

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

RESOLUTION ALJ-274. Establishes Citation
Procedures for the Enforcement of Safety Regulations
by the Consumer Protection and Safety Division Staff
for Violations by Gas Corporations of General Order
112-E and Code of Federal Regulations, Title 49, Parts
190,191,192,193 and 199.

Draft Resolution ALJ-274
(Served October 10, 2011)

**REPLY OF THE UTILITY REFORM NETWORK
ON DRAFT RESOLUTION ALJ-274**



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RESOLUTION ALJ-274. Establishes Citation Procedures for the Enforcement of Safety Regulations by the Consumer Protection and Safety Division Staff for Violations by Gas Corporations of General Order 112-E and Code of Federal Regulations, Title 49, Parts 190,191,192,193 and 199.

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Pursuant to Rule 14.5 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, and the schedule established in the notice of availability of draft Resolution ALJ-274, The Utility Reform Network ("TURN") hereby respectfully submits its reply comments.

TURN fully supports the intent and provisions of draft Resolution ALJ-274. It represents an important step forward for the Commission in ensuring that public safety is adequately protected in the provision of gas services to consumers. The draft Resolution is justified and consistent with the findings and recommendations that were developed as a result of the San Bruno explosion of 2010.

The most vociferous opposition, not surprisingly, comes from the industry in the form of comments from Southern California Gas Company and San Diego Gas & Electric Company (“Sempra”) and from Southwest Gas Corporation (“SWG”). Given that these two sets of comments are similar, TURN has focused in the instant reply on the comments of Sempra.

Aside from Sempra’s legal arguments alleging unlawful delegation and due process violations, which will be discussed below, Sempra’s objections reflect a fundamental inconsistency. On the one hand, Sempra argues that the draft Resolution allows Commission staff too much discretion.¹ Yet, in the same breath, Sempra proposes a process of “graduated enforcement” that would delegate a large amount of discretion to Staff. For example, in the Sempra proposal, the Director of CPSD should “consider a number of factors in proposing a penalty amount including the nature, circumstances and gravity of the violation, the degree of Respondent’s culpability, Respondent’s history of prior offenses, and any good faith by Respondent in attempting to achieve compliance.”² Sempra cannot have it both ways – arguing that staff should have more discretion when it serves Sempra’s interests, while contending that vesting any discretion in staff renders the citation program legally infirm.

Further, Sempra’s recommended approach, while cloaked in legal justification, serves the undesirable purpose of delaying the correction of gas pipeline safety violations. That approach may have been acceptable in the past, but clearly is no longer adequate in the wake of the findings of the various agencies that investigated and reported on the San Bruno disaster. Business-as-usual can no longer be the standard and draft Resolution ALJ-274 marks a step in the right direction.

From a legalistic point-of-view, Sempra’s principle arguments appears to be that the Commission does not have the authority to permit the Commission’s Executive Director to delegate the issuance of citations and fines to Commission staff. Sempra also alleges that the draft Resolution violates due process.

¹ See, for example, Joint Comments of Southern California Gas Company and San Diego Gas & Electric Company (“Sempra” at p. 1 (“The Draft Resolution also does not require Staff to follow any process before issuing citations and fines.”).

² *Id.*, pp. 5-6.

With regard to the delegation argument, contrary to Sempra's assertions, the Commission has the clear authority to delegate to staff the power to investigate and issue citations with penalties. In D.09-05-020, cited in the draft Resolution, the Commission, in ruling on an application for rehearing of a similar citation program for railroad safety, reviewed other Commission citation programs. In that case the Commission discussed numerous citation programs and concluded that,

Regardless of subject matter, these citation programs are uniform in the sense that they all seek to achieve compliance with various general orders and statutes; seek to streamline the administrative process for hearing contested matters for ensuring public safety; efficiently utilize limited resources; properly authorizes the staff to perform certain functions; and provide reasonable procedures that protects the rights of each party. However, in all these programs, the Commission has not delegated its authority to make fundamental policy decisions, and the Commission retains the final approval of any contested fine.³

Contrary to Sempra's contentions, the citation program embodied in draft Resolution ALJ-274 is entirely consistent with past Commission practice and decisions. Most significantly, draft ALJ-274, like the Commission's other citation programs, reserves for the Commission the resolution of any matters that the utility may choose to appeal. Thus, the Commission will be the final arbiter of any contested citation.

Similarly, Sempra's due process arguments should be rejected. As discussed above, the draft Resolution proposes a citation program consistent with existing Commission citation programs and none of them have been found to violate due process standards. In fact, in the case of the railroad citation program, the railroads made the same due process claims that Sempra is making here. The Commission dismissed those arguments in Resolution ROSB-002, finding that the right to appeal the citation with an expedited hearing is "adequate as demanded under fundamental principles of due process of law."⁴ That is precisely the case with the draft resolution under review. If the gas companies object to a particular citation, they have the right to appeal and the assigned Administrative Law Judge ("ALJ") must "within 60 days after the

³ D.09-05-020, pp. 10-11.

⁴ Resolution ROSB-002 (11/10/08), p. 7.

appeal is submitted...issue a draft resolution resolving the appeal.”⁵ This process has been found to protect a claimant’s due process rights in prior programs and will have the same effect here.

Finally, TURN supports the recommendation made by the City and County of San Francisco and by the Division of Ratepayer Advocates (“DRA”) that citations and all related materials should be publicly disclosed and prompt notice be given to local governments where violations occur.⁶ Given how critical gas safety violations are to public safety, the Commission processes need to be as transparent as possible so that consumers see that public safety concerns are of paramount importance and are resolved expeditiously. For this reason, the Commission should promptly post any citations and supporting documentation on its website.

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Respectfully submitted,

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⁵ Draft Resolution ALJ-274, Appendix A, III.

⁶ Comments of the City and County of San Francisco, pp. 1-2. Opening Comments of the Division of Ratepayer Advocates, p.3.