THEODORE R. KULONGOSKI
ATTORNEY GENERAL

THOMAS A. BALMER
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
1162 Court Street NE
Justice Building
Salem, Oregon 97310
Telephone: (503) 378-4400
TDD: (503) 378-5938

February 2, 1996

Dennis La Vine
HC 32 Box 538
Gilchrist, OR 97737

Re: ***Petition for Public Records Disclosure Order: Public Utility Commission Records***

Dear Mr. La Vine:

This letter is the Attorney General's order on your petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, dated January 2, 1995, was directed to Assistant Attorney General John H. Socolofsky, rather than the Attorney General. Unfortunately, at that time Mr. Socolofsky was on vacation. When he returned, he forwarded your letter to the Attorney General. It was received by the Attorney General on January 26, 1996. Therefore, for purposes of this order, we will consider your petition filed on that date.

Your petition asks the Attorney General to direct the Public Utility Commission (PUC) to make available certain records relating to a natural gas pipeline of Pacific Gas Transmission Company (PGT) located on your property and a grievance that you have with PGT with respect to that pipeline. Your petition alleges, in substance, that you have made numerous requests for such records, including a formal request of October 16, 1995, and that some records have been produced, but not all. Your petition states that the PUC claims it has produced all records that are in existence.

In the petition you take issue with that assertion and list a number of records which you contend are in existence and which have yet to be produced. You also assert that at least one piece of evidence has been destroyed. Under these circumstances, we have undertaken to determine whether any requested records are in existence that have not been produced. The PUC does not claim that any requested records are exempt from disclosure. For the reasons that follow, we find that all requested records in PUC's files have been

produced, with the exception of a copy of a travel expense account, which the PUC has agreed to provide to you and which is enclosed with this order.[1/]

Our review of this matter indicates that you have made several requests for records from the PUC. The first appears to have been by letter dated July 6, 1995. Subsequent written requests were made on October 16, 1995, and November 2, 1995. These requests were somewhat amplified in your petition. For the most part, the requests were for the same records. The expense account was mentioned only in the letter of July 6, 1995. From these separate requests, we have endeavored below to compile a list of the records that you believe are in existence and have not been produced. We will address each item on the list separately.

1. Pictures taken by PUC employee, Jack Dent

We find that Jack Dent took no pictures for the PUC. At the request of Peter Katchmar, a USDOT employee, Mr. Dent took one or more pictures of the pipeline with a camera in the possession of Mr. Katchmar. After taking the pictures, he returned the camera to Mr. Katchmar. Mr. Dent did not ask for or receive copies of those pictures.

2. The complete PUC file on this matter

With the exception of the travel expense account discussed in item 8 below, which was not in the PUC investigation file, we find that you have been given a copy of the complete PUC file related to this matter. That file appears to consist of the following documents:

a. A three-page fax, including cover, sent June 16, 1995, from USDOT to Jack Dent containing a Sample Vandalism Letter form and representative letter;

b. A 34-page packet, including the cover letter from W.G. Thomas to Peter J. Katchmar, dated September 21, 1995, containing the documents listed on the cover letter with the exception of the video tape which was not provided to the PUC;

[1/] This order addresses only your request for public records. It does not address the merits of claims against third parties which are asserted in your petition. With respect to the latter claims, we have found nothing that justifies further action by this office.

c. A three-page letter, with two pages of attachments, dated July 3, 1995, from W.G. Thomas to Dennis and Michelle La Vine;

d. A one-page letter dated July 6, 1995, from Dennis and Michelle La Vine to Jack Dent;

e. A one-page letter dated July 18, 1995, from Jack Dent to Edward J. Ondak, USDOT;

f. A two-page letter dated July 19, 1995, from Jack Dent to Dennis and Michelle La Vine;

g. A two-page fax, including cover, dated September 14, 1995, from PGT to Jack Dent indicating that a fence post will be relocated and another added during the week of September 18, 1995;

h. A four-page letter from Edward Ondak to Dennis La Vine, dated October 10, 1995, re: investigation conclusions;

i. A two-page letter from Dennis La Vine to Edward Ondak, dated October 19, 1995;

j. A one-page letter from Dennis La Vine to Joan Smith, dated October 16, 1995;

k. A two-page letter from Dennis La Vine to Edward Ondak, dated October 19, 1995;

l. A one-page letter from Edward Ondak to Dennis La Vine, dated October 31, 1995;

m. A two-page letter from Joan Smith to Dennis La Vine, dated October 31, 1995;

n. A four-page document, entitled "Notice of Location," relating to description of PGT right of way.

3. Cellular telephone records

The PUC has not provided Mr. Dent with a cellular telephone. Consequently, there are no PUC cellular telephone records. In connection with this matter, Mr. Dent states that

he made one call to the La Vine residence with the cellular telephone in one of the PGT trucks. Any cellular telephone records of PGT are not in the custody of the PUC and not subject to the Public Records Law.

4. PGT Regulator's Package

The PUC file contains a reference to a PGT Regulator's Package. That reference is in the chronology that is part of the packet referred to Item 2b above. We find that the information mentioned in the chronology as being part of the "regulator's package" was shown to Mr. Dent by PGT during the June 19, 1995, meeting in Redmond, Oregon, but no part of the "regulator's package" was used or retained by Mr. Dent, except a copy of the pipeline easement, which copy should have been part of the PUC file material which has been sent to you. This is the right of way description referred to in Item No. 2n above.

5. Office of Pipeline Safety "Letter/Ruling."

This document was part of the PUC file that has been provided you. It is a copy of a fax from the regional Office of Pipeline Safety to Jack Dent, dated June 16, 1995. It is a form letter, with sample, used by the office to alert persons of criminal penalties for removing pipeline right of way markers. Reference to this document as a letter/ruling is somewhat misleading.

6. Prior complaints against PGT

The PUC has reported to you that there were two complaints against PGT of which the PUC are aware. So far as PUC staff know and so far as we have been able to determine, there have been no other complaints. Both complaints were oral; both were within the last year. The complaining parties were from the Ashland, Oregon, area. They were referred orally to the federal Office of Pipeline Safety which may have a written record of them. The PUC kept no written record of these contacts.

7. Letter from Locating, Inc.

Your information requests frequently refer to a letter or statement from an employee of Locating, Inc. to the PUC. The letter was not retained by the PUC. However, at the request of the PUC, Locating Inc. has provided us with the document, together with related correspondence from and to you. The document in question is a statement from Rod Bunday, dated June 16, 1995. A copy is attached to this order. The PUC has verified that this statement is a true copy of the statement that was not retained by the PUC.

8. Expense Account

In your letter of July 6, 1995, you requested a copy of the expenditures of Jack Dent related to his trip to your property. That record was not part of the official PUC file in this matter, but has been located and is attached hereto.

The Attorney General has no authority to order an agency to produce records that do not exist or that are not in the custody of the agency. *See* ORS 192.410(4), 192.450(1). Because the records in the PUC's files have already been provided to you or are attached hereto, we respectfully deny your petition.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the Attorney General

ESH:JHS:AV:jpl/JAA01C0E
Attachments

LOCATING INC.

FAX TRANSMITTAL MEMO

NUMBER OF PAGES INCLUDING COVER SHEET 9

DATE Jan 30, 1996

TO Jack Sokolowski

COMPANY State of Oregon

DEPT Dept. of Justice

FAX # 373-7067

FROM Bill Patterson.

COMPANY LOCATING INC

PHONE # (503) 581-1265

FAX # (503) 581-1845

COMMENTS: Includes Mr. Lavines certified letter to Locating Inc. Rod Bunday's statement of events. Copies of certified letter sent back to Mr. Lavine per his request. Copies of Both tickets refered to in letters.

2095 Davcor Court S.E. • Salem, Oregon 97302 • (503) 581-1265

et No: 86238
o: USW 18 Seq No: 1 Map Ref: GILCHRIST EXCHANGE

ransmit Date: 6/05/95 Time: 10:26 am Op: OCAS10
riginal Call Date: 6/05/95 Time: 8:44 am Op: OCAS10
ork to Begin Date: 6/07/95 Time: 8:45 am

tate: OR County: KLAMATH Place: GILCHRIST
ddress: Street: STAGECOACH RD
earest Intersecting Street: HWY 97

wp: 23S Rng: 10E Sect-Qtr: 19-NW
wp: Rng: Sect-Qtr:
egal Given: N

ype of Work: LOCATE BURIED FENCE POSTS
ocation of Work: ACTUAL ADDRESS IS HC32 BOX 538 WHICH IS ON S SIDE OF
: STAGECOACH RD APX 3/4 MI E OF HWY 97 MARK ON BOTH SIDES & FULL LENGTH
: OF GATES THAT ARE ON N & S SIDES OF PROP AT THIS ADDRESS

Remarks: CALLER GAVE TOWNSHIP, RANGE, SECTION, AND 1/4 SECTION INFO
: BEST INFO AVAILABLE CH: N

Company :
Contact Name: DENNIS LAVINE Phone: (503)433-9507
Work Being Done For: DENNIS LAVINE
P 05 PGTC 03 USW 06 USW 18

COMPLETED

DATE 6-7-95 TIME 11:50

NAME Bob M.P.# 0%

TOTAL UNITS 1 USW N/C

GOT LOC ON THIS ONE

6-6 Called for directions - No call back

6-7 Called AM - At directions OK - Before 12:00 Noon

WORK AREA ON GAS PIPE LINES

02/16/1994 23:02 [illegible] LOCATING INC PAGE 05

Ticket No: 91204
Send To: USW 18 Seq No: 1 Map Ref: GI[illegible]
Update Of: 86238
Transmit Date: 6/12/95 Time: 10:35 am Op: [illegible]
Original Call Date: 6/12/95 Time: 9:36 am Op: [illegible]
Work to Begin Date: 6/14/95 Time: 9:45 am

State: OR County: KLAMATH [illegible]
Address: Street: STAGECOACH RD
Nearest Intersecting Street: HWY 97

Twp: 23S Rng: 10E Sect-Qtr: 19-NW
Twp: Rng: Sect-Qtr:
Legal Given: Y

Type of Work: LOCATE BURIED FENCE POSTS
Location of Work: ACTUAL ADDRESS IS HC32 BOX 538 WHICH IS ON A SIDE OF
: STAGECOACH RD APX 3/4 MI E OF HWY 97 MARK ON BOTH SIDES & FULL LENGTH
: OF GATES THAT ARE ON N & S SIDES OF PROP AT THIS ADDRESS
: * UPDATED TICKET PER CALLER TO HAVE THE AREA REMARKED DUE TO NO MARKINGS

Remarks: WERE LEFT ON SITE. CALL CALLER IF QUESTSIONS *
: * CALLER GAVE LEGALS * BEST INFO AVAILABLE [illegible]

Company :
Contact Name: DENNIS LAVINE Phone: (503)433-9587
Work Being Done For: DENNIS LAVINE
PGT 05 PGTC 03 USW 06 USW 18

COMPLETED

DATE 6-13-95 TIME _____

NAME Rod MAP # _____

TOTAL UNITS _____

NO USW TO LOC. IN THIS AREA!

NO/CHARGE

071395-4-060 VT003104 Released 7/13/95 AH

TRAVEL EXPENSE DETAIL SHEET

RECEIVED JUL 6 1995 PUC Business Services

1. Name of Employee	2. Agency	3. Period (Month & Year)
JACK DENT	PUBLIC UTILITY COMMISSION	June, 1995
4. Official Station: SALEM	5. Program & Cost Center: UTILITY GAS SAFETY (14001)	6. Regular Scheduled Work Shift: 8 am - 5 pm: Other: X

Unrepresented | X | Management Service | Executive Service | Board/Commission Member | Volunteer

8. Date	9. Time of Departure	10. Time of Arrival	11. Destination	12. Per Diem & Hourly Rate	Breakfast	Lunch	Dinner	13. Lodging	14. TOTAL Meals & Lodging
6/19/95	6:00AM		Gilchrist (Non-commercial lodging)	34.00					34.00
6/20/95		2:00PM	Return to Salem	8.00					8.00
									0.00
									0.00
									0.00
									0.00
									0.00
									0.00
									0.00
									0.00
									0.00
									0.00
1544	5071	50							0.00
									0.00
			15. TOTAL Columns						$ 42.00

(Office Use Only) Cost Distribution			16. Date	17. MISCELLANEOUS EXPENSES Fares, Private Mileage, Room Tax, Telephone, Other Expenses	18. Training Related Y/N	19. Rate Per Mile	20. Private Car Miles	21. Amount
14001	4101	46.00		Phone call home		$.22		4.00
						$.22		
						$.22		
						$.22		
						$.22		
						$.22		
						$.22		
						$.22		
						$.22		
						$.22		
						$.22		
						$.22		
		46.00		22. TOTAL Columns 21				$ 4.00

23. REASON FOR TRAVEL: (Be specific; must be completed for all travel expenses.)	24. TOTAL OF COLUMNS 15 & 22	$ 46.00
Investigation - Excavation Law Violations	25. LESS TRAVEL ADVANCE AMOUNT	$ 0.00
	26. AMOUNT DUE EMPLOYEE	$ 46.00
27. Received Training ____ Conducted Training ____	28. Make Checks Payable to PUC AMOUNT DUE STATE	

I certify that all reimbursements claimed, reflect actual duty required expenses or allowances entitled; that no part thereof has been heretofore claimed or will be claimed from any other source.	29. Signature of Employee: Jack P. Dent	30. Title: Chief, Gas Pipeline Safety — Date
I certify that the above claimed expenses are authorized duty required expenses. Funds for payment of this claim are available in the approved budget for the period covered and have been allotted for expenditure.	31. Approved By: By Mike Hamm for 7/11	32. Title: Assistant Commissioner — Date 7/5