer at hearings.

Ex Parte Rules

Ex parte communications are prohibited in adjudicatory proceedings under Pub. Util. Code § 1701.2(b) and Rule 7 of the Commission's Rules of Practice and Procedure.

IT IS RULED that:

1. The scope of the proceeding is as set forth herein.
2. The schedule for this proceeding is set forth herein
3. The presiding officer will be Administrative Law Judge Vieth.
4. This ruling confirms that this proceeding is an adjudication.
5. Ex parte communications are prohibited under Pub. Util. Code § 1701.2(b) and Rule 7 of the Commission's Rules of Practice and Procedure.

Dated February 16, 2005, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey
Assigned Commissioner

APPENDIX A: EXHIBITS

Preparation of Prepared Testimony

See Article 17 of the Commission's Rules of Practice and Procedure for various requirements (Rule 68--need for subject index; Rule 70--exhibit size; etc.). For the purposes of ascertaining whether a subject index is required, include the individual pages of any attachment(s) in the total page count. A subject index should identify all such attachments, as well as the sections/subsections within the prepared testimony. Generally, prepared testimony should be bound with any attachments to it, unless size considerations warrant a different practice. Each attachment to prepared testimony shall be separately tabbed to facilitate reference.

Formatting requirements:

- 1) The ***upper right hand corner of the exhibit cover sheet should be blank for the ALJ's exhibit stamp.*** (Rule 70.) This applies to prepared testimony as well as other exhibits—if there is insufficient room in the upper right hand corner for an exhibit stamp, prepare a cover sheet for the exhibit. If a party “premarks” an exhibit in **any** way, it should **not** do so in the upper left hand corner of the cover sheet.
- 2) If any exhibit *provided to the ALJ in the hearing room* consists of more than one page, the pages shall be bound together or otherwise fixed in a secure fashion (e.g., brads, acco fasteners, velo binding). **Do not use a loose-leaf binder** for this purpose--if dropped, the pages may fall out.

Service of Exhibits

One copy of all prepared written testimony should be served on the assigned ALJ, and unless otherwise arranged, on all appearances and state service on the service list, as well as on the Assigned Commissioner's office. Prepared testimony should NOT be filed with the Commission's Docket Office.

Corrections to Exhibits

Minor corrections: only minor corrections to an exhibit may be made orally from the witness stand.

Major corrections: all corrections, other than minor corrections, shall be made in advance of hearings, in writing, in order to provide timely notice to the ALJ and other parties.

- 1) Corrections shall use “redline” format conventions which permit comparison of the original and revised text (i.e., line out or strikeover the original text being deleted; clearly indicate, in a readily distinguishable manner, the substitute or additional text).

- 2) Each corrected page should be marked with the word “revised” and the revision date.
- 3) Exhibit corrections will receive the same number as the original exhibit plus a letter to identify the correction. (Example: Exhibit 2-A is the first correction made to Exhibit 2.) Corrections to exhibits with multiple sponsors will also be identified by chapter number. (Example: Exhibit 5-2-B is the second correction made to Chapter 2 of Exhibit 5, where different witnesses sponsor chapters 1 and 2.)

Identification of Exhibits in the Hearing Room

Number of copies:

- 1) *Prepared testimony*--the sponsoring party should provide **one copy to the ALJ and one to the court reporter**, and have at least 5 copies available for distribution to parties present in the hearing room.
- 2) *Other exhibits*—the sponsoring party should provide **two copies to the ALJ and one to the court reporter**, and have at least 5 copies available for distribution to parties present in the hearing room. (This directive supercedes Rule 71.)
- 3) *Confidential exhibits*— at least one of the copies provided to the ALJ must be in an **unsealed envelope** measuring no more than 10” by 13”.

Premarking Exhibit #s: At the discretion of the ALJ, a block of exhibit numbers may be reserved for each party. A party that “premarks” exhibits with numbers should plan to use them at hearing in consecutive numerical order, however.

Cross-examination With Exhibits

As a general rule, if a party intends to introduce an exhibit in the course of cross-examination, the party should provide a copy of the exhibit to the witness and the witness’ counsel before the witness takes the stand on the day the exhibit is to be introduced.

Exception: A party is not required to give the witness an advance copy of the document if it is to be used for purposes of impeachment or to obtain the witness’ spontaneous reaction.

Confidential documents: If parties have agreed to consult prior to disclosure, as in the case of **confidential documents**, they shall do so before using the documents in cross-examination, unless a different procedure regarding confidential documents has been arranged in advance with the ALJ.

(END OF APPENDIX A)

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner on all parties of record in this proceeding or their attorneys of record.

Dated February 16, 2005, at San Francisco, California.

/s/ KE HUANG

Ke Huang

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.