IN ARBITRATION PROCEEDINGS

PURSUANT TO AGREEMENT BETWEEN THE PARTIES

In the Matter of a Controversy Between PACIFIC GAS & ELECTRIC CO., Employer, and INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1245, Union, RE: Termination	ARBITRATION NO. 294 OPINION AND AWARD Frank Silver, Chair, Board of Arbitration John Mendoza Ed Dwyer Union Board Members Rick Fuhrman John Moffat Company Board Members

This dispute arises under the Collective Bargaining Agreement between the above-named parties. Pursuant to the terms of the Agreement, this Arbitrator was as the Chair of the Board of Arbitration to hear the evidence and to determine the issues.

A hearing was conducted on March 3, 2010 in San Francisco, California, at which time the parties had the opportunity to examine and cross-examine witnesses and to present relevant evidence. After preparation of the transcript, both counsel submitted post-hearing briefs and the matter was submitted for decision.

APPEARANCES:

On behalf of the Union:

Jenny Marston, Staff Attorney, IBEW Local 1245, Vacaville, CA

On behalf of the Employer:

Valerie Sharpe, Attorney, PG&E, San Francisco, CA

ISSUE

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

FACTS

The Grievant was hired as a meter reader in July 2002, and worked as a gas service representative (GSR) from October 2004 until his termination resulting from an incident on December 16, 2008. The incident for which he was terminated involved his response to a residence in Manteca, California where there had been an explosion, and after conducting a gas leak investigation, he left the house although, as it was later determined, he had not stopped the gas leak, nor had he notified his supervisor.

A primary responsibility of GSRs is the investigation of possible gas leaks at customer properties. They are the first responders when a customer reports a leak, and they have primary responsibility for investigating to determine if there is a leak in the "house lines," i.e. the gas piping downstream of the meter for the residence, and for taking appropriate action to correct the leak. The Grievant was provided yearly training on the Company's Gas Emergency Plan, and additional training in conducting field service leak investigations. The training covered Company procedures for conducting gas leak investigations (WP 6434-01; LIC Ex. 6a, b), the Code of Safe Practices

regarding investigation of gas leaks (LIC Ex. 7a-c), and the PG&E Emergency Plan, including checklists for fires and explosions and for gas leaks (LIC Ex. 8a-c).

On December 16, 2008, the Grievant worked his normal 8:00 a.m. to 4:30 p.m. shift, and due to a large number of service tags, he continued working past his shift, eventually getting off work at about 4:00 a.m. At approximately 10:00 p.m. he was dispatched to a residence in Manteca where the customer had turned on a light switch in his bathroom, causing an explosion which blew out a section of the wall around the switch. The customer had initially called 911, and the fire department responded and notified PG&E. Firefighters were present when the Grievant arrived at the residence, and both the firefighters and the customer told the Grievant they thought the problem was sewer gas.

The Grievant took a reading at the bathtub with his Sensit Gold combustible gas indicator, getting a 25% reading. He then made the decision to conduct a full gas leak procedure, as detailed in Work Procedure 6434-01. He turned off all pilot lights in the house, and he got a zero reading at the meter. He then went outside the house, checking the water box, looking for dead grass and shrubbery which might indicate a leak on the outside service line, and checking the gas stub at the rear of the house. He then went back to the bathroom, taking another read at the tub where, by his testimony at the arbitration, he got a .03 reading.[1] He testified that this read was "pretty much zero," which he considered a "false read." (Tr. 157, 185.)

He concluded that his investigation had shown that there was no gas leak in the house itself,

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[1] According to the LIC Joint Statement of Facts, the Grievant stated that after locking the meter, he went back to the bathroom, and he got a read which was "significantly less" than the previous reading. When asked by field service manager Rick Fuhrman what he meant by "significantly less," he responded that he didn't recall, but that he thought it was 3% less. (LIC Joint Statement of Facts, ## 43, 44.)

Fuhrman testified on rebuttal that the LIC joint statement of facts was accurate, and that the Grievant had responded that "significantly less" was "about 3% less," not ".03" as he testified at the arbitration. Fuhrman testified further that "3% less" would have been consistent with the 25-30% readings that were obtained at the tub the following day, and that he would have questioned the Grievant further if he had responded ".03," since that would not have been consistent with the readings the next day (Tr. 194-5).

and that from his examination of the shrubbery and water box outside, there was no reason to believe that gas was coming in from the service lines. Therefore, the only logical conclusion to him was that it was sewer gas, as the fire department and the customer believed. Since he had locked off the gas at the meter, he believed that he had made the situation safe for the night.[2] He told the customer that he should have a plumber investigate whether gas was coming back from the sewer line.

Before leaving, the dispatcher, M , called him, and in a recorded phone conversation, the Grievant explained his investigation and conclusion. He told M that after locking the meter, he was "still picking up something under the tub," telling the customer, "You had an explosion here. I gotta turn the gas off. I can't just leave this on. . . . I don't know what's going on. You don't seem to have a gas leak, but you have some kind of leak going." He then told M that he had had some experience in construction, and that he believed it was likely that sewer gas was backed up from a clogged sewer vent. M . then asked if they should let Greg (gas service supervisor Greg Cobarrubias) know, and the Grievant responded:

> "I'll let him know in the morning. I'll call him and let him know. . . . It's really nothing of ours. As far as I can see it really wasn't gas related. But we don't really know. Like I said, the line holds pressure. You don't seem to have a gas leak. And there's no gas lines in that bathroom."

Following this conversation, the Grievant left the residence and completed his shift. Neither he nor M called Cobarrubias that night, but the following morning he called Cobarrubias at approximately 8:40 a.m. Cobarrubias and field service manager Rick Fuhrman were both in a meeting in San Ramon at the time, and Cobarrubias informed Fuhrman of his conversation with the Grievant: that after turning of the gas the Grievant was still getting a reading on the combustible

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[2] At the customer's request, he did not turn off the electricity, although the explosion had been ignited by turning on a wall switch.

gas indicator around the bathtub, but that he had done nothing further to evacuate the customers or take further action (Tr. 18).[3] Fuhrman was concerned because there had been an explosion at the house, there was still gas present at the time that the Grievant left, and it was not known what the source of the gas was. He instructed Cobarrubias to get a crew to the site, and to leave the meeting and drive to the site himself. When Cobarrubias arrived at about 12:30, the crews were on site, and had obtained readings on the Sensit Gold of 25-30% at the base of the tub in the bathroom. Additional readings were obtained at the water box outside, at nearby manhole covers, and at other locations on the neighboring properties. It was ultimately determined that there was a crack on the main gas line serving these properties, and that gas from this leak had apparently migrated into the house where the explosion had occurred. All affected customers were evacuated from their houses, and the leak was repaired with no further incident. (See Cobarrubias chronology, LIC Ex. 5.)

That day or the next, Fuhrman met with the Grievant and Cobarrubias, along with a shop steward. At the meeting, the Grievant stated that he believed he had made the situation safe, since he had shut the gas off at the meter and there was no indication of a gas leak in the house line. He stated his belief that the leak was due to sewer gas, and that he felt it was not necessary to call Cobarrubias that night. Fuhrman went over the gas leak investigation procedure, and related policies, which are included in the Code of Safe Practices. He noted that the Grievant had violated a number of procedures in that he had not located the source of the gas leak, that his instrument had still shown the presence of gas after he shut off the gas to the house, and that he had left the residence without notifying his supervisor or calling a crew to investigate the possibility of gas leaks

[3] In his testimony, the Grievant denied telling Cobarrubias that there was still gas in the house, and that he would not have left or made a statement like that if he thought there was still gas present (Tr. 162).

on the service line or main line outside the residence.[4] During the meeting the Grievant did not dispute that he had violated Company procedures, once he realized that a gas leak had in fact been found at this location (Tr. 53, 169).

Fuhrman concluded that the Grievant had violated policies and procedures contained in the Code of Safe Practices by failing to identify the source of the gas leak and by leaving the house without notifying his supervisor or getting a crew to come out, even though he had detected gas in the house after shutting off the gas service to the house. In fact, as determined the following day, there were large readings from the manholes and other locations in the neighborhood, and, in Fuhrman's opinion, the Grievant put the customers at extreme risk by leaving without evacuating them or providing proper notification. In Fuhrman's' view, the seriousness of these rule violation merited termination.

POSITIONS OF THE PARTIES

The Company

The Company argues that the Grievant's admitted violations of Company policies and procedures put the public at extreme risk and merited termination. Work Procedure 6434, section 8 states that if odor persists after a full gas leak investigation, the employee must look for gas leaks on the main or service lines. Because a GSR is limited in his ability to locate main or service line leaks, he should have called a crew with the correct equipment to do so. WP6434, section 9 states in subsection C that if a gas leak is hazardous or could become hazardous, the GSR must (1) notify Dispatch if additional resources are needed, (2) call the PBX Field Helpline and initiate a referral

[4] The Sensit Gold instruments provided to GSRs at the time were not equipped with probes which would allow for underground readings. T&D crews did have the equipment to investigate for underground leaks, since their responsibility included the main lines and service lines leading to the residences. GSRs currently are provided with probes which allow for more thorough underground investigations.

Employer's position

case, (3) stand by with the customer until construction personnel arrive, (4) and take further actions needed to safeguard life and property. Because an explosion had already occurred, it was obvious that the leak was potentially hazardous; yet he did not take any of the steps outlined in subsection C. He also allowed the customer to remain in the house, and he did not turn off the electricity which had ignited the explosion.

The Grievant also violated the Code of Safe Practices, section 1505(d), which states that when a "hazardous gas leak is not repaired or stopped, the employee shall stand by, notify the local dispatch office, and remain at the scene until relieved." He also failed to comply with the Gas Emergency Plan by failing to evaluate the danger to life and property, by failing to identify the source of the gas, and by failing to make the necessary notifications for an incident involving an explosion and property damage.

Termination was warranted due to the seriousness of the Grievant's misconduct. As Fuhrman testified, the Grievant's action put the public at extreme risk. By failing to follow established procedures, the Grievant caused a delay of over eight hours before maintenance crews were called to the scene. Fortunately, there was no further explosion endangering lives and property, but the potential for such an event caused by the Grievant's gross negligence merited termination. Arbitrators routinely uphold summary discharge where an employee's misconduct creates a significant safety hazard, citing *BHP Petroleum/Gasco Inc.*, 102 LA 321 (Najita 1998) (upholding termination of a gas service technician who failed to identify a gas leak in a customer's home by failing to follow prescribed leak investigation procedures); *Union Tank Car Co.*, 110 LA 1128 (Lalka 1998); *Solae LLC*, 125 LA 349 (Baroni 2008); and others. As shown in these decisions, employers and the public are entitled to more than the mere hope that negligence, such as that shown

by the Grievant, will not result in serious injury or property damage.

Termination was imposed after a fair and reasonable investigation in which the Grievant acknowledged his violations of safety procedures. Those procedures are well documented, and the Grievant had been trained on them several times, most recently in a tailboard which emphasized that GSRs must remain on site until crews capable of determining underground leaks have arrived. The Positive Discipline Agreement expressly provides that termination without positive discipline may be imposed for a single offense of major consequence.

The Union has not demonstrated that other employees were given more moderate discipline under substantially similar circumstances such as to show disparate treatment. None of the disciplinary actions introduced in evidence involved the same misconduct as that committed by the Grievant (Un. Ex. 2, 5). None involved situations where an explosion had already occurred and the employee left customers in the home without taking appropriate steps to identify the source of the leak and have it repaired. There is no evidence to show what procedures were violated in those cases, the extent of the employee's training. The Grievant had been repeatedly trained on the safety procedures which in violated during his relatively short period of employment (six years) with the Company.

For these reasons, the Company asks that the be denied in its entirety.

The Union

The Union argues that termination was improper in that the Grievant conducted a full leak investigation and an outside search and he had an impeccable record of service with no active discipline; the Company's decision was at odds with forty years of precedent applying progressive/positive discipline to the same conduct as the Grievant's; and there was another

employee in the incident who shared the same level of culpability as the Grievant.

There have been several nearly-identical cases in the past where a GSR (or gas serviceman) was given positive discipline, not termination, for a procedural error, including leaving an unrepaired and undetected hazardous gas leak and damage or injury resulted. Recently the Company has issued DMLs in two cases when employees violated policies failing to shut down the gas or notify his supervisor following a gas leak and by failing to respond immediately, as required, to a serious gas leak (Un. Ex. 5). In nine Review Committee decisions between 1971 and 2007, GSRs were given discipline less than discharge for failing to follow established work procedures in a variety of situations, such as causing a fire at a customer's house, failing to discover a hazardous gas leak on an appliance, improperly logging that he could not gain access to a customer's residence, causing an explosion and fire at a customer's home, leaving a hazard in a customer's home, and mistakenly leaving a furnace in a condition that it could be easily reconnected by the customer. The Company has not provided previous cases in which a GSR has been terminated for a single work performance mistake, and instead has offered three previous disciplines (two terminations and a DML) of linemen involving much different circumstances than those in the present grievance.

In this case, the Grievant followed the applicable work procedures, properly performing a full leak investigation, but he chose the wrong of two plausible outcomes. There was no sign of a gas leak on any house line, there was no odor of gas, no reading at the water box, no dead shrubbery. The work procedures did not require a GSR to notify a supervisor about a customer's sewer problem. From listening to the conversation with the dispatcher, it is clear that the Grievant understood that the cause of the explosion had been sewer gas, and not natural gas.

Even if it is found that the Grievant violated work procedures by not contacting his

supervisor and leaving a potentially hazardous situation, based on the history of prior disciplinary actions, termination for a single mistake of this nature is not warranted. In addition, the dispatcher who shared responsibility in this same incident was only given a DML. By failing to follow his supervisor's instructions he violated dispatch work procedures and was arguably more culpable than the Grievant, and there is no rational reason for the Grievant to be treated more harshly.

For the above reasons, the Union argues that the Grievant should be reinstated with appropriate back pay and benefits.

DISCUSSION

The circumstances involved in the Grievant's service call at the Manteca residence on the night of December 16, 2008 are largely undisputed: There had been an explosion ignited when the customer turned on a light switch in his bathroom. When the Grievant arrived, both the firefighters and the customer said that they believed the cause had been sewer gas. The Grievant got a 25% reading on his combustible gas indicator at the bathtub and he then conducted a full leak investigation, finding no leak in the house lines, and noting no dead shrubbery or other signs of a leak on service lines outside the house. After turning off the gas at the meter, he got a reading at the bathtub which was "significantly less" than the previous reading. He concluded that the cause of the explosion had been sewer gas, and he left the house after telling the customer to contact a plumber. Prior to leaving the house, he had a conversation with dispatcher M , in which he explained his conclusions, and when M asked if they should call supervisor Greg Cobarrubias, the Grievant responded that he would call Greg in the morning to let him know, but there did not appear to be a leak in the gas lines. The following day, crews obtained significant readings showing the presence of gas in the bathroom where the explosion had occurred, and at other

locations on neighboring properties, and they located and repaired a leak on the main line serving the properties.

Field service manager Rick Fuhrman concluded that the Grievant had violated a number of work procedures by failing to identify the source of the leak and by leaving the house without notifying his supervisor, and that the seriousness of these violations – placing the public at "extreme risk" – warranted termination. The Union contends that the Grievant conducted a proper full gas leak investigation, making what turned out to be an incorrect determination that the cause of the explosion was sewer gas rather than natural gas. The Union argues that its research of disciplinary actions imposed on GSRs or gas servicemen for work procedure violations over a forty year period shows that termination has never been imposed for a single incident, even in cases where the errors have involved leaving unrepaired and undetected hazardous gas leaks on the property and failing to make required notifications to supervisors. The disciplinary notices and Review Committee decisions relied upon by the Union have been reviewed in some detail, and they certainly show that many apparently serious work procedure violations have resulted in discipline less than termination. However, in general the documentation fails to provide sufficient detail to demonstrate that the policy violations were necessarily as serious as those by the Grievant in the current case. In particular, although there were several incidents where the employee failed to detect a hazardous leak, there do not appear to be other cases where the service call resulted from an explosion at the customer's house, establishing the presence of a hazardous leak, and where the employee left without finding the source of the leak and without notifying his supervisor. Therefore, while the prior disciplinary actions show that positive discipline should normally be imposed prior to termination for work procedure violations, they are not definitive on the question of whether the

Grievant's violations were sufficiently serious to warrant termination as a first offense.[5]

As noted, the Grievant concluded that the cause of the explosion had been sewer gas, and he testified he believed he had made the situation safe by turning off the gas to the house. On this point, however, there is a significant discrepancy in the evidence. As recorded in the LIC Joint Statement of Facts, the Grievant stated that when he took a second reading in the bathroom after locking off the gas at the meter, he got a reading which was "significantly less" than the previous 25% reading, and that when asked what "significantly less" meant he responded "three percent less." At the arbitration, the Grievant testified that the second reading was ".03" less, and that this was what he had said at the LIC. He testified further that a .03 reading was "pretty much zero," and that he considered it a "false read." (Tr. 157, 185.) Fuhrman disputed the Grievant's claim that he had said the read was ".03" less, and testified that the LIC Joint Statement of Facts was accurate.

For a number of reasons, the Grievant's testimony on this point cannot be accepted. First, his attempt to minimize the amount of gas present in the bathroom is inconsistent with his recorded conversation with M before leaving the house. He told M that after locking of the meter, he was "still picking up something under the tub." He said that he told the customer that he couldn't leave the gas on, explaining, "I don't know what's going on. You don't seem to have a gas leak, but you have some kind of leak going." These comments and others during the conversation show that he was aware of the presence of gas in the house, although he wrongly

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[5] Similarly, the DML issued to M does not demonstrate discriminatory treatment of the Grievant. M was disciplined for failing to follow his supervisor's instructions to call the Grievant back and tell him to call his supervisor. From the discussion in the Review Committee decision, it appears that M ' failure to follow instructions was considered negligent rather than willful. Also, M had 28 years of service. Also, it is not unreasonable that the Company would hold the Grievant, as the Company representative on the scene with a firsthand ability to investigate and assess the gas leak, primarily responsible for failing to identify the source of the leak and to take appropriate action to repair the leak.

concluded it was sewer gas rather than natural gas. His testimony to the effect that he considered the second reading to be a false read appears to be an attempt on his part to belatedly claim that the gas had essentially dissipated by the time he left the house.

In addition, the Grievant testified that when he called the next morning, he did not tell Cobarrubias that there was still gas in the house. Although Cobarrubias was not questioned on this point at the arbitration, Fuhrman testified that Cobarrubias had told him that the Grievant had reported he was still getting a reading on the combustible gas indicator after turning off the gas.[6] Therefore, the Grievant's statements at the time of the incident are inconsistent with his attempt at the arbitration to minimize the presence of gas in the house. Finally, Fuhrman credibly testified that he would have questioned the Grievant further at the LIC if he had said the second reading was ".03" less, since that would have been inconsistent with the 25-30% readings that the crews obtained at the bathtub the following day.

Therefore, the Grievant's arbitration testimony on this important point cannot be accepted. His statements at the time of the incident, and at the LIC, show that he was aware that gas, from whatever source, remained in the house, and in his arbitration testimony he attempted to back away from those implied admissions. Given his lack of credibility on this point, the Union's request to reduce the discipline to a penalty less than termination cannot be accepted. The Company's decision to terminate is affirmed.

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[6] Fuhrman's account of what Cobarrubias told him contains two levels of hearsay, since the arbitration board is being asked to accept the truth of Cobarrubias' statement that the Grievant told him he got a reading after turning off the gas, as well as the truth of the Grievant's statement that he got the reading. Hearsay, of course, is normally admissible in arbitration, and its reliability must be assessed based upon the surrounding circumstances. On this point, it must be concluded that Cobarrubias' statement to Fuhrman (if Fuhrman accurately recalled it) was reliable, i.e. there is no apparent reason that Cobarrubias would have told Fuhrman that the Grievant said he got a read if this was not what the Grievant had in fact told him. Similarly, the Grievant would not have made such a comment to Cobarrubias unless it was true. Therefore, the hearsay aspects of Fuhrman's testimony on this point do not undercut its reliability.

AWARD

The termination of the Grievant was for just cause. The grievance is denied.

Frank Silver, Chair, Board of Arbitration — 7/30/10 date

John Mendoza, Union Board Member — ~~Concur~~/Dissent — 8-16-10 date

Ed Dwyer, Union Board Member — ~~Concur~~/Dissent — 8/18/10 date

Rick Fuhrman, Company Board Member — Concur/Dissent — 8/9/2010 date

John Moffat, Company Board Member — Concur/Dissent — 8/5/2010 date