

BEFORE THE

PUBLIC UTILITIES COMMISSION OF THE STATE OF CA

RESOLUTION ALJ-274.

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

REPLY COMMENTS of the UTILITY WORKERS UNION OF AMERICA ON PROPOSED RESOLUTION ALJ DELEGATING CERTAIN ENFORCEMENT AUTHORITY to the CONSUMER PROTECTION AND SAFETY DIVISION (CPSD)

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**REPLY COMMENTS OF UWUA
ON PROPOSED RESOLUTION CALJ
DELEGATING CERTAIN ENFORCEMENT AUTHORITY to the
CONSUMER PROTECTION AND SAFETY DIVISION (CPSD)**

The National Transportation Safety Board had a devastating observation in its most recent Report on the San Bruno Pipeline Rupture

Because of the lapses of oversight seen in this incident concerned and has strong doubts about the quality and enforcement at both the Federal and state levels. Although PHMSA has authority to enforce pipeline safety regulations, organizational failures of PG&E seen in this accident suggest operators are able to ignore certain standards without meaningful enforcement action against

Therefore, the NTSB concludes that the ineffective enforcement posture of the CPUC permitted PG&E's organizational failure over many years. The NTSB recommends that the Governor of California expeditiously evaluate the audit ability of the pipeline safety division within the CPUC to effectively enforce state regulations, and, based on the results of this evaluation, the pipeline safety division within the CPUC the direct authority, including an assessment of fines and penalties, to correct the non-compliance of regulated pipeline operators.

Accident Report on the Natural Gas Transmission Pipeline Rupture and Fire in Bruno, California (September 9, 2010, 11706, NTSB/PAR-10-11561 (August 30, 2011)), at page 123

The Utility Workers Union (UWUA) supports the objectives of proposed Resolution 277. Given the observation of procedural complexities that create practical barriers to securing compliance by gas utilities with the Commission's and gas safety records to provide meaningful incentives for compliance objectives advocated by the Independent Review Panel (IRP) in its report on pages 10-11 as well as the NTSB.

In these Reply Comments UWUA seeks to assure that the pursuit of these objectives is fully consistent with the new response to the San Bruno explosion, particularly Chapter 522 705 (c)(1). Improving on the Commission's exercise of its fully consistent with the safety plan process enacted by C how to deploy those powers in a way that maximizes the elimination of hazards, including identification by employees and operator and thus maximizes incident prevention for the utility route section 961(d). Although not all hazards are regulations, the basis of punitive in response to asserted violat could create obstacles to the systematic identification and elimination of hazards before they cause injury and damage.

CPSD and its predecessors have for some time carried powers of investigation concerning operating and maintenance practices, condition of facilities service adequacy, reporting including the identification of violations from General Orders the recommendation of Final Investigation to Maintenance Practices of CPSD 04-06-14 Sec. http://www.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/36914.htm

The apparent innovation proposed ALJ 2746 focuses on the enforcement process following identification of violations during the course of with the objective of expediting compliance. It provides two primary delegations to CPSD staff to (1) require remediation of identified violations within seven (7) business days of (with citation option to extend the correction period to a total of seven and (7) days, and (2) impose a maximum fine (after January 1, 2012) of fifty thousand dollars (\$50,000.00) per day. In 2011, it explicitly recognized in its rules.

¹ The Commission has rejected the distinction among degrees with GO standards, labeling them as violations. D.04

2011, § Ch.) for each violation, § 190. The effect of § measures is to raise the standards and metrics and to create real incentives when violations are uncovered. §

Chapter 522 creates the requirement of a safety plan other things, for identification of safety hazards. UWU has advocated (in both the Southern California Gas General A.10-12 and the Gas Safety Rulemaking) creation of a safety culture that promotes transparent communication among utility employees and their representatives. Approval of § should not deter this open communication. §

The Commission's practice of graduated enforcement proposals by the IRP and for NTSB strengthening generally consistent with the safety plan now state (Chapter 522) he safety culture proposal. § The law with a program of prevention that is outside and formal may be broader in its approach to elimination of based formal enforcement approaches. § where the existence of formal standards is insufficient by itself to correct a violation of the formal standard. § The "fix it" element of § that requires immediate correction of a violation of the formal standard is the first enforcement. § This "fix it" or "address" is appropriate to the operator has proved unwilling to address an identified hazard. § The disagreement between the operator (utility) and enforcer (commi the existence of the violation is resolved by Chapter 522, absolute priority for § Safety Util. Code section 963(b) added §

The "fix it" requirement does not create a barrier to open and transparent communication about safety hazards includin

with GO 112 (Discussion of the hazard including that remedial action can take place without coercion so long as all parties resolving the problem eliminate the hazard with the Commission staff the final say as the arbiter. The Commission may also limit the amount of the fine for which the utility may number of days during which would accumulate. The case of geographically extensive hazards, a remediation plan should be an element of the investigation it represents in a public utility.

However, the fine provision proposed in Resolution may create a barrier to the open communication essential both for the Chapter 5 safety culture. For this policy reason the Commission should show them. The drastic nature of the fine provision, particularly discretion at the initial investigative phase, and the legal under current law and statute inject an element of obstructive communication and undermine cooperation necessary to achieve an approach to hazard identification and elimination.

The Commission should consider modifying the fine requirement providing some discretion, and providing standards guiding exercise of that discretion in imposition of fines. Fines should be reduced in cases of violations that are identified and corrected and where no injury or damage has resulted from the violation would provide additional to the open communication between Commission staff, utility employees management needed to implement the safety culture and safe-

Gas utilities including Southwest Southern California Gas have questioned the lawfulness of the proposal, focusing particularly on the provision. These legal arguments are not the well-founded Resolution has provided the state law underpinning for its proposals, including preliminary impositions for fines. The Resolution provides for an

expedited appeal process that will result in a decision on the
Deposit of the fine at the Commission prevents dilatory
remediation; it is not a taking of property. The Commission
remains the ultimate finder of the facts concerning the
Edison Maintenance Practices, *supra*.

The existing regulatory framework for collecting fines through a
proceeding, which provides a fair hearing, does not do so because it does
not need to remain in place. It provides sufficient opportunity to be heard
and to adjust or compromise. It can move the process forward to add
the legal and due process arguments raised by Southwest California
Gas. C.f., Pub. Util. Code sections 2104.5 (collect
fines), 2104.5 (procedure and venue) to collect 2104.5 (compromise of
fines assessed prior to suit for gas corporations)

For the foregoing reasons, UWUA respectfully supports the
Resolution as modified to provide discretion in the ex
fine where violations have been committed and no damage
has resulted from the violation.

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