

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

Order Instituting Rulemaking on the
Commission's Own Motion to Adopt
New Safety and Reliability Regulations
for Natural Gas Transmission and
Distribution Pipelines and Related
Ratemaking Mechanisms.

Rulemaking 11-02-019
(Filed February 24, 2011)

**CITY OF SAN BRUNO'S OPENING COMMENTS
TO DRAFT RESOLUTION ALJ-274**

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October 21, 2011

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I. INTRODUCTION

Pursuant to Rule 14.5 of the California Public Utilities Commission's ("CPUC") Rules of Practice and Procedure, the City of San Bruno ("City") submits opening comments to draft Resolution ALJ-274 ("draft Resolution"). On October 10, 2011, the CPUC proposed a draft Resolution that delegates authority to the Consumer Protection Safety Division ("CPSD") to issue citations to gas utilities in order to enforce compliance with General Order 112-E and the Code of Federal Regulations. The draft Resolution noted that the impetus for the new citation procedure stems from the CPUC's Independent Review Panel report and the National Transportation Safety Board's ("NTSB") final accident report ("NTSB final accident report") on the September 9, 2010

pipeline explosion which tragically took eight lives, injured 66 people, and destroyed 38 homes in San Bruno.¹

II. DISCUSSION

The City believes that the draft Resolution is appropriate and necessary. The NTSB through its investigation and final accident report highlighted significant concerns relating to CPUC's and the Pipeline and Hazardous Material Safety Administration's ("PHMSA") regulatory oversight of Pacific Gas & Electric Company ("PG&E"). Specifically, the NTSB final accident report found that a contributing cause of the accident was "CPUC's failure to detect the inadequacies of PG&E's pipeline integrity management program."² The NTSB final accident report also explained that the CPUC "failed to uncover the pervasive and long-standing problems with PG&E."³ Therefore, the failure of such "precluded the CPUC from taking any enforcement action against PG&E."⁴ As the draft Resolution acknowledges and to address the failure of regulatory oversight, NTSB's final accident report recommended that the Governor of the State of California expand CPUC's pipeline safety division and give direct authority to the division to assess fines and penalties to "correct noncompliance by state regulated pipeline operators."⁵

¹ Adopted on August 30, 2011.

² See NTSB Final Accident Report NTSB/PAR-11/01 PB2011-916501, page xii.

³ See NTSB Final Accident Report NTSB/PAR-11/01 PB2011-916501, page 122.

⁴ See NTSB Final Accident Report NTSB/PAR-11/01 PB2011-916501, page 122.

⁵ See NTSB Final Accident Report NTSB/PAR-11/01 PB2011-916501, page 130

The City commends the CPUC for implementing NTSB's recommendation and establishing a robust enforcement tool for the CPUC to enforce pipeline safety regulations and hold utilities accountable for violating provisions of General Order 112-E and/or the Code of Federal Regulations through the draft Resolution. It is the City's continued and unwavering position that all parties implement NTSB's recommendations in its final accident report to ensure that this type of catastrophic failure never happens again. The City believes that the draft Resolution provides the CPUC with an additional level of oversight required to protect the safety of our City's residents and that of residents throughout the State of California. The City also supports the provision in the Order under paragraph 3, which provides that any penalty payments are the responsibility of the gas utilities' shareholders, not the ratepayers.

The City, however, has five recommended changes as described below and in the attached subject index, table of authorities, and appendix. First of all, the City suggests that the enforcement of the draft Resolution should be delegated to the CPSD staff, not "such other Staff" as indicated in the draft Resolution. The language "such other Staff" appears to be ambiguous and gives the CPUC wide latitude in delegating this important function. The CPSD is the appropriate entity to enforce the citation procedure based on its responsibilities and resources as outlined in Public Utilities Code § 309.7.

Secondly, the City recommends that the Chief Administrative Officer of the City or City and County in which violation occurred be notified of the citation. As we know from the tragic explosion that occurred in our City, PG&E's public awareness program was not effective. Had PG&E provided information to the Fire Department and City

about the location and dimension of the pipeline *before* the accident, on scene emergency personnel would likely have quickly recognized that the pipeline had ruptured and been in a position to quickly provide information to PG&E that confirmed the location. Similar to knowing where a high pressure gas transmission line is located, the City's knowledge of a violation can alert local agencies to potential emergencies.

Third, the Order in the draft resolution includes language that if CPSD staff discovers "violations that constitute immediate safety hazards . . . [s]taff has existing authority to ensure that violations are promptly corrected." However, the above-cited language from the Order is not included in Appendix A. It seems imperative that Appendix A include express language that a utility is not afforded the seven calendar day cure period if the violation poses an immediate safety hazard. As well, this language should be included in Appendix A since Appendix A specifically outlines the citation procedures and appeal process. Therefore, the City proposes language in Appendix A that expressly mandates a utility to cure a violation within one calendar day if the violation poses an immediate safety hazard and redirect the gas or shut-off the gas at the site of the violation. One calendar day seems more than a reasonable amount of time to cure a violation if a violation poses an immediate safety hazard.

Fourth, absent compelling justification for additional time, the City respectfully requests that utilities not be permitted to request a one-time extension of "no more than seven days" to cure a violation under Section I.C.1.a. This particular extension dilutes the effectiveness of the draft Resolution. As we know now from the tragic explosion that took place on September 9, 2010, any delay in curing the defective welds and pipeline

segments in Line 132 would have ended in the same deadly result. Seven calendar days to cure a violation seems more than an ample amount of time for utilities which employ thousands of employees and for a violation that is serious enough to warrant a citation. Public safety should be of paramount concern. If a utility can establish a compelling justification for more time in rare circumstance, the utility should redirect the gas or shut-off the gas if the violation poses a safety hazard. As well, any violations under General Order 112-E or the Code of Federal Regulations by PG&E should cause the CPUC immediate concern and be immediately cured by PG&E based on the finding that PG&E's "litany of failures" caused the San Bruno explosion.⁶

Lastly, the City requests the CPUC to clarify the language in Section II in Appendix A relating to the appeal process. It appears that the under Section II(2), the filing of the Notice of Appeal does not expressly outline the procedure for curing the violation if a utility files a Notice of Appeal. The City suggests language that expressly clarifies that the utility must cure the violation as outlined in Section C.1. The City is concerned that the language in Section II(2) is subject to varying interpretations.

III. CONCLUSION

Based on the foregoing, the City believes that the draft Resolution is appropriate and necessary considering the important pipeline safety issues stemming from the tragic outcome of the September 9, 2010 explosion and the NTSB's findings in the final accident report. The City respectfully requests that the CPUC implement the City's

⁶ Testimony of NTSB Chairman Deborah Hersman, August 30, 2011 NTSB Board Member Meeting.

suggested revisions to the draft Resolution in order to enhance the draft Resolutions' effectiveness.

Respectfully submitted,

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October 21, 2011

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SUBJECT INDEX OF RECOMMENDED CHANGES:

1. Findings, paragraph #10, page 5 of the draft Resolution
2. Appendix A, Section I.B.5, page 7 of the draft Resolution
3. Appendix A, Section I.C.1, page 7 of the draft Resolution
4. Appendix A, Sections I.C.1.a, page 7 of the draft Resolution
5. Appendix A, Section II.A.2, page 8 of the draft Resolution

TABLE OF AUTHORITIES:

Findings, paragraph #10, page 5 of the draft Resolution	Public Utilities Code § 309.7(a)-(d)
Appendix A, Section I.B.5, page 7 of the draft Resolution	Public Utilities Code § 451, 701, and 702
Appendix A, Section I.C.1, page 7 of the draft Resolution	Public Utilities Code § 451, 701, and 702
Appendix A, Sections I.C.1.a, page 7 of the draft Resolution	Public Utilities Code § 451, 701, and 702
Appendix A, Section II.A.2, page 8 of the draft Resolution	Appendix A, Section I.C.1; Public Utilities Code § 451, 701, and 702

APPENDIX SETTING PROPOSED FINDINGS AND ORDERING PARAGRAPHS:

1. Findings, paragraph #10, page 5 of the draft Resolution:

“The Commission needs the flexibility for its Executive Director to designate CPSD Staff who may be most appropriate to carry out the various functions involved in the citation program described in this Resolution.”

2. Appendix A, Section I.B.5, page 7 of the draft Resolution:

“Service of the citation shall be served to the Chief Administrative Officer of the City or City and County where the citation occurred.”

3. Appendix A, Section I.C.1, page 7 of the draft Resolution:

“Within seven calendar days after the date of the service of the citation, Respondent shall cure the violation unless Staff discovers that the violation constitutes an immediate safety hazard, pursuant to Public Utilities Code §702. In rare circumstances, respondent may request a one-time extension of no more than seven calendar days to cure the violation provided that: 1) there is a compelling justification for the extension; 2) the request for extension is made within three calendar days of the date of service of the citation; 3) the gas at the site of the violation is either redirected or shut-down within one calendar day of the date of service of the citation; and 4) the request for the citation is supported by an affidavit from the respondent’s Chief Executive Officer stating that in the respondent’s best judgment, the extension to cure the violation will not affect the safety or integrity of the operating system or endanger public safety. In addition, Respondent shall remit payment of the full amount of the fine, as set forth in Section I.D.1, with notice to Staff, or submit and serve a Notice of Appeal, as set forth in Section II, below.

If the violation constitutes an immediate safety hazard, Respondent must cure the violation within one calendar day and redirect the gas or shut-off the gas at the site of the violation.”

4. Appendix A, Sections I.C.1.a, page 7 of the draft Resolution:

See above.

5. Appendix A, Section II.A.2, page 8 of the draft Resolution:

“Submitting a Notice of Appeal does not excuse the Respondent from curing the violation described in the citation. Respondent/Appellant must cure the violation under Section I.C.1, above. The Respondent/Appellant must deposit the penalty amount with the Commission’s Fiscal Office, to be held in escrow until the appeal is resolved. The appeal must explain with specificity each and every ground for the appeal.”

CERTIFICATE OF SERVICE BY ELECTRONIC MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of Alameda; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is 555 12th Street, #1500, Oakland, California, 94607

On October 21, 2011 I served a true copy of:

**CITY OF SAN BRUNO'S OPENING COMMENTS
TO DRAFT RESOLUTION ALJ-274**

BY E-MAIL OR ELECTRONIC TRANSMISSION: serving the enclosed via e-mail transmission to each of the parties listed on the official service list (attached) for **R11-02-019** with an email address.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed in Oakland, California on October 21, 2011.

/s/ Debra Inness
Debra Inness

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

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