

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: December 8, 2011

To: The Commission
(Meeting of December 15, 2011)

From: Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 578 (Hill) – Public Utilities Commission: public safety**
Pending amendment

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: OPPOSE UNLESS AMENDED

SUMMARY OF BILL:

AB 578 is currently a bill dealing with disaster relief funding that the author's office has indicated will be amended in January to match the language attached at the end of this memo. The amended bill would require the CPUC to open new proceedings to implement any statewide natural gas pipeline safety recommendations made by the National Transportation Safety Board (NTSB). If the Commission finds a specific recommendation to be inappropriate, it would be required to detail its objection to that recommendation in writing as part of the record of the relevant proceeding. The Commission would be required to implement those NTSB recommendations applicable to a particular utility as soon as practicable. The Commission would be required to implement any general recommendation no later than 18 months after the recommendation has been made public by the NTSB.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

AB 578 should be opposed unless amended for the following reasons:

(1) The bill could undermine ongoing pipeline safety efforts at the CPUC by interfering with an existing proceeding (R.11-02-019). On February 24, 2011, the CPUC opened R.11-02-019 as a forward-looking effort to establish a new model of natural gas pipeline safety regulations. This rulemaking has directed the natural gas operators, including PG&E, to either test or replace all pipelines for which it cannot locate verifiable records. In addition, this rulemaking is proposing rules for immediate implementation, such as rules for requiring strength tests, retrofitting transmission lines to allow inline inspections, requiring operators to perform evaluations for installing automatic or remote controlled valves, requiring gas quality monitoring, requiring

specified clearance between gas pipelines and other subsurface structures, reporting problems associated with mechanical/compression fittings, assessing existing Meter Set Assemblies and other pipeline components to protect them from excessive snow and ice loading, and requiring operators to identify threats along their pipelines and submit a plan to mitigate the threats.

As such, R.11-02-019 already addresses many of the same issues identified in the NTSB's recommendations to the CPUC. AB 578 would require the Commission to open new proceedings to focus on specific NTSB recommendations outside the wider context of R.11-02-019, thus reversing progress on these issues by requiring new testimony and comment filing periods, ultimately delaying what would more appropriately be addressed in R.11-02-019.

(2) The bill sets unrealistic timeframes for compliance. Although the bill is well-intentioned, it would be difficult, if not impossible, to implement in the timeframe specified. Sec 960 (b)(2) would require the Commission to implement general NTSB recommendations within 18 months of those recommendations being made public. The latest NTSB recommendations pertaining to San Bruno that were released on August 30, 2011, would thus need to be implemented by March 1 of 2013, a mere two months after the bill would take effect.

Other limitations of the Commission further complicate compliance with the bill's provisions within a defined time period. In the case of the first of the NTSB's recommendations for the CPUC in its San Bruno report, there would be a requirement that the CPUC work with the Pipeline and Hazardous Materials Safety Administration (PHMSA) to conduct a comprehensive audit of all aspects of Pacific Gas and Electric Company's (PG&E's) operations, listing several specific areas of focus. The nature of this recommendation allows for easy identification of when the recommendation is completed. However, because of limitations of staffing and other pre-existing legislative requirements on the pipeline safety staff, accomplishing this within a defined time period could be challenging. Using this NTSB recommendation as an example, without ensuring additional resources were available, the Commission would be forced to choose between implementing the NTSB recommendations or performing other legislatively-required duties. An augmentation of staff would thus be necessary to both expedite the implementation of NTSB recommendations and perform additional mandated duties.

The situation is similar with the second of the NTSB's recommendations for the CPUC in its San Bruno report. Complying with that recommendation would have the CPUC require PG&E to correct all deficiencies identified as a result of the San Bruno accident investigation, as well as any additional deficiencies identified in the aforementioned CPUC-PHMSA audit, and verify that all corrective actions are completed. To demonstrate a potential problem associated with complying with this recommendation within a defined time period, one of the NTSB recommendations to PG&E is to expedite the installation of automatic shutoff valves and remote control valves on transmission lines in high consequence areas and in class 3 and 4 locations, and space them at

intervals that consider the factors listed in Title 49 Code of Federal Regulation 192.935(c). While this recommendation seems straightforward on its face, many factors come into play in the Commission's decision on valve spacing and make-up, including cost to ratepayers. Using this recommendation simply as an example, and not implying that this would be the outcome, one could envision that the cost to comply with this recommendation could be substantial. In balancing the safety needs of Californians with the ability to fund safety upgrades, it could be that the Commission would phase meeting this requirement over a number of years that exceeds the 18 months anticipated in the bill. This approach would thus run afoul of AB 578's requirements.

(3) The bill does not allow the CPUC to reject a recommendation that it finds to be inappropriate. No procedure is specified in the event that the Commission disagrees with a recommendation for a specific utility made by the NTSB. This lack of flexibility in compliance could mandate solutions that become outdated, not cost-effective or not otherwise appropriate.

SUMMARY OF SUGGESTED AMENDMENTS:

The bill should be amended to require the Commission to report to the Legislature periodically, following an NTSB report related to gas pipeline safety, on its efforts to implement the NTSB recommendations for individual pipeline operators statewide rather than require the Commission to implement all NTSB recommendations through new proceedings. In addition, the bill should be amended to ensure that the staffing and training resources necessary to implement recommendations that are incremental to existing workload are available to the Commission in a timely manner.

DIVISION ANALYSIS (Consumer Protection and Safety Division):

The bill would impact CPUC programs, practice and policy in the following ways:

On September 9, 2010, a 30-inch diameter natural gas transmission pipeline owned and operated by Pacific Gas and Electric Company (PG&E) ruptured and caught fire in the city of San Bruno, California, causing the death of eight persons, injury of many others, as well as massive property damage. The explosion left a crater 72 feet long by 26 feet wide and propelled a 28 feet long section of the pipeline about 100 feet away from crater.

The San Bruno tragedy was a game-changer for the CPUC's gas safety program. The Commission has been working to improve pipeline safety in California since the evening of the blast and has already taken significant steps towards that end. The CPUC has so far done the following:

- Ordered all pipelines that were not required to be pressure tested under federal rules (referred to as grandfathered pipes) to be pressure tested or replaced. All transmission pipes that haven't been tested before are being tested or replaced, and

for all pipes that have been tested, we are re-verifying operating pressures based on complete, traceable, and verifiable records.

- Ordered immediate pressure reductions on specified PG&E lines, including lines with weld characteristics similar to the ruptured segment of Line 132. PG&E has reduced pressure on other pipelines for which it has incomplete pressure records or that were operating at an insufficient margin of safety based on changes in nearby population density.
- Begun evaluating utility implementation plans that include retrofitting pipelines to accommodate inline inspection tools.
- Opened a penalty consideration proceeding against PG&E, alleging poor record-keeping.
- Begun evaluating sweeping new requirements for automatic or remotely-operable valves, emergency response, and public information.
- Required PG&E to file safety project information twice a year so we and the public can be assured they've spent funds appropriately.
- Conducted an audit of PG&E's Public Awareness Program in November, 2011.

In addition, the Commission has taken steps to reform its own regulatory oversight function. The Commission's goal now is to establish a new model of natural gas pipeline safety regulation for all California pipelines and for the nation. So far the following additional steps have also been taken by the CPUC:

- Appointed an Independent Review Panel to look at both PG&E and CPUC actions leading up to San Bruno. Their report was critical of both PG&E and the CPUC.
- Doubled the number of pipeline inspectors and created a new Risk Assessment Unit to help change our inspection culture from compliance box-checking to proactive risk assessment.
- Concluded a staff investigation into the 2008 PG&E natural gas explosion in Rancho Cordova. The staff's proposed resolution of the investigation included a series of admissions by PG&E of violations of safety rules. The Commission adopted a \$38 million fine.
- Delegated to Consumer Protection and Safety Division staff the authority to issue citations and levy fines on gas corporations for violations of General Order 112-E and the Code of Federal Regulations, Title 49, Parts 190, 191, 192, 193, and 199 at the maximum amount set forth in PU Code Sec 2107.

- Established a public stakeholder process to improve the integration of safety into ratemaking, and consider a periodic safety certification of each utility independent of all other considerations. Workshops will be held January 11-13, 2011.
- Solicited for a consultant to audit the structure, function, and effectiveness of the CPUC's natural gas safety program as a whole. The final report by the consultant will make recommendations focused on actions that the CPUC can make internally to improve the effectiveness of the Gas Safety and Reliability Branch program, and ultimately improve public safety.

NTSB recommendations issued prior to the final San Bruno report included the following items:

- Develop an implementation schedule for the requirements of Safety Recommendation P-10-2 (Urgent) to Pacific Gas and Electric Company (PG&E) and ensure, through adequate oversight, that PG&E has aggressively and diligently searched documents and records relating to pipeline system components, such as pipe segments, valves, fittings, and weld seams, for PG&E natural gas transmission lines in class 3 and class 4 locations and class 1 and class 2 high consequence areas that have not had a maximum allowable operating pressure established through prior hydrostatic testing as outlined in Safety Recommendation P-10-2 (Urgent) to PG&E. These records should be traceable, verifiable, and complete; should meet your regulatory intent and requirements; and should have been considered in determining maximum allowable operating pressures for PG&E pipelines. (P-10-5) (Urgent)
- If such a document and records search cannot be satisfactorily completed, provide oversight to any spike and hydrostatic tests that Pacific Gas and Electric Company is required to perform according to Safety Recommendation P-10-4. (P-10-6) (Urgent)
- Through appropriate and expeditious means, including posting on your website, immediately inform California intrastate natural gas transmission operators of the circumstances leading up to and the consequences of the September 9, 2010, pipeline rupture in San Bruno, California, and the National Transportation Safety Board's urgent safety recommendations to Pacific Gas and Electric Company so that pipeline operators can proactively implement corrective measures as appropriate for their pipeline systems. (P-10-7) (Urgent)

CPUC actions to date have been consistent with these recommendations.

The new recommendations included in the NTSB's final San Bruno report were as follows:

- With assistance from the Pipeline and Hazardous Materials Safety Administration, conduct a comprehensive audit of all aspects of Pacific Gas and Electric Company

operations, including control room operations, emergency planning, record-keeping, performance-based risk and integrity management programs, and public awareness programs. (P-11-22)

- Require the Pacific Gas and Electric Company to correct all deficiencies identified as a result of the San Bruno, California, accident investigation, as well as any additional deficiencies identified through the comprehensive audit recommended in Safety Recommendation P-11-22, and verify that all corrective actions are completed. (P-11-23)

The Commission welcomed those new recommendations and committed publicly to conducting a comprehensive audit and ensuring that PG&E corrects any deficiencies that led to the San Bruno blast. The Commission further committed to evaluating the NTSB's PG&E-specific recommendations to determine whether it would need to adopt rules to enforce the recommendations as part of its ongoing proceeding to set new rules for natural gas safety.

PROGRAM BACKGROUND

The CPUC is the state agency with safety jurisdiction for intrastate gas pipeline systems. It is responsible for enforcing safety regulations, auditing the pipeline operators, inspecting all work affected by the statutes and making necessary additions and changes to regulations for promoting the safety of the general public and the utility employees that work on the gas pipeline systems. In addition to enforcing various state regulations, the CPUC works as an agent of the federal government to enforce gas safety requirements in California.

In 1995, the CPUC adopted the sections of Title 49, CFR, pertinent to gas safety in CPUC General Order (GO) 112-E. Subsequent changes to the Federal Pipeline Safety Code, Title 49 CFR, Parts 190, 191, 192, 193, and 199 are automatically updated in GO 112-E with the effective date being the date of the final order as published in the Federal Register.

On August 20, 2010, PG&E and related parties negotiated a Gas Accord Settlement Agreement, which among other things, requires the establishment of a balancing account for the recovery of costs for the maintenance and repair of gas transmission pipelines. This agreement was promulgated in CPUC Decision 11-04-031, which requires PG&E to provide a semi-annual Gas Transmission and Storage Safety Report and establish a balancing account addressing the revenue requirements, cost allocation, and rates associated with PG&E's gas transmission and storage facilities.

LEGISLATIVE HISTORY:

Similar laws related to natural gas pipeline safety that passed the Legislature and were signed by the Governor since the tragedy in San Bruno include the following:

AB 56 (Hill), which requires utilities to pressure-test all pipelines, maintain accurate records and install pipeline automatic shut-off valves in high population areas;

SB 216 (Yee), which requires automatic shut-off valves on pipelines in densely-populated areas or which cross active earthquake fault lines;

SB 44 (Corbett), which requires utilities to have emergency-response plans and notify local agencies when a rupture occurs;

SB 705 (Leno), which directs the natural gas industry to make the safety of their pipelines their top priority, and prohibits utilities from passing the costs of safety improvements in the form of unreasonable rate increases; and

SB 879 (Padilla), which increases the maximum fines for violations of CPUC rules from \$20,000 per day to \$50,000 per day as of January 1, 2012.

FISCAL IMPACT:

In order to expedite implementation of NTSB recommendations, the Commission would require 3 new Utilities Engineers to aid CPSD with enforcement, 1 Public Utilities Counsel III to ensure utility compliance and 1 ALJ II to oversee proceedings.

STATUS:

AB 578 is currently awaiting action in the Assembly Governmental Organization Committee and will be re-referred upon amendment.

SUPPORT/OPPOSITION:

None on file.

STAFF CONTACTS:

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BILL LANGUAGE:

Proposed language:

SECTION 1. Section 960 is added to the Public Utilities Code , to read:

960. (a) The commission shall issue orders or adopt rules to implement any safety recommendation by the federal National Transportation Safety Board (NTSB) relative to natural gas pipeline safety.

(b) (1) Except as provided in paragraph (2), the commission shall implement, as soon as is practicable, any natural gas pipeline safety recommendation by the NTSB as to a specific utility.

(2) The commission shall hold a rulemaking proceeding regarding any general natural gas pipeline safety recommendation and shall implement the general recommendation no later than 18 months after the recommendation has been made public by the NTSB.

(c) If the commission determines that implementation of a safety recommendation is not appropriate, the reason or reasons shall be detailed in writing as part of the commission's record of the proceeding.