



U.S. Department of Transportation

Pipeline and Hazardous Materials
Safety Administration

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Commissioner PEEVEY'S OFFICE
Washington, DC 20590

December 23, 2011

OVERNIGHT EXPRESS MAIL

Mr. Michael R. Peevey
President
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298

Dear Mr. Peevey:

Sections 60105(e) and 60106(d) of the Pipeline Inspection, Protection, Enforcement and Safety (PIPES) Act of 2006 provides for the monitoring of State pipeline safety programs by the Pipeline and Hazardous Materials Safety Administration (PHMSA). This annual monitoring is to ensure compliance with the PIPES Act requirements for State pipeline safety programs and provides information for determining the State's total point award for the PHMSA pipeline safety grant for next year.

On September 19-23, 2011, representatives of PHMSA's Office of State Programs evaluated the CY 2010 Pipeline Safety program activities conducted by the California Public Utilities Commission (CAPUC). The evaluation encompassed the validation of annual Certification documents submitted to PHMSA, review of the pipeline program procedures and records, and the observation of an on-site inspection of a pipeline operator conducted by your staff. Thank you for the courtesies extended by your staff to Mr. Glynn Blanton and Mr. Don Martin, PHMSA State Programs.

We appreciate Mr. Raffy Stepanian and Mr. Michael Roberson's participation in the National Association of Pipeline Safety Representatives (NAPSR) supporting improvement in pipeline safety across the nation. Mr. Stepanian also continues to provide recommendations for improvements to pipeline safety regulations to State Commissioners while serving on the National Association of Regulatory Utilities Commissioners Staff Subcommittee on Pipeline Safety. Additionally, several CAPUC staff members continue to participate in the Common Ground Alliance and USA North meetings regarding preventing excavation damage to underground facilities which continues to be a leading cause of pipeline incidents. We appreciate your efforts to improve pipeline safety by supporting participation in these important safety committees.

Based on the evaluation and validation of Certification information, it appears the pipeline safety program is generally complying with PHMSA's requirements. As a result of this evaluation, I would like to bring the following items to your attention:

1. Each year PHMSA's State Programs reviews and scores the annual Certification submittals by each State pipeline safety program. If all requirements have been met in the Certification 50 points are awarded to the State. During the review of the 2011 CAPUC certification, CAPUC was awarded 39 points. Grant allocation points were deducted and associated funding reduced for the following items:
 - a. There was a five point reduction due to the CAPUC not having 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. This is a reoccurring concern for PHMSA and we continue to encourage the State to take action to address it. In your letter dated February 25, 2011, you expressed the CAPUC is working toward achieving complete oversight of all intrastate pipeline facilities; however, due to concerns regarding the increasing regulatory requirements the CAPUC must implement, such as Distribution Integrity Management and Control Room Management, you are concerned with increasing your safety authority until you have a better understanding of the resources necessary to implement the new programs. PHMSA agrees we have been actively pursuing additional regulations aimed toward improving pipeline safety and inspector resources will need to be increased to address the new regulatory workload. PHMSA has increased grant funding to States to support them in obtaining the additional pipeline safety staff. I continue to encourage the CAPUC to hire additional dedicated pipeline safety staff to implement the new regulatory requirements and obtain safety authority for all California intrastate gas pipeline facilities.
 - b. The CAPUC lost six points for failure to meet the minimum number of recommended inspection person days. This is the second consecutive year CAPUC has failed to meet the minimum recommended number of inspection days requirement. To be effective, a pipeline safety program must have dedicated resources available to perform inspections and incident investigations assuring pipeline operators are complying with the safety regulations. Priority should be placed on accomplishing these core inspection and investigation task to avoid additional loss of grant allocation points, associated grant funding, and possible program Certification. We recognize the CAPUC is hiring additional staff to address this issue. We will continue to evaluate the use of these additional resources and their affect for increasing the number of days spent inspecting pipeline operators and investigating pipeline incidents for compliance.
2. PHMSA recognizes the CAPUC does not have an upper limit for penalties assessed to pipeline operators; however, there are limits on the daily amount which an operator can be fined. The CAPUC may fine up to any level it deems appropriate starting at \$500 per day up to \$20,000 per violation for gas public utility operators. To prevent a loss of future grant allocation points we are encouraging the CAPUC to adopt maximum per day penalty levels the same as PHMSA's per day limits of \$100,000 per day.

Master meter and propane operators can be fined \$1,000 per day for each day a violation continues, but not to exceed \$200,000 for a single violation or related series of violations. In order to insure no scoring reductions will occur in the future, CAPUC is encouraged to increase the civil penalty amounts to match Federal penalty levels of \$100,000 per day up to a total of \$1,000,000 for any related series of violation for these operators.

Additionally, it appears under General Order 112-E Section 104.1 it is the intent of the CAPUC to automatically incorporate all revisions to the Federal Pipeline Safety Regulations, 49 CFR Parts 190, 191, 192, 193, and 199. It should be noted that Part 190; Subpart B is PHMSA's enforcement authorities which under 190.223(a) sets our penalty limits. Please confirm if your legal counsel believes you have the authority through this automatic adoption of our enforcement procedures to apply our enforcement tools and penalty levels to pipeline operators under your safety authority. If this is the case as we raise our penalty levels the CAPUC penalty levels would automatically be the same as PHMSA's levels without the need for additional legislation. If it is not your intent to adopt PHMSA enforcement procedures and authority then "Part 190" should be stricken from the language under Section 104.1 General Order 112-E.

3. PHMSA appreciates the CAPUC's action directing Pacific Gas & Electric (PG&E) to reduce cast iron pipelines and copper services under an existing order from the agency. We understand in 2010, PG&E replaced 6,209 copper services and continued the replacement of cast iron mains in their service areas. As of January 2011, PG&E had 63 miles of cast iron main remaining to be replaced. PHMSA appreciates your actions to address the replacement of cast iron pipelines and copper services lowering the potential risk to the general public. Please continue to monitor the replacement of these pipelines and consider adding requirements to address unprotected bare steel and accelerating replacement based on risk.
4. We understand efforts are moving forward at CAPUC in the creation of a new and separate division for the Natural Gas Pipeline Safety program. In this regard, the proposed division manager would report directly to the Executive Director and all pipeline safety personnel would be separate from the Consumer Protection and Safety Division. We support the pipeline safety program being in a division under a State Program Manager who is trained and knowledgeable in natural gas safety.
5. Proposed and final rulemaking at PHMSA will continue to impact your pipeline safety program in the coming year. The Distribution Integrity Management final rule requires the operator to combine periodic inspections and testing of its pipeline's condition with processes to collect, integrate, analyze, and apply information about possible threats to their system. These actions will need to be checked during the review of the operator's Integrity Management Plan. Additionally, monitoring the operator's effectiveness in meeting the Public Awareness rule and how the operator has established human factor management to meet the Control Room Management Rule will also contribute to the inspection workload. As mentioned above PHMSA has increased grant funding to support States in hiring additional inspection staff to address the increasing regulatory

work load. Please assure sufficient staff resources are in place to assure compliance with the increasing regulatory requirements.

6. In reviewing your enforcement records we noted the number of violations carried over from previous years continues to increase. At the end of CY 2010, 4,550 violations have not been confirmed as corrected according to your records. It is our understanding the pipeline operators have been notified of the violations and required to take corrective actions addressing them, but staff has not assured the violations have been corrected. Additional staff resources should be directed to assuring correction of identified operator violations.

PHMSA also noted from CY 2007 to CY 2010 the CAPUC assessed penalties against five operators for violations of the pipeline safety regulations amounting to \$8,450. PHMSA believes using penalties as an enforcement tool is effective for achieving operator compliance and is encouraged by your recent action to streamline the enforcement process allowing more practical use of penalties by the pipeline safety staff. Additionally, the CAPUC \$38 million penalty against PG&E for the Rancho Cordova incident sends a clear message to pipeline industry there is a financial consequence for not complying with the regulations.

I appreciate the CAPUC's efforts for improving the pipeline safety program by hiring additional pipeline safety engineers, streamlining the enforcement process to make more effective use of your fining authority, and establishing a separate section for the Pipeline Safety Program.

Please provide your comments regarding the above items within 60 days of your receipt of this letter to avoid losing performance points in next year's evaluation. The response should be addressed to me at the following address: 6500 South MacArthur, Building MPB Room 335, Route PHP-70, Oklahoma City, OK 73169. Thank you for your contributions and continuing support of the pipeline safety program.

Sincerely,



Zach Barrett
Director State Programs
Office of Pipeline Safety

cc: Don Martin, State Programs Coordinator, PHP-50, PHMSA
Glynn Blanton, State Programs Evaluator, PHP-50, PHMSA
Chris Hoidal, Western Region Director, PHP-500, PHMSA
Michael Robertson, Program & Project Supervisor, CAPUC