

From: Clanon, Paul
Sent: 10/10/2010 10:34:09 AM
To: Cherry, Brian K (/O=PG&E/OU=CORPORATE/CN=RECIPIENTS/CN=BKC7)
Cc:
Bcc:
Subject: Fwd: Today's SFChron article.

Good quotes from Kirk, making an important point that the reporters don't buy when we tell them.

Begin forwarded message:

From: "Clark, Richard W." <richard.clark@cpuc.ca.gov>
Date: October 10, 2010 10:21:20 AM PDT
To: "Prosper, Terrie D." <terrie.prosper@cpuc.ca.gov>, "Clanon, Paul" <paul.clanon@cpuc.ca.gov>, "Lindh, Frank" <frank.lindh@cpuc.ca.gov>, "Stepanian, Raffy" <raffy.stepanian@cpuc.ca.gov>, <mdr@cpuc.cagov>
Subject: FW: Today's SFChron article.

FYI

*Richard W. Clark
Director
California Public Utilities Commission
Consumer Protection & Safety Division
415-703-2349 (office)
415-987-1184 (mobile)*

From: King, Paul
Sent: Sun 10/10/2010 10:11 AM
To: Clark, Richard W.; Halligan, Julie
Subject: Today's SFChron article.

Regulators seen as going easy on PG&E

Despite violations, watchdog takes hands-off approach

By Jaxon Van Derbeken

CHRONICLE STAFF WRITER

California regulators did not levy a single fine against Pacific Gas and Electric Co. for

violations of natural gas safety laws during a six-year period in which the utility racked up more such infractions than the rest of the state's major pipeline operators combined, a Chronicle review shows.

PG&E, which operates 42 percent of the state's gas pipeline mileage, accounted for almost 60 percent of the probable violations of federal safety laws that regulators found from 2004 through 2009, according to records from the California Public Utilities Commission.

But the commission, which enforces the gas safety laws in California on behalf of the federal government, has taken a largely hands-off attitude toward PG&E — even in the face of apparently serious violations.

The commission, for example, has yet to open an official investigation into a fatal gas explosion in December 2008 in Rancho Cordova (Sacramento County) — an accident that federal investigators blamed in part on PG&E's failure to act on previous safety warnings.

The state agency is forming a panel to conduct an independent review of the PG&E pipeline blast Sept.

9 that killed eight people in San Bruno. The explosion's cause has not been determined, but if PG&E is found at fault, it could be fined hundreds of thousands of dollars.

But the commission's recent history suggests such penalties are unlikely.

Richard Clark, head of consumer protection and safety for the commission, said it's been at least seven years since his agency fined PG&E — or any other utility operating gas pipelines in the state. He said the industry has a history of fixing its problems voluntarily. "We operate under the assumption they are interested in having a safely operated system," Clark said. "If we saw a trend that gave us concerns in terms of what we are finding out there, we would take enforcement action."

Clark added, however, that "we don't see problems that warrant that level of enforcement actions. We don't see it. This is an anomalous event that took place in San Bruno."

Kirk Johnson, vice president of gas transmission and distribution for PG&E, pointed out that the utility itself often tells the commission about safety problems. Such selfpolicing is almost a necessity, because the commission employs just nine inspectors to monitor 100,000 miles of gas pipeline in the state.

'We often self-report'

Johnson said the utility should not be penalized for blowing the whistle on itself.

"If we have an issue, we share it," Johnson said. "We often self-report activities prior to any audit. We believe that being transparent with our regulators is absolutely the right thing to do."

Critics say the state commission needs to be tougher on pipeline operators, given the catastrophes that can result from their mistakes and safety shortcomings. They say that simply suggesting changes, with no threat of penalties if utilities make those changes slowly or not at all, is not enough.

"It shows a co-opted regulatory agency that is not doing its job," said Loretta Lynch, a former commission chairwoman who left the agency when her five-year term expired in 2004. "They are not regulating, they are not enforcing the law, they are giving the companies the benefit of the doubt when that is not the law."

Lynch added, "You need a sufficient deterrent. Slapping somebody on the wrist and letting them go and saying, 'Please don't do that again,' is never a sufficient deterrent."

Small-time operators

Although the state's major utilities, mainly PG&E and Southern California Gas, operate the vast majority of gas pipelines in California, almost all the violations of federal law that state regulators reported from 2001 through 2009 involved small-time operators such as the owners of mobile home parks and propane distributors, commission records show.

They accounted for 22,405 of the 23,717 safety problems cited by commission inspectors in those years.

The Public Utilities Commission can levy fines of as much as \$20,000 per incident, per day of violation. But the only fines it has collected for gas pipeline safety violations since 2003 were an \$850 penalty paid by a mobile home park operator three years ago and a \$750 fine last year against an unidentified target.

From 2004 to 2009, state regulators found 410 safety violations involving PG&E.

Other utilities together accounted for 287. Commission spokeswoman Terrie Prosper said part of the explanation for PG&E's higher number is that the agency counts violations the utility itself reports, something she said other pipeline operators don't do. But that has been the case only since 2008, and PG&E accounted for well over half the violations in years before that.

None of the violations resulted in fines. In lieu of financial penalties, the agency sends letters to pipeline operators asking the companies to comply with federal safety rules.

In other words, Clark said, "we find a violation, we tell them to fix it. Unless it's a really egregious violation."

He did not cite any such violation.

"We have been very successful in getting them to correct the violations without having to take the next step," said Julie Halligan, assistant director of consumer protection and safety at the Public Utilities Commission.

Clark described the commission's strategy as one of "graduated enforcement," which consists of "finding a violation, detecting a violation and developing a cure via a corrective action program."

Carl Weimer, executive director of the Pipeline Safety Trust, a watchdog group in Bellingham, Wash., questioned that approach. He said that levying fines shows that a regulatory agency means business.

"Even small fines, if you publicize them, are better than no fines at all," Weimer said.

"It looks like they (state regulators) have fallen into an approach of, 'Let's hope for the best.'"

Disaster in the valley

Of the safety violations noted over years involving PG&E, none had more disastrous consequences than a string of problems that arose in 2008 in the Central Valley.

State investigators auditing the utility's Fresno division in August 2008 found that PG&E wasn't training or equipping its workers to deal with outdoor gas pipeline leaks and hadn't even defined what constituted a hazardous leak.

PG&E officials stress that the utility itself raised the issue, when it told the Public Utilities Commission that one of its workers had falsified leak inspection reports on gas lines. It said it was voluntarily rechecking several years of inspection work.

Three months after it was cited for the violations, PG&E promised state regulators that, by the end of 2008, it would issue a protocol for how to deal with hazardous leaks. As for the issue of untrained workers, the utility told regulators it was consulting with the workers union on how to proceed.

Sluggish action

Then, on Dec. 24, 2008, a PG&E gas worker who was later found to have been poorly trained and improperly equipped failed to locate a leak on a small distribution line in Rancho Cordova. Three hours after the worker first came to the scene, an explosion killed an elderly man who lived in the neighborhood and injured five other people.

Seven months after the accident, the Public Utilities Commission staff was still not satisfied with PG&E's response.

"We do not believe PG&E's actions have satisfactorily addressed" the requirement that the utility issue a protocol for dealing with leaks, Banu Acimis, a utilities engineer at the commission, told federal investigators in July 2009.

The National Transportation Safety Board, the federal agency investigating the San Bruno disaster, faulted PG&E in May 2010 for not immediately sending properly trained personnel to check out the Rancho Cordova leak.

Five months after the federal report was issued, and almost two years after the explosion itself, the Public Utilities Commission still has not opened an official investigation into the Rancho Cordova blast. Clark said the agency was conducting an informal staff review, with a decision on what to do next expected within 60 days.

He added that he was satisfied with how PG&E had raised the worker training issue beforehand and also with how it had completed the needed reinspections and retraining.

Former commissioner Lynch, however, expressed surprise that the agency has not begun an official investigation. She said that is typically done within 90 days after an incident.

"If there is a problem, an accident, the regulatory agency needs to act right away and issue an order instituting an investigation — it's a common tool," she said. "It's a question of priorities."

The independent panel that the agency formed to look into the San Bruno disaster, she said, carries less weight than a formal investigation would.

The commission can issue orders only after such an investigation, Lynch said.

In that same 2008 audit of PG&E's Fresno division, state inspectors expressed other frustrations with the utility.

They said PG&E had promised two years before to fix safety problems involving potential corrosion damage to gas meters, but still had not done so.

They cited the utility again for the violations, but the commission issued no fines.

Problems elsewhere

Other audits of PG&E's operations in Northern California from the same period showed that commission inspectors had concerns with how the utility was checking for leaks, inspecting valves and monitoring for pressure spikes on its lines — all of which are considered potential contributors to the Sept. 9 explosion in San Bruno.

In October 2008, commission engineer Dennis Lee found that one piece of vital equipment that regulates pressure in a gas line at a station in PG&E's Peninsula division was not working properly.

During a test, pressure spiked so high that the line had to be shut down.

PG&E overhauled the device and says it has worked since.

But Lee hinted at a larger dispute over whether PG&E was keeping proper logs of pressure problems on the system. He mentioned "ongoing discussions" with the utility about the issue.

PG&E refused to answer his concerns in its response to Lee's audit in January 2009, saying it was dealing with them in a separate letter to his boss. The Public Utilities Commission has yet to release that letter.

Federal investigators are examining a spike in pressure on the San Bruno line before the Sept. 9 rupture and whether it played a role in the explosion. They believe the line pressure may have increased because of a power failure at the 46-mile-long pipeline's Milpitas terminal.

Corrosion problems

In an audit of the Hollister/ Milpitas division, regulators notified PG&E in May 2008 that it was not properly tracking external corrosion problems on pipelines and was not making sure that the workers doing repairs were qualified.

Federal and state regulators have said corrosion also is among the possible factors in the San Bruno blast.

In an audit of the utility's Sacramento division in 2008, regulators found that PG&E had failed to meet deadlines to fix leaks or inspect repairs in 23 instances over two years.

PG&E admitted the problem and promised to improve its system to meet deadlines.

The audit also found that PG&E could not prove it was doing annual drills on shutting down gas during emergencies in the Sacramento, Yolo and Solano districts, as it is required to do under federal rules. The utility promised to fix that problem.

'Seems to be some chaos'

The audit also faulted PG&E for not doing the required number of inspections for corrosion in the Sacramento division. The utility said it had done the inspections but couldn't prove it because of poor record keeping.

A pipeline safety expert who reviewed the audits of PG&E operations faulted both the regulators and the utility for not doing enough to ensure safety.

"There seems to be some chaos" at PG&E, said Rick Kuprewicz, who heads a pipeline safety consulting firm, Accufacts, in Washington state.

Kuprewicz said the utility seems unable to coordinate its safety efforts, and that the state commission is not forcing the company to prevent problems.

"The main theme is the watchdog isn't watching," he said. "They are a little too cozy."

E-mail Jaxon Van Derbeken at jvanderbeken@sfchronicle.com.

Paul Chinn / The Chronicle

The California Public Utilities Commission is forming a panel to review last month's San Bruno blast, though penalties are rare.

Randy Pench / Sacramento Bee 2008

Sacramento fire Capt. Adam House inspects a fatal gas explosion in Rancho Cordova (Sacramento County) in December 2008. The commission has yet to open an official investigation.