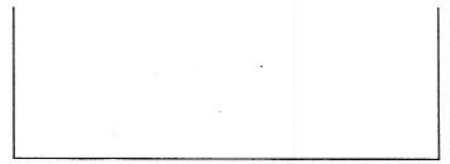




Public Utilities Commission
STATE OF CALIFORNIA



**APPEAL OF WEST COAST GAS COMPANY FROM CITATION # ALJ 274 15-01-005
ISSUED BY SAFETY AND ENFORCEMENT DIVISION**

Raymond J. Czahar
C.F.O.
West Coast Gas Company
9203 Beatty Drive
Sacramento, CA 94826

Citation Date: January 30, 2015
Citation #: ALJ 274 15-01-005
Operator #: 31267
Appeal Date: Feb. 6, 2015

(Please See the Attached Statement of Appeal)

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

In the Matter of the Appeal of West Coast Gas)
Company (U910G) of Citation # ALJ 274) (Filed February 6, 2015)
15-01-005 Issued by the Commission Safety)
and Enforcement Division)
_____)

**NOTICE OF APPEAL OF WEST COAST GAS COMPANY
OF CITATION # ALJ 274 15-01-005
ISSUED BY SAFETY AND ENFORCEMENT DIVISION**

Raymond J. Czahar
C.F.O.
West Coast Gas Company
9203 Beatty Drive
Sacramento, CA 94826

Citation Date: January 30, 2015
Citation #: ALJ 274 15-01-005
Operator #: 31267
Appeal Date: February 9, 2015

(Please See the Attached Statement of Appeal)

**ATTACHMENT TO NOTICE OF APPEAL
CITATION # ALJ 274 15-01-005**

I. INTRODUCTION

West Coast Gas Company (WCG), a small CPUC-regulated natural gas distribution utility earning less than \$100,000 in annual net operating income, hereby appeals the referenced citation on the grounds that the \$100,000 fine imposed by the Commission's Safety Enforcement Division (SED) is excessive and disproportionate in light of the size and scope of WCG's utility operations and will materially limit the ability of WCG to continue to improve its level of service and adequately respond to the increasing safety-related requirements and obligations imposed by the Commission. Furthermore, as set forth below, WCG submits that (1) there is no basis for the most serious of the three, alleged violations; and (2) WCG has already taken corrective action with respect to the two remaining violations set forth in the citation.

II. BACKGROUND

WCG is a small distribution-only, low pressure natural gas company. Operating pressures vary from 7 PSIG up to 50 PSIG. WCG serves approximately 1,350 natural gas customers at Mather Field in Sacramento County, and at Castle Airport, in Merced County, California. There are currently 1,230 residential customers and 120 commercial customers.

The \$100,000 fine is excessive and threatens the near-term financial viability of WCG. The fine is equal to almost 150% of WCG's annual net operating income as adopted by the Commission in its last general rate case (Test Year 2013). Net Operating Income provides WCG with the capital that is used to make investments in its distribution system, including those investments that enhance safety and replace plant and equipment used to keep the system operating in a safe and reliable manner. All of the net income of WCG is

re-invested in the gas distribution system, including upgrades designed to improve safety and reliability.

WCG stockholders have never taken a dividend but have reinvested all the net cash flow back into the utility. In 2014, WCG invested over \$100,000 replacing and upgrading the cathodic protection system at Mather (three new rectifiers and a new ground bed for the impressed current cathodic protection system). In 2013 and 2014 WCG invested over \$130,000 in a maintenance building and equipment at Castle to enhance WCG's emergency response effectiveness. WCG has created a web site in 2014 at a cost of \$20,000 to increase its safety messages to end-use customers (call before you dig, emergency response information, home safety devices such as CO2 monitors). These three investments in safety and reliability and communication, while only totaling \$250,000 represent a 25% increase in WCG net rate base. While WCG hopes to have these investments included in its rate base in the next general rate case (Test Year 2017), WCG has made these investments without any change in its rates or additional contributions from ratepayers.

WCG has earmarked additional safety related capital expenditures for enhanced cathodic protection at Mather and has begun to increase management control and oversight of its operations in response to the Commission's implementation of various legislative initiatives and CPUC code changes over the last several years. WCG does not believe that its system will be safer in the future if it is required to pay a fine of \$100,000. In the 19 years that WCG has operated, it has never experienced a single incident that resulted in harm to a person or their property or to an employee of WCG. WCG took an abandoned,

dilapidated and dangerous military gas systems, invested \$2 million in modernization, and continues to invest capital and resources to improve these gas distribution systems.

WCG acknowledges that it has made mistakes, including failure to require its only two supervisors to take a 60-minute instruction course on identifying alcohol impaired employees, though it believes that such mistakes did not in any fashion compromise the safety or reliability of WCG's system or service. However, imposition of a fine of \$100,000 will have a devastating impact upon WCG. Such a fine, which would eliminate any return on investment for a year and a half, in conjunction with the continuing threat of further fines should a single additional citation result from SED's upcoming December 2015 audit of WCG conduct of utility operations over that last few years, will all but insure that WCG will be cut off from any possible external financing and will threaten WCG's ability to improve in all areas of safety from capital investments to covered employee training.

WCG has responded positively to SED recommendations and when violations were identified in the 2013 safety audit, WCG quickly resolved those violations. A \$100,000 fine may be readily absorbed by PG&E or SoCalGas as a rounding error in their financial statements which are rendered in millions of dollars. However a \$100,000 fine poses an existential threat to WCG which renders its financial statements in dollars and cents.

III. DESCRIPTION OF INFRACTIONS/REMEDIAL ACTIONS TAKEN BY WCG

Citation ALJ 274 15-01-005 cites WCG for the following violations of General Order 112-E for the period 2008 through 2013, while stipulating required remedial actions where appropriate:

1. Failure to perform annual maintenance, inspection, and testing of its pressure limiting and regulating station (Housing-Capehart Regulation Station) to ensure that it (a) is in good mechanical condition, (b) is properly installed and protected, and (c) has adequate capacity and reliability and to confirm that the regulator and monitor are set to control or relieve at the correct pressure.

2. Failure (a) to administer the required pre-employment drug testing for one employee when he first started to work for WCG in 2008 and (b) to include the subject employee in WCG's pool of covered employees for the years 2008 through 2013 for required drug and alcohol tests. The citation requires WCG to administer all required drug and alcohol testing for all of its employees and to include them in its pool of covered employees subject to the drug and alcohol testing requirements.

3. Failure to provide required training for WCG supervisors to determine whether reasonable suspicion exists to require a covered employee to undergo alcohol testing. The citation requires WCG to provide at least 60-minute training to its supervisors to educate such supervisors with regard to recognition of indicators of probable employee alcohol misuse and determination of the need to administer required alcohol testing for its employees.

IV. RESPONSE OF WCG TO THE THREE, CITED VIOLATIONS

With respect to each of the above-referenced, cited violations, as set forth below, WCG either disputes the validity of the specific violation or demonstrates the corrective actions it has taken to remedy the asserted violations.

1. **WCG was in compliance with the requirements of Title 49, CFR, §192.739 Pressure limiting and regulating stations: Inspection and testing.**

The most serious allegation cited was the alleged failure of WCG to properly maintain a pressure regulation station in the Wherry Housing Area of Mather. WCG believe it was in compliance and supplied documentation to support its compliance.

Title 49, CFR, §192.739 Pressure limiting and regulating stations: Inspection and testing.

(a) Each pressure limiting station, relief device (except rupture discs), and pressure regulating station and its equipment must be subjected at intervals not exceeding 15 months, but at least once each calendar year, to inspections and tests to determine that it is

(1) In good mechanical condition. *(Each month WCG inspects and records the outlet pressure. Periodically WCG changes the worker regulator to the monitor regulator changes the monitor to the worker regulator to insure the worker is monitor is operational).*

(2) Adequate from the standpoint of capacity and reliability of operation for the service in which it is employed. *(The gas load in the area has in fact decreased over the last several years and the nature of the gas load under the control of this regulating station has remained unchanged since the facility was installed. Therefore there is no question that it is adequate for the service in which was designed and it is employed).*

(3) Except as provided in paragraph (b) of this section, set to control or relieve at the correct pressure consistent with the pressure limits of CFR, §192.201(a); *(The regulating station is set to control 42-45 psig inlet down to 11-12 psig outlet. Monthly inspections and recording of the outlet pressure insures that the outlet pressure is at or below the 17 psig MAOP outlet pressure).*

(4) Properly installed and protected from dirt, liquids, or other conditions that might prevent proper operation *(The regulating station is enclosed in a cinder block structure with a padlocked iron door. In addition, the entire area is enclosed within an iron- padlocked fence).*

WCG believes it has met the requirements of 49 CFR, §192.739, and it should not be subject to a citation. However, WCG does acknowledge its responsibility to maintain and provide more detailed inspection records detailing the scope of the monthly inspections

so that it would be clear to auditors/observers that WCG is meeting or exceeding the requirement of 49 CFR, §192.739.

2. Title 49 CFR 199.113 (c) Employee Assistance Program, 199.241 Training for supervisors:

WCG must provide at least a 60-minute training to its supervisors to educate supervisors on how to recognize the physical, behavioral, speech, and performance indicators of probable alcohol misuse and determine the need to administer alcohol testing for its employees as required by CFR, §199.241 and keep training records as per CFR, §199.227.

Immediately upon notification by SED staff of this deficiency, WCG scheduled its two managers to receive the required training regarding the physical, behavioral, speech, and performance indicators of probable alcohol and drug abuse.

3. Title 49 CFR 199.105 Drug Tests Required:

WCG did not administer the required pre-employment drug test for one of its employees which is required by Title 49, CFR, §199.225.

With regard to the employee in question, WCG contracted with this individual who lived within minutes of Castle Airport and had worked on the Air Force Base prior to its closure. The purpose of his employment was to go to Castle in the event WCG received an after-hours call regarding the gas system at Castle. His sole responsibility was to give WCG's response team real-time, on-the-scene information regarding the circumstances of the after-hours call as the response team traveled to Castle. He was not contracted to perform covered operations and maintenance tasks, and he never has done so. In the 2013 SED report, the SED concluded that this contractor should have been drug tested and included in WCG drug pool.

In response to SED, WCG had this contractor drug tested and included in its drug and alcohol testing program. In addition, this contractor has been given training in emergency response.

V. THE \$100,000 FINE IS EXCESSIVE AND DISPROPORTIONATE AND SHOULD BE SUBSTANTIALLY REDUCED.

The proposed fine is excessive given the relative size of WCG compared to other utilities that have also been subject to fines. The financial impact of a \$100,000 fine on WCG would be equivalent to a \$2 billion fine on Pacific Gas and Electric (PG&E) or a \$1 billion fine on Southern California Gas Company (SoCalGas). AJL – 274 specifically states that the **FINANCIAL IMPACT** of the fine must be a consideration in determining the level of fines imposed. Clearly, that requirement will be ignored if the Commission were to impose such a draconian fine, in relative terms on WCG in this case.

In support of imposing this fine on WCG, the SED Citation Analysis states that WCG annual revenues are \$2.27 million and that “SED applied factors contained in Public Utilities Code 2104.5 in its determination of the citation amount”. An understanding of the basic elements of utility finance reveals that Revenue and Financial Viability is not the same thing. While WCG may have \$2.27 million in revenue, however that revenue is used to pay for operating expenses, the vast majority of which are for natural gas supplies, Operations and Maintenance labor, and PUC mandated programs such as CARE and the GHG program. After all operating expenses have been paid, WCG is left with \$72,912.75 under the best possible scenario.

CPUC Code 2104.5 states the following:

2104.5. **Any penalty** for violation of any provision of this act, or of any rule, regulation, general order, or order of the commission, involving safety standards for pipeline facilities

or the transportation of gas in the State of California **may be compromised by the commission.** In determining the amount of such penalty, or the amount agreed upon in compromise, **the appropriateness of such penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation, shall be considered.**


WCG does not believe that SED's recommended fine of \$100,000 is in conformance with the letter, much less the spirit, of CPUC Code 2105.4. The purported justification for the fine, i.e. a misplaced reliance on WCG's Revenue rather than its Net Operating Income, is not consistent with any of the criteria set forth in Section 2104.5 for determining penalties for violations of the statute.

VI. CONCLUSION

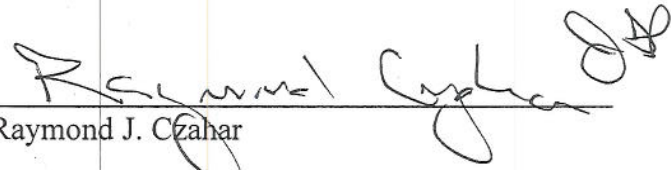
Given the size of WCG's business, the limited impact of the admitted violations on system safety, WCG's good faith, immediate rectification of acknowledged violations and the express statutory recognition of the possibility and desirability for compromise, WCG would ask that SED revisit the substance and scope of the proposed \$100,000 fine and work with WCG to consider alternative remedies that will allow WCG to continue to meet its utility obligation to provide safe and reliable gas distribution service at reasonable rates.

Respectfully submitted this 6th day of February, 2015 at San Francisco, California.

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15-01-005 Issued by the Commission Safety)
and Enforcement Division)
_____)

CERTIFICATE OF SERVICE

I, Sandra DiLuzio, certify that I have on this 6th day of February 2015
caused a copy of the foregoing

**NOTICE OF APPEAL OF WEST COAST GAS COMPANY
OF CITATION # ALJ 274 15-01-005
ISSUED BY SAFETY AND ENFORCEMENT DIVISION**

to be served by email and hand-delivery to the individuals listed below:

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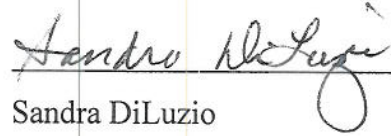
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I declare under penalty of perjury that the foregoing is true and correct.

Executed this 6th day of February 2015 at San Francisco, California.


Sandra DiLuzio