

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Draft Resolution Establishing 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.

Resolution ALJ-274
(Filed October 10, 2011)

**COMMENTS OF THE CITY AND COUNTY OF SAN FRANCISCO
ON DRAFT RESOLUTION ALJ-274**

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Subject Index of Recommended Changes

1. The Commission should increase the transparency of the citation process by publicly disclosing the citations and all related correspondence, and by giving prompt notice to the local governments where the violations occur.
2. The Commission should clarify how and when a violation will be determined to be cured, including requiring an affidavit from the respondent's Chief Executive Officer affirming that the alleged violation has been corrected.

Draft Resolution Establishing 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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I. INTRODUCTION

Pursuant to the Commission’s Rule of Practice and Procedure 14.5, the City and County of San Francisco (“CCSF”) submits these comments on Draft Resolution ALJ-274, issued by Administrative Law Judge Minkin on October 11, 2011 (the “Draft Resolution”). The Draft Resolution proposes to delegate specified authority to the Consumer Protection and Safety Division (“CPSD”) staff, or such other staff as may be designated by the Executive Director, to issue citations to all gas corporations to enforce compliance with General Order (“GO”) 112-E, and the provisions of the Code of Federal Regulations incorporated by GO 112-E.

CCSF supports many aspects of the Draft Resolution, and agrees that it is reasonable to provide staff with an additional enforcement procedure to help ensure that natural gas utilities adhere to their statutory and service obligations. Both the Independent Review Panel and the National Transportation Safety Board made similar recommendations urging the Commission to revise its graduated enforcement framework to increase the efficacy of its gas safety oversight.

CCSF proposes two modifications to the Draft Resolution. These changes are intended to address a lack of public scrutiny in the natural gas pipeline safety field, and a lack of accountability on the part of utilities and regulators to address violations even when they are identified. First, the Commission should increase the transparency of the citation process by

publicly disclosing the citations and all related correspondence, and by giving prompt notice to the local governments where the violations occur. Second, the Commission should clarify how and when a violation will be determined to be cured.

II. DISCUSSION

A. The Commission Should Require Prompt Public Disclosure of Citations and Related Communications.

The Draft Resolution should be modified to include prompt public disclosure of the citations issued and all communications related to those citations once they are issued. Requiring such disclosure will ensure accountability and help to rebuild public trust in the State's regulatory framework.

The Draft Resolution does not require disclosure of the initial citation, and in fact, provides that written communications in response to citations will not be filed with the Commission's Docket Office.¹ Even if the citation and responsive communications are not treated as formal pleadings, the Commission should make clear that the initial citation and all related communications will be made publicly available on the Commission's website. At a minimum, the Commission should publicly post the citations and all related correspondence, as well as track all relevant information such as: name of utility cited; issuance date of the citation; type of violation found; proposed fine; any response from the utility, including the date the utility pays the citation, remedies the violation, asks for an extension of time, or files an appeal; and any subsequent correspondence.

In addition to the recommendation that the Commission revise its graduated enforcement program, the Independent Review Panel also recommended that the Commission raise the profile of its safety enforcement efforts. To accomplish this goal, the Independent Review Panel

¹ Draft Resolution ALJ-274, Appendix A Section I.C.2.a. It appears that the issue of disclosure of the initial citation and response is separate from disclosures regarding any appeal. The Draft Resolution provides that any appeal will be in the form of a hearing and on the record. Thus, CCSF assumes that these appeals will be subject to public review. See Draft Resolution ALJ-274, Appendix A, Section II.

specifically recommended posting the results of the Commission's audits on its website. The Commission should embrace this recommendation and apply it to the proposed citation program. Because the basic findings contained in the proposed citations appear to be very similar to findings contained in audits, it is reasonable for the Commission to make the citations and related communications available for public review. By doing so, the Commission reinforces the importance of CPSD's safety efforts and provides a means to evaluate trending histories of violations, which may be useful for future audits or enforcement efforts.

This type of disclosure will have the additional benefit of creating increased accountability on the part of the Commission and California natural gas operators. By publicly tracking the Commission's enforcement efforts, the Commission demonstrates to the public in a transparent manner that it is working to meet its mandate to oversee the safety of gas operations. Further, increased public scrutiny will amplify the usefulness of the proposed citations. Operators may be more inclined to comply with regulations from the outset or correct violations found in the citations if they know that the Commission will make the violations public.

Finally, the public records policies of the State require such public disclosure.² The public has a right to know about the existence of potentially dangerous conditions and any safety measures that are being taken to remedy the cited violations. This includes providing notice to local governments of alleged violations. Local governments are stakeholders who should be consulted and kept apprised of the status of the citations and plans to remedy the violations.

² Cal. Constitution Art. I, § 3(b)(1)-(2), and Cal. Govt Code § 6250 *et seq.* CCSF does not oppose the use of redactions that are strictly necessary to avoid compromising public security by divulging critical infrastructure information or confidential personnel information. For this reason, the possible public disclosure of this type of information should not be used as a basis for withholding entire documents.

B. The Commission Should Clarify the Process of Curing Violations.

The Commission should modify the Draft Resolution to clearly define the process for determining that a violation has been cured. The Draft Resolution only sets time periods in which the violation must be cured, for example:

So long as the violation does not pose an immediate safety hazard, the citation will provide a time period not to exceed seven calendar days from the date of issuance for the utility to cure the violation and either pay the penalty or file a Notice of Appeal.³

Section I.C.1. of the Draft Resolution also states that, “[w]ithin seven calendar days after the date of service of the citation, Respondent shall cure the violation or request a one-time extension of time to do so.” This provision, however, fails to provide any definition or method by which the Commission will evaluate compliance and ensure that the respondent has satisfactorily cured the alleged violation. Some form of verification should be required to ensure that the violation has actually been fixed.

In order to receive the seven day extension of time to cure, the utility must submit a signed affidavit from its Chief Executive Officer attesting that the requested extension will not affect the safety or integrity of the operating system.⁴ Similarly, it is reasonable to require utilities to submit signed affidavits from the Chief Executive Officer affirming that the utility has corrected the alleged violation. Without such documentation the Commission will have an incomplete factual record of each violation. Requiring such affidavits will also help to ensure that senior management is aware of the citations and any actions that have been taken to correct the violations. In addition, the Commission should modify the Draft Resolution to include specific criteria for when CPSD should perform follow-up inspections.

By requiring the utilities affirm that “cured” violations are in fact remedied, publicly tracking the citation process, and establishing criteria for follow up inspections as discussed

³ Draft Resolution ALJ-274. Page 6, Section 6.

⁴ *Id.*, Appendix A, Section I.C.1.a.

above, the Commission can begin to provide accountability and assure the public that gas operations being performed safely.

III. CONCLUSION

The Draft Resolution would take an important step in the Commission's oversight of natural gas safety. CCSF's proposed modifications to the Draft Resolution would further assist the Commission in achieving this goal.

Dated: October 21, 2011

Respectfully submitted,

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Attachment A

Proposed Findings of Fact

16. There is a need to provide greater transparency into utility gas safety practices and Commission oversight of these practices.

17. The public maintains a strong interest in knowing the existence of potentially hazardous conditions and any actions that are being taken to address those conditions.

18. Local governments should be provided notice of violations.

19. Greater accountability will help to ensure that regulations are enforced and violations are corrected in a timely manner.

20. The Independent Review Panel recommended that the Commission post its audit finding publicly on the Commission's website.

21. The content and nature of the citation program, as provided for above and in Appendix A, is similar in content and nature to the audit violations.

22. Publicly posting the citations and all related correspondence serves a similar purpose to posting the audit violations on the Commission's website.

23. The Commission shall ensure that each violation has been satisfactorily cured. Without such a verification process, the record for each violation will be incomplete and the risk of incomplete information will remain.

24. CPSD will provide local governments notice that a violation within their jurisdiction has been satisfactorily cured.

Proposed Ordering Paragraphs

5. Upon the issuance of a violation, CPSD shall provide notice to any local government in whose jurisdiction the violation takes place.

6. CPSD shall post to the Commission's website: the citation itself, any response from the utilities, and any subsequent correspondence. In addition, CPSD shall track and make available a database containing, at a minimum, the following information: name of the gas utility cited; issuance date of the citation; type of violation found; proposed fine; response from the utility, including the date the utility pays the citation, remedies the violation, asks for an extension of time, or files an appeal; and any subsequent correspondence.

7. CPSD shall ensure that each violation is cured. At a minimum this requires documented verification in the form of a signed affidavit from the respondent's Chief Executive Officer affirming that the violation has been corrected.

8. CPSD shall develop criteria to determine which types of violations or repeated violations warrant follow-up inspections.

9. CPSD shall provide notice to any local governments in the jurisdiction where a violation occurred that it has been satisfactorily cured.