

U.S. Department of Transportation
Research and Special Programs Administration
400 Seventh Street, S.W. Washington, D-C. 20590

April 2, 2003

Mr. Zee Wong, Chief
State of California
California Public Utilities Commission
Safety and Reliability Branch
Consumer Protection and Safety Division
506 Van Ness Avenue
San Francisco, California 94102-3298

Mr. Zee Wong:

We have considered your letter of January 22, 2003, notifying us that the California Public Utilities Commission (Commission) granted the Pacific Gas and Electric Company (PG&E) a waiver from compliance with 49 CFR 192.723(b)(2) regarding the frequency of leakage surveys.

Section §192.723(b)(2) requires operators of a distribution system to conduct leakage surveys with leak detection equipment outside business districts as frequently as necessary, but at intervals not exceeding 5 years. However, for cathodically unprotected distribution lines subject to §192.465(e) on which electrical surveys for corrosion are impractical, survey intervals may not exceed 3 years.

The waiver would allow PG&E an additional 3 month window to schedule and complete the required leakage surveys thereby increasing the time intervals to conduct leakage surveys from 5 years to 63 months for distribution lines outside business districts and from 3 years to 39 months for cathodically unprotected distribution lines subject to § 192.465(e).

The Commission concluded that the current 5 year and 3 year requirements were too restrictive because it did not allow the operator flexibility to schedule its personnel to perform the required leakage survey. The Commission concluded that the 5 year and 3 year requirements did not account for scheduling conflicts, unforeseen workload issues, inclement weather, personnel staffing issues, or other unplanned events which could prevent the operator from completing the leakage surveys on time.

We agree that the additional 3 month window allows the operator flexibility to account for unforeseen scheduling conflicts or other unplanned events with no significant effect on safety. Therefore, we have no objection to the waiver.

Sincerely,
Stacey L. Gerard
Associate Administrator for Pipeline Safety

Pacific Gas and
Electric Company

August 15, 2002

Ms. Zee Wong, Chief
Utilities Safety Branch
California Public Utilities Commission
505 Van Ness Avenue, Room 2005
San Francisco, CA 94102-3298

Dear Mr. Wong:

RE: Request for waiver from General Order Number. 112-E, Section 192.723(b)(2), allowing Pacific Gas and Electric Company a three-month variance in leak survey intervals.

Pacific Gas and Electric Company is petitioning the Utilities Safety Branch for a waiver concerning 49 CFR, §192.723(b)(2).

This Section, as it is currently written, states that:

"A leakage survey with leak detector equipment must be conducted outside business districts as frequently as necessary, but at intervals not exceeding 5 years. However, for cathodically unprotected distribution lines subject to §192.465(e) on which electrical surveys for corrosion are impractical, survey intervals may not exceed 3 years."

Pacific Gas and Electric Company and all interested parties in pipeline safety believe this language is unnecessarily restrictive and does not serve to enhance pipeline safety. Federal regulators have proposed a change in wording that is widely anticipated to be issued shortly. The following summarizes the events leading to the proposed change in regulation and Pacific Gas and Electric Company's specific waiver request and justification:

Background

Following its 1996 Board meeting, the National Association of Pipeline Safety Representatives (NAPSR), presented several pipeline safety regulation proposals. Among those was Resolution 1996-1-P1:

"Amend 49 CFR Part 192, Section 192.723(b)(2) to incorporate a 3-month variance in leak survey intervals."

In a May 12, 1997 letter¹ from the Department of Transportation (DOT), Research and Special Programs Administration (RSPA), to NAPSR, responding to NAPSR's proposed changes to §192.723(b)(2), RSPA states:

"We appreciate NAPSR's intent in submitting this resolution and believe it beneficial to our offices and industry, without affecting the public's safety."

As a result, RSPA, through its Office of Pipeline Safety (OPS), has proposed a change² to § 192.723(b)(2):

"A leakage survey with leak detector equipment must be conducted outside of business districts as frequently as necessary at intervals not exceeding 63 months, but at least once every 5 calendar years. However, for cathodically unprotected distribution lines subject to §192.465(e) on which electrical surveys for corrosion are impractical, leakage surveys must be conducted at intervals not exceeding 39 months, but at least once every 3 calendar years. "

¹May 12, 1997 letter from Kelley Conyer, RSPA to Massoud Tahamtani, NAPSR, Page 3.

² Notice of Proposed Rulemaking (NPRM), 65 FR 15295; March 22, 2000; Docket No. RSPA-99-6106

To date, there have been no negative comments on this proposed change.

As justification in the NPRM, RSPA references the State Industry Regulatory Review Committee (SIRRC)³ Summary Report, dated April 26, 1999, that identified industry- regulatory consensus items of proposed rule changes. In support of the NAPSRS proposal to change §192.723(b)(2), the SIRRC Report⁴ states:

"Part 192 typically provides a "window" of time for the completion of periodic inspections and tests. However, there is no window for certain 3 or 5-year leak surveys. An October 1, 1992, OPS interpretation held that inspectors did not have the discretion to accept surveys done after the anniversary date as substantially complying with the rule. NAPSRS saw no public safety benefit to adhering to a rigid, 'at intervals not to exceed' requirement and proposed a more flexible rule consistent with other areas of Part 192. Industry agreed the change was appropriate."

Waiver Request

Pacific Gas and Electric Company is in concurrence with the proposed wording of §192.723(b)(2) in the NPRM, and is seeking a waiver from compliance with the current regulation until the time that the "window of time" language is incorporated into the regulation.

Justification

Pacific Gas and Electric Company agrees with the justification in the SIRRC report that indicates "*NAPSRS saw no public safety benefit to adhering to a rigid, 'at intervals not to exceed' requirement and proposed a more flexible rule consistent with other areas of Part 192.*" Furthermore, Pacific Gas and Electric Company is in concurrence with RSPA's statement that "We ... believe it beneficial to our offices and industry without affecting the public's safety." Pacific Gas and Electric Company sees no increased risk associated with this waiver.

Should you or your staff have any questions, feel free to contact Tom Robinson at (415) 973-8180.

Sincerely,
Shan Bhattacharya

³ On October 7, 1997, NAPSRS, the American Public Gas Association (APGA), and the American Gas Association (AGA), formed the SIRRC to work together in hopes of reaching consensus on a number of rulemaking proposals in RSPA's Rulemaking Docketing PS-124. On April 26, 1999, SIRRC published a report showing where industry and NAPSRS had or had not reached consensus on the PS-124 proposed changes.

⁴SIRRC Summary Report, April 26, 1999, page 35.

State of California
PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

January 22, 2003

Mr. Richard Huriaux,
Manager, Regulations
Office of Pipeline Safety
RSPA/US DOT
400 7th Street, S.W., Room 7128
Washington, D.C. 20590

Re: Waiver of Compliance Approved by California Public Utilities Commission

On Thursday, January , 2003, the California Public Utilities Commission (Commission) approved a waiver of compliance or Pacific Gas and Electric Company (PG&E) with Title 49 Code of Federal Regulations (49CFR) 192.723 (bX2), regarding the frequency of leakage surveys. The justification and support for the waiver approval is included on the attached Commission Resolution (Resolution S U-55) submitted by the Safety and Reliability Branch staff for Commission consideration in this matter. Also included is a copy of PG&E's request, as well as the support provided with their request.

Essentially, PG&E proposed the language contained in the rulemaking on this matter in Docket RSPA -99- 6106, currently under consideration. Under Section 3(e) of the Natural Gas Pipeline Safety Act of 1968, the Office of Pipeline Safety must concur with the Commission in granting the waiver, or it is stayed.

Please respond at your earliest opportunity with your decision.

Should you have any questions or concerns regarding this matter, please feel free to contact me at 415-703-4712, or Daren Gilbert at 916-324-8325.

Sincerely,
Zee Wong, Chief
Safety and Reliability Branch
Consumer Protection and Safety Division

RESOLUTION

RESOLUTION SU- 55, ORDER GRANTING PACIFIC GAS & ELECTRIC COMPANY A VARIANCE FROM TITLE 49 CODE OF FEDERAL REGULATIONS 192.723(b)(2) AS ADOPTED UNDER GENERAL ORDER 112E, RULE 101.2.

SUMMARY

1. By letter of August 15, 2002, Pacific Gas & Electric Company (PG&E) petitions the Commission to authorize a variance from General Order 112E (G.O. 112E), Rule 101.2, for its California gas distribution operations.
2. Whereas G.O. 112E, Rule 101.2, incorporates Title 49 of the Code of Federal Regulations, Part 192 (49 CFR 192), the variance is sought under G.O.112E, Rule 101.3, and is subject to the requirements of Section 3(e) of the Natural Gas Pipeline Safety Act of 1968.
3. 49 CFR 192.723 (b)(2) requires that gas operators conduct leakage surveys on distribution systems with leak detection equipment in areas outside business districts as often as necessary, but at intervals not exceeding 5 years. PG&E has proposed alternative language in its request.
4. The variance as proposed would allow PG&E an additional 3 month window to schedule and complete the required leakage surveys and specifically would require that PG&E conduct leakage surveys with leak detection equipment in areas outside business districts as often as necessary but at least once every five calendar years, at intervals not exceeding 63 months, and for cathodically unprotected distribution lines, as often as necessary but at least once every three calendar years, at intervals not exceeding 39 months.
5. This resolution authorizes the variance for PG&E from 49 CFR 192.723 (b)(2), as adopted in G.O. 112E, Rule 101.2, until the effective date of the final rule in docket RSPA-99-6106.

BACKGROUND

PG&E is a gas transmission and distribution company, under the jurisdiction of the Commission and subject to the regulations contained in 49 CFR192 and Commission G.O. 112E. As such, for its distribution systems, PG&E must follow 49 CFR 192.723(b)(2), which states:

"A leakage survey with leak detector equipment must be conducted outside business districts as frequently as necessary, but at intervals not exceeding 5 years. However, for cathodically unprotected distribution lines subject to § 192.465(e) on which electrical surveys for corrosion are impractical, survey intervals may not exceed 3 years. "

In practice, the PG&E procedure has been to schedule leakage surveys every fifth year, in the anniversary month of the prior leak survey. This has lead to the Safety and Reliability Branch (SRB) Engineers citing PG&E for violations of 49 CFR 192.723(b)(2), when the next survey occurs later in the month than the survey 5 years earlier.

PG&E believes that the language in 49 CFR 192.723(b)(2) is too restrictive and does not allow for any flexibility in scheduling its leak survey personnel and equipment. It also correctly points out that both the National Association of Pipeline Safety Representatives (NAPSR, the group of State pipeline safety program managers), industry representatives and the US Department of Transportation, Research and Special Programs Administration (RSPA), which contains the Office of Pipeline Safety (OPS), have essentially agreed that more flexibility should be included in this regulation.

In fact, language to amend section 49 CFR 192.723(b)(2) has been proposed in RSPA docket Number RSPA-99-6106, Notice of Proposed Rulemaking, 65 Federal Register 15295, March 22, 2000. At this time, OPS projects the Final Rule publication in the Federal Register during November 2002, and final rule adoption in early 2003. The following proposed

language for 49 CFR 192.723(b)(2) is proposed in this docket:

"A leakage survey with leak detector equipment must be conducted outside of business districts as frequently as necessary at intervals not exceeding 63 months, but at least once every 5 calendar years. However, for cathodically unprotected distribution lines subject to §192.465(e) on which electrical surveys for corrosion are impractical, leakage surveys must be conducted at intervals not exceeding 39 months, but at least once every 3 calendar years. "

Therefore, by letter of August 15, 2002, PG&E petitions the Commission to authorize a variance from G.O. 112E, permitting PG&E to conduct its leakage surveys under the less restrictive language noted above.

NOTICE

The matter was not specifically noticed, however, the same language PG&E is proposing was noticed in the Federal Register as part of a Research and Special Programs Administration Notice of Proposed Rulemaking, docket Number RSPA-99-6106, published in the Federal Register at 65 Federal Register 15295, March 22, 2000.

PROTEST

To date, verbal representations by RSPA personnel indicate RSPA has received no protests or objections to the proposal to adopt the language herein in place of the currently effective language. Because of a general industry and government regulator agreement on the matter, the issue is regarded as "non-controversial".

DISCUSSION

The SRB evaluated this variance request to determine its impact on public safety. Factors influencing the SRB's evaluation included the intent of the code requirement, consistency with other regulations in 49 CFR 192, the proposed rule modification currently under consideration in docket RSPA-99-6106, and whether the issuance of the variance would negatively impact public safety.

49 CFR 192.723(b)(2) is intended to require instrumented leakage surveys on 5 year intervals for distribution systems, and on 3 year intervals for distribution lines not cathodically protected. With the issuance of the variance discussed herein, this requirement will continue to be met, as the new language retains the 5 year requirement. The desired flexibility is reached through the, "at intervals not exceeding 63 months" language.

The language sought by PG&E is that suggested by NAPS and included in the proposed rule changes to 49 CFR 192 in RSPA-99-6106. This language is consistent with other requirements in 49 CFR 192, which generally provide a period of time for the completion of periodic tests and inspections. For example, operators are required to test their corrosion control systems by taking cathodic protection readings on their systems pursuant to 49 CFR 192.465(a), which requires that "(e)ach pipeline that is under cathodic protection must be tested at least once each calendar year, but with intervals not exceeding 15 months, to determine whether the cathodic protection meets..." This type of language is typical throughout 49 CFR 192.

Additionally, because instrumented leakage surveys can only be conducted under acceptable weather conditions, the surveys can be delayed due to rain or excessive wind conditions. Thus, the current code language results in the situation where operators are having to schedule the leak surveys at intervals less than 5 years just to assure that the 5 year requirement is met. With such a constantly advancing maintenance requirement, PG&E can be faced with several or many operations and maintenance activities required by regulation due during the same time frame. This could result in unnecessary overtime, and increased costs, with no commensurate public safety benefit.

The SRB does not believe that public safety will be compromised by issuance of this variance. The leakage surveys will continue to be conducted at approximate 5 year intervals as the code intends. The requested relief will allow PG&E more flexibility in conducting and scheduling leakage surveys. It will allow PG&E to deal with scheduling, unforeseen

workload issues, inclement weather, personnel staffing issues, and other unplanned events which might cause surveys to be reasonably delayed beyond the specific anniversary date. The SRB sees no public safety benefit in adhering to a rigid time frame in this matter versus the additional flexibility offered in the PG&E preferred, NAPSR proposed language, as included in RSPA docket number RSPA-99-6106. Also, within the next several months, the PG&E preferred, NAPSR language will become the code language.

COMMENTS

Public Utilities Code Section 311 (g)(2) provides that the 30-day public notice and comment period may be reduced or waived for an uncontested matter in which the decision grants the requested relief.

The 30-day comment period for the draft of this resolution is waived due to the noncontroversial and uncontested nature of the request.

FINDINGS

1. The SRB, after reviewing PG&E's request, the additional requirements in 49 CFR 192 and currently proposed rulemakings at the national level, believes that the issuance by the Commission of a variance waiving compliance with the current language in 49 CFR 192.723(b)(2), and instead following the RSPA-99-6106 language would not significantly impact public safety.
2. The SRB recommends that this variance request be approved until the effective date of the Final Rule in docket RSPA-99-6106, or other, which amends section 49 CFR 192.723(b)(2) in the manner requested by PG&E.

THEREFORE, IT IS ORDERED THAT:

1. Pacific Gas & Electric be granted the variance it requested from 49 CFR 192.723(b)(2) which is adopted in General Order 112E, Rule 101.2.
2. This resolution shall be effective immediately, however, concurrence by the US DOT Associate Administrator must also be obtained. State approval is required before US DOT will consider the waiver.
3. The variance shall expire as of the effective date of the Final Rule in docket RSPA-99-6106 addressing this code section in the manner discussed herein.

I hereby certify that this Resolution was adopted by the California Public Utilities Commission at its regular meeting on January 16, 2003. The following Commissioners approved it:

WESLEY M. FRANKLIN
Executive Director
MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

See original for Attachments

#15290-15297 Federal Register/Vol 65, No. 56/Wednesday, March 22, 2002/Proposed Rules