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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Consumer Protection and Safety Division

RESOLUTION USRB-001

July 31, 2008

R E S O L U T I O N

RESOLUTION USRB-001. Establishes Citation Procedures For The Enforcement Of Safety Regulations By The Consumer Protection And Safety Division Staff For Jurisdictional Propane Gas Distribution System Operators.

Summary

Public Utilities Code (PU Code) sections 4451-4465 contain regulations applicable to propane gas systems. PU Code section 4452 authorizes the Commission to create an inspection and enforcement program for propane distribution systems, and to adopt rules that are "at least" as stringent as the federal law, to protect the health and safety of customers served by propane distribution systems. PU Code section 4457(b)(1), authorizes the Commission to enforce these provisions through the issuance of citations against propane system operators.

The Commission staff (staff) requests authorization to create a citation program for efficient enforcement against propane system operators who fail to comply with the directives contained in PU Code sections 4451-4465 and in General Order 112-E. We grant the request consistent with the citation procedures described below.

Background

On September 1, 1994, Assembly Bill (AB) 766 was enacted creating authority for the Commission to establish a propane gas safety inspection and enforcement program for the operators of propane gas distribution systems (Stat. 1994, ch.388 (AB766)). The legislation was enacted to ensure that jurisdictional propane system operators comply with the federal pipeline safety standards¹ to protect the health and safety of their customers.

On September 19, 1996, in AB 2430 (Stats. 1996, ch.651), the original legislation was modified by amending PU Code sections 4451-4454, 4456, 4458 and by adding sections 4462-4465. The amended Section 4457 provides for civil penalties of not more than \$1,000 per day that the violation continues, not to exceed \$200,000 for a single violation or related series of violations.

Staff implemented a Propane Safety Program in 1995 as a result of AB 766, but has not developed an accompanying citation program to aid in enforcement. Staff has been working with jurisdictional propane system operators to help them understand and comply with the rules and regulations of the Propane Safety Program.

Since inception of the Propane Safety Program, staff has found numerous code violations that propane system operators have failed to correct. When an operator misses a compliance deadline, or fails to take action to correct a violation

¹ The federal standards are established in the National Gas Pipeline Safety Act of 1968 (49 U.S.C. section 1671 et seq.) as amended by the Pipeline Safety Improvement Act of 2002, and the regulations set forth in Parts 190, 191, 192, 193 and 199 of Title 49 of the Code of Federal Regulations.

The Commission supplemented the federal regulations in General Order 112-E, rules governing the design, construction, testing, operation, and maintenance of gas gathering, transmission, and distribution piping systems.

or safety hazard, staff pursues compliance via telephonic notices, letters, and/or re-inspections. In spite of staff's efforts, some operators consistently fail to comply with the Commission directives.

Currently, staff does not have an effective means to compel compliance. The current procedures call for staff to bring such operators before the Commission through an Order Instituting Investigation or an Order to Show Cause which are lengthy, resource consuming and expensive proceedings for the Commission as well as for the operators.

Staff informs us that some of the enforcement issues that arise relate to definitions. A propane system operator is defined by the federal regulations as "a person who engages in the transportation of gas." (49 Code of Federal Regulations (CFR) Section 192.3) A propane system operator can be a gas utility, a municipality, an individual or supplier operating a propane system in a housing project, apartment complex, condominium, mobile home park, shopping center, etc. If there is no designated person responsible for compliance, then the person making a sale of propane gas to the customer is the propane system operator. The federal regulations do not specifically define "customer"; however, 49 CFR 191.3 refers to the "ultimate consumer" who "purchases the gas directly through a meter or by other means..." We adopt a similar definition in this Resolution; the "customer" is the ultimate purchaser of the propane gas who buys the gas for his or her own use and not for resale.

With regards to covered "systems" and "operators", PU Code section 4451(b) defines a jurisdictional propane system as a "system of pipes, operated by a person or corporation other than a public utility, serving 10 or more customers, within a citywide area, an apartment house, a condominium, a cluster of homes, a shopping center, a combination of any of the above, a mobilehome park with two or more

customers, or any system if a portion of the system is located in a public place, which is connected to a tank or tanks, for the purpose of distribution of propane to the end customers". Section 4451(c) defines "operator" as the "owner of the mobilehome park or the propane distribution system", including the "designated responsible employee, manager, or legal representative" for the operator of the system.

Citation Program

The following procedures are adopted for the citation program:

1. The Director of the Commission's Consumer Protection and Safety Division (CPSD), or a designated CPSD staff under the supervision of the Director, is hereby authorized to serve citations on propane system operators subject to the requirements of PU Code sections 4451 et seq. for the following specified violations of those sections and applicable Commission regulations:

a) Willful Obstruction of Commission Staff's Right of Entry

A citation may be issued to a propane system operator who willfully obstructs staff from gaining access to the premises to conduct an inspection of a propane system (PU Code section 4453(f)).

b) Failure to File an Annual Report

A citation may be issued to a propane system operator who fails to comply with the Annual Report filing requirements (PU Code section 4454).

c) Failure to Repair Immediate Safety Hazards

For safety hazards that pose an immediate threat to the health and safety of the distribution system's customers, a citation may be issued to the operator of that propane system. Staff must also follow the additional detailed procedures described in the Special Circumstances section (below) to ensure that corrective action is taken within 24 hours. (PU Code section 4456.)

d) Failure to Comply With Commission Staff Directives

During an inspection, staff may discover code or regulation violations which are considered non-hazardous but may be potential future hazards. Upon discovery of violations which constitute a potential but not immediate threat to the health and safety of propane system customers, the operator will be given 30 days from the inspection to submit a compliance plan that details how the violations will be corrected. (PU Code section 4455.) If the operator fails to prepare an appropriate compliance plan within 30 days, or if little or no effort is made by the operator to follow the compliance plan, a citation may be issued.

e) Falsifying Documents

All documents submitted by a propane system operator to the Commission must be accurate and truthful. If staff discovers that an operator has deliberately falsified documents, the operator may be issued a citation. (PU Code section 4459.) Alternatively, the falsification may be referred to the General Counsel for enforcement under Rule 1.1 of the Commission's *Rules of Practice and Procedure*.

f) Failure to Pay the Surcharge (Annual User Fee)

A surcharge must be paid by propane system operators. (PU Code section 4458.) An operator who fails to pay the surcharge may be cited. (PU Code section 4465.)

2. After an inspection, CPSD staff provides the propane system operator with an Inspection Report. If, during the course of the investigation, the inspector discovers violations, the inspector must indicate any violations in his/her Inspection Report. The propane system operator has 30 days to submit a compliance plan detailing how the operator will correct the violations detailed in the Inspection Report, except for violations that may result in an immediate threat to the health and safety of the distribution system's customers (PU Code section 4455.) If the inspector determines that conditions exist that may create an immediate hazard to the health and safety of the distribution customer(s), the Special Circumstances section of this resolution applies.
3. CPSD will review the compliance plan submitted by the operator, and may accept or reject it. If it is rejected, CPSD will immediately notify the

operator of any necessary compliance plan modifications that are necessary.

4. If the violations described above continue unabated, or if a pattern and practice of violations by the propane system operator emerges, these violations or potential violations may instead be addressed by a Citation pursuant to this resolution, an Order Instituting Investigation, an Order to Show Cause, and/or other law enforcement actions.
5. If the Director of the Commission's Consumer Protection and Safety Division (CPSD), or a designated CPSD staff under the supervision of the Director issues a Citation, it must state the alleged violations and the fine amount and summarize CPSD's evidence. Each citation shall describe with particularity the nature of the violation, including a reference to the statutory provisions or regulations alleged to have been violated, as well as any penalty provided by law for failure to make a timely correction. The citation shall fix the earliest feasible time, as determined by the staff, for the elimination of the condition constituting the alleged violation. (PU Code section 4457(a)(2).)
6. Citations must be in the following amounts:
 - for violation categories (a), (b), and (c), a penalty of \$750 per violation, and \$100 per week until the violation is corrected;
 - for category (d), \$750 per week and \$100 per month until the violation is corrected;
 - for category (e), \$750 per violation; and
 - for category (f), the penalty is 25% of the amount due.
7. Service of the citation shall be effected either personally or by first-class mail. Citations served by first class mail may be sent to the propane system operator's business address, or the address for the service of process of the corporation or LLC or other business entity filed with the Secretary of State of California.
8. The staff inspector must make a reasonable effort to meet and confer with the propane system operator if the operator requests an informal conference regarding the violations detailed in the citation. (PU Code section 4457(b)(3).) CPSD may withdraw the citation where facts and circumstances warrant.

9. If the citation has not been withdrawn, within 45 calendar days from the date of the citation the propane system operator must pay the fine or appeal the citation to the Director of CPSD. CPSD may allow for payment of citation fines in installments in appropriate cases.
10. The propane system operator may appeal the citation and request a hearing as detailed below. Citations must include an explanation of how to file an appeal, including an explanation of the propane system operator's right to have a hearing, to have a representative at the hearing, to request a transcript, to request an interpreter, and a form for requesting an interpreter.

Appeals

11. Appeals will be conducted as follows:
 - a. The appeal must be brought by submitting a letter of appeal to the Director of CPSD within 45 calendar days from the date of the citation, and the propane system operator must explain the reasons for the appeal in the letter. Within 30 days of receipt of a timely appeal, CPSD will, at its discretion, either (a) withdraw a citation upon appeal where facts and circumstances warrant such action and provide a written notice of withdrawal to the operator, or (b) notify the Chief Administrative Law Judge of the Appeal ("CPSD Notice").
 - b. Upon receipt of a CPSD Notice of an appeal, the Chief Administrative Law Judge will assign and promptly forward the matter to an Administrative Law Judge, who will set the matter for hearing within 30 calendar days after receipt of the CPSD Notice. The Administrative Law Judge may, for good cause shown or upon agreement of the parties, grant a reasonable continuance of the hearing.
 - c. Appeals of citations will be heard in the Commission's San Francisco or Los Angeles courtrooms. The operator and CPSD will be notified at least ten days in advance of the time, date and place for the hearing.
 - d. The propane system operator may order a transcript of the hearing, and must pay the cost of the transcript in accordance with the Commission's specified procedures.

- e. Upon a good faith showing of language difficulty, the propane system operator will be entitled to the services of an interpreter at the Commission's expense upon written request to the assigned Administrative Law Judge not less than ten days prior to the date of the hearing.
- f. The propane system operator may be represented at the hearing by an attorney or other representative, but any such representation will be at the operator's expense.
- g. At an evidentiary hearing, CPSD bears the burden of proof. CPSD also bears the burden of producing evidence and accordingly will open and close. The Administrative Law Judge may, in his or her discretion to better ascertain truth, alter the order of presentation. Relevant and reliable evidence may be received in the discretion of the Administrative Law Judge. Although the technical rules of evidence ordinarily need not be applied in hearings before the Commission, substantial rights of the parties shall be preserved. (PU Code section 1701(a).)
- h. Ordinarily, the case will be submitted at the close of the hearing. The Administrative Law Judge, upon a showing of good cause, may keep the record open for a reasonable period, not to exceed 30 calendar days, to permit a party to submit additional evidence or argument.
- i. The Administrative Law Judge will issue a draft resolution that resolves the appeal not later than 45 days after the submission of the CPSD Notice, and the order will be placed on the first available agenda, consistent with the Commission's applicable rules.
- j. A final Commission resolution is subject to the rehearing rights under Public Utilities Code Section 1731 and to judicial review under Public Utilities Code Section 1756.

Special Circumstances – Correcting Immediate Safety Hazards (PU Code Section 4451(b)(1))

12. There are many types of conditions that could create an immediate hazard to the health and safety of the customers of a propane distribution system. One such example is the presence of a serious leak in the system.

All hazards identified by the inspector as immediate safety hazards require immediate repair or continuous action until the conditions are no longer hazardous. (PU Code section 4456.) When an inspector encounters an immediate safety hazard he or she must adhere to the following procedures.

- a. If the inspector has identified an immediate hazard on the propane distribution system, the inspector will explain to the operator that prompt action must be taken within 24 hours to insure that the unsafe condition is no longer hazardous.
- b. If the hazard exists on a propane system that is located on an end-user customer's property (such as the property of a tenant in a mobile home park), the operator may require the customer to correct the problem promptly, and if the customer does not or cannot comply, the propane system operator may terminate propane supply to the customer. The customer's propane supply will not be reinstated until the propane system operator ensures that the unsafe condition no longer exists. The propane system operator is fully responsible for addressing the unsafe condition to make sure that the propane system is operating safely and that there are no existing safety hazards, and must bear the cost or repair or corrective action. (PU Code section 4456(b).)
- c. Upon completion of the inspection, the inspector will provide the operator an inspection report describing the location and type of the safety hazards encountered.
- d. After 24 hours, the inspector will meet and confer with the operator to determine if action was initiated to abate the unsafe condition. If no action was taken, a citation will be issued immediately.
- e. If the unsafe condition persists after 24 hours, and poses a significant or immediate danger to the health and safety of the public, staff may immediately initiate judicial or administrative proceedings. In addition, the staff inspector may contact local agencies such as the county or the fire district; may require the operator to warn the affected customers; may place a warning tag on the propane tank; may direct the serving propane supplier to terminate service to the propane tank; and may direct other suppliers not to serve the propane tank. (PU Code section 4456.)

13. This citation program is cumulative to all other applicable provisions of state and federal law that provide for sanctions against violators, including but not limited to PU Code section 2112 and 2113, and does not affect the tort liability of the propane system operator. (PU Code sections 4457(c) and (d).) For example, nothing in this citation program alters the duty of the propane system operators to submit a compliance plan within 30 days of receiving the inspection report that specifies a timetable for correcting safety violations. (PU Code section 4455.)
14. From the date that CPSD issues a citation to and including the date when the final Commission resolution is adopted, the Commission's rules governing ex parte communications in adjudicatory proceedings will apply.
15. A copy of this Resolution will be made available to all propane system operators subject to requirements of Public Utilities Code Section 4451 et seq.

Notice and Comments

A copy of the proposed draft resolution was made available on the Commission website on April 2, 2008. On April 10, the CPSD staff issued a letter to all operators and/or interested parties of record informing them of the proposal for a citation resolution and of the process to obtain a copy of the proposed resolution (via web link or via phone/e-mail). Pursuant to PU Code section 311(g) and Rule 14.2(c) of the Commission's Rules of Practice and Procedure, the propane gas operators and/or interested parties were notified that comments on the proposed resolution were due by June 20.

Workshop

On April 25, CPSD staff notified all operators and interested parties of a proposed workshop to be held in Stockton on June 12 for the purpose of explaining the resolution, answering questions, and receiving additional comments. The workshop was held as scheduled.

Parties attended the workshop from various facets of the propane gas industry. There were representatives from the Western Propane Gas Association, propane suppliers, distribution system operators, contractors, etc. At the workshop, CPSD staff explained the purpose and details of the resolution. Many comments were received, all of which were in support. Attendees generally praised the

Commission's effort to tighten-up enforcement of the code and supported the need for such a resolution.

Comments received

1. E-mail comments -- No comments were received via e-mail.
2. Written comments -- One written comment was received from Western Propane Gas Association. The Association supported the resolution in full with no suggested changes.
3. Verbal/Phone comments -- Two verbal comments were received. Both comments were in support of the resolution.
4. Workshop comments -- No adverse comments suggesting changes were received. In general, comments were in support of the resolution.

Findings

1. PU Code section 4457(b)(1) authorizes the Commission to enforce the provisions of PU Code sections 4451-4465 (safety regulations for propane system operators) through the issuance of citations against propane system operators.
2. Staff implemented a Propane Safety Program in 1995 as a result of AB 766, but has not developed an accompanying citation program to aid in enforcement.
3. Staff has been working with jurisdictional propane system operators to help them understand and comply with the rules and regulations of the Propane Safety Program. In spite of staff's efforts, some operators consistently fail to comply with the Commission directives.
4. The Commission's existing procedures for enforcing violations of the PU Code sections 4451-4465 are time-consuming and require expensive resources, and are therefore ineffective.
5. The proposed Propane Citation Procedure process described above to be used by staff is needed to ensure effective enforcement of the legislative mandate.
6. Staff held a workshop to discuss the proposed resolution with propane operators, Western Propane Gas Association members and other entities interested in propane gas regulation. No adverse comments were received.

THEREFORE, IT IS ORDERED that:

The Citation Program described above is hereby adopted.

This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on July 31, 2008. The following Commissioners approved it:

/s/ PAUL CLANON

PAUL CLANON
Executive Director

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners