

August 10, 2022

Office of Energy Infrastructure Safety
Underground Safety Board
715 P Street, 20th Floor
Sacramento, CA 95814

Sent via email to enforcement.dig@energysafety.ca.gov

Re: Request for Reconsideration in Case No. 22LA01484

Dear Members of the Underground Safety Board,

Southern California Edison Company (SCE) respectfully submits this letter and the attached Declaration of Daniel Macias as its request for reconsideration of the Underground Safety Board's (Board) decision in Case No. 22LA01484 (Request). As required by 19 CCR § 4255(a), SCE is submitting the Request within 30 days of the Board's July 11, 2022 decision finding SCE violated California Government Code sections 4216.3(a)(1)(A) and 4216.3(c)(1)(A). As required by 19 CCR § 4255(a)(1), the Request is based on relevant new evidence: a declaration from Daniel Macias, the UtiliQuest, LLC (UtiliQuest) technician who negotiated a new excavation start date with the excavator, Merlin Johnson Construction, Inc. (MJC). In this letter, SCE explains why the new evidence, as well as evidence already submitted in this proceeding, demonstrates SCE fully complied with Sections 4216.3(a)(1)(A) and 4216.3(c)(1)(A). SCE also explains why the new evidence could not have been presented when SCE responded to the Notice of Probable Violation (NPV).

SCE did not violate Section 4216.3(a)(1)(A) because SCE and the excavator mutually agreed to a later excavation start date and time and SCE completed locating and marking its subsurface installations before that date and time.

The NPV alleges SCE violated Section 4216.3(a)(1)(A) by not locating and marking “the excavation area until January 11, 2022, after the legal excavation start date and time of January 10, 2022.”¹ But Section 4216.3(a)(1)(A) requires an operator to locate and field mark before the legal excavation start date and time only if the operator and excavator do not agree to a later start date and time.² If the operator and excavator agree to a later start date and time, the operator is required to complete locating and marking before the new, agreed upon date and time.

¹ NPV at 1.

² “Unless the excavator and operator mutually agree to a later start date and time, or otherwise agree to the sequence and timeframe in which the operator will locate and field mark, an operator shall do one of the following before the legal excavation start date and time: Locate and field mark within the area delineated for excavation and, where multiple subsurface installations of the same type are known to exist together, mark the number of subsurface installations.” Section 4216.3(a)(1)(A) (emphasis added).

The Board should reconsider its finding that SCE violated Section 4216.3(a)(1)(A) based on Mr. Macias's declaration. The declaration demonstrates that SCE, through its locate and mark contractor, UtiliQuest, and excavator MJC agreed to a new excavation start date and time and that UtiliQuest completed locating and marking SCE's underground facilities before then. As explained in the declaration:

- Mr. Macias arrived at the site of the excavation by 9:00 a.m. on January 10, 2022, the date and time scheduled by MJC for a meet and mark and the legal excavation start date and time.
- Mr. Macias did not see the excavator at the site, so began to locate and mark subsurface installations for UtiliQuest's clients, including SCE.
- After marking for a while, Mr. Macias realized the job was too large to complete on his own, so he telephoned MJC's president, Merlin Johnson, to let him know UtiliQuest needed more time to complete locating and marking.
- Mr. Macias and Mr. Johnson agreed the locating and marking should be completed by January 11, 2022.
- Mr. Macias completed locating and marking SCE subsurface installations on January 11, 2022.

SCE could not have submitted Mr. Macias's declaration when it responded to the NPV because SCE did not know at that time the Board would require evidence of UtiliQuest's agreement with MJC be in the form of a declaration. When SCE responded to the NPV, there were several pieces of evidence in the record that demonstrated the agreement with MJC:

- At page 0041 of the Investigation Report prepared by Tony Marino, Mr. Marino documents an interview he did with Merlin Johnson on January 19, 2022. As Mr. Marino explains:

[Mr. Johnson] had received a phone call from the UtiliQuest technician requesting more time to mark. He stated that so long as the work was done the evening of January 11, it was fine with him, as he was not to begin potholing until the morning of January 12 (Wednesday). He indicated that UtiliQuest had marked for Southern California Edison on Tuesday night (1/11) but not for Frontier. I asked Johnson if the 'Negotiated Marking Schedule' listed on the EPR for Spectrum, the two Edison units, and Frontier was accurate, and he indicated that the potholing discussion constituted in his mind a negotiated marking schedule.
- On page 0058 of Mr. Marino's Investigation Report is a January 11, 2022 email from Mr. Johnson to UtiliQuest documenting the agreement: "In a phone call with your tech yesterday I had agreed that you would be able to mark this morning and thereby let us look at the marks and start potholing tomorrow January 12th."

- Attachment 2 to SCE's June 20, 2022 response to the NPV is an email to SCE from Joe Anton, UtiliQuest's Regional Manager, Claims & Compliance, summarizing UtiliQuest's work on the ticket, its appearance at the meet and mark and January 10, 2022, and the agreement between UtiliQuest and MJC.

However, the Board did not appear to consider this evidence at its July 11, 2022 meeting. The undersigned, SCE attorney Ryan Jerman, listened to the meeting telephonically. At the meeting, Board members noted that the email from UtiliQuest attached to the response to the NPV was confusing and that SCE did not present evidence of an agreement with MJC in an appropriate form. The attached declaration of Daniel Macias addresses both of the Board's concerns. Mr. Macias has firsthand knowledge of the agreement between UtiliQuest and MJC because he negotiated the agreement directly with MJC's president. Further, the declaration lays out the agreement and Mr. Macias's work on the excavation in a straightforward timeline attested to by Mr. Macias. Pursuant to the agreement, UtiliQuest was required to locate and mark SCE's subsurface installations by the end of the day on January 11, 2022, which it did. Accordingly, SCE did not violate Section 4216.3(a)(1)(A).

The alternate basis for a violation of Section 4216.3(a)(1)(A) in the Investigation Report is inconsistent with applicable law and is contradicted by Mr. Macias's declaration.

SCE notes that the Investigation Report of Tony Marino offers a different basis for a violation of Section 4216.3(a)(1)(A) than the NPV, which was signed by Jason Corsey, Chief of Investigations. The NPV asserts SCE violated Section 4216.3(a)(1)(A) because SCE finished locating and marking on January 11, 2022, while the Investigation Report asserts SCE violated the Section because SCE supposedly did not timely respond to MJC's request for a meet and mark.³ SCE believes it would be legally improper for the Board to find SCE violated Section 4216.3(a)(1)(A) on the alternate basis provided in the Investigation Report for two reasons: (1) the Investigation Report misinterprets Section 4216.3(a)(1)(A), which does not require an operator to respond to a meet and mark if there is a subsequent agreement to a new excavation start date and time, and (2) finding a violation on a basis not identified in the NPV could potentially violate SCE's right to notice in this proceeding. However, the Board does not need to address either of these legal issues because Mr. Macias's declaration shows that UtiliQuest did in fact appear at the 9 a.m. meet and mark on January 10, 2022.⁴ UtiliQuest then began marking facilities and contacted MJC when it realized the job was so large all the subsurface installations could not be marked that day. Thus, SCE did respond to the excavator prior to the legal start date and time, but UtiliQuest and Mr. Johnson did not see each other at the meet and mark. Accordingly, SCE did not violate Section 4216.3(a)(1)(A) under the alternate basis in the Investigation Report.

³ Investigation Report of Tony Marino at 0010 (whether Merlin Johnson told SCE on "January 10 that he would not begin potholing until 7:00 a.m. on Wednesday, January 12 does not impact [SCE's] obligations under Government Code 4216.3(a)(1)(A) to respond to the excavator prior to the legal start date and time").

⁴ "On January 10, 2022, I arrived at the site of the excavation by 9:00 a.m. but I didn't see the excavator."

SCE did not violate Section 4216.3(c)(1)(A) because UtiliQuest supplied the “clear – no conflict” electronic positive response only to the duplicate ticket; the original ticket remained open and UtiliQuest finished locating and marking SCE’s subsurface installations under that original ticket.

Section 4216.3(c)(1)(A) requires operators to “supply an electronic positive response through the regional notification center before the legal excavation start date and time.” An electronic positive response (EPR) is “an electronic response from an operator to the regional notification center providing the status of an operator’s statutorily required response to a ticket.”⁵ The NPV asserts that SCE violated Section 4216.3(c)(1)(A) because it “provided an incorrect [EPR] on January 10, 2022, indicating that it had no subsurface installations in the area of excavation.”⁶

The NPV misstates the meaning of UtiliQuest’s EPR. As Mr. Macias explains in his declaration:

Also on January 10, 2022, and after I made the agreement with Mr. Johnson to complete locating and marking by January 11, 2022, I noticed that MJC opened a new “no show” ticket. Because I had already made the agreement with Mr. Johnson to complete locating and marking for UtiliQuest’s clients by January 11, 2022 under the original ticket, I closed the new “no show” ticket as “clear – no conflict”.

The EPR was not made on the original excavation ticket; that ticket remained open through UtiliQuest’s marking of SCE’s subsurface facilities on January 11, 2022. Nor did the EPR for the duplicate ticket indicate that SCE had “no subsurface installations in the area of excavation”. Rather, the EPR indicated, literally, that the duplicate ticket should be closed as “clear – no conflict” because UtiliQuest and MJC had resolved the conflict with regard to the excavation start date, at least as it pertained to SCE.

This explanation is consistent with evidence already before the Board in the email from UtiliQuest’s Regional Manager Joe Anton, which states that UtiliQuest closed the duplicate ticket because its technician (Mr. Macias) did not think the “no show” ticket applied to him since he had already begun marking and had negotiated the new schedule with MJC. “Therefore, for administrative purposes he closed the duplicate ‘no show’ ticket as ‘no conflict’ and kept the original ticket which he had already started working on. This was done to remove the duplicate ticket from his work load and keep only the original ticket he was marking.”⁷

For these reasons, SCE did not violate Section 4216.3(c)(1)(A) and the Board should reconsider its violation finding.

⁵ Section 4216(e).

⁶ NPV at 1.

⁷ Response to NPV at Attachment 2.

Conclusion

SCE appreciates the opportunity to present this request for reconsideration. The statements in Mr. Macias's declaration and the statements by MJC president Merlin Johnson in Mr. Marino's Investigation Report demonstrate that SCE, through UtiliQuest, and MJC agreed to a new excavation start date and time, that UtiliQuest finished marking SCE's subsurface installations before the negotiated excavation start date and time, and that UtiliQuest closed the new, duplicate ticket after agreeing to the new excavation start date and time with MJC. For these reasons, as well as the other reasons stated above, SCE respectfully requests that the Board reconsider its decision that SCE violated Sections 4216.3(a)(1)(A) and 4216.3(c)(1)(A).

Sincerely,

/s/ Ryan Jerman
Ryan Jerman
Senior Attorney

cc: Jeff Brooks, Attorney, Office of Energy Infrastructure Safety

DECLARATION OF Daniel Macias
IN SUPPORT OF SOUTHERN CALIFORNIA EDISON'S
REQUEST FOR RECONSIDERATION IN
UNDERGROUND SAFETY BOARD CASE NO. 21LA01484

My name is Daniel Macias am a [technician] for UtiliQuest, LLC (UtiliQuest), which provides locate and field marking services for operators of subsurface installations in California, including Southern California Edison (SCE).

On January 5, 2022, Merlin Johnson Constrction, Inc. (MJC) opened a ticket with the one-call center for locate and field marking services in Beaumont, California. MJC requested a meet and mark on January 10, 2022.

On January 10, 2022, I arrived at the site of the excavation by 9:00 a.m. but I didn't see the excavator. I started to mark subsurface installations for UtiliQuest's clients, including SCE. However, after marking for a while I realized the job was too big for me to complete on my own. I then called MJC from the excavation site to let them know I needed more time to complete the marking and to negotiate a new marking schedule. I spoke directly with Merlin Johnson, the president of MJC. Mr. Johnson told me he was not planning to begin excavation until January 12, 2022. We made an agreement that marking and locating for UtiliQuest's clients (including SCE) should be completed by January 11, 2022.

Also on January 10, 2022, and after I made the agreement with Mr. Johnson to complete locating and marking by January 11, 2022, I noticed that MJC opened a new "no show" ticket. Because I had already made the agreement with Mr. Johnson to complete locating and marking for UtiliQuest's clients by January 11, 2022 under the original ticket, I closed the new "no show" ticket as "clear - no conflict".

On January 11, 2022, I completed locating and marking all of SCE's subsurface installations consistent with my agreement with Mr. Johnson. I then updated the original ticket to reflect "locate area marked" for all of SCE's subsurface installations.

Signed: Daniel Macias
By: Daniel Macias
Date: 8/9/22
Title: technician