



PUBLIC UTILITIES COMMISSION

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February 17, 2012

Mr. Zach Barrett
Director, State Programs
6500 South MacArthur
Building MPB Room 335, Route PHP-70
Oklahoma City, OK 73169

Dear Mr. Barrett:

Thank you for your letter of December 23, 2011 detailing the findings of your staff, Messrs. Glynn Blanton and Don Martin, following their September 19-23, 2011 evaluation of the California Public Utilities Commission (CPUC) CY 2010 Pipeline Safety program activities reported in the annual Certification document the CPUC submitted to the Pipeline and Hazardous Materials Safety Administration (PHMSA). The CPUC is pleased with your staff's finding that the CPUC's pipeline safety program is generally compliant with PHMSA's requirements. This letter provides our response to the items noted in your letter within the 60 days prescribed therein.

PHMSA Issue #1: The CPUC was awarded 39 points, out of a possible 50, during PHMSA's 2010 review of the CPUC Certification. The CPUC lost five points because it does not have safety authority over all intrastate pipeline facilities including municipal gas systems, private operator transmission and gathering pipelines, and master-meter operators other than mobile home parks; and it lost six points, for the second consecutive year, for its failure to meet the minimum number of recommended inspection person-days.

PHMSA recommends that the CPUC prioritize the inspective and investigative activities of the gas safety program and encourages the CPUC to hire additional dedicated pipeline safety staff to implement the new federal regulatory requirements if necessary. PHMSA also urges the CPUC to continue to work towards achieving full safety authority for all California interstate gas pipeline facilities.

CPUC Response 1: The CPUC agrees that staffing shortages and travel restrictions in past years have negatively impacted the ability of the gas pipeline safety program staff to meet the minimum number of inspection days as noted by PHMSA. In addition, the CPUC dedicated a significant amount of staff time to investigating the tragic September 9, 2010, PG&E incident in San Bruno and ensuring the on-going safety of all California gas systems. As a result, certain routine audits were delayed which, in turn, contributed to a decrease in field inspections and, correspondingly, inspection person-days in the field. Over the past year, the CPUC has taken action to address this issue and expects that in future years we will meet, and even exceed, PHMSA's minimum requirements.

As the staff of the CPUC's Consumer Protection and Safety Division's (CPSD) Gas Safety and Reliability Branch informed your staff during their evaluation in September 2011, the CPUC added 9 engineers to the pipeline safety program and four additional staff to a newly created Risk Assessment Unit in the Gas Safety and Reliability Branch.¹ Currently, our Gas Safety and Reliability Branch includes 22 positions in our grant program plus the Program Supervisor and the Program Manager.

With increased staffing, we expect to be able to increase the number of audits and field activities conducted and make more staff available to participate in National Association of Pipeline Safety Representatives (NAPSR), and other industry gas pipeline committees related to safety, technology, and rulemaking. We also intend to continue our strong commitment to: the California Regional Common Ground Alliance (CARCGA), the one-call centers, and seeking legislation to establish state mandates that result in effective enforcement of California's One-Call law. To that end, legislation has recently been introduced to include the CPUC as one of the agencies authorized to enforce California's one-call law because we recognize, as does PHMSA, that damages to sub-surface gas facilities are a leading cause of pipeline incidents and that this threat can be best mitigated through an effective enforcement program. Our efforts in these areas will increase inspection person-days.

PHMSA suggests that the CPUC obtain safety authority for all California intrastate gas pipeline facilities, and the CPUC will continue to work towards that goal; however, given the many significant pipeline safety initiatives the CPUC has recently undertaken, this remains a longer term goal.

In 2012, the CPUC's Gas Safety and Reliability Branch will begin evaluation of the operators' implementation of the new Distribution Integrity Management and Control Room Management rules. The CPUC will also be conducting several accelerated audits of PG&E operations in response to recommendations from the National Transportation Safety Board. The Gas Safety and Reliability Branch is also heavily involved in the

¹ The former Utility Safety and Reliability Branch has now been divided into specialized branches, the Gas Safety and Reliability Branch and the Electric Safety and Reliability Branch.

ongoing CPUC rulemaking to revise California's gas safety regulations as well as oversight of the pressure testing and pipeline replacement efforts stemming from that

rulemaking. In addition, implementation of recently enacted legislation, as well as working to build support for one-call enforcement legislation, is work that is all incremental to the Gas Safety and Reliability Branch's core tasks. Moreover, training of all new engineers to perform incident investigations, inspections of routine operations and construction, requires that Gas Safety and Reliability Branch resources be prioritized to operators over whom we have already obtained authority. We will reassess our situation after our incremental work decreases and our staff further develops necessary inspection skills. In the meantime, we are confident that PHMSA will continue to ensure the safety of operators for whom we cannot, at this time, assert authority.

PHMSA Issue #2: Although PHMSA recognizes that the CPUC has no upper limit for penalties that can be assessed on a pipeline operator, PHMSA encourages the CPUC to increase the limit on the daily amount which an operator can be fined, which at the time of the audit was \$500 per day up to \$20,000 per violation for gas public utility operators, to the PHMSA maximum of \$100,000 per day.

PHMSA makes similar suggestions for penalties for master meter and propane operators, and encourages the CPUC increase the civil penalty amounts to match the federal penalty amounts. PHMSA notes that Part 190; Subpart B is contains PHMSA's enforcement authorities which set forth certain penalty limits. PHMSA suggests that if it is not the CPUC's intent to apply PHMSA's enforcement tools and penalty levels as they are changed by PHMSA, then the CPUC should consider eliminating "Part 190" from Section 104.1, of General Order 112-E.

CPUC Response #2: As of the start of 2012, legislation increased its fine amount to \$50,000/violation with no upper limit. However, perhaps even more important than the increase in the amount that can be levied, is the fact that the gas pipeline safety staff has been delegated authority to issue penalty citations without formal CPUC action as was required prior to 2012. This is a significant improvement in the enforcement process and, even though the amount is less than the PHMSA value, it is a giant step that increases awareness among utility operators that the CPUC stands ready to swiftly deal with failures to comply with regulations which significantly impact the safety of the public. The CPUC will continue to monitor citations and make modifications, which can include increases in the penalty amounts, if and when warranted.

While we appreciate that in some cases, substantial penalties are the right enforcement tool; a fine of \$100,000/day for an average small operator would be unreasonable and would affect the financial stability of such operators. The CPUC's experience with fines levied on small operators at its \$1,000/day level has, thus far, provided the results which all fines are intended to achieve, namely, cooperation from the operator to eliminate the non-compliance or other issues with which the operator had failed to comply, and which formed the basis for the citation being issued in the first place.

The CPUC, through R.11-02-019, will be reviewing the references within its General Order 112-E (GO 112-E). As part of that process, we will consider eliminating references to Part 190 from Section 104.1, and all other locations where it is referenced in the CPUC's GO 112-E.

PHMSA Issue #3: PHMSA indicated it was appreciative of the CPUC-directed long-term program under which Pacific Gas & Electric (PG&E) has reduced its cast iron pipelines and copper services. In 2010, PG&E replaced 6,209 copper services and as of January 2011, has 63 miles of cast iron main remaining to be replaced. PHMSA indicated its belief that such work lowers the potential risk to the general public and recommended the addition of requirements to address unprotected bare steel and accelerating replacement based on risk.

CPUC Response #3: The CPUC will continue to monitor PG&E's gas pipeline replacement program (GPRP) to confirm that it continues to address the purpose for which it was intended: replacing high risk gas lines more likely to fail during seismic events. The program is risk-based and we will review if, and how, unprotected bare steel should be included in the current GPRP work. We will also continue to monitor other, long-term programs, in addition to GPRP, aimed at systematically improving the safety of gas systems.

PHMSA Issue #4: PHMSA indicated it was supportive of the gas pipeline safety program being a stand-alone program with a State Program Manager that is trained and knowledgeable in gas pipeline safety.

CPUC Response #4: In mid-December 2011, the Consumer Protection and Safety Division's (CPSD) Utilities Safety and Reliability Branch (USRB), which carried out the gas pipeline safety program, was split into two independent branches. As a result, CPSD now has a Gas Safety and Reliability Branch (GSRB) which focuses entirely on gas safety issues and will carry out the gas pipeline safety program. GSRB is managed by a program manager and supervisors who are trained and have decades of knowledge of natural gas safety issues and regulations. In addition, GSRB staff will not perform dual gas and electric functions as done in the past. This will allow for a more focused allocation of resources, as well as improved ability to make use of PHMSA provided training

PHMSA Issue #5 and #6: PHMSA notes that the new requirements contained in proposed and final rulemaking, including the Distribution Integrity Management final rule, Public Awareness rule, and Control Room Management rule will continue to increase the inspection workload for the pipeline safety program in the coming year.

PHMSA also expressed concern that the number of violations carried over from previous years continues to increase. As an example, PHMSA noted that at the end of 2010, 4,550

violations had been identified and pipeline operators notified of the necessary corrective action, but staff had yet to confirm that the violations had been corrected. PHMSA suggests that additional staff resources may need to be directed towards assuring correction of identified violations.

PHMSA also expressed support for the CPUC's use of penalties as an enforcement tool and the CPUC's efforts to streamline the enforcement process by allowing penalties to be levied against utility operators by the pipeline safety staff.

CPUC Response #5 and #6:

The CPUC understands the seriousness of gas pipeline safety and the need to adequately staff and support our program with all the tools necessary to not only meet, but to exceed, PHMSA's minimum program requirements. As noted above, the CPUC has made great strides to improve the performance of our gas safety program. We have reorganized the safety program to create a separate Gas Safety and Reliability Branch. We have also hired a significant number of new inspectors; in fact, the gas safety program now has twice the number of staff inspectors that it had as of September 9, 2010. The gas safety program also now has the technical support of a dedicated risk assessment unit consisting of four senior engineers and a senior analyst. It will take some time to train our new staff; however, we are confident that our GSRB managers, who have decades of pipeline safety experience, will be able to quickly and effectively leverage the knowledge and experience of the existing GSRB staff to complete our core tasks while training our new staff. Our GSRB continues to demonstrate its commitment to improving public safety, producing quality work product, and meeting PHMSA's requirements. Furthermore, as the work associated with the San Bruno investigation and penalty proceeding winds down, we will have significant resources to dedicate to working with the many small operators to confirm that the necessary corrective actions have been taken.

Where required corrective action has not occurred, the CPUC has fully embraced the need to levy penalties. In all of our safety programs, we recognize that there are occasions when improvements in attitude and compliance will not occur unless the operators understand that there are financial costs associated with not complying with safety regulations. In addition to the \$38 million fine levied by the CPUC against PG&E for the Rancho Cordova incident, our CPSD has used the delegated authority provided them to fine PG&E for violations related to its leak survey process. Public safety remains our highest priority; therefore, the CPUC will continue to use its enforcement authority, wherever necessary, to levy penalties against operators who fail to comply with established safety standards.

Thank you for your continued support of the CPUC's gas pipeline safety program. Please do not hesitate to contact Michelle Cooke, Interim Director of CPSD, at (415) 703-2349 should you have any questions related to our response.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael R. Peevey". The signature is fluid and cursive, with a large, sweeping initial "M".

Michael R. Peevey, President
California Public Utilities Commission

cc: Chris Hoidal, Western Region Director, PHP-500, PHMSA
Paul Clanon, Executive Director – CPUC
Michelle Cooke, Interim Director, CPSD – CPUC
Julie Halligan, Deputy Director, CPSD – CPUC
Michael Robertson, Interim Program Manager, GSRB – CPUC
Sunil Shori, Interim Program and Project Supervisor, GSRB – CPUC