
PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

November 16, 2020

Agenda ID #19000

TO PARTIES OF RECORD IN DRAFT RESOLUTION ALJ-392:

This is the draft Resolution of Administrative Law Judge (ALJ) Sasha Goldberg's Resolving the Appeal K.19-03-001 of Citation No. D.16-09-055 G.19-02-001 of Southern California Gas Company (U904G). It will appear on the Commission's agenda no sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft resolution, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own order. Only when the Commission acts does the resolution become binding on the parties.

You must serve your comments on the draft resolution. Comments shall be served (but not filed) within 20 days of the date that the draft Resolution is noticed in the Commission's Daily Calendar, <http://docs.cpuc.ca.gov/SearchRes.aspx?DocTypeID=9&Latest=1>, as provided in Rule 14.5 of the Commission's Rules of Practice and Procedure. Comments shall be served via electronic mail upon all persons on the attached service list.

Comments must be served to ALJ Goldberg at SL5@cpuc.ca.gov. No paper copies are required at this time.

/s/ ANNE E. SIMON

Anne E. Simon

Chief Administrative Law Judge

AES:sgu

Attachment

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-392
Administrative Law Judge Division
[Date]

RESOLUTION

RESOLUTION ALJ-392. Resolves the Appeal K.19-03-001 of Citation No. D.16-09-055 G.19-02-001 of Southern California Gas Company (U904G)

SUMMARY

This resolution resolves the appeal of Southern California Gas Company from Citation No. D.16-09-055 G.19-02-001 issued by the California Public Utilities Commission's Safety and Enforcement Division on February 1, 2019. Citation No. D.16-09-055 G.19-02-001 issues a fine of \$3.3 million dollars for violation of Part 49 Code of Federal Regulations (CFR) §192.13(c) and California Public Utilities Code §§ 451 and 702 and SoCalGas' Gas Standard 223.0030. In lieu of a hearing, the parties provide a Settlement Agreement which resolves all disputed issues raised in the instant appeal. As a result of the Settlement Agreement, Southern California Gas Company shall pay a penalty of \$1,250,000 to the State's General Fund. Additionally, Southern California Gas Company shall make a \$700,000 shareholder investment to accelerate its soil sampling and pipe/fitting testing processes. Parties request the proposed settlement be adopted and the proceeding closed.

BACKGROUND

On January 20, 2017, a fitting on a pipeline (Subject Pipe Fitting) within a condominium complex failed, allowing for the release of natural gas. The natural gas ignited leading to a fire that destroyed property and injured one individual. Southern California Gas Company (SoCalGas) took certain immediate actions to ensure the safety of the site, including making repairs, conducting a leak survey, and soil testing. In addition, SoCalGas replaced the mains and services within the condominium complex.

On November 21, 2017, the injured resident and his family (Plaintiff) filed a lawsuit against SoCalGas in Los Angeles Superior Court (civil lawsuit). On November 19, 2018,

the California Public Utility Commission's (Commission) Safety and Enforcement Division (SED) directed SoCalGas to conduct testing of the Subject Pipe Fitting no later than December 28, 2018. On November 28, 2018, SoCalGas advised SED that the Subject Pipe Fitting was evidence in the civil lawsuit and that testing could not be completed without consent of all parties to the civil litigation due to the destructive nature of the test. At that time, SoCalGas indicated that testing of the Subject Pipe Fitting was planned for January 10, 2019 in the civil lawsuit. Based on this information, SED agreed to extend the deadline to test the Subject Pipe Fitting by January 10, 2019.

On January 4, 2019, SoCalGas settled with the main Plaintiff to the civil litigation. However, other plaintiffs added new defendants to the case. Due to these litigation changes, SoCalGas removed testing of the Subject Pipe Fitting off calendar. On January 7, 2019, SoCalGas notified SED that the January 10, 2019 testing date was taken off-calendar due to the recently-added parties, and concern over needing their consent to move forward with the Subject Pipe Fitting test. SoCalGas admittedly should have discussed this change with SED before agreeing to take the January 10, 2019 Subject Pipe Fitting test off calendar.

On January 23, 2019, SED requested a "firm date to conduct the testing." On January 28, 2019 SoCalGas responded that a firm date would be challenging given the destructive testing in the face of pending litigation.

On February 1, 2019, SED issued a Citation fining SoCalGas \$3,300,000 and alleging that SoCalGas violated 49 CFR §192.13(c) and California Public Utilities (Cal. Pub. Util.) Code §§ 451 and 702, and SoCalGas' Gas Standard 223.0030 in connection with the timeliness and communication with SED on the Subject Pipe Fitting test. The Citation alleges SoCalGas failed to properly and timely investigate the incident to determine the cause(s) of the failure and minimize the possibility of recurrence in accordance with state and federal law. The Citation further alleges SoCalGas failed to obey and comply with SED's directive to determine cause(s) and prevent reoccurrence by testing the Subject Pipe Fitting by January 10, 2019, and failed to obtain SED's approval prior to the cancellation of the scheduled test. The Citation calculation results from the maximum penalty per day, \$50,000, for the time period between the directive's testing deadline (January 10, 2019) and the citation date (February 1, 2019), 22 days, for the three alleged violations ($\$50,000 \times 22 \times 3 = \$3,300,000$).

Testing of the Subject Pipe Fitting was completed on February 19, 2019, after an additional extension was requested by Plaintiffs and approved by SED. The testing was attended by representatives of SED, SoCalGas, and parties to the civil lawsuit. On February 21, 2019 SED confirmed that the testing required by the November 2018 directive was completed.

DISCUSSION

Pursuant to ALJ-274, issued by the Commission on December 7, 2011, SED is authorized to issue citations to all gas corporations to enforce compliance with GO 112. When issuing citations, SED considers factors per Cal. Pub. Util. Code § 2104.5 and Section 1702.5(a)(1), as outlined in Commission Decision (D.) 16-09-055. ALJ-274 also delegates SED authority to levy fines for violations in the amounts prescribed for penalties by Cal. Pub. Util. Code § 2107. In turn, a corporation issued such a citation may accept the fine imposed or contest it through a process appeal under Resolution ALJ-299.

On March 1, 2020, SoCalGas filed the instant Appeal, appealing the citation and requesting a hearing on the grounds: (1) there is no supporting evidence that SoCalGas failed to meet its obligations under Pub. Util. Code § 451; (2) the Citation is not consistent with the purpose of the Gas Safety Citation Program; (3) the Citation and financial penalties were assessed prematurely and without notice and opportunity to correct; (4) the penalty does not comply with ALJ-274's requirements, which include taking "account of the factors listed in §2104.5 in issuing citations;" (5) the penalties are vague and further do not comport with the Commission's penalty analysis framework, including the requirements listed in D.16-09-055; (6) the penalty amounts are excessive; and (7) mitigating factors warrant either no penalties or lowered penalties because, among other factors, SoCalGas made good faith efforts to comply with SED's directive as evidenced by its ongoing communication with SED following issuance of the directive regarding the legal hold obligation placed on SoCalGas.

On July 22, 2019, a prehearing conference was scheduled in this proceeding. Prior to the hearing, parties received an email ruling cancelling the prehearing conference and alerting parties it would be rescheduled at a later date. In the fall of 2019, this proceeding was reassigned to Administrative Law Judge (ALJ) Goldberg. ALJ Goldberg set evidentiary hearings for this matter for October 28, 2019.

On October 18, 2019, SoCalGas and SED filed a joint motion for a reasonable continuance to allow parties the opportunity to explore settlement. On October 22, 2019 ALJ Goldberg granted the continuance and directed parties to contact the Commission's Alternative Dispute Resolution (ADR) program. The parties contacted the ADR coordinator and met-and-conferred several times. After participation in ADR, the parties reached a settlement agreement. On March 9, 2020, SoCalGas and SED jointly filed a motion for Commission consideration of settlement.

RESOLUTION OF THE APPEAL

The Commission will approve a settlement if it is reasonable in light of the whole record, consistent with law, and in the public interest.¹ The Commission set out factors for penalty analyses in D.98-12-075, incorporated into gas citation programs in D.16-09-055.² For settlement agreements which include a fine or penalty, D.98-12-075 also sets forth the following five factors that must be examined in determining whether the proposed fine or penalty is reasonable: (1) The severity of the offense, including consideration of economic harm, physical harm, harm to the regulatory process, and number and scope of violations, with violations that cause physical harm to people or property being considered the most severe and violations that threatened such harm closely following; (2) The conduct of the utility in preventing, detecting, disclosing and rectifying the violation; (3) The financial resources of the utility (to ensure that the degree of wrongdoing comports with the amount of fine and is relative to the utility's financial resources such that the amount will be an effective deterrence for that utility while not exceeding the constitutional limits on excessive fines); (4) The amount of fine in the context of prior Commission decisions; and (5) The totality of the circumstances in furtherance of the public interest.

Based on the record, the offense is severe. The violations occurred when SoCalGas' equipment failed releasing natural gas, igniting a condominium complex and injuring one individual. SoCalGas did take action to ensure the safety of the site, including making repairs, conducting a leak survey, soil testing, and replacing the mains and services within the condominium complex. However, SoCalGas' failure to communicate with SED prior to off-calendaring the January 10, 2019 Subject Pipe Fitting test is another factor we consider when viewing the penalty amount. SoCalGas' actions after January 4, 2019, however, do not reach a level of non-responsiveness adding to the severity of the offense. While SoCalGas admittedly should have communicated with SED prior to off-calendaring the January 10, 2019 Subject Pipe Fitting test, the test was rescheduled and appropriately attended by utility and SED representatives on February 19, 2019, a little more than one month past the original test date. Moreover, SoCalGas made a good faith effort to comply with SED's original test directive as evidenced by the utility's ongoing communication with SED following the January 10, 2019 test cancellation. Weighing these factors alongside the utility's remedial measures following the fire and SoCalGas' financial resources, we find the settlement amount of \$1,250,000 to be reasonable under D.98-12-075's five factors.

On review, the \$1,250,000 settlement payment is reasonable in light of the record. This amount serves as an effective reminder to SoCalGas of its obligations as a prudent

¹ See *e.g.* Commission Rules of Practice and Procedure 12.1(d).

² D.16-09-055 modified and incorporated D.98-12-075, Appendix A, § (b) (fines), 85 CPUC2d 155, 193-195.

operator mindful of both Commission directives and public safety. The \$700,000 shareholder-funded program to accelerate SoCalGas' soil sampling and pipe / fitting testing of Aldyl-A pipeline materials, is reasonable in light of time it took to coordinate the Subject Pipe Fitting test. Moreover, the improvements to SoCalGas' internal testing and soil sampling promotes safety in that the utility is investing in improving its internal safety controls. The settlement amount coupled with the \$700,000 testing program is reasonable in light of the record.

The Commission strongly favors settlement and "takes into consideration a long-standing policy favoring settlements. This policy reduces litigation expenses, conserves scarce Commission resources and allows parties to craft their own solutions reducing the risk of unacceptable outcomes if litigated."³ The Settlement is consistent with the Commission's policy that provides for settlements between the Commission's enforcement staff and a utility where staff has alleged a violation of the Commission's rules or orders. The parties that can most properly resolve these types of allegations are the enforcement staff and the utility that has been charged with a violation of Commission rules. SoCalGas' commitment to spend \$700,000 in shareholder funds to accelerate soil sampling and pipe/ fitting testing are is consistent with law since it does not contravene or compromise any statutory provision or controlling law.

The settlement avoids the time, expense, and uncertainty of further litigation and resolves the matter. Additionally, by requiring a settlement payment, the agreement affirms the importance to adhering to Commission rules and orders. Moreover, the \$700,000 investment in SoCalGas' Distribution Integrity Management Program enhances the safety of SoCalGas' systems. The settlement agreement is therefore in the public interest.

On balance, we find the settlement agreement is reasonable in light of the whole record, consistent with law, and in the public interest.

SAFETY

The Commission has broad authority to regulate public utilities, particularly regarding safety concerns. Although SoCalGas' failure to notify SED prior to off-calendaring the Subject Pipe Fitting test did not result in damage to any persons or property, the integrity of the regulatory process was harmed by SoCalGas' disregard for statutory and Commission directives. This Settlement Agreement ensures SoCalGas will improve its soil testing and pipe / fitting testing processes and communicate with SED prior to disregarding a Commission order.

³ Motion at 6; citing D.10-06-038 at 46.

COMMENTS

Pub. Util. Code § 311(g)(1) requires that a draft resolution be served on all parties and be subject to a public review and comment period of 30 days or more, prior to a vote of the Commission on the resolution. A draft of today's resolution was distributed for comment by the interested parties.

FINDINGS OF FACT

1. On January 7, 2019, SoCalGas notified SED that the January 10, 2019 testing date was taken off-calendar due to the recently-added parties, and concern over needing their consent to move forward with the Subject Pipe Fitting test. SoCalGas admittedly should have discussed this change with SED before agreeing to take the January 10, 2019 Subject Pipe Fitting test off calendar.
2. On February 1, 2019, SED issued a Citation fining SoCalGas \$3,300,000 and alleging that SoCalGas violated 49 CFR §192.13(c) and Cal. Pub. Util. Code §§ 451 and 702, and SoCalGas' Gas Standard 223.0030 in connection with the timeliness and communication with SED on the Subject Pipe Fitting test.
3. Testing of the Subject Pipe Fitting was completed on February 19, 2019, after an additional extension was requested by Plaintiffs and approved by SED. The testing was attended by representatives of SED, SoCalGas, and parties to the civil lawsuit. On February 21, 2019 SED confirmed that the testing required by the November 2018 directive was completed.
4. On March 9, 2020 SoCalGas and SED agreed to a settlement whereby SoCalGas would pay a fine of \$1,250,000 to the State's General Fund within thirty days of approval of the Settlement Agreement by the Commission. Within 90 days of approval of the Settlement Agreement, SoCalGas will develop a program to accelerate soil sampling, and pipe/fitting testing. This program will be financed by \$700,000 in shareholder funds.

CONCLUSIONS OF LAW

1. SoCalGas failed to comply with Commission regulations and statutory obligations requiring SoCalGas to hold the Subject Pipe Fitting test on January 10, 2019.
2. The Settlement Agreement should be adopted because it is consistent with applicable law and because nothing in the settlement agreement contravenes any statute or Commission's statute or rule.

3. The Settlement Agreement should be adopted because it avoids the time, expense, and uncertainty of further litigation and resolves the matter and affirms the importance of adhering to Commission's rules and orders.
4. The Settlement Agreement should be adopted because it is reasonable, consistent with law, and in the public interest.
5. The Settlement Agreement should be approved and SoCalGas should be directed to make \$1,250,000 payment to the State's General Fund within thirty days of adoption of this resolution.
6. The Settlement Agreement should be approved and SoCalGas should be directed to submit a report to SED, within one year from the date of adoption of this resolution, documenting what portion of the \$700,000 in funds have been spent and on what, including how much pipe/fitting testing has occurred, and whether that testing resulted in replacements and other benefits derived therefrom.

THEREFORE, IT IS ORDERED that:

1. The Joint Settlement Agreement resolving Citation D.16-09-055 G.19-02-001 between Southern California Gas Company and the Safety and Enforcement Division is approved.
2. Southern California Gas Company (SoCalGas) shall pay a settlement payment of \$1,250,000 by check or money order payable to the to the State of California's General Fund and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102. Payment must be mailed or delivered within 30 days of the effective date of this order. SoCalGas shall write on the face or check or money order "For deposit to the General Fund per Resolution ALJ-392."
3. Within 90 days of adoption of this resolution, Southern California Gas Company shall develop a program which shall be financed by \$700,000 in shareholder funds, to accelerate its soil sampling and pipe / fitting testing.
4. Within one year from the date of adoption of this resolution, Southern California Gas Company (SoCalGas) shall submit a report to the Commission's Safety and Enforcement Division documenting what portion of the \$700,000 in funds have been spent and on what, including how much pipe/fitting testing has occurred, and whether that testing resulted in replacements and other benefits derived therefrom. SoCalGas shall file additional reports annually until the entire \$700,000 has been spent.

5. This proceeding is closed.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on _____, the following Commissioners voting favorable thereon:

Rachel Peterson
Acting Executive Director

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RESOLUTION ALJ-392 Resolves the Appeal K.19-03-001 of Citation
No. D.16-09-055 G.19-02-001 of Southern California Gas Company
(U904G)

INFORMATION REGARDING SERVICE

I have electronically served all persons on the attached official service list who
have provided an e-mail address for K.19-03-001.

Upon confirmation of this document’s acceptance for filing, I will cause a copy of
the filed document to be served by U.S. mail on all parties listed in the “Party” category
of the official service list for whom no e-mail address is provided.

Dated November 16, 2020, at San Francisco, California.

 /s/ SHANE GUTTO

Shane Gutto

N O T I C E

Persons should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission’s policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TDD# (415) 703-2032 five working days in advance of the event

***** SERVICE LIST *****

Last Updated on 16-NOV-2020 by: KB3

K1903001 LIST

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