

ALJ-274 Workshop Notes

Short Term (Action Items before next workshop)

- Clarification of 10 day period – Business v. Calendar, and when the count begins
- Safety Hazard / Safety Related Condition
- Possible v. Actual Violation
- Duplicate Reports
- Who issues citation? Who approves?
- Communication to Utility, acknowledgement and closure
- \$0 to \$50K / or Graduated fine
- Initial Citation template

Medium Term (Action Items 6-months)

- Local Authorities notification
- Declaration in place of affidavit
- Process for soliciting labor feedback
- Examples of Risk Models
- Citation Template Refinement

Long Term (Action Items 12-months)

- Policy development and Enforcement
- Continuous improvement processes
- Industry sharing of lessons learned
- Trend Analysis
- Citation Program Effectiveness

Other

- Separate framework for actual v. potential events
- Audits, Incidents, & SRCRs
- Quarterly Reporting
- Possible exclusions from 10-day
 - Non-Compliance of procedures
 - Duplicate reports
 - Did not relate in SRC
 - Found through QA/QC (Internal Audit Finding) not SRC
 - Issues found through routine maintenance (e.g., broken pipeline marker)
 - Part 199 violations

ALJ-274 Workshop SED Staff Notes

Opening by Deputy Director

- Fines based on risk management principles
- Clear and transparent processes. Certainty in results.
- SED staff to respond in a timely manner
- 2 things are must
 - clarify what violations must self-report
 - establish initial schedule of fines
 - not just financial penalties
 - warning letters
- (Senator) Congressman Hill's staff representative: - must focus on gas program as a whole.
 - Make sure citation program applies to audit findings and not just the self-reporting.
- SED will take all comments and issue a program overview to include a schedule of fines, have process and framework.
 - Should be starting point for continued progress and feedback.
- In response to questions from TURN:
 - ALJ 274 gives SED a lot of authority.
 - Citation process will be a staff level document
 - It will not modify ALJ 274 initially; changes will be proposed to Commission if necessary.
 - Still unclear what the opportunity to make written comments on SED's proposal will be. SED not too eager to draw out the process.
 - Some discussion on when a citation is necessary.

SED

- Discussion of enforcement tools available:
 - Definition of a citation should be discussed further.
 - When we cite a utility there is a specific violation of the code. There could be a fine or a warning letter if the circumstances don't warrant a financial penalty.
 - This is about giving Staff tools. SED wants to learn from what has happened and what could happen. The goal of improving safety.
 - A "Staff Resolution" is a seldom used tool, but is a way to put a matter before the Commission.

Utility Presentations

SEMPRA - Doug Schneider

- Discussed 49 CFR part 191 there are different reporting requirements incorporated in GO

112 E

- Incident Reports - threshold that took place
- Safety Related conditions - area dependent. i.e. lower pressure to ensure safety, and time of repair.
- Audits
- Quarterly Reports as part of GO 112E
- New ALJ 274.
- Self-reporting and citation.
- City and County. Notify chief executive officer of city and county. Question is what is threshold?
 - City and counties wonder what to do with the information.
 - Courtesy notification. Jan 2012 there was safety related condition, not consequence of violation. SEMPRA thought that first responders would want to know about. It could be a scenario planning, they served a courtesy notification.
- In June 2012, SEMPRA stopped courtesy notifications to avoid confusion. Considered disseminating that information as part of the public outreach and emergency preparedness process.
- Semptra does not currently report all self-identified violations. They do report:
 - Safety related condition even if corrected within 10 days of discovery
 - A hazardous condition.
 - Other circumstance deemed significant.
 - Something the city and county may benefit from.
- Presented flow chart with process.
 - **May be some confusion on the 10 day** period. Believes there is stress on organization on notification while not yet sure if it was a violation or not.
 - 10 days of identification of probable violation.
 - They are reporting the violation once they have confirmed there is a violation. They would still file a safety-related condition.
 - SED clarified that the 10 day "clock" starts once violation is determined.
 - Local authorities will be notified if there is a citation, which seems redundant.
- Questions/Recommendations:
- Who should notifications go to within city/county
- declaration instead of affidavit (due to notarizing)
- "Cure Period" allowing root cause analyses and determination of how to prevent recurrence
- CAP \$ amount.
- Prefer to report missed maintenance dates during regular audit rather than as Self-ID Violation
 - - For consistency, tie into the PHMSA Part 190 model.

- Citation/cure information freely available so the rest of the industry is involved.
 - SED considering petitioning for removal of the reference to Part 190 due to inconsistent amounts.
- **SEMPRA reports internal audit findings if they result in a safety related condition. Otherwise they are not reporting audit findings.**
 - This differs from PG&Es interpretation.
 - Safety condition defined in Part 191. Their interpretation is directly tied to that definition.
- Some of the recommendations would not need modification to ALJ 274.
- TURN concerned about transparency - if staff is negating something that is in the resolution. **Concern spurred by CAP on \$ and compounding.**
 - SED intends to provide that transparency. Everything will be on the website. Emphasized the importance of turning around the citations quick, and those tools are what ALJ 274 gives.
 - Labor representatives recommend that the violation information should flow down to workers for safety.

PGE - Jane Yura

- Learn from other successful self-reporting citation programs.
 - FAA model
- Ensure consistency w/ SB 291
- 57 SI Reports as of 7/31/13
- All self-reports are possible non-compliance w/ CFR 49 Part 192 and on not following their own procedures.
- Not included:
 - Internal audit findings
 - QA/QC issues that are promptly corrected
 - Via on going proceedings.
 - If they confirm a violation occurred, it will be reported, not only if it results in a safety related condition as is done by SEMBRA.
- PGE proposes high potential safety risk and exclude lower impact noncompliance semi-annually.
 - They wish to exclude
 - Non-compliance with their own procedures.
 - Concern about how to balance this given that Part 192 does require utilities to follow their own procedures.
 - Eliminate duplicate reporting of safety related conditions, reportable incidents.
 - Labor representative - NRC places a great deal of attention to the operator following their own procedures.

- PGE does not propose to eliminate reporting/tracking of this altogether, but find the adequate mechanism to do so, and not this more formal avenue discussed today
- NRC has a gradation of severity levels. Lower severity items will be in the reporting process but will not.... **SED should confirm.**
- Important to track for trending in case there is a systemic condition indicative of a broader culture issue.
- Question is: What is the best mechanism to monitor these items.
 - Promote self-reporting - no citations for voluntary self-reported violations.
 - CAP and clarity of when this will move into an OII.
 - Aviation is an industry with great success of self-reporting programs.

Current Utility interpretations of self-reports:

- PGE is excluding items from QA/QC. SEMPRA is not.
- SEMPRA is only reporting if safety-related condition.

SOUTHWEST GAS (SWG)

- SWG procedure is very similar to SEMPRA. If incident occurs determination if actual violation exists is made first before reporting.
 - Mentioned a previous workshop where SED would consider any self-report a violation.
 - SWG cited for a broken pipeline marker, they were following a Caltrans vehicle....
 - Employees failing drug test- CFR 199 violations must be reported?
- CPUC Risk Assessment Section agrees that the determination of safety related condition should not be left up to utility.
- There is a possibility of exploring a method of **rescinding** a previously reported possible violation.
- SWG argues that if a violation is reported through another program then it does not have to be duplicated in the ALJ 274 process...
 - Proposes that a utility should determine what safety related condition to report.
 - SWG has submitted one

Summary of possible exclusions from 10-day self-reporting requirement:

- Non-compliance with utility's own procedures
- Duplicate reports
- Violation did not result in safety related condition
- Violation was found through QA/QC not SRC.
- Violations found during routine maintenance
- (How to modify the notices to city/counties).
- Part 199 violations

SED clarified and emphasized that the citation authority is not limited to self-reporting.

Procedure Compliance is important; and the roles of employees in establishing work procedures SB (705).

There would be value in sharing "lessons learned" among operators and regulators across USA. ? What about national role of PHMSA?

SED should provide clear expectation of when a Citation/Warning will be issued following a SI report. That will be part of our published procedures.

Risk Assessment approach to Citations - Paul Penney.

- Late or misses Leak Surveys and CP Surveys are most often reported violations.
- Issue of "double citing" i.e. citing for violation of federal regulations and operator's own procedures (192.13(c)) at the same time.
- Draft Risk Matrix
- Utilities believe their input in determining severity is important because the definitions are very subjective.
- SED wants input from utilities for their risk matrices - better information to feed our matrix.
- PGE has a risk evaluation tool designed by their Enterprise Risk Management (ERM) group.
- SEMPRA has a prioritization matrix for performing maintenance activities of what they want to do first rather than later. Briefly mentioned what drives the utilities specific accelerated items.

Discussion of possible penalty reduction credit for quality root cause analysis.

Discussion on the interpretation of ALJ 274, in terms of compounding and the "up to \$50,000" language. Definitions will not be different for different utilities. It will be applied across the board.

Question to utility: how do the utilities respond to the terms of "warning letter" vs. "citation"?

- In the matter of audits, PGE takes findings and recommendations equally seriously.
- A simpler tool to deal with the smaller violations.
- Discussion of regulatory levels of citation (Staff level, Resolution, OII).
- Concerns from Senator Hill representative that issues be adequately escalated to the Commissioners.

Request that SED acknowledge/confirm Self-ID violations and have an expected date for notice of citation/warning.

Utility Action Items

- Utilities to provide their own risk assessment tools/matrix
- PGE to share the Alaska Air one.
- How they treat warning letter vs. citation.

DAY 2

Risk Matrix

- Definitions of risk levels
- Discretion is key

- Some discussion on the size of the company
- A few examples to go with the process were agreed to be helpful.
- Examples of things SED could look at in considering amount of fine
 - Repeat violations:
 - Resolve what happens when there is a repeat violation to a problem already identified and mitigative/corrective plan is already in place but needs some time to be fully implemented.
 - Suggestion that those instances can be tracked and not cited for continued monitoring.
 - SED emphasized the need to streamline the level 4 (low-risk) citations.
 - These citations could escalate in level over time if warranted because of trend/pattern of non-compliance.
 - Utilities own risk assessment may be taken into account as part of the communication process with the utility.
 - The type and level of root cause to be considered. Utilities pointed out It can take months sometimes years to conduct a thorough root cause analysis - probable cause?
 - Willful offender - SED clarified it was generally referring to an individual action.

Comments on risk matrix and flow chart:

- Flow chart - does not allow the opportunity to decrease the risk level to at the top to consider credits and lower the risk category.
- Actual \$ amount of fine schedule has not been decided upon yet.
- How will the actual to potential risk be related and considered in the flow chart matrix?
 - SED's intention is to make it very simple and logical.
- How does SED envision enforcing this? Will citation be issued for everything?
 - SED believes there will be an evolution process to understand the most efficient way to grow into process.
 - How the larger safety consequences will be accounted for SED to ensure resources are not being devoted to more trivial violations?
- Should a consideration to an actual event vs. violation w/o event use a different matrix?
- Citation authority for non-asset violations, i.e. programs
 - SED will look at asset related violations at the beginning of implementing the framework first. Program violations will be considered later on while we grow the framework but not for now.
- Suggestion that we apply matrix to existing violations and share the thought process w/ utilities, however, SED is firm in the position that this will not help in agreeing on a process and will drag out the program.
- SED staff will process the backlog and as more complex cases are encountered, they will be taken more slowly in a case by case basis. Have the dialog and build the framework. There will be heavy management and approval of senior leadership in the Commission on the initial citations to ensure that everyone is in the same place.

- How will the non-commission/non-utility parties be involved in the process (i.e. TURN) in the discretionary portion of the process.
 - ALJ 274 requires citation notices to be posted on the website.
 - Continued program improvement will communicate to the service list on Safety OIR and workshop attendees.
- Fines go to the General Fund. No flexibility on that currently.

Suggest that SED provide example case histories to illustrate how process will work. For example a missed leak survey, missed CP read, etc.

SEMPRA objects to size of company should determine amount of a fine. They will respond equally to a citation whether it is \$1000 or \$10.

The result of the process should be that utilities are focused on spending resources on items that have greatest safety improvement impact.

What about option of the utility applying the fine amount to safety improvements? (Jerry Hill office is looking to introduce legislation in 2014).

Will a Risk-Matrix approach interact with General Rate Case process?

Appeal Process

- PGE believes the appeal process time frame of 10 calendar days is too short. Business days would be better and 30 days even more appropriate.

Other issues:

- Connection with the GRCs. NY has something on this. What are the priorities and tools for safety?
 - Want to have a statement from the Commission.
 - SED stated that the Commission has gone through great lengths to instill a safety culture and this item is being addressed in different forums.