



Public Utilities Commission
STATE OF CALIFORNIA

Citation Date: October 25, 2013

Citation #: 13-002

Operator ID#:18484

Notice of Appeal Form
(For A Citation Issued Pursuant to Resolution ALJ-274)

Respondent:

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Citation Date: October 25, 2013

Citation #:13-002

Operator ID#:18484

Appeal Date: November 4, 2013

Statements supporting Respondent's Appeal of Citation (You may use additional pages if needed and/or attach copies of supporting materials along with this form).

Please See the Attached.

ATTACHMENT TO NOTICE OF APPEAL

CITATION #13-002

Southern California Gas Company (SoCalGas) appeals the referenced citation on the grounds that the \$150,000 fine imposed by the Commission's Safety Enforcement Division (SED) is excessive and could create perverse incentives by creating a strong motivation for SoCalGas (and other utilities) to expend large amounts of resources to avoid minor safety infractions. A fine for missed leak surveys that SoCalGas discovered during the process of upgrading our mapping system and corrected upon discovery sends the wrong signal about advancing a forward-thinking safety culture, where the Commission is working with the utilities to improve safety. It also fails to recognize SoCalGas' strong past safety record. Moreover, the Commission should strongly consider the value, or lack thereof, of fines from self-reported violations, without a clearly articulated safety and enforcement philosophy with accompanying goals and metrics. As one of the regulated utilities that has been recognized by this Commission for our efforts to advance safety, this fine sends a confusing message. The Commission should not issue any financial penalties for minor safety-related violations until, in accordance with SB 291, it reexamines whether financial penalties are appropriate for such violations.

I. BACKGROUND

For ease of reference, the factual summary provided in SED's Investigation Report is reproduced below:

On March 2 and 30, 2012, in accordance with Resolution ALJ-274, the Southern California Gas Company (SoCal Gas) notified the Commission's Safety and Enforcement Division (SED) of three non-compliance issues found at SoCal Gas' Pacific, Northern, and Inland Regions. These issues involved three separate sections of pipeline that had not been leak surveyed in a timely manner as required.

The first two issues were discovered on February 23, 2012, while a SoCal Gas clerk was gathering atlas sheets for special leak surveys in advance of planned street improvement work, and noticed that the segments were not

on leak survey cycles. The missed leak surveys were subsequently reported on March 2, 2012, to the CPUC. The first segment involves a 535 foot segment of 2-inch steel gas main in the City of Simi Valley, located near the intersection of Buffum Street and Barnes Street. This segment was installed in 1960 and is cathodically protected. Its Maximum Allowable Operating Pressure (MAOP) is 22 psi and there are no services connected to the main. It had not been leak surveyed since March of 1998. The second segment is 325 feet of 8-inch PE main in the City of Los Angeles, near the intersection of North Hazard Avenue and Hammel Street and was installed in May 2006. It has an MAOP of 45 psi and has eight services connected to it. This segment had not been surveyed since its installation. No new services have been added to either segment since they were last leak surveyed and both segments are located in residential areas. SoCal Gas performed a gas leak survey on both segments on February 24, 2012, and found no leaks or hazards on the pipeline segments.

The third issue was discovered on March 7, 2012, and reported on March 30, 2012. A leakage clerk was reviewing the map while preparing for a special leak survey and noticed that a segment of pipe was not highlighted. The leak survey was completed on the following day - March 8, 2012, and SoCal Gas reported that it did not find any leaks or hazardous conditions. The segment is 335 feet long, 2-inch plastic main with a MAOP of 60 psi and an operating pressure of 55 psi and is located in a residential area of the City of Palm Desert on Quail Hollow Drive in Riverside County. The last documented inspection of this area had been completed on May 9, 2001. However, through an interview with the employee who conducted the leak survey, SoCal Gas believes that the segment was included in the 2009 survey (completed September 22, 2009) although it had not been documented on the map. The 335 foot segment contains only one residential service and no new services have been added since the last leak survey.¹

II. MATTERS NOT IN DISPUTE

Before describing why a fine is not justified in this instance, SoCalGas wishes to explain what it is *not* disputing:

- SoCalGas is not disputing that the referenced violations of GO-112-E took place. In all three instances, leak surveys did not take place within the 63-month time frame specified by Title 49 CFR § 192.723(b)(2). SoCalGas apologizes for these violations, and we are working diligently to make sure that any other missed leak

¹ SED Investigation Report at 1-2.

surveys are discovered and remedied.

- SoCalGas is not disputing that SED has the authority to issue the specified fine (\$50,000 per incident), or that SED could have issued an even larger fine. SoCalGas understands and appreciates that SED considered the criteria specified in ALJ-274 (e.g., severity of the offense; the conduct of the utility before, during, and after the offense, etc.), and issued a fine that is well under the maximum potential fine.
- SoCalGas is not arguing that SED over-counted violations, or took any other actions that are inconsistent with the authority vested in it by ALJ-274.

III. GROUNDS FOR APPEAL

A. THE FINE IS EXCESSIVE AND SERVES NO USEFUL PURPOSE

As explained by SED in its Investigative Report, SoCalGas self-reported each of these three missed leak surveys. What may not be clear from SED's summary is that each of these missed leak surveys were discovered as a result of SoCalGas upgrading its mapping system and moving from a heavily "human-based" legacy mapping system to a computerized geographical information system (GIS) that will ultimately incorporate our nearly 100,000 mile transmission and distribution system. These three self-reported violations relating to approximately 1,100 feet of our distribution system are a direct result of our proactive efforts to upgrade our mapping systems and enhance our ability to verify the safety of our system.

SoCalGas operates a safe system, yet there is always room for improvement. The Commission has recognized, in the context of compliance with General Orders, that it is not possible for utilities to attain perfection while keeping the goals of safe and reliable service and reasonable cost in balance. Instead, the Commission focuses on utility knowledge and opportunity to cure, so that

the utilities have “an incentive to engage in maximally effective preventive maintenance.”² The Commission has also acknowledged that a utility’s “100% compliance . . . at all times is not realistic.”³ Indeed, a utility “cannot maintain its distribution system so that there are no GO 95 and 128 violations at a given time.”⁴ The same is true of natural gas transmission and distribution systems. SoCalGas should not be penalized for failing to achieve a standard that the Commission has acknowledged is unachievable.

Our transition from our existing legacy mapping system to a new computerized GIS system is a good example of a utility attempting to do the right thing and make its system safer. Will this upgrade result in the discovery of missed leak surveys? Yes. The referenced citation describes three such instances, and SoCalGas anticipates that we may discover additional missed leak surveys in the future.⁵ If our current system was perfect, there would be no reason to spend considerable time and money on this effort. These are minor violations SoCalGas discovered while doing work to help detect the very sort of minor violations that are the subject of the citation, and to prevent future violations. SoCalGas cured the problem, and self-reported in a timely manner. This is not a situation that justifies a penalty.

Will penalties for these self-reported missed leak surveys cause SoCalGas to search for missed leak surveys that it might otherwise miss? No, we are already converting our legacy mapping system to a new computerized GIS, and we will do this work with or without penalization.

Will penalties for these self-reported missed leak surveys cause SoCalGas to remedy missed leak surveys more quickly than it would otherwise? Absolutely not. As explained in SED’s Investigative Report, in each instance covered by the citation, SoCalGas conducted corrective leak

² D.04-04-065, mimeo., at 31.

³ *Id.*

⁴ *Id.* at 38.

⁵ For example, on October 17, 2013, SoCalGas self-reported another missing leak survey (rectified upon discovery) identified as a result of this transition to a new computerized GIS.

surveys within one day after discovering the missing leak survey. SoCalGas will continue this practice in the future, with or without a penalty.

Will penalties for these self-reported missed leak surveys encourage SoCalGas or other natural gas corporations regulated by the Commission to take proactive steps to make their systems safer and to self-report problems discovered during the process? No -- utilities should be encouraged to make their systems safer, not financially punished for doing so.

**B. A FINE IN THIS INSTANCE COULD CREATE PERVERSE
INCENTIVES**

The stated goal of the Commission is to improve the safety of the natural gas transmission systems in the State of California in a cost-effective manner.⁶ There is a tradeoff between the safety, reliability, and robustness of a natural gas system (often collectively referred to as “quality of service”), on the one hand, and on the other hand, its cost. Put another way, each incremental improvement to the quality of service of the system entails additional materials and redundancies that increase its cost.

The Commission does not authorize SoCalGas to collect revenue in rates for every conceivable risk management project, only for those deemed cost-effective or necessary for business purposes. For example, it might provide some limited improvement to safety for SoCalGas to conduct leak surveys of every one of its distribution lines every six months, but the cost of doing so would be so great that it is probably not a realistic scenario.

To achieve its objective of improving safety in a cost-effective manner, the Commission’s actions should cause SoCalGas to choose actions that achieve the desired behavior in a manner that avoids excessive cost. Financial penalties for minor safety violations like the leak surveys at issue would not achieve that goal. Instead, assessing substantial financial penalties for self-reported minor

⁶ D.11-06-017, mimeo., at 1.

safety violations would create a strong incentive to maintain and operate the entire system going forward so as to avoid any chance of being judged guilty of a future violation. This would involve redundancy in pipeline construction, testing, maintenance and recordkeeping in excess of a reasonable standard of economic efficiency.

By penalizing SoCalGas for these three missed leak surveys (and for any other missed leak surveys that we discover in the process of upgrading our mapping system), the Commission would create an incentive for a much more costly system that would be proof against potential minor violations in the future. Not all violations of GO-112-E are of equal importance from a safety-related perspective. The relatively large fine levied by SED for these three untimely leak surveys create a strong motivation for SoCalGas (and other utilities) to expend large amounts of resources to avoid minor safety infractions -- even when the cost to avoid these minor infractions is far greater than the safety-related benefits that would accrue from these expenditures.

The penalties proposed by SED could have an effect well beyond leak surveys. Imposition of large penalties for imperfect compliance in one area of operations would create an incentive to overspend to achieve perfect compliance in *all* areas of our operations. This would be a perverse incentive that neither achieves the goal of safe and reliable service (since we are talking about minor violations), nor delivers low cost to customers. The Commission should not create an incentive for SoCalGas (and other utilities) to overspend on future safety-related activities to avoid disproportionate penalties.

C. THE COMMISSION SHOULD TAKE SOCALGAS' SAFETY RECORD INTO ACCOUNT

In Resolution ALJ-277,⁷ the Commission denied an appeal by Pacific Gas and Electric Company (PG&E) of a citation issued by the by the Commission's Consumer Protection and Safety

⁷ Issued April 19, 2012.

Division (CPSD) pursuant to Commission Resolution ALJ-274 for violations by PG&E of gas safety requirements. In reaching its decision to not grant PG&E relief from the financial penalties issued by CPSD, the Commission provided the following guidance:

CPSD and the Commission consider a utility's safety track record when determining the size of a penalty. Each utility may present evidence of its safety conduct in a future citation appeal proceeding, if any. This is—and we intend it to be—a strong incentive for PG&E to develop a stellar track record that can potentially be considered in a future PG&E request for no or reduced penalties. However, the evidence does not support such an outcome here.⁸

Contrary to PG&E, SoCalGas does indeed have a documented and compelling track record of safety over many years. The Commission should keep this track record in mind while SoCalGas goes about updating its legacy mapping system with a new electronic GIS, and fixing any lapses uncovered as a result of the implementation of these technological improvements.

D. THE COMMISSION SHOULD NOT IMPOSE PENALTIES FOR MINOR VIOLATIONS UNTIL IT CONSIDERS THE EFFECT OF SB 291

On October 5, 2013, Governor Brown signed into law a new statute, Senate Bill (SB) 291, that directly impacts the penalties in question.⁹ SB 291, among other things, requires the Commission to implement a safety enforcement program for gas safety by July 1, 2014. This new law specifically requires the Commission to take into account several factors when issuing financial penalties:

When considering the issuance of citations and assessment of penalties, the commission staff shall take into account voluntary reporting of potential violations, voluntary removal or resolution efforts undertaken, the prior history of violations, the gravity of the violation, and the degree of culpability.¹⁰

SB 291 also requires the Commission to establish limits on the amount of penalty authority delegated to Commission staff:

⁸ Resolution ALJ-277 at 11 (citation omitted).

⁹ SB 291 is codified at Section 1702.5 of the Public Utilities Code.

¹⁰ PUC § 1702.5(a)(1).

The commission shall adopt an administrative limit on the amount of monetary penalty that may be set by commission staff.¹¹

SoCalGas assumes that the Commission will convene a rulemaking, technical workshops, or some other form of proceeding to consider whether the procedures adopted in ALJ-274 meet both the letter and spirit of SAB 291, or whether changes need to be made to the existing ALJ-274 procedures.¹² SoCalGas also assumes that affected utilities such as SoCalGas will be provided with notice and an opportunity to participate in any such proceedings. Given that the Commission will be considering in the near future whether, and under what circumstances, financial penalties are appropriate for minor safety-related violations, and whether existing delegations of penalty authority to SED are consistent with SB 291, the Commission should not issue any penalties for such violations until it completes its review.

As part of this legislative-directed reexamination, the Commission should take a careful look at whether fines for minor self-reported safety violations are ever appropriate. Studies and reports have shown that improvements in safety come from a well-defined safety and enforcement philosophy. The philosophy should be clearly written, communicated and integrated within all of the Commission's actions. Of note is the need to have a clear driving principal behind any enforcement action, and that the actions are clearly understood by the Commission as well as the utilities it regulates. We see this as an opportune time for the commission to pause the ALJ-274 program, and to convene a proceeding to further examine and develop its safety and enforcement policies for the future.

IV. REQUESTED RELIEF

SoCalGas discovered these three missed leak surveys as a direct result of our proactive efforts

¹¹ PUC § 1702.5(a)(3).

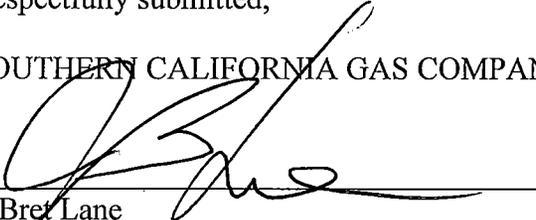
¹² Given that SB 291 was adopted by the legislature after the adoption of ALJ-274, it seem reasonable to assume that the Commission will need to examine whether the procedures set forth in ALJ-274 comply with the new statute. If the existing procedures set forth in ALJ-274 were fine by the Legislature, there would have been no reason to adopt much of SB 291.

to upgrade our mapping and enhance our ability to verify the safety of our system. A fine in this instance is excessive and serves no useful purpose – SoCalGas treats safety as its number one priority, and we will continue to do so even if we are not financially penalized for self-reporting minor violations of GO-112 such as these three missed leak surveys. A fine for these missed leak surveys could create perverse incentives, and fails to recognize SoCalGas’ strong past safety record. Moreover, in accordance with SB 291 the Commission should soon be reexamining both SED’s penalty authority and whether financial penalties are appropriate for minor safety-related violations.

For each of these reasons, SoCalGas respectfully requests that the Commission exercise its discretion and decline to penalize SoCalGas for the three self-reported missed leak surveys that are the subject of the referenced citation.

Respectfully submitted,

SOUTHERN CALIFORNIA GAS COMPANY



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