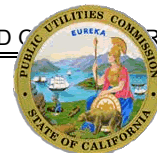


PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

**FILED**04/06/18
10:41 AM

April 6, 2018

Agenda ID #16423
Ratesetting

TO PARTIES OF RECORD IN RULEMAKING 11-02-019:

This is the proposed decision of Administrative Law Judge Kersten. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's May 10, 2018, Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, ex parte communications are prohibited pursuant to Rule 8.3(c)(4)(B).

/s/ ANNE E. SIMON

Anne E. Simon

Acting Chief Administrative Law Judge

AES:jt2

Attachment

Decision PROPOSED DECISION OF ALJ KERSTEN (Mailed 4/6/2018)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the Commission's Own Motion to Adopt New Safety and Reliability Regulations for Natural Gas Transmission and Distribution Pipelines and Relating Ratemaking Mechanisms.

Rulemaking 11-02-019

**DECISION DENYING PETITION FOR MODIFICATION
OF DECISION 15-06-044, AS FILED, AND
ADOPTING ALTERNATE MODIFICATIONS**

Summary

This decision disposes of the Petition for Modification of Decision 15-06-044, filed by the Commission's Safety and Enforcement Division (SED). In Decision 15-06-044, we adopted revised regulations governing the safety and reliability of natural gas and distribution pipeline utilities. In particular, we adopted General Order 112-F, which contained new operational and reporting metrics, accelerated leak survey schedules, and, in certain circumstances, adopted California standards intended to be more stringent than federal requirements.

SED filed its Petition for Modification of Decision 15-06-044, however, arguing that certain provisions of Section 142.1 of General Order 112-F are actually less stringent than are the minimum federal safety requirements. SED thus proposed modifications to Section 142.1 to make it more stringent than what is required under federal rules.

As discussed below, we recognize that Section 142.1, as currently adopted, imposes less stringent requirements than applicable federal safety requirements. We agree that some form of modification to Decision (D.) 15-06-044 is warranted to remedy this inconsistency. We conclude, however, that the Section 142.1 modifications as originally proposed by SED are not the best way to reconcile these inconsistencies between the state and federal requirements. For the reasons discussed below, we conclude that the deletion of Section 142.1 in its entirety offers the preferred remedy. In this manner, we make it clear that the more stringent federal requirements apply, and remove any conflict or inconsistency under state requirements set out in General Order 112-F.

Because General Order 112-F was adopted as Attachment A to D.15-06-044, our action herein to delete Section 142.1 from General Order 112-F constitutes a modification to the decision. While we adopt this modification, we do not adopt the partial revisions to Section 142.1 originally proposed by SED. With this explanation, we thus we formally deny the Petition for Modification of Decision 15-06-044. SED filed a reply to responses to its Petition for Modification in which it proposed deleting Section 142.1 in its entirety, departing from its original proposal. SED never formally amended its Petition, however, to reflect this change in view. Accordingly, while we agree with SED's final view, we deny the Petition for Modification insofar as its original recommendation was never formally withdrawn or amended.

1. Factual Background

On August 11, 2017, Safety and Enforcement Division (SED) filed a Petition for Modification (PFM) of Decision (D.) 15-06-044. In its PFM, SED proposed changes to Decision (D.) 15-06-044, Attachment A, which contained the text of General Order 112-F. In particular, SED proposed revisions to

Section 142.1 of General Order (GO) 112-F (Section 142.1). SED argued that the revisions were necessary because Section 142.1 is less stringent than the applicable minimum federal safety requirements.

Section 142.1 reads as follows:

Plastic Pipe Storage – At the time of installation, plastic pipe to be used for gas transportation, shall not have been subjected to unprotected outdoor exposure longer than the time recommended by the manufacturer, the time period specified in the Operator’s operations and maintenance plan, or 4 years for medium density and 10 years for high density polyethylene pipe, whichever is least. The Operator must maintain documentation from the manufacturers to support all frequencies applied by the Operator for unprotected outdoor exposure.

The corresponding federal requirements are contained in Part 192 of Title 49 of the Code of Federal Regulations (CFR) Section 192.321. The federal requirements state that: “Plastic pipe must be installed below ground level except as provided by paragraphs (g) and (h) of this section.” 49 CFR Section 192.321(g)(1) allows uncased plastic pipe to be temporarily installed above ground level, but in order to do that, “[t]he operator must be able to demonstrate the cumulative above ground exposure of the pipe does not exceed the manufacturer’s recommended maximum period of exposure of 2 years, whichever is less.”

SED explains that the above-ground standards for plastic pipe storage in Section 142.1 are therefore less stringent than 49 CFR 192.321(g)(1) federal requirements in three ways:

First, federal requirements allow for no longer than two years of above-ground exposure, or the maximum time recommended by the manufacturer, whichever is less. On the other hand, Section 142.1 standards allow for a shorter period of time among the following:

time recommended by the manufacturer; period specified in the Operator's operations and maintenance plan; or four years for medium density pipe and 10 years for high density polyethylene pipe.

Second, Section 142.1 uses the word "frequencies" and it is uncertain what that term means because it is undefined.

Third, federal requirements call out "cumulative" above-ground exposure, but Section 142.1 does not. In SED's view, cumulative outdoor exposure of each piece of pipe includes both outdoor storage or above-ground exposure before each installation, as well as uncased above ground installed exposure.

SED thus proposed modifications to Section 142.1 of GO 112-F, as shown in Appendix A of its PFM. SED proposes added language about cumulative exposure to include above-ground exposure before and after installation, and to ensure above-ground exposure of a piece of pipe does not exceed two years. SED states that this would provide a more stringent standard to ensure the cumulative timeframes of outdoor storage and above-ground installation are accounted for on each piece of pipe, and to ensure adherence to minimum federal safety requirements. The word "frequencies" would also be removed to eliminate any ambiguity from Section 142.1, and avoid a potentially less stringent interpretation than would be allowed by federal requirements, and industry standards incorporated by reference into those federal requirements. Finally, Section 142.1 would be amended to allow for Operators an alternative to comply with that Section by showing that above-ground exposure of a piece of pipe complies with the applicable standards incorporated by reference in 49 CFR Part 192.

2. Procedural Background

D.15-06-044 became effective on June 25, 2015. SED filed its PFM on August 11, 2017, more than 12 months following the effective date of the underlying decision. Rule 16.4(d) requires an explanation for a PFM filed more than one year after the effective date of a Commission decision. As set forth in its PFM:

In February 2016, within one year of the date D.15-06-044 became effective, SED senior management raised specific concerns with D.15-06-044, brought to the attention of the assigned Administrative Law Judge (ALJ), proposed language corrections, and asked the ALJ how to proceed.

SED determined that certain requirements in D.15-06-044 were less stringent than applicable minimum federal requirements. SED consulted with the Pipeline and Hazardous Safety Materials Administration (PHMSA), the federal agency responsible for oversight and enforcement of the applicable federal requirements in this case. PHMSA agreed with SED that Section 142.1 was less stringent than the applicable federal regulations. SED senior management did not hear a response regarding this matter, and continues to see the need to ensure that Section 142.1 is at least as stringent as the applicable federal safety requirements.

We conclude that SED offered a reasonable explanation regarding the factors governing the timing of its PFM filing, and we consider the PFM timely filed in reference to Rule 16.4(d).

On September 8, 2017, Southwest Gas Corporation (Southwest) filed a response to the PFM. On September 11, 2017, Southern California Gas Company (SoCalGas), San Diego Gas & Electric Company (SDG&E), and Pacific Gas and Electric Company (PG&E), (collectively, the "Joint Gas Utilities") responded to the PFM. SED filed a third-round reply on September 20, 2017.

This decision is based upon the record consisting of parties' written pleadings.

3. Parties' Positions

Southwest opposes the PFM, arguing that SED's proposed modification results in an overly broad application and, as such, conflict with 49 CFR Part 192. In this regard, 49 CFR Section 192.321(g)(1) provides that, for uncased plastic pipe temporarily installed above ground, the operator must be able to demonstrate that the cumulative above ground exposure does not exceed the manufacturer's recommended maximum period of outdoor exposure or 2 years, whichever is less. SED seeks to apply this standard of no more than 2 years outdoor storage for all plastic pipe, not just the uncased plastic pipe temporarily installed above ground.

SED does not differentiate between outdoor storage for uncased plastic pipe temporarily installed above ground versus plastic pipe installed below ground. Although SED does not assert that GO 112-F is deficient as to other plastic pipe installation, its requested modification would apply to all plastic pipe. On this basis, Southwest argues that SED seeks an overly broad application of the outdoor storage requirement. Southwest also argues that SED's broad application of the outdoor storage limitation discounts the evaluation and analysis in Rulemaking 11-02- 019 that resulted in the current version of Section 142.1.

Southwest further argues that the temporary above-ground installation of uncased plastic pipe, at least in the case of its own operations, occurs infrequently. Southwest warns that if the storage standards for such infrequent occurrence were applied to all plastic pipe, costs to serve would increase and there could be service delays. For these reasons, Southwest argues that any

modification of D.15-06-044 should be restricted to solely the storage requirements for uncased plastic pipe temporarily installed above ground but not storage requirements for other plastic pipe installations.

The Joint Gas Utilities largely agree with SED's proposed revisions to Section 142.1 but offer certain text changes to promote clarity and accuracy. They suggest certain wording clarifications so as not to impose likely unintended and unnecessary standards which would not enhance safety or otherwise benefit the public.

The Joint Gas Utilities state that the SED-proposed modifications, if adopted, would render Section 142.1 more stringent than federal requirements. The SED-proposed revision to Section 142.1 expands the scope of 49 CFR Subpart G to include service lines made from plastic pipe whereas 49 CFR 192.301 expressly limits the applicability of 49 CFR Subpart G to transmission lines and mains. The SED-proposed revision to Section 142.1 regarding buried and cased above-ground installation of plastic pipe, like the federal requirements, allows for the use of state-of-the-art materials that have longer outdoor storage capability. SED proposed this revision by including the language: "...unless the Operator can demonstrate that the pipe complies with the applicable standards incorporated by reference in CFR 49 Part 192." However, the Joint Gas Utilities believe this language is ambiguous and subject to interpretation, particularly in light of SED's statement in the PFM that "[t]his is to ensure the cumulative timeframes of outdoor storage and above-ground installation are accounted for on each piece of pipe." The narrative suggests that the outdoor storage requirement of all plastic pipe should be limited to a maximum of two years, regardless of the type of plastic pipe or where and how it is installed.

On September 20, 2017, SED filed a third-round reply to the filed responses. SED argues that although Southwest is critical of the SED PFM as being overly broad, Southwest does not address the concern that the language in Section 142.1 is less stringent than the applicable minimum federal safety requirements contained in Part 192 of Title 49 of the CFR.

Although the Joint Gas Utilities offer alternative wording to address their concerns, SED argues that the Joint Gas Utilities leave out additional requirements from 49 CFR Section 192.321 that apply to installed below-ground or cased pipe if the operator is unable to demonstrate that the pipe complies with the applicable federal standards. SED is concerned that the revised language offered by the Joint Gas Utilities still leaves ambiguity as to whether Section 142.1 or 49 CFR Part 192 applies if an operator cannot demonstrate that buried or above-ground case pipe applications comply with applicable standards incorporated by reference in 49 CFR Part 192.

After considering the complications raised by parties' responses to its PFM, and the difficulties of crafting appropriate partial modifications to Section 142.1 to address them, SED changed its original position. In its reply comments, SED now proposes that the Commission should simply delete Section 142.1 in its entirety. SED argues that taking this action would make clear the Commission's intention that the letter of 49 CFR Section 192 applies to installation and exposure of plastic pipe; nothing more and nothing less.

4. Discussion and Analysis

We recognize that Section 142.1 requirements, as currently enacted, are less stringent than are the corresponding federal requirements for plastic pipe. The current language of Section 142.1 only addresses outdoor storage of plastic pipes before installation, not above-ground exposure once that pipe is installed.

The federal requirements are more comprehensive than Section 142.1 since they specify that plastic pipe not be installed uncased and above-ground if the cumulative exposure exceeds manufacturer's recommendation or two years, whichever is less. The federal cumulative requirement addresses limiting the total length of time the pipes are exposed to sunlight. By not accounting for cumulative exposure, Section 142.1 allows having a plastic pipe that has longer above ground exposure than the federal requirements prescribe for plastic pipe installed above ground. This difference in requirements has safety implications.

While this inconsistency between state and federal requirements must be addressed, we conclude that SED's proposed partial modifications to Section 142.1, as originally proposed in its PFM, is not the best solution. The PFM proposal raises additional complications and issues, as noted in the above-referenced responses filed by the parties. The partial modification proposed by SED creates the potential for further ambiguities, and does not fully reconcile the differences between applicable state and federal requirements. We find merit in SED's observation in its third-round reply that a preferred solution is to simply delete Section 142.1 in its entirety.

We conclude that deleting Section 142.1 in its entirety is the most efficient way to address the original concern raised in SED's PFM. In this manner, the gas utilities remain subject to the more stringent safety requirements of federal law as set forth in 49 CFR Section 192 which applies to installation and exposure of plastic pipe. Since these federal requirements are more extensive than the limited requirements of Section 142.1, the deletion of Section 142.1 will not diminish the extent of safety requirements that apply to the installation and exposure of plastic pipe. At the same time, by simply deleting Section 142.1 from the body of GO 112-F, there is no need to resolve the specific disputes identified

by the parties in the attempt to address and reconcile differences between the referenced federal and state rules.

Although SED apparently changed its original position in its reply comments, SED did not formally file an amendment to its original PFM to reflect that change. Accordingly, although we modify D.15-06-044 by deleting Section 142.1 in its entirety, we formally deny the PFM as it was originally filed, in which SED proposed only partial revisions to Section 142.1.

5. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____ and reply comments were filed on _____.

6. Assignment of Proceeding

Commissioner Martha Guzman Aceves is the assigned Commissioner and Colette E. Kersten is the assigned ALJ in this proceeding.

Findings of Fact

1. D.15-06-044 adopted GO 112-F, which contained new operational and reporting metrics, accelerated leak survey schedules, and, in certain circumstances, adopted California standards intended to be more stringent than federal requirements.

2. The standards outlined in Section 142.1 of GO 112-F are in certain respects less stringent than the corresponding federal requirements and certain other American Society for Testing and Materials (ASTM) industry standards, which are incorporated by reference into federal requirements. This difference in requirements has safety implications.

3. SED filed a PFM of D.15-06-044, proposing changes in Section 142.1 of GO 112-F to comply with the federal standards in 49 CFR Section 192 of the Pipeline Safety Regulations and ASTM industry standards.

4. Federal requirements provide that for uncased plastic pipe temporarily installed above ground, the operator must be able to demonstrate that the cumulative above-ground exposure does not exceed the manufacturer's recommended maximum period of outdoor exposure or two years, whichever is less. The SED PFM sought to apply this standard for all plastic pipe, not just the uncased plastic pipe temporarily installed above ground.

5. The temporary above-ground installation of uncased plastic pipe, at least in the case of Southwest operations, occurs infrequently. If the SED-proposed storage standards for this infrequent occurrence were applied to all plastic pipe, as proposed in the PFM, its costs of service would increase and there could be service delays.

6. The Joint Gas Utilities proposed language in response to the PFM to address a perceived ambiguity in language suggesting that the outdoor storage requirement of all plastic pipe should be limited to a maximum of two years, regardless of the type of plastic pipe or where and how it is installed.

7. The proposed language of the Joint Gas Utilities, referenced in Finding of Fact 6, leaves ambiguity as to whether Section 142.1 or 49 CFR Part 192 applies if an operator cannot demonstrate that buried or above-ground case pipe applications comply with applicable federal standards.

8. In view of the complications involved in partially modifying Section 142.1, as explained in parties' filed comments, the PFM proposed revisions are not the best way to resolve concerns raised in the PFM regarding the noted disparities between state and federal requirements.

9. Deletion of Section 142.1 in its entirety reasonably resolves concerns as to disparities between state and federal regulations and makes clear that the letter of federal requirements in 49 CFR Section 192 applies to installation and exposure of plastic pipe; nothing more and nothing less.

Conclusions of Law

1. Commission Rule 16.4(d) requires an explanation as to the reasons for any PFM to be filed more than one year after the effective date of the underlying Commission decision. SED provided a reasonable explanation with respect to its PFM filing. Thus, the PFM should be considered timely filed in conformance with Rule 16.4(d).

2. Because certain requirements in D.15-06-044 are less stringent than the applicable minimum federal requirements, as specifically identified in the PFM, modifications to D.15-06-044 are warranted to make it clear that the relevant federal requirements apply to installation and exposure of plastic pipe; nothing more and nothing less.

3. The ordering paragraphs below appropriately dispose of the disparities between state and federal requirements relating to plastic pipe installation and storage, and should be adopted.

4. Although SED changed its original position in its reply comments, SED did not formally file an amendment to its original PFM to incorporate that change. Accordingly, the PFM, as originally filed in which SED proposed partial revisions to Section 142.1, should be denied.

O R D E R

IT IS ORDERED that:

1. The Petition for Modification of Decision (D.) 15-06-044, filed by the Commission's Safety and Enforcement Division, is denied insofar as it seeks partial modification of Section 142.1 of General Order 112-F. In the alternative, D.15-06-044 is modified to delete Section 142.1 in its entirety, as prescribed in Ordering Paragraph 2 below.

2. Attachment A of Decision 15-06-044, entitled "General Order Altered 112-F," page 14 thereof, is hereby amended to delete Section 142.1, entitled "Plastic Pipe Storage" in its entirety. The following language shall be inserted under the Section 142 heading: "*Section 142.1 is deleted pursuant to Commission Decision 18-__-__ in R.11-02-019.*"

This order is effective today.

Dated _____, at Fontana, California.