

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)

**OPENING COMMENTS OF THE DIVISION OF RATEPAYER
ADVOCATES ON DRAFT RESOLUTION ALJ-274**

I. INTRODUCTION

In accordance with Rule 14.5 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission) and with the schedule for comments set in the Chief Administrative Law Judge's (ALJ) notice of availability of draft Resolution ALJ-274,¹ the Division of Ratepayer Advocates (DRA) hereby submits its opening comments regarding draft Resolution ALJ-274, issued on October 10, 2011. DRA appreciates the opportunity to comment on the draft Resolution and generally supports the directives and policy established therein. DRA proposes some additional enhancements to the Resolution, discussed below.

II. COMMENTS

A. New Legislation

The draft Resolution "delegates specified authority to the Consumer Protection and Safety Division Staff, or such other Staff as may be designated by the Executive

¹The notice provides: "Opening comments shall be served no later than October 21, 2011, and reply comments shall be served no later than October 26, 2011."

Director, to issue citations to all gas corporations to enforce compliance with General Order (“G.O.”) 112-E.”² The draft Resolution further states: “The citation program described herein delegates to Staff the authority to draft and issue citations for violations of G.O. 112-E and the Code of Federal Regulations, Title 49, Parts 190, 191, 192, 193, and 199. We delegate to Staff the authority to require immediate cure of the violations and to levy fines for violations in the amounts prescribed for penalties by the Public Utilities Code § 2107.”³ On October 7, 2011, Governor Brown signed into law several natural gas pipeline safety bills: Assembly Bill (AB) 56, Senate Bill (SB) 44, SB 216, SB 705 and SB 879.⁴ DRA recommends that this new gas pipeline safety legislation be included by reference in Resolution ALJ-274.

Finding 2 in the draft Resolution provides: “Pub. Util. Code § 702 mandates every public utility to obey and promptly comply with every Commission order, decision, direction, or rule.”⁵ The new legislation adds new or amended provisions to the Public Utilities Code relevant to gas pipeline safety that require the Commission to implement them. Given that the draft Resolution cites the requirement in Section 702 regarding utility compliance with Commission orders, DRA recommends that the Resolution include in Ordering Paragraph 1 the newly adopted legislation. This would enable the Commission to delegate authority to the Consumer Protection and Safety Division (CPSD) or other Commission staff to cite and fine natural gas corporations for failures to comply not only with Commission General Order 112-E and Title 49, Parts 190-193 and

² Draft Resolution (“Res.”) ALJ-274, p. 1.

³ Draft Res. ALJ-274, p. 1.

⁴ Assembly Bill No. 56, Chapter 519, An act to add Sections 956.5, 957, 958, 958.5, 959 and 969 to the Public Utilities Code, relating to gas corporations; Senate Bill No. 44, Chapter 520, An act to add Chapter 4.5 (commencing with Section 950) to Part 1 of Division 1 of the Public Utilities Code, relating to public utilities; Senate Bill No. 216, Chapter 521, An act to add Section 957 to the Public Utilities Code, relating to public utilities; Senate Bill No. 705, Chapter 522, An act to add Sections 961 and 963 to the Public Utilities Code, relating to public utilities; Senate Bill No. 879, Chapter 523, An act to amend Section 2107 of and to add Section 969 to, the Public Utilities Code, relating to gas corporations.

⁵ Draft Res. ALJ-274, p. 8.

199, of the Code of Federal Regulations, but also with the new additions and amendments to the Public Utilities Act that pertain to natural gas pipeline safety.

B. Public Notice of Citation and Appeal

Appendix A of the draft Resolution sets forth the citation procedures and appeal process. Appendix A describes a citation's contents and service, response thereto, payment of fines and default. In addition, Appendix A sets forth an appeal process: a Notice of Appeal of Citation is submitted to the Director of CPSD, with copies to the Commission's Executive Director, Chief ALJ and General Counsel, and to the Director of DRA.⁶ The assigned ALJ sets the matter for hearing such that a draft resolution resolving the appeal is issued within 60 days after the appeal is submitted.⁷ Appendix A also provides: "Parties may file comments on the draft resolution pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure."⁸ It is unclear, however, whether and how a utility's customers and other affected members of the public can participate in the appeal process, or obtain information about the citations being issued by CPSD Staff. DRA recommends that the Resolution include a procedure by which the public can obtain such information or receive notice that a citation against the respondent utility exists. The League of California Cities supports the concept of local jurisdictions' receiving notice of the violations for which citations have been issued pursuant to this Resolution.⁹

C. Timing of Corrective Action

The draft Resolution states: "To the extent that Staff discovers violations that constitute immediate safety hazards, pursuant to §702, Staff has existing authority to

⁶ See draft Res. ALJ-274, Appendix A, pp. 3-4.

⁷ See draft Res. ALJ-274, Appendix A, pp. 4-5.

⁸ Draft Res. ALJ-274, Appendix A, p. 5.

⁹ On October 21, 2011, Joseph P. Como, Acting Director of DRA, conferred by telephone with Patrick Whitnell, General Counsel of the League of California Cities.

*ensure that those violations are promptly corrected.”*¹⁰ This language seems vague, particularly relative to the very specific provisions in the draft Resolution regarding violations and enforcement. Because immediate safety hazards likely carry the greatest immediate danger to the public, DRA recommends that the Resolution provide a more specific timeline for addressing immediate safety hazards.

D. Penalty Payments and Other Related Expenses

The draft Resolution provides that penalty payments are the responsibility of shareholders of the gas corporation and shall not be charged to ratepayers.¹¹ DRA strongly supports this equitable policy. DRA recommends that the policy also be applied to the expenses that the utility incurs in conjunction with other internal overhead and administrative costs associated with adjudication of the citation and processing payment of penalties.

III. CONCLUSION

DRA recommends that the Commission adopt Resolution ALJ-274 with the changes proposed by DRA.

Respectfully submitted,

/s/ MARION PELEO

MARION PELEO

Attorney for the Division of Ratepayer
Advocates

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-2130
Fax: (415) 703-2262
E-mail: map@cpuc.ca.gov

October 21, 2011

¹⁰ Draft Res. ALJ-274, p. 7, emphasis added.

¹¹ See draft Res. ALJ-274 at 9, Ordering Paragraph 3.

DRA'S PROPOSED CHANGES TO DRAFT RESOLUTION ALJ-274

Finding 15:

To the extent that Staff discovers violations that constitute immediate safety hazards, pursuant to § 702, Staff has existing authority to ensure that violations are ~~promptly~~ corrected within days.

Ordering Paragraph 1:

The Commission delegates authority to the Consumer Protection and Safety Division Staff, or such other Staff as may be designated by the Executive Director, to issue citations to and to levy fines on gas corporations to enforce compliance with General Order 112-E, ~~and~~ the Code of Federal Regulations, Title 49, Parts 190, 191, 192, 193, and 199, and any amendments or additions to the Public Utilities Code pursuant to the passage of Assembly Bill 56 and Senate Bills 44, 216, 705 and 879, under the procedures contained in Appendix A.

Appendix A, Citation Procedures and Appeal Process:

I. Citation Procedures

C. Notice of Citation

1. On the same date that Staff serves the citation to Respondent, a copy of the citation shall be posted on the Commission's website.
2. On the same date that Staff serves the citation to Respondent, a copy of the citation shall be served on members of the League of California Cities and other local jurisdictions.

II. Appeal.

M. All non-confidential information related to the appeal shall be posted on the Commission's website.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of “**OPENING COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON DRAFT RESOLUTION ALJ-274**” in **A.10-12-005, A.10-12-006, R.11-02-019 and A.09-09-013**, by using the following service:

E-Mail Service: sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

U.S. Mail Service: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on **October 17, 2011** at San Francisco, California.

/s/ NELLY SARMIENTO

Nelly Sarmiento

SERVICE LISTS
A1012005, A1012006,
R1102019, A0909013

jleslie@luce.com
rdc_law@swbell.net
RVanderleeden@SempraUtilities.com
jcorralejo@lbcgla.org
DGilmore@SempraUtilities.com
npedersen@hanmor.com
douglass@energyattorney.com
francis.mcnulty@sce.com
dj0conklin@earthlink.net
KMelville@SempraUtilities.com
JPacheco@SempraUtilities.com
mshames@ucan.org
dbyers@landuselaw.com
Faith.Mabuhayalliance@gmail.com
rkoss@adamsbroadwell.com
jab@cpuc.ca.gov
nms@cpuc.ca.gov
norman.furuta@navy.mil
nsuetake@turn.org
sls@a-klaw.com
swf5@pge.com
epoole@adplaw.com
lencanty@BlackEconomicCouncil.org
stephaniec@greenlining.org
rwillford@dralegal.org
jweil@aglet.org
billjulian@sbcglobal.net
kmills@cfbf.com
cadowney@cadowneylaw.com
j4lr@pge.com
jessica@ongrid.net
JXYR@pge.com
jwmitchell@mbartek.com
mike@ucan.org
naaz.khumawala@baml.com
ppatterson2@nyc.rr.com
regrelcpuccases@pge.com
dwtcpucdockets@dwt.com
mrw@mrwassoc.com
alison@bartlewells.com
noah.hauser@barclayscapital.com
jheckler@levincap.com
khojasteh.davoodi@navy.mil
makda.solomon@navy.mil
ralphdennis@insightbb.com
rsmithla@aol.com
daniel.j.brink@exxonmobil.com
kirby.bosley@jpmorgan.com
paul.gendron@JPMorgan.com

Paul.Tramonte@jpmorgan.com
randy.e.parker@exxonmobil.com
robert.pettinato@ladwp.com
RPrince@SempraUtilities.com
JPong@SempraUtilities.com
ASteinberg@SempraUtilities.com
rothenergy@sbcglobal.net
sendo@cityofpasadena.net
eklinkner@cityofpasadena.net
VPuffer@ci.glendale.ca.us
slins@ci.glendale.ca.us
bjeider@ci.burbank.ca.us
rmorillo@ci.burbank.ca.us
case.admin@sce.com
learl@SempraUtilities.com
liddell@EnergyAttorney.com
onell.soto@uniontrib.com
marcie.milner@shell.com
CManzuk@SempraUtilities.com
pgirard@semprautilities.com
CentralFiles@SempraUtilities.com
carl.wood@verizon.net
sjkeene@iid.com
cguss@anaheim.net
ssciortino@anaheim.net
ek@a-klaw.com
sue.mara@RTOadvisors.com
sswaroop@naacoalition.org
mdjoseph@adamsbroadwell.com
bfinkelstein@turn.org
tlong@turn.org
Fassil.t.Fenikile@att.com
filings@a-klaw.com
aaron.joseph.lewis@gmail.com
cem@newsdata.com
RobertGnaizda@gmail.com
ssm3@pge.com
ceyap@earthlink.net
dmarcus2@sbcglobal.net
service@cforat.org
rschmidt@bartlewells.com
garrick@jbsenergy.com
john@jbsenergy.com
kdw@woodruff-expert-services.com
rl@eslawfirm.com
californiadockets@pacificorp.com
michael.colvin@cpuc.ca.gov
beg@cpuc.ca.gov
dlf@cpuc.ca.gov

SERVICE LISTS
A1012005, A1012006,
R1102019, A0909013

dfb@cpuc.ca.gov
ec2@cpuc.ca.gov
jrw@cpuc.ca.gov
jsw@cpuc.ca.gov
zaf@cpuc.ca.gov
ram@cpuc.ca.gov
rmp@cpuc.ca.gov
srt@cpuc.ca.gov
sgm@cpuc.ca.gov
sjg@cpuc.ca.gov
txb@cpuc.ca.gov
StephanieC@greenlining.org
SLG0@pge.com
carlwood@uwua.net
jboehme@nicor.com
justin.brown@swgas.com
STomkins@semprautilities.com
npedersen@hanmor.com
bob.gorham@fire.ca.gov
douglas.porter@sce.com
Faith.Mabuhayalliance@gmail.com
cjackson@sanbruno.ca.gov
rkoss@adamsbroadwell.com
gxh@cpuc.ca.gov
map@cpuc.ca.gov
austin.yang@sfgov.org
marcel@turn.org
cpj2@pge.com
sgs@dcbsf.com
bkc7@pge.com
smeyers@meyersnave.com
lencanty@BlackEconomicCouncil.org
rwilliford@dralegal.org
michaelboyd@sbcglobal.net
bmcc@mccarthylaw.com
Mike@alpinenaturalgas.com
dcarroll@downeybrand.com
westgas@aol.com
wwester@smud.org
ajahns@jahnsatlaw.com
Dave.Weber@nwnatural.com
jason.dubchak@niskags.com
a2mx@pge.com
AGL9@pge.com
artfrias@uwua.net
cassandra.sweet@dowjones.com
christine.tam@cityofpaloalto.org
CMM6@pge.com
cleo.zagrean@macquarie.com

enriqueg@greenlining.org
grant.kolling@cityofpaloalto.org
gclark@lodistorage.com
jheckler@levincap.com
j2ti@pge.com
jleslie@luce.com
karla.Dailey@CityofPaloAlto.org
lauren.duke@db.com
unionnancy@gmail.com
ray.welch@navigantconsulting.com
russell@lodistorage.com
tcollier@buckeye.com
timothyrea@hotmail.com
ttutt@smud.org
mrw@mrwassoc.com
regrelcpuccases@pge.com
scott.senchak@decade-llc.com
andrewgay@arcassetltd.com
wschmidt@buckeye.com
malp@pge.com
daniel.j.brink@exxonmobil.com
kmmj@pge.com
christy.berger@swgas.com
jim.mathews@swgas.com
priscila.castillo@ladwp.com
robert.pettinato@ladwp.com
GHealy@semprautilities.com
JLSalazar@SempraUtilities.com
Naftab@semprautilities.com
RCavalleri@SempraUtilities.com
DNg@semprautilities.com
RPrince@SempraUtilities.com
jcorralejo@lbcgla.org
ellen.isaacs@asm.ca.gov
dtorres@sogate.org
pat.jackson@teaminc.com
klatt@energyattorney.com
michael.alexander@sce.com
douglass@energyattorney.com
ssc.chrissy@gmail.com
carneycomic@sbcglobal.net
case.admin@sce.com
gloria.ing@sce.com
janet.combs@sce.com
Robert.F.Lemoine@sce.com
marcie.milner@shell.com
CentralFiles@SempraUtilities.com
jhunter@riversideca.gov
waltowaiji@tustinca.org

SERVICE LISTS
A1012005, A1012006,
R1102019, A0909013

laura@messimer.com
sswaroop@naacoalition.org
kfabry@sanbruno.ca.gov
gcaldwell@sanbruno.ca.gov
mdjoseph@adamsbroadwell.com
SanBrunoGasSafety@cpuc.ca.gov
joc@cpuc.ca.gov
theresa.mueller@sfgov.org
bfinkelstein@turn.org
tlong@turn.org
C4MU@pge.com
d1ct@pge.com
jldavis@dcbsf.com
j1pc@pge.com
jmalkin@orrick.com
filings@a-klaw.com
kck5@pge.com
M1D1@pge.com
NXKI@pge.com
sls@a-klaw.com
tnhc@pge.com
wvm3@pge.com
bcragg@goodinmacbride.com
jarmstrong@goodinmacbride.com
mmattes@nossaman.com
aaron.joseph.lewis@gmail.com
cem@newsdata.com
RobertGnaizda@gmail.com
Susan.Durbin@doj.ca.gov
Service@spurr.org
sean.beatty@genon.com
bstrottman@meyersnave.com
dmarcus2@sbcglobal.net
service@cforat.org
tomb@crossborderenergy.com
sberlin@mccarthy.com
billjulian@sbcglobal.net
bburns@caiso.com
gvanpelt@caiso.com
blake@consumercal.org
kelder@aspenerg.com
atrowbridge@daycartermurphy.com
wmc@a-klaw.com
kuprewicz@comcast.net
MD7@cpuc.ca.gov
aad@cpuc.ca.gov
ang@cpuc.ca.gov
djg@cpuc.ca.gov
dbp@cpuc.ca.gov

emm@cpuc.ca.gov
cpe@cpuc.ca.gov
hym@cpuc.ca.gov
jzr@cpuc.ca.gov
alf@cpuc.ca.gov
jmh@cpuc.ca.gov
kcl@cpuc.ca.gov
mpo@cpuc.ca.gov
mab@cpuc.ca.gov
mwt@cpuc.ca.gov
pap@cpuc.ca.gov
psp@cpuc.ca.gov
pzs@cpuc.ca.gov
ram@cpuc.ca.gov
rmp@cpuc.ca.gov
srt@cpuc.ca.gov
skh@cpuc.ca.gov
tcr@cpuc.ca.gov
janill.richards@doj.ca.gov
glesh@energy.state.ca.us
rkennedy@energy.state.ca.us
sbender@energy.state.ca.us
jleslie@luce.com
marcel@turn.org
keith.mccrea@sutherland.com
kziober@sparkenergy.com
francesca.ciliberti@elpaso.com
trish.french@kernrivergas.com
JPong@SempraUtilities.com
npedersen@hanmor.com
map@cpuc.ca.gov
kck5@pge.com
sls@a-klaw.com
bcragg@goodinmacbride.com
mday@goodinmacbride.com
dhuard@manatt.com
jkarp@winston.com
Grant.Kolling@cityofpaloalto.org
ken@in-houseenergy.com
service@spurr.org
Sean.Beatty@mirant.com
JerryL@abag.ca.gov
tomb@crossborderenergy.com
bmcc@mccarthy.com
dcarroll@downeybrand.com
glw@eslawfirm.com
atrowbridge@daycartermurphy.com
pinney@capp.ca
cassandra.sweet@dowjones.com

SERVICE LISTS
A1012005, A1012006,
R1102019, A0909013

cleo.zagrean@macquarie.com
klatt@energyattorney.com
karla.Dailey@CityofPaloAlto.org
michelle.d.grant@dynegy.com
ray.welch@navigantconsulting.com
rothenergy@sbcglobal.net
mrw@mrwassoc.com
julien.dumoulin-smith@ubs.com
Yim@ZimmerLucas.com
jheckler@levincap.com
doug.vanbrunt@credit-suisse.com
jdibble@calpine.com
eva_neufeld@transcanada.com
bday@sparkenergy.com
william.tomlinson@elpaso.com
peteresposito@earthlink.net
kmmj@pge.com
JLSalazar@SempraUtilities.com
jcorralejo@lbcgla.org
michael.alexander@sce.com
marcie.milner@shell.com
ek@a-klaw.com
Faith.Mabuhayalliance@gmail.com
jsperry@ifpte20.org
CDO1@pge.com
RegRelCPUCCases@pge.com
mdm8@pge.com
JKD5@pge.com
filings@a-klaw.com
NRN2@pge.com
RAG5@pge.com
jarmstrong@gmsr.com
tkaushik@manatt.com
tsolomon@winston.com
edwardoneill@dwt.com
lcottle@winston.com
cem@newsdata.com
MDP5@pge.com
RobertGnaizda@gmail.com
RegRelCPUCCases@pge.com
KJBh@pge.com
nathan.solov@asm.ca.gov
Grant.kolling@CityofPaloAlto.org
beth@beth411.com
kowalewskia@calpine.com
lencanty@BlackEconomicCouncil.org
ceyap@earthlink.net
bill@jbsenergy.com
bsb@eslawfirm.com

jd@eslawfirm.com
smoorma@smud.org
RNevis@daycartermurphy.com
wmc@a-klaw.com
Julie.Morris@iberdrolaren.com
jason.dubchak@niskags.com
DBP@cpuc.ca.gov
cpe@cpuc.ca.gov
jsw@cpuc.ca.gov
kcl@cpuc.ca.gov
pzs@cpuc.ca.gov
ram@cpuc.ca.gov
tmr@cpuc.ca.gov
nate.solo@asm.ca.gov