



Chemical Safety and Hazard Investigation Board

Office of General Counsel

Memorandum

To: Board Members

From: Richard C. Loeb *Richard C. Loeb*

Cc: Leadership Team
Rachael Gunaratnam
Christina Morgan

Subject: Board Action Report – Notation Item 936

Date: October 10, 2012

On September 20, 2012, the Board approved Notation Item 936, thereby designating Recommendations 2008-01-I-CO-R4 through R6, to the Colorado Public Utilities Commission (from the Xcel Energy investigation), with the status of Closed – Unacceptable Action/No Response Received.

The Board also voted to adopt the Recommendations Status Change Summary presented in Attachment 2 to Item 936, and to authorize the publication of that summary on the CSB public web site.

Voting Summary – Notation Item 936

Disposition: APPROVED

Disposition date: September 20, 2012

	Approve	Disapprove	Calendar	Not Participating	Date
R. Moure-Eraso	X				9/6/2012
M. Griffon	X				9/20/2012



U.S. Chemical Safety and Hazard Investigation Board

MEMORANDUM

September 6, 2012

To: Mark Griffon
From: Rafael Moure-Eraso
Cc: Daniel Horowitz
Manuel Gomez
Rachael Gunaratnam
Mark Kaszniak
Christina Morgan

Subject: Notation Items 936 – 938

Attached for your review and vote are Notation Items 936 through 938. These items provide for the approval of status changes to several recommendations, based upon evaluations of recipient responses prepared by the Office of Recommendations. These response evaluations and proposed status changes have been reviewed and approved by the Director of Recommendations.

These items now also provide for the adoption of a summary document (attached to each item) explaining the Board's decision on each status change, which will be published on the CSB web site upon Board approval. Unlike the recommendation response evaluations, which are strictly internal documents, the recommendation status change summaries are intended for public release. These summaries are a new undertaking of the Office of Recommendations to provide additional transparency for the recommendations process.

You may direct any questions about these items to the Office of Recommendations staff members named in the evaluation reports, which are attached to each item. Additional background information and documentation for each of the recommendations covered by these notation items is posted on the G Drive at: G:\Recommendations\Recommendations for Board Vote\2012-08-23. For your convenience, you will also receive an e-mail with the links to the background information and documentation. Please note that your computer must be connected to the CSB network either at the office or via VPN in order to access these files.

Please return your completed vote sheets to Chris Kirkpatrick no later than the close of business on September 20, 2012. Thank you for your attention to these items.

**U.S. Chemical Safety and
Hazard Investigation Board**

Hon. Rafael Moure-Eraso
Chairperson

Hon. Mark Griffon
Board Member



**CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD
MEMBER VOTING RECORD**

Notation No.: 936

Voting Period: September 6 – September 20, 2012

Subject: Status Change – Recommendations to the Colorado Public Utilities Commission (2008-01-I-CO-R4 through R6) from the Xcel Energy Investigation (2008-01-I-CO)

Whereas,

1. The Board is authorized by 42 U.S.C. § 7412(r)(6)(C)(i) to “investigate . . . and report to the public in writing the facts, conditions, and circumstances and the cause or probable cause of any accidental release resulting in a fatality, serious injury or substantial property damages;”
2. The Board is further authorized by 42 U.S. C. § 7412(r)(6)(C)(ii) to “issue periodic reports to the Congress, Federal, State and local agencies, including the Environmental Protection Agency and the Occupational Safety and Health Administration, concerned with the safety of chemical production, processing, handling and storage, and other interested persons recommending measures to reduce the likelihood or the consequences of accidental releases and proposing corrective steps to make chemical production, processing, handling and storage as safe and free from risk of injury as is possible;”
3. The Board has issued such recommendations to the **Colorado Public Utilities Commission** based upon the findings of the Board’s Xcel Energy investigation;
4. Consistent with Order 022, the Board is to vote on changes to the status of recommendations;
5. The staff of the Office of Recommendations proposes that the status of the above named recommendations should be changed, as described in the attached internal Recommendation Response Evaluation (Attachment 1 to this item); and
6. The Recommendations staff further proposes that the attached Recommendations Status Change Summary (Attachment 2 to this item) be adopted and published on the CSB web site.

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Notation No.: 936
Subject: Status Change – Recommendations 2008-01-I-CO-R4 through R6

[continued from preceding page]

Therefore, pursuant to its authority, the Board hereby votes:

- a. To designate **Recommendations 2008-01-I-CO-R4 through R6** with the status of **Closed - Unacceptable Action/No Response Received**.
- b. To adopt the Recommendations Status Change Summary presented in Attachment 2 to this item, and authorize the publication of that summary on the CSB public web site.

_____ I **APPROVE** this notation item **AS PRESENTED**.

_____ I **CALENDAR** this notation item for discussion at a Board meeting.

_____ *Some of my concerns are discussed below or on the attached memorandum.*

_____ I **DISAPPROVE** this notation item.

_____ *A dissent is attached.*

_____ *I will not file a dissent.*

_____ I am **NOT PARTICIPATING**.

Date: _____

Member: _____

ATTACHMENT 2



U. S. Chemical Safety and Hazard Investigation Board RECOMMENDATIONS STATUS CHANGE SUMMARY

Report:	Xcel Energy Hydroelectric Plant Penstock Fire
Recommendation Numbers:	2008-01-I-CO-R4 through R6
Date Issued:	August 25,2010
Recipient:	Colorado Public Utilities Commission (CO-PUC)
New Status:	Closed - Unacceptable Action/No Response Received
Date of Status Change:	

Recommendations Text:

Recommendation No. 2008-01-I-CO-R4:

Revise your rules regulating electric utilities, 4 Code of Colorado Regulations 723-3, to:

- a. Require regulated utilities to investigate the facts, conditions, and circumstances of all incidents resulting in death, serious injury or significant property damage as defined in Section 3204*
- b. Require utilities to submit a written investigation report to the Commission within one year of the incident that contains the investigation findings, root causes and recommendations for preventing future incidents that focus on needed changes to utility safety systems. All reports shall be made public.*
- c. Authorize the commission to issue orders addressing needed corrective actions to be taken as a result of the incident.*
- d. Require utilities to submit periodic reports to the Commission detailing action taken on the incident report recommendations and Commission orders. All reports shall be made the public.*

Recommendation no. 2008-01-I-CO-R5

Revise your rules regulating electric utilities, 4 Code of Colorado Regulations 723-3, to:

Require all regulated utilities to fully cooperate with all government safety investigations including facilitating access to witnesses, facilities, and equipment; providing copies of requested records; and responding to interrogatories and other investigative requests for information as expeditiously as possible.

Recommendation no. 2008-01-I-CO-R6

Revise your rules regulating electric utilities, 4 Code of Colorado Regulations 723-3, to:

Require that competitive bidding and contractor selection rules for construction, maintenance or repair of regulated utilities include procedures for prequalifying or disqualifying contractors based on specific safety performance measures and qualifications.

Board Status Change Decision:

A. Rationale for Recommendation

These recommendations were issued following the October 2007 penstock fire at the Xcel Energy Hydroelectric Plant near Georgetown, Colorado, where five contract workers from RPI Coating, Inc. were killed and three others injured while using a flammable solvent to clean coating equipment which had malfunctioned. The Colorado Public Utilities Commission (CO-PUC) is the state regulatory agency that oversees a wide variety of electric power and other utilities and has issued rules pertaining to contractor safety performance, accident reporting, and investigations.

Although the Commission required electric utilities to report fatal accidents, the CSB found that CO-PUC had not received a detailed investigation report of the incident from Xcel or been notified of the availability of one. CO-PUC had only received a letter from Xcel briefly describing the incident and the number of people killed and injured.. The CSB recommended that the Commission revise its reporting requirements to require incident reports that include root causes, provide recommendations for prevention, and describe any preventative measures taken by the company post-incident. Moreover, existing Commission rules neither require that past safety performance be considered as a factor in the competitive bidding process in awarding maintenance and repair contracts, nor do they specify safety-based prequalification or disqualification procedures for contractor selection. Recommendations were issued to the CO-PUC to address these issues.

B. Response to the Recommendations

Despite two CO-PUC public meetings where the CSB recommendations were discussed by the Commissioners and their staff – one in which the CSB only monitored the discussions and the other where CSB investigators gave a formal presentation and answered questions pertaining to the recommendations – plus a number of subsequent e-mail inquires and written letters by Recommendations staff, the CSB has received to date no substantive response to address these recommendations from the CO-PUC.

C. Board Analysis and Decision

More than 270 days have elapsed since these recommendations were issued, and the CSB has received no substantive response from CO-PUC. This time period exceeds the limits established for receiving a response from a recipient under established CSB policy in CSB Board Order No. 22. Therefore, the Board votes to change the status of Recommendations 2008-01-I-CO-R4 through R6 to “Closed—Unacceptable Action/No Response Received.”