

DECISION AND AWARD

PACIFIC GAS AND ELECTRIC
COMPANY,

And

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 1245
Arb. No. 314

Re:

Termination

APPEARANCES

Pacific Gas and Electric Company
Valerie Sharpe, Esq.
San Francisco, California

International Brotherhood of Electrical Workers, Local 1245
Jenny Marston, Esq.
Vacaville, California

BOARD OF ARBITRATION

Fred D'Orazio, Neutral Arbitrator
Bob Gerstle, Union Board Member
Ed Dwyer, Union Board Member
Tony Mar, Company Board Member
Jeffrey Neeley, Company Board Member

INTRODUCTION

This arbitration arises from a collective bargaining relationship between the Pacific Gas and Electric Company ("PG&E" or "Company") and the International Brotherhood of Electrical Workers, Local 1245 ("IBEW" or "Union"), and involves the termination of a compliance inspector for fraudulently representing that he inspected a piece of electrical equipment when, in fact, he had not. The undersigned arbitrator was selected as the Neutral Chairperson of a Board of Arbitration ("Board") to conduct a hearing and render a decision. Bob Gerstle and Ed Dwyer are the Union Board Members. Tony Mar and Jeffery Neeley are the Company Board Members.

A hearing was conducted in Vacaville, California on February 5, March 1 and July 1, 2013. At the hearing, the parties stipulated that the case is properly before the Board and that there are no procedural or other bars to arbitration. The parties were afforded the opportunity to examine and cross-examine witnesses, and to introduce relevant exhibits. A transcript of the hearing was prepared. With the receipt of the final post-hearing brief on or about October 1, 2013, the matter was deemed submitted.

ISSUE

Was the Grievant terminated for just cause? If not, what shall be the remedy?

STATEMENT OF FACTS

The following Statement of Facts is not all inclusive. Other facts are included in the Discussion section, as necessary.

Background

At the time of his termination in August 2011, [redacted] had worked for PG&E for 25 years. He was trained as a lineman and became a Compliance Inspector on May 18, 2009. He has had no positive discipline during his career with the Company. (Joint Ex. 1, LIC, para. 2; RT 285-286, 311)

The primary responsibility of a Compliance Inspector is to examine equipment and “record any abnormal conditions that, in the judgment of the inspector will adversely impact safety, service reliability, or asset life before the next scheduled inspection.” (Joint Ex. 1, LIC, Ex. 25A, Electric Distribution Preventative Maintenance Manual (EDPM); 287) Under PG&E policy, underground facilities are to be inspected every three years. (RT 297, 394; Joint Ex. 1, LIC. Ex. 25, EDPM) The EDPM provides:

The following is a list of abnormal conditions the Compliance Inspector must evaluate for possible grading, and input into the SAP database. This list is not all-inclusive and many of these conditions should be corrected at the site, if possible. Minor work is defined as work that can safely be accomplished at the site by a Compliance Inspector.

(Company Ex. 3)

The list of abnormal conditions include, for example, “Vegetation...Obstructing Covers, Door, and/or Working Space” and “Dirt/Debris that prohibits the safe operation of equipment.” (Company Ex. 3) Inspectors are required to sign daily logs and maps to record their work and identify any need for future maintenance. (RT 135; see also Joint Ex. 2, LIC Ex. 11A and B) According to then Superintendent for the North Valley

Division, _____, an inspector is required as a rule of thumb to perform minor maintenance that can be accomplished within an hour. (RT 132-133)

Compliance Supervisor _____, testified that Inspectors are required to clear vegetation so that there is three feet of clearance on the back and sides of an enclosure and eight feet in front. If the vegetation is so significant that it cannot be cleared by the Inspector or clearance will be too time-consuming, the Inspector must document or “tag” it as an abnormal condition on the log and map for future clearance. (RT 357-358) The Company reviews the work performed by the Inspectors as reflected in the documentation. Errors are followed up with a “work verification” order. In the past, Harrigan has found no errors in _____ work. (RT 217)

The California Public Utilities Commission (CPUC), through PG&E General Order 165 (GO 165), mandates that PG&E conduct timely inspections of its overhead and underground electric distribution equipment or be subject to fines. (RT 55-58) As part of a GO 165 inspection, a Compliance Inspector must open doors or lids to the enclosure containing the equipment so that it can be inspected. Inspectors use, among other things, infrared guns to scan equipment at connection points to determine whether there is a temperature differential between the various connection points. A differential could be an indicator of failure that could cause an outage. (RT 132, 304, 331-332) Inspectors are also required to conduct visual inspections of all sides of the equipment in the enclosure

to make sure there are no apparent defects, such an oil leak. (RT 317-318, 331-332)

On July 1 of each year, PG&E must submit a GO 165 Compliance Report to the CPUC identifying the facilities that have been inspected for the preceding year. The accuracy of the report is certified by the Company's Vice President of Asset Management, who relies on the information set forth in the documents completed by Compliance Inspectors. (RT 59-60; Company Ex. 1)

The Baseline Assessment

In 2010, the Company discovered five contract Inspectors and two bargaining unit Inspectors in San Jose who were not opening enclosures and performing inspections as required. PG&E informed the CPUC of its discovery and began an investigation of inspections on a system-wide basis to ensure that they were being properly conducted. (RT 61-63) To this end, Quality Engineer [REDACTED] developed a multi-step methodology, known as the Baseline Assessment, to determine the extent to which misrepresentation about inspections might be occurring. (RT 63, 94) The process was implemented in 2011.

First, a Compliance Supervisor evaluated 15-25 facilities each Compliance Inspector was to have inspected in the last 45 days. The goal was to identify indicators suggesting a facility had not been inspected, as claimed by the Inspector. The supervisors were trained to identify the indicators. For example, growth of moss or accumulation of mud or dirt in bolt and hook holes on enclosure lids were factors that might indicate the

enclosure had not been opened and inspected as claimed by the Inspector. Conversely, disturbance of dirt around the holes was considered an indicator the enclosure had been opened and inspected. The review was anonymous, so that supervisors did not know the Inspector who was responsible for inspecting a particular facility. (RT 94-97)

Evidence suggesting an enclosure had not been opened was to be photographed and documented in writing. This documentation was then reviewed by a Desktop Quality Review Panel made up of members with at least 20 years experience in field work. If the Panel determined the information indicated an enclosure may not have been opened and inspected, it was forwarded to a three-member Review Panel made up of quality control and program manager representatives for evaluation. (RT 96-98, 115-116)

If the Review Panel determined the evidence suggested a facility had not been opened and inspected, a Quality Control team was sent to the location to open the enclosure and document any evidence related to whether the Inspector had actually inspected the facility. For example, the degree of torque required to remove a bolt, the amount of accumulated dirt on the edges or cross arm within an enclosure, and rusty or corroded bolts could indicate an enclosure may not have been opened recently. (RT 99-101)

Evidence gathered by the Quality Control team was then turned over to the Review Panel, which made a final determination about whether the enclosure had been opened for inspection. A conclusion that an enclosure had not been opened required a unanimous

vote. Inconclusive or disputed evidence resulted in a conclusion that the enclosure was “suspect,” but not necessarily that it had not been inspected. Doubts were resolved in favor of the Compliance Inspector. (RT 86-89, 100-103, 124)

The Baseline Assessment took 2-3 three months. The Panel concluded that five of eighteen Divisions within PG&E had at least one Inspector who had not inspected a facility as recorded in Company records. [redacted] fell into this group. Specifically, the Baseline Assessment review determined that he completed a Company record certifying that he inspected underground switch SW6096 on April 14, 2011. (Joint Ex. 1, LIC Ex. 11A)

On May 23, 2011, a Compliance Supervisor visited the facility and took photographs of its exterior. (Company Ex. 4; RT 138, 146) The Panel concluded that the enclosure had not been opened. Their conclusion was based, among other things, on the presence of rusty bolts, compacted dirt in seams and other growths around the lid. (RT 138-148, 196) On June 8, 2011, two other investigators accompanied by [redacted] visited the facility and took photographs of the inside of the enclosure. The photographs show dirt compacted on the cross arm and ledges inside the facility. The Panel concluded “there was too much debris for a compliance inspector not to make an attempt to clean the lip, center bar, to ensure the lids went back on properly.” (RT 168) These factors contributed to the conclusion of the Review Panel that the facility had not been opened and inspected. (RT 150-159) The findings and conclusions of the Baseline Assessment

are more fully discussed below.

SW6096, the switch at issue here, is located on a piece of equipment in a subsurface enclosure. There is an adjoining switch, SW6094, on the opposite side of the equipment. The enclosure sits flush with a sidewalk adjacent to a grassy area at a school in Yuba City. A curb and street borders the enclosure on the opposite side. The enclosure has double doors of equal size. They rest on the enclosure as lids which are dragged off the facility rather than as doors that open in the conventional sense. The equipment that was to be inspected is located in the middle of the subsurface enclosure box. (Company Exs. 4-6) As noted, the Panel determined that the doors to the facility had “moss and dirt in lid seams and bolt holes” and “packed dirt on street side of lid in bolt holes. Center support was not clean. Most bolts were easy to remove. One bolt on each lid needed excessive torque....” (Union Ex. 3)

In June 2010, [redacted] was put on leave with pay, as were other Inspectors who were determined not to have inspected facilities as they had claimed. (RT 69) A letter of termination was issued on August 31, 2011. (Joint Ex. 1, LIC Ex. 2)

[redacted] was interviewed by Corporate Security on July 5, 2011, and shown photographs of the facility. (RT 166-167; Joint Ex. 1, LIC para. 6) According to the LIC, he told the interviewers that he “opened all of them,” but “it’s possible that he may have opened one of the lids to that enclosure and did not clean around the bolts or the edge of the lid.” (Joint Ex. 1, LIC para. 6)

Meanwhile, because the Baseline Assessment initially had looked at only a sampling of inspections, the Company decided to re-inspect more facilities allegedly inspected by those Inspectors who were found not to have inspected a facility during the initial re-inspection phase. (RT 66-68) Compliance Supervisor [redacted] and Compliance Inspector [redacted] re-inspected the facilities assigned for to be inspected by Williams in 2010. (RT 352-353, 393) During inspections in July and August 2011, Jones and [redacted] identified approximately 18 underground facilities declared by [redacted] to have been inspected which they believed had not been opened. Photographs of these facilities were submitted to the Review Panel. (RT 353-355)

Corporate Security interviewed [redacted] again on November 9, 2011. (Joint Ex. 1, Exs. 3, 6) He “provided a response for each enclosure, primarily that there was a large amount of time between the inspection and the re-inspection, which probably caused the change in conditions.” (Joint Ex. 1, Ex. 6) It was eventually determined that [redacted] had plausible explanations for five of the 18 enclosures, but he had not inspected 13 other facilities. The determination was based largely on excessive vegetation growth around the facilities. (RT 357-358, 407; Joint Ex. 1, LIC Ex. 6) Thus, although [redacted] was terminated based on the allegation that he had falsely claimed he inspected SW6096, the Company discovered 13 other facilities it believes [redacted] falsely claimed he inspected in 2010. These are more fully addressed below in evaluating [redacted] credibility.¹

¹ At hearing on March 1, 2013, I initially precluded the Company from introducing evidence in its case-in-chief about the 13 additional instances on the ground that they were not formally charged in the letter of termination, although they had been discussed at the December 2011 LIC, and because their probative value would be

SUMMARY OF POSITIONS

The Company

PG&E argues that [redacted] did not open an enclosure containing two switches (SW 6094 and SW6096) on April 14, 2011. Therefore, he could not have inspected the facility. Yet he completed an inspection log and highlighted a map certifying that he performed the inspection. When the Baseline Assessment team inspected the exterior of the facility on May 23, 2011, and the interior of the facility on June 8, 2011, the then existing conditions identified by the team establish clearly that [redacted] could not have opened the enclosure on April 14, 2011, and, therefore, did not actually inspect the facility.

Specifically, the photos taken about 40 days after April 14, 2011, show that the bolt and hook holes on the enclosure lids are compacted with dirt and debris. In order to open the lid, it would have been necessary to remove the bolts with an impact gun or T-wrench and insert a hook into the hook hole to drag the lid off the facility. The photos clearly show, among other things, that the bolt and hook holes have so much compacted dirt in them that the lid could not have been opened on April 14, 2011, without disturbing the dirt. If the lid had been opened, there would have been no dirt or at least less dirt in the holes when the lids were photographed on May 23, 2011. Further, photographs taken

outweighed by the prejudicial effect on Williams. (RT 41-54) However, Williams opened the door to questioning about these instances when he testified during the Union's case-in-chief that it was his practice to document only facilities he actually inspected and that he never knowingly deviated from that practice, but "could have...made a mistake." (RT 327-328) Therefore, the Company was permitted to introduce evidence of other instances for impeachment purposes, provided the evidence did not become cumulative and unduly time consuming. (See email

in June 2011 show such a large amount of compacted dirt and debris on the inside of the facility that the lids could not possibly have been removed and replaced on April 14, 2011. In sum, the evidence shows that [redacted] could not have opened the facility and inspected it on April 14, 2011, as he claimed. There is just cause to terminate him for fraudulently claiming he performed the inspection.

Even if it is found that [redacted] did not falsely claim he inspected SW6096 on April 14, 2011, he is entitled to no relief. This is because he falsely claimed he inspected at least 13 other facilities in 2010. If it is found that [redacted] falsified Company documents in at least one other instance, the doctrine of after-acquired evidence precludes reinstatement. And, because [redacted] perjured himself at the arbitration hearing, he should be equitably estopped from obtaining relief.

The Union

The Union offers several explanations for the presence of compacted dirt in the bolt and hook holes on May 23, 2011, as well as for the conditions inside the facility upon re-inspection in June 2011. Specifically, it was possible for the dirt to have accumulated on the lid of the facility after [redacted] inspected it. The facility was regularly sprayed by sprinklers, subjected to heavy foot traffic and covered with lawn clippings and dirt from landscaping work on the adjacent schoolyard between April 14 and May 23, 2011. Also, compacted dirt and debris is frequently found in bolt and hook holes, and it is possible to

ruling of April 24, 2013) When the hearing resumed on July 1, 2013, the Company presented evidence of other instances as discussed below.

fit the socket of an impact gun around even impacted bolts and remove them without much pressure. The same is true with regard to inserting hooks in hook holes. An impact gun does not necessarily remove dirt from bolt holes, and even wet or densely packed soil is not necessarily dislodged when the bolt is removed.

The presence of compacted dirt or other debris on the interior or exterior of a facility is not an “abnormal condition” under the EDPM which Inspectors are required to address, and it was practice to bypass such conditions as long as they did not present an obstacle to inspecting a facility. When clearing dirt was not necessary to gain access, considered it a “low priority” and would not necessarily do it.

Describing the Company’s evidence as underwhelming, the Union contends the Company has not shown by clear and convincing evidence that knowingly made false entries on his daily inspection log and the grievance should be sustained.²

DISCUSSION

PG&E has the burden of proving that was terminated for just cause. The Company must establish that he committed the allegedly wrongful act, and that termination is the “just” discipline. (*How Arbitration Works*, Elkouri and Elkouri, 7th ed., 2012, ch. 15, pp. 25-27) With respect to the quantum of proof required in a discharge

² The parties presented a considerable amount of evidence about whether both switches on the equipment in the enclosure at issue here can properly be inspected if only one lid is removed. In brief, the Company argued that the enclosure could not be properly inspected if only one lid was removed because complete access to the covered side of the facility would be problematic, even though the equipment sits in the center of the vault. The Union argued that it is unnecessary to remove both lids to properly inspect a facility. This particular facility could be inspected with only one lid removed because the equipment sits in the center of the vault and complete access to the equipment is possible. Given the findings set forth below -- that Williams did not open the enclosure and therefore could not have inspected it -- it is unnecessary to address the question whether the facility could properly be inspected if only

case, it is appropriate to apply the “clear and convincing” standard where, as here, the allegation of misconduct involves stigmatizing behavior such as falsely claiming he inspected a Company facility when, in fact, he did not. (*Id.*, p. 25)

and Compliance Inspector [redacted] testified that compacted dirt is not an abnormal condition, and there is no requirement to clean compacted dirt out of a bolt or hook hole or replace rusty bolts. They would remove dirt and debris only if necessary to release the bolt. The ability of an impact gun to loosen bolts surrounded by impacted dirt depends on the dampness of the dirt. (RT 292-293, 302-306 [redacted]; 248-252, 256-257 [redacted]) [redacted] also testified that, in his opinion, there is “no way” to tell from the impacted dirt shown in the photos if the facility had been opened on April 14, 2011. (RT 246-247)

On the other hand, [redacted] testified that the amount of compacted dirt in the bolt and hook holes, as well as the growth at the edges of the lid, clearly establish that the facility had not been opened on April 14, 2011. (RT 138, 140-144, 146, 152, 168 [redacted] 209-210 [redacted]) They also testified that although the grassy area adjacent to the facility may have been dampened with sprinklers or rain after April 14, 2011, there was no possibility of a run-off of enough dirt to impact the holes during the 40-day period in question because the grass would have acted to prevent it. (RT 147 [Mar]; 213 [redacted], Company Ex. 12)

The evidence leads to the conclusion that [redacted] did not open the facility on

April 14, 2011. The amount of compacted dirt and debris in the bolt and hook holes reflected in the photos taken on May 23, 2011, is considerable and thus its volume on that date strongly suggests it had been there long before April 14, 2011. If [REDACTED] had opened the facility, it seems at least some of the compacted dirt in one or more bolt or hook holes would have been disturbed.

Given the location of the facility housing SW6096, it is improbable that the large amount of compacted dirt found on the exterior of the facility on May 23, 2011, could have accumulated naturally in the 40 days since [REDACTED] claimed he *would have* opened it.³ The facility is located on a sidewalk between a paved street on one side and a level grass area on the other. As such, it is not a location that is subject to a run-off sufficient to accumulate the level of compacted dirt shown in Company Exhibits. (See, e.g., Company Exs. 4-6) One side of the facility is pure concrete. Even though a grass-covered area borders the other side and there was some rain during the relevant period, it is improbable that mere rain or sprinkler activity transported the amount of dirt necessary to build the volume of compacted dirt depicted in the photos. The only source of dirt was in the adjacent grassy area and the grass was thick, suggesting it constrained any run-off. There are a few dried grass strands visible in the photos taken on May 23, 2011, but they are minimal and distinct from the compacted dirt found in the holes. (See Company Exs. 4-6, 12) In fact, a photo taken on May 25, 2011, the rainiest day during the previous 40

³ As more fully addressed below, Williams could not recall whether he inspected the facility on April 14, 2011. His testimony is based on his inspection practices and what he says he would have done in inspecting this particular facility.

days, shows no run-off whatsoever from the grassy area. It is difficult to conclude that water from sprinklers or rain caused a run-off that explains the heavily compacted dirt in the holes as reflected in the photos. (Company Ex. 12; RT 213)

Moreover, each of the two lids covering the facility has four bolt holes and two hook holes. Compacted dirt and debris was found in all bolt and hook holes on both lids. Much of the testimony at hearing focused on inspecting the facility with only one lid open. If [redacted] opened one lid, he would have dislodged at least some of the dirt in the holes on that lid. This would have created at least some difference between the lids as far as the level of compacted dirt is concerned. But the holes on both lids had essentially the same level of compacted dirt on May 23, 2011. And the compacted dirt in one bolt hole on the lid [redacted] said he possibly opened was flush with the top of the bolt. (Company Exs. 4-6; RT 146)

The Union contends [redacted] could have fit the socket of the impact gun around the bolts to open the enclosure; he did not clean out the holes because he is not required to perform housekeeping tasks; it is not his practice to clean out dirt from holes unless it impedes him from gaining access to the facility; and, in any event, the impact gun would not necessarily have dislodged the dirt. As the Company points out, however, while these contentions might help to explain the presence of compacted dirt in the bolt holes, they do not account for the compacted dirt in the hook holes. There is simply no way a hook could have been inserted into the hook hole and the lid pulled off and on without

significantly digging up the dirt in the hole.

Subsequent inspections of the interior of the facility tend to support the Company's position. On June 8, 2011, only a few weeks after the exterior of the facility was first photographed, Compliance Inspector [REDACTED] opened both lids of the enclosure to conduct a GO 165 inspection. (RT 180, 191-192) [REDACTED] had to use a screwdriver to loosen the dirt in the bolt and hook holes before he could open the facility because the impact gun would not fit around the bolts. (RT 210-211) This undercuts testimony to the effect that the bolts could have been removed without clearing the compacted dirt.

Photos taken on June 8, 2011, show that the condition of the interior of the facility was consistent with the condition on the exterior as shown in the May 23, 2011, photos. They show a large accumulation of dirt on the edges bordering the vault on which the lids to the enclosure rested, and a thick clump of dirt with a green moss-like growth running the length of the central cross arm. (Company Exs. 7, 8, 9) There is no indication that the dirt had been disturbed recently. If [REDACTED] had opened the enclosure, it is difficult to imagine how he could have dragged one or both lids off the facility and replaced it without substantially disturbing the dirt, especially the accumulation on the cross arm. Even assuming [REDACTED] had no duty to perform "housekeeping" tasks, the large amount of dirt on the cross arm is hard to ignore.⁴ The large amount of accumulated compacted dirt

⁴ Williams and Parra testified that there is no requirement to remove dirt and debris as a "housekeeping" task as long as the lids could be removed and replaced properly during an inspection. (RT 253-254, 307) Mar similarly testified that while a requirement may not exist, there is an "assumption" that dirt and debris be cleared. (RT 152) Even

and debris remaining on the edges and cross arm is but another factor that argues against a finding that the facility was opened and inspected on April 14, 2011.⁵

In the face of the evidence set forth above, [redacted] testimony about whether he actually opened the facility on April 14, 2011, and inspected it not convincing because he had no recollection of inspecting the facility on April 14, 2011. Asked if he “falsely claimed” to have inspected the facility, he said “no.” (RT 287-288) Asked if “to the best of his memory” he “believe[d]” he examined the facility for abnormal conditions on April 14, he said “yes.” (RT 289) [redacted] testimony is largely predicated on what he described as his “routine practice” when inspecting such facilities, and he said he had no reason to believe he inspected the facility at issue here any differently. (RT 300) At the same time, however, [redacted] testified that he could not remember inspecting the facility. (RT 299) His testimony is replete with references too numerous to mention about his inspection *practices* and how he *would have* inspected the facility.

[redacted] inability to specifically recall inspecting SW6096 on April 14, 2011, standing alone, may suggest no more than an inability to recall a single inspection in a sea of thousands over the years. However, his prior inconsistent statements cannot be overlooked. During his interview with Corporate Security on July 5, 2011, only a few months after April 14, 2011, he did *not* assert a failure to recall whether he inspected

assuming no hard and fast rule about clearing dirt and debris as a housekeeping task existed, it is fair to infer from the record as a whole that the amount of dirt and debris visible on the exterior and interior of the facility would have prompted an Inspector to remove at least some of it or face difficulty replacing the lids and bolts.

⁵ An inspection of the facility on February 4, 2013, although admittedly 20 months after the June 2011 GO 165 inspection, is consistent with the findings reached herein to the effect that the facility was not opened on April 14,

SW6096 or base his response on what he would have done. He was shown photographs of the facility and asked questions about his actions on April 14, 2011. He responded that he “opened all of them,” but possibly opened only one lid. (Joint Ex. 1, Ex. 1, LIC para.

6) It seems unlikely that [redacted] would have recalled inspecting SW6096 during a Corporate Security interview in July 2011, been terminated in August 2011 for falsely claiming he inspected the facility and yet be unable at hearing to recall the inspection and explain exactly what he did on the day in question. [redacted] lapse of memory in regard to whether he inspected SW6096, while at the same time recalling several of the 13 inspections in 2010, as more fully addressed immediately below, erodes his credibility.

Other Inspections

[redacted] testified that he cannot remember inspecting SW6096, but he believes he must have inspected it because he highlighted it as part of his color-coded system of highlighting facilities that he inspected. He said he highlighted only facilities he inspected. (RT 299-300, 327-329) However, the Company presented evidence of other facilities [redacted] highlighted and/or documented but failed to inspect.

On November 5, 2010, [redacted] documented that he completed an inspection of underground transformer T-2309 on Map N2322. (RT 375-378) However, about nine months later, on August 10, 2011, [redacted] and [redacted] re-inspected the facility and took photos showing the area was completely overgrown and the facility was almost totally

2011. It shows minimal compacted dirt in the exterior bolt and hook holes and far less accumulation of dirt and debris in the interior, especially on the cross arm. (Company Exs. 10, 11)

obscured by blackberry bushes. (RT 378-379; Joint Ex. 1, Exs. 15C, D, E) Based on the degree of vegetation at the site, they concluded that the area could not have been cleared and the facility could not have been opened for an inspection in November 2010. (RT 379, 424-425)

The Union argues that the photos of T-2309, taken nine months after the fact, do not conclusively show that [redacted] did not prune the blackberry bushes in November 2010 before inspecting the facility. They show green branches at the facility, suggesting new growth after [redacted] cut away the bush at the time of his inspection. Also, the bush at issue here is a Himalayan blackberry bush, a particularly invasive species that can grow as much as ten feet in a single growing season. (See RT 432-433; Union Exs. 8-10) On direct examination, [redacted] testified that he "cut just enough to get the lid off...and uncover the box with the shovel." (RT 464) On cross-examination, he said that when he left the facility there was no blackberry bush covering the lid of the transformer. (RT 474) In sum, the Union argues that [redacted] cut away enough vegetation to inspect the facility in November 2010 and by August 2011 it had grown back.

The photos taken in August 2011 show an area so completely overgrown that it is difficult to even identify the existence of the subsurface transformer, which is almost totally obscured by vegetation. (Joint Ex. 1, LIC Exs. 15C, D and E; RT 378-379) When

visited the site in August 2011, he cut away the blackberry bushes with margins of three feet on each side and eight feet in the front. (RT 425, 430) In January 2013, [redacted]

took another photo of the facility. It shows the areas around the facility remarkably free of blackberry bushes, and there had been no inspection during the intervening months. (RT 426-427; Company Ex. 21) Plainly, this particular blackberry bush was not as fast-growing as the Union contends.

_____ is a certified arborist employed by PG&E who is responsible for forecasting vegetation growth. (RT 438, 440) He agreed that the blackberry bush in question generally is known as an invasive species, and that it can grow 6-8 feet during an aggressive growing year. However, during the 5-6 active growing months between November 2010 and August 2011, _____ estimated this bush grew a maximum of only two feet. (RT 441-442, 450) According to _____ the blackberry bush in this case was not very healthy, so its growth rate may have been limited. Importantly, the August 2011 photos shows an unusually thick bed of gray or dead branches lying directly on the lid of the facility, which suggests they had been there longer than the nine months that preceded the August 2011 re-inspection, according to _____. If _____ had cleared the bush and left no branches on the lid of the facility when he departed the site in November 2010, in _____ opinion, the thick layer of dead branches lying on the enclosure in August 2011 would not have been there. (RT 442-443) The totality of the evidence convincingly shows that the vegetation around T-2309 was not cleared on November 5, 2010, and thus the transformer could not have been inspected on that date.

The Company argues that another false inspection report was made on November

24, 2010, when [redacted] marked T-2083 on Map 2316 as having been inspected. (RT 362-365; Joint Ex. 1, LIC Exs. 14B, C, D, E) When the facility was re-inspected by [redacted] and [redacted] on August 2, 2011, the enclosure was so covered with vegetation that [redacted] had to use a chain saw to clear it. (RT 422) [redacted] and [redacted] felt the vegetation covering the enclosure was so great that [redacted] could not have cleared it enough in November 2010 to permit an inspection. Therefore, they concluded [redacted] did not inspect T-2083, as he claimed.

The Union argues that the vegetation could have grown as much as two feet during the eight intervening months. During the November 2011 re-inspection, [redacted] did not attempt to remove the lid to determine if an inspection was possible even though the shrubbery was present. Instead, he completely cut away the bush, precluding any subsequent challenge to his and [redacted] observation. For his part, [redacted] insists he cut away the shrubbery and inspected the facility. During his interview with Corporate Security on November 9, 2011, he said he “opened the enclosure.” (Company Ex. 22, p. 3) In a contemporaneous written statement regarding the interview, he wrote that “I did in fact do the inspections.” (Joint Ex. 1, LIC. Ex. 22) At hearing, he testified that he cleared just enough vegetation to open the lid and complete the inspection: “I would have either cut a few of the limbs away or moved them away with my leg or whatever to open that lid. And that lid, once I got the bolts out, just slides down into the sidewalk there.” (RT 462-463, 471)

T-2083 is located in a residential area adjacent to a sidewalk. The lid is about three feet across. There are bolts on the edge of the lid that runs parallel to the sidewalk and on the edge of the lid away from the sidewalk. (RT 367, 472; Joint Ex. 1, LIC Ex. 14D, E) Jones, an experienced Compliance Inspector, credibly testified "there are four bolts. And there are bolts that are back into the bush. And you can't -- this bush was so mature, it was big branches, that you couldn't push that away. If you were to, you would -- this would all fall in on top of your enclosure." (RT 421) The photos taken by Jones about eight months after Jones claimed he inspected T-2083 corroborate his testimony. They show the entire lid dwarfed by thick vegetation. Given the size of the lid, at least three feet of vegetation would have to be cut in order to reach the bolts away from the sidewalk, but, as Jones noted, this particular bush (a pittosporum) only grows about 1-2 feet a year. (RT 439-440) After looking at the photographs taken in August 2011, Jones testified that "in my opinion, with the canopy growth of this I don't feel any cuts were made. You would see a defined notch in that trunk type, and you don't see that. You still see a full lush canopy." (RT 441) In fact, in January 2013, Jones took another photo of the area. It remained remarkably clear since he cleared the area in August 2011, suggesting a very slow growth rate for this particular vegetation. (RT 422-423; Company Exs. 19-20)

The totality of the evidence shows that, given the nature of the pittosporum, T-2308 could not have been inspected without clearing the quite substantial amount of

vegetation covering it. If [redacted] had cut enough vegetation to gain access to the bolts farthest from the sidewalk in November 2010 and actually opened the facility, the enclosure would not have been covered by lush vegetation eight months later because, at most, the bush would have grown only two feet. Thus, he could not have inspected T-2308 in November 2010, as he claimed.

Lastly, on October 26, 2010, [redacted] completed documentation that he inspected T-1740, a transformer in a pad-mounted enclosure above ground on Map K3118. The door to the enclosure opens from the bottom, like a residential garage door. (RT 428) When the facility was re-inspected by [redacted] and [redacted] about eight months later, on July 14, 2011, the front door of the enclosure could not be opened because there was a Manzanita bush blocking it. (RT 382, 428-429) [redacted] and [redacted] concluded that [redacted] could not have opened the door and inspected the facility without removing the Manzanita bush.

The Union argues that the bush was not evaluated to determine the possible growth in the previous eight months, and PG&E did not attempt to open the door with the bush present during the re-inspection. [redacted] testified on direct examination "this particular [box] opens from the bottom... You just – right there where the opening is is like a little handle thing, and you just lift it up... Just maybe, if necessary, hold the vegetation out of the way and get the bolt out and lift the lid up." (RT 465-466, 469) He said "if I couldn't get the lid open, I would cut the bush." (RT 466)

The photos taken of T-1740 during the July 2011 re-inspection show a thick Manzanita branch in a position that effectively blocks the door of the pad-mounted facility from swinging out to open. (Joint Ex. 1, LIC Ex. 16D, F) [redacted] testified that the Manzanita bush had been there for at least three years, and it would have grown only about 12 inches during the eight months between October 2010 and July 2011. (RT 443)

[redacted] and [redacted] agreed that the bush was an impediment to opening the door to the facility. As [redacted] put it, because Manzanita bushes are “really hard” and “don’t bend over really easy,” they could fall onto electrical connectors during inspection if not removed beforehand. This could create a safety hazard. (RT 428; see also RT 383)

Once again, [redacted]’s testimony does little to refute the evidence presented by the Company because he could not recall what he actually did on October 26, 2010, although he appeared to recall the inspection during his November 2011 interview with Corporate Security. (See RT 454; Company Ex. 22; Joint Ex. 1, LIC Ex. 22) Asked on cross-examination if he had a specific recollection of inspecting T-1740, he said “I don’t have a specific recollection. But if I highlighted it and said I was there, I was there and inspected it.” (RT 468-469) He agreed that in an “ideal world” the bush should be removed before inspection but it “wasn’t that big a deal.” (RT 470-471) Asked why he did not submit a tag so that the bush could be cleared later, he said “I don’t know. Probably because when I was there that bush wasn’t that big, and it wasn’t that big of a

deal.” (RT 470-471) Asked if he was “just guessing” at the size of the bush, he said “that’s right.” (RT 471)

The location of the Manzanita bush is just inches from the bottom of the door to T1740, which is just inches above ground level. Given the location of the bush and accepting the fact that the bush was at most 12 inches smaller in October 2010 than it was in the photos taken in July 2011, any inspection would have been problematic. As the Company points out, it would have been necessary for [redacted] to somehow bend a hard Manzanita branch and hold it to the ground to create enough space for the door to swing out, while simultaneously opening the door and using the infrared gun to inspect the equipment in the enclosure. Aside from the fact that this could create a safety hazard as described by [redacted], [redacted] can’t even remember if he performed this somewhat awkward task.

CONCLUSION

I recognize that the accumulation of compacted dirt and overgrown vegetation cannot establish to the day when a facility was last inspected. However, the photos in this case are remarkably strong indicators that the facilities in question could not have been opened for inspection on the dates claimed by [redacted]. The evidence shows that three facilities (T-2309, T-2083 and T-1740) had vegetation growth that should have been removed or tagged as abnormal conditions. [redacted] documented these as having been

inspected when, in fact, the evidence shows he didn't inspect any or them.⁶ These three examples serve to impeach his credibility with regard to whether he inspected SW6096. Williams relies almost entirely on his inspection practices to prove he inspected SW6096, but his testimony is not persuasive for the reasons expressed above and his claim that he inspected SW6096 must be rejected.

It is worth noting that the investigation of Williams' inspection record was not taken lightly. A multi-step Baseline Assessment process designed and operated by experienced employees documented by clear and convincing evidence that Williams did not open the enclosure housing SW6096 on April 14, 2011, and, therefore, could not have inspected it on that date. There is no valid reason to question the process. The Company has shown by clear and convincing evidence that the termination was for just cause. I recognize that Williams is a long term employee, but the parties have recognized the seriousness of such conduct in the past and found termination appropriate in such circumstances. (See PRC Decision 19812 [termination of employee with no active discipline for falsification of Company record])

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⁶ In support of its contention that Williams was not a credible witness, the Company also presented evidence of two additional instances in which it is alleged Williams highlighted facilities on a map ostensibly to show he inspected them, but, in fact, no facilities even existed at those locations. (See e.g., RT 383, 385) Given the other findings in

AWARD

I have carefully considered the entire record herein, including the post-hearing briefs submitted by the parties. Based on the foregoing findings and conclusions, the grievance is denied. PG&E has shown by clear and convincing evidence that it had just cause to terminate



Fred D'Orazio, Neutral Chairperson

Date: 2-2-14



Bob Gerstle, IBEW Local 1245 Representative (Concur/Dissent)

Date: 1-21-14



Ed Dwyer, IBEW Local 1245 Representative (Concur/Dissent)

Date: 1/21/2014



Tony Mar, PG&E Representative (Concur/Dissent)

Date: 1/22/14



Jeffrey Neeley, PG&E Representative (Concur/Dissent)

Date: 1/21/2014

this decision, it is unnecessary to address these instances.

