

(Decision No. R93-1590)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF PROPOSED RULES)	DOCKET NO. 93R-548G
RELATING TO THE GAS PIPELINE)	
SAFETY PROGRAM, 4 CCR 723-11.)	RECOMMENDED DECISION OF
)	ADMINISTRATIVE LAW JUDGE
)	KEN F. KIRKPATRICK

Mailed Date: December 23, 1993

STATEMENT

By Decision No. C93-1192, September 30, 1993, the Commission instituted this rulemaking proceeding. The purpose of the proposed rulemaking was stated as being to amend existing rules concerning Commission enforcement of the Federal Pipeline Safety Program, 49 CFR 190. The existing rules, found at 4 CCR 723-11, were adopted to comply with the mandates promulgated by the United States Department of Transportation (DOT) which requires state agencies certified as federal agents to the Federal Pipeline Safety Program to adopt and enforce DOT rules. The proposed amendments to the rules in this rulemaking incorporate federal rules but make non-substantive modifications to reflect the Commission's specific terminology. The proposals are also intended to comply with recent amendments to § 40-2-115, C.R.S., and § 40-7-117, C.R.S. These proposed rules aim to replace the Commission's prior incorporation by reference of the Federal Safety Rules and procedures.

The notice of proposed rulemaking was published in the October 10, 1993, Colorado Register. A hearing was held on November 19, 1993, at 9:00 a.m. in a Commission hearing room in Denver, Colorado, in accordance with the notice. Written comments were filed by Public Service Company of Colorado (Public Service) on November 18, 1993.

At the assigned place and time the undersigned called the matter for hearing. Oral presentations were made by the Staff of the Commission and by People's Natural Gas company. At the hearing the undersigned extended the comment period until November 24, 1993. No additional comments were filed.

In accordance with § 40-6-109, C.R.S., the undersigned now transmits to the Commission the record and exhibits of this proceeding along with a written recommended decision.

RULE 1 - STATEMENT OF BASIS AND PURPOSES

This rule sets forth the basis and purpose for the rest of the rules. One commentor felt that the reference to the agreement between the Public Utilities Commission and the DOT should be omitted. Omission of the reference to the agreement would be inappropriate since it is through the agreement with the DOT that the Commission does enforce the Pipeline Safety Program. The rules should remain as written.

RULE 2 - DEFINITIONS

Rule 2(c) contains a typographical error and the word "blanc" should be changed to "banc".

RULE 3 - SERVICE

There were no comments concerning this rule and it should be adopted as proposed.

RULE 4 - SUBPOENAS

There were no comments concerning this rule and it should be adopted as proposed.

RULE 5 - INSPECTIONS

Rule 5(b) drew two comments concerning punctuation and grammar which have been incorporated into the final rule.

RULE 6 - WARNING LETTERS

This rule drew no comments and it should be adopted as proposed.

RULE 7 - NOTICE OF PROBABLE VIOLATION

This rule drew several comments. Initially it was suggested that the word "probable" throughout the rules be changed to "alleged." The phrase "notice of probable violation" is used by most states and the Federal DOT. The use of the word "probable" does not affect the burden of proof and for consistency's sake the phrase "notice of probable violation" will be used.

Rule 7(c) drew objections from the commentors. Primarily, the commentors objected to the right of the head of the Safety and Enforcement Section to amend a notice of probable violation at any time prior to the commencement of hearing. The commentors felt that 30 days prior to hearing would be fair to any Respondent.

Allowing a unilateral right to amend up to the day before hearing is somewhat unfair. The rule will be changed to allow the notice to be amended up to 30 days prior to hearing. After that time period the notice may be amended with consent of the presiding officer.

RULE 8 - RESPONSE OPTIONS

This rule drew two comments, one concerning a grammatical error and one concerning a typographical error. Both errors have been corrected.

RULE 9 - HEARING

Rule 9 drew several comments. Initially it was stated that a respondent should not have to request a hearing. However, since one of the response options to a notice of probable violation is to simply pay the civil penalty without hearing, it would not make sense to automatically set the matter for hearing if that were the response option chosen. The request for hearing does not appear onerous and it should not be deleted from the proposed rules.

Proposed Rule 9(a) drew the strongest criticism from the commentators of any of the proposed rules. This proposed rule states as follows:

A request for hearing in response to a notice of probable violation issued under Rule 7 shall be accompanied by a statement of the issues which the Respondent intends to raise at the hearing. The issues may relate to the alleged violations, new information, or to the proposed compliance directive or proposed civil penalty amount. A respondent's failure to specify an issue may result in waiver of his right to raise that issue at the hearing.

The gist of the criticism is that this proposed rule denies the Respondent due process in that requiring the Respondent to identify all issues prior to hearing shifts the burden of proof to the Respondent by requiring the Respondent to prove its non-culpability on the given issue.

The undersigned does not concede that all protections afforded a criminal defendant apply in this situation.¹ However, even in a criminal context, with its higher level of protection,

¹ Clearly in a purely civil context a defendant must deny averments in a complaint or they will be deemed admitted. Rule 8(d), Colorado Rules of Civil Procedure.

defendants must frequently plead matters in order to place them in issue. For example, the affirmative defense of impaired mental condition must be indicated to the court and to the prosecution at the time of arraignment. See § 16-8-103.5, C.R.S. A defendant intending to use an alibi defense must so notify the court and the prosecution no later than 30 days prior to trial. See Rule 16 I(d), Colorado Rules of Criminal Procedure. And finally, the Commission's proposed rule says nothing about shifting the burden of proof. The burden of proof remains with the Staff. The rule should be adopted as proposed.

RULE 10 - COMPLIANCE DIRECTIVES

Rule 10 drew criticism from the commentors. Specifically, the commentors felt that the phrase "reason to believe" as grounds for conducting an investigation was not substantial enough. The commentors felt that the Staff should not be permitted to institute or conduct any sort of investigation unless it had either probable cause or "reliable and competent evidence" to believe that a person was engaging in conduct violative of the Natural Gas Pipeline Safety Act or any rule, regulation, or order issued thereunder.

Rule 10 should be eliminated in its entirety.² The Staff should not have to meet some exceptional burden in order to conduct an investigation. The proposed rule would essentially limit Staff, perhaps quite stringently if the commentors' proposal was adopted. Staff has sufficient statutory authority to conduct investigations without a declaration to that effect embodied in the rules.

RULE 11 - CONSENT STIPULATIONS

This rule drew no comments and it should be adopted as proposed.

RULE 12 - CIVIL PENALTIES

Both commentors stated that the language of Rule 12(a) contains subtle differences from the statutory authorization and suggest that the exact language of the statute be utilized. These suggestions are adopted and the proposed rules will contain the exact statutory language.

² In the appendix that follows, Rules 11 through 16 have been renumbered to reflect this deletion. The remainder of this decision, however, refers to the rule numbers as proposed.

RULE 13 - CIVIL PENALTY CONSIDERATIONS

This rule drew similar criticism as Rule 12, namely, that it did not track the statutory language. There is some merit to the criticism in that § 40-7-117(2), C.R.S., mandates that the Commission consider certain factors when determining the amount of a penalty. One of those factors, the size of the business of the violator, is not included in the criteria in Rule 13. It should be added. However, the statutory section does not indicate that only the factors in the statute should be considered. For example, the Commission indicates that it should also consider "such other matters as equity and fairness may require." While this is not included in the statute it is an appropriate factor to consider in determining an amount of the penalty. Therefore the rule will be revised to insure that all the statutorily mandated factors are included, as well as the other factors set forth in the proposed rules.

RULE 14 - PAYMENT OF PENALTY

This rule drew several comments. First, it was suggested that 20 days after a final decision to pay a penalty should be changed to 60 days after a final decision has become administratively final. Twenty days is short, considering that judicial review may be filed within 30 days and the proposed rules essentially require either payment of a penalty or early filing to exercise appeal rights. A more reasonable amount of time would be 45 days after an administratively final decision assessing a penalty.

Rule 14(c) is problematic. It purports to authorize a Staff member to compromise a final Commission decision. This is not permissible under the Public Utilities Law. Even if it were, it would discourage, rather than encourage, early negotiation and settlement. Rule 14(c) should be deleted.

RULE 15 - HAZARDOUS FACILITY ORDERS

This rule drew no comments and it should be adopted as proposed.

RULE 16 - INJUNCTIVE ACTION

This rule drew no comments and it should be adopted as proposed.

MISCELLANEOUS

Throughout the proposed rules the term "presiding official" is used. The definition is the same as the one assigned by the Commission's Rules of Practice and Procedure to "presiding officer." This latter term appears throughout the Commission's

rules and for consistency purposes it should be utilized in these rules also.

In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

ORDER

THE COMMISSION ORDERS THAT:

1. The Rules Governing the Enforcement of Gas Pipeline Safety, attached as Appendix A, are adopted.
2. The rules shall be effective 20 days after publication by the Secretary of State.
3. An opinion of the Attorney General of the State of Colorado shall be sought regarding the constitutionality and legality of the rules found in Appendix A to this Decision.
4. The Commission Director shall file with the Office of the Secretary of State, for publication in the Colorado Register, a copy of the rules found in Appendix A adopted by this Decision, and when obtained, a copy of the opinion of the Attorney General of the State of Colorado regarding the constitutionality and legality of these rules.
5. The rules found at Appendix A should be submitted by the Commission's Director to the appropriate committee of reference of the Colorado General Assembly, if the General Assembly is in session at the time this Order becomes effective, or to the Committee on Legal Services, if the General Assembly is not in session, for the opinion as to whether the adopted rules conform with § 24-4-103, C.R.S.
6. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.
7. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.
 - a. IF NO EXCEPTIONS ARE FILED WITHIN 20 DAYS AFTER SERVICE OR WITHIN ANY EXTENDED PERIOD OF TIME AUTHORIZED, OR UNLESS THE DECISION IS STAYED BY THE COMMISSION UPON ITS OWN MOTION, THE RECOMMENDED DECISION SHALL BECOME THE DECISION OF THE COMMISSION AND SUBJECT TO THE PROVISIONS OF § 40-6-114, C.R.S.

- b. IF A PARTY SEEKS TO AMEND, MODIFY, ANNUL, OR REVERSE BASIC FINDINGS OF FACT IN ITS EXCEPTIONS, THAT PARTY MUST REQUEST AND PAY FOR A TRANSCRIPT TO BE FILED, OR THE PARTIES MAY STIPULATE TO PORTIONS OF THE TRANSCRIPT ACCORDING TO THE PROCEDURE STATED IN § 40-6-113, C.R.S. IF NO TRANSCRIPT OR STIPULATION IS FILED, THE COMMISSION IS BOUND BY THE FACTS SET OUT BY THE ADMINISTRATIVE LAW JUDGE AND THE PARTIES CANNOT CHALLENGE THESE FACTS. THIS WILL LIMIT WHAT THE COMMISSION CAN REVIEW IF EXCEPTIONS ARE FILED.

8. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

KEN F. KIRKPATRICK

Administrative Law Judge

KFK:srs

APPENDIX A

DECISION NO. R93-1590

RULES GOVERNING THE ENFORCEMENT OF GAS PIPELINE SAFETY
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RULES GOVERNING THE ENFORCEMENT OF GAS PIPELINE SAFETY**Rule 1. Statement of Basis and Purposes.**

These rules prescribe enforcement procedures utilized by the Pipeline Safety Group, Safety and Enforcement Section of the Colorado Public Utilities Commission ("Commission"), acting as agent for the United States Department of Transportation by virtue of the annual submission for certification under Section 5(a) of the Natural Gas Pipeline Safety Act of 1968, as amended, 49 U.S.C. §§ 1671, et seq., ("NGPSA"). Under this agreement, the State of Colorado enforces the provisions of the NGPSA with respect to the intrastate pipeline transportation of gas over which it has jurisdiction under state law. Gas facilities include gas gathering, distribution, transmission, master meter and direct sales systems. The Commission has authority under Section 40-2-115, C.R.S. to enter into cooperative agreements with any agency of the United States government and to adopt rules and regulations to administer and enforce the safety laws and regulations of the United States under the NGPSA. The Commission has authority under Section 40-2-108, C.R.S. to adopt rules and regulations as are necessary for the proper administration and enforcement of Title 40 of the Colorado Revised Statutes.

Rule 2. Definitions.

As used in this part:

- (a) **"The NGPSA"** means the Natural Gas Pipeline Safety Act of 1968, as amended, 49 U.S.C. §1671 et. seq., as it existed on the date these rules became effective.
- (b) **"OPS"** means the Office of Pipeline Safety, which is part of the Research and Special Programs Administration, U.S. Department of Transportation.
- (c) **"Presiding Officer"** means the chairman or senior commissioner in a hearing conducted before the Commission en banc, or individual commissioner or administrative law judge in a hearing conducted by a single commissioner or administrative law judge.
- (d) **"Person"** means any individual, firm, joint venture, partnership, corporation, association, municipality, cooperative association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof.
- (e) **"Respondent"** means a person upon whom a compliance directive, notice of probable violation, consent stipulation, or order to show cause has been served.

- (f) **"state"** means the State of Colorado.
- (g) **"Hearing"** means any hearing provided in Rule 9 of these rules.
- (h) **"Direct Sales Pipeline"** means a pipeline from an interstate or intrastate gas pipeline to a direct sales meter or the connection to a direct sales customer's piping, whichever is farther downstream. A direct sales meter is the meter that measures the transfer of gas to a direct sales consumer purchasing gas for its own consumption, and does not include small-volume users, such as farm taps.
- (i) **"Chief"** means the head of the Safety and Enforcement Section of the Public Utilities Commission of the State of Colorado.
- (j) **"Staff"** means the staff of the Gas Pipeline Safety Group, a unit of the Safety and Enforcement Section of the Public Utilities Commission of the State of Colorado.
- (k) **"Commission"** means the Public Utilities Commission of the State of Colorado.
- (l) **"Director"** means the Director of the Commission.
- (m) **"Intrastate pipeline transportation"** means pipeline facilities and transportation of gas within the State of Colorado which

are not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act.

Rule 3. Service.

- (a) Each order, notice, or other document required to be served under these rules shall be served personally or by registered or certified mail.
- (b) Service upon a person's duly authorized representative or agent constitutes service upon that person.
- (c) Service by registered or certified mail is complete upon mailing. An official U.S. Postal Service receipt evidencing a registered or certified mailing constitutes prima facie evidence of service.

Rule 4. Subpoenas.

- (a) The Commission, any commissioner, any administrative law judge, or the Director of the Commission, may issue a subpoena in accordance with the provisions of § 40-6-103(1), C.R.S.
- (b) Subpoena practice before the Commission shall be governed by Rule 45 of the Colorado Rules of Civil Procedure, except as provided in this rule and §§ 40-6-102 and 103, C.R.S. When Rule 45 is applied to Commission subpoena practice, the word

"court" in Rule 45 means the Commission, a hearings commissioner, an administrative law judge, or the Director of the Commission.

- (c) Enforcement of any subpoena issued under this rule shall be in the district court, as provided in § 40-6-103(2), C.R.S.

Rule 5. Inspections.

- (a) Staff employees authorized by the Chief, upon presenting appropriate credentials are authorized to enter upon, inspect, and examine, at reasonable times and in a reasonable manner, the records and properties of persons subject to the NGPSA and these rules to the extent such records and properties are relevant to determining the compliance of such persons with the NGPSA, or state law, rules, regulations, or orders issued thereunder.
- (b) Inspections are ordinarily conducted pursuant to one of the following:
- (1) Routine scheduling by the Chief;
 - (2) A complaint received from a member of the public;
 - (3) Information obtained from a previous inspection;
 - (4) Pipeline accident or incident;
 - (5) Whenever deemed appropriate by the Chief; or
 - (6) At the request of the Western Region Director, OPS, United States Department of Transportation.

- (c) If, after an inspection, the Staff believes that further information is needed to determine appropriate action, the Staff may send the owner or operator a "Request for Specific Information" to be answered within 30 days after receipt of the letter.
- (d) To the extent necessary to carry out the responsibilities of the Commission under the NGPSA, and/or state rules and regulations, the Staff may require testing of portions of pipeline facilities subject to the NGSPA or state regulations which have been involved in or affected by an accident. However, before exercising such authority, the Staff shall make every effort to negotiate a mutually acceptable plan with the owner of such facilities for performing such testing.
- (e) When the information obtained from an inspection or from other appropriate sources indicates that further action is warranted, the Chief may issue a warning letter under Rule 6 of these rules, or may initiate one or more enforcement proceedings prescribed in these rules.

Rule 6. Warning letters.

Upon determining that a probable violation of the NGPSA, or any State rule, regulation or order issued thereunder has

occurred, the Chief may issue a Warning Letter notifying the owner or operator of the probable violation and advising him to correct it or be subject to enforcement action under these rules.

Rule 7. Notice of probable violation.

- (a) Except as otherwise provided by these rules, the Chief may commence an enforcement proceeding by serving a notice of probable violation on a person subject to the NGPSA or State rules and regulations adopted by the Commission under the NGPSA charging him with a probable violation of the NGPSA, or any State rule and regulation, or order issued thereunder.
- (b) A notice of probable violation issued under this rule shall include:
- (1) A statement of the provisions of the law, rules, regulations or orders which the respondent is alleged to have violated and a statement of the facts upon which the allegations are based;
 - (2) A notice of response options available to the respondent under Rule 8;
 - (3) If a civil penalty is proposed under Rule 12, the amount of the proposed civil penalty and the maximum civil penalty for which respondent may be liable under law; and

- (4) If a compliance directive is proposed under Rule 10, a statement of the remedial action being sought in the form of a proposed compliance directive.
- (c) The Chief may amend a notice of probable violation not later than thirty (30) days prior to the commencement of a hearing under Rule 9. After this the Chief may amend such notice only with leave of the Presiding Officer.

Rule 8. Response options.

Within 30 days after his receipt of a notice of probable violation the respondent shall respond to the Chief in any of the following ways:

- (a) When the notice of probable violation contains a proposed civil penalty,
- (1) the respondent may pay the proposed civil penalty as provided in Rule 14 and the Staff will close the case with prejudice;
 - (2) the respondent may submit an offer in compromise of the proposed civil penalty under paragraph (c) of this rule and paragraph (a) of Rule 14;
 - (3) the respondent may submit written explanations, information or other materials in answer to the

allegations or in mitigation of the proposed civil penalty; or

(4) the respondent may request a hearing under Rule 9.

(b) When the notice of probable violation contains a proposed compliance directive,

(1) the respondent may agree to the proposed compliance directive;

(2) the respondent may request the execution of a consent stipulation under Rule 11;

(3) the respondent may object to the proposed compliance directive and submit written explanations, information or other materials in answer to the allegations in the notice of probable violation; or

(4) the respondent may request a hearing under Rule 9.

(c) An offer in compromise under paragraph (a)(2) of this rule shall be made by the respondent submitting a check or money order for the amount offered. If the offer in compromise is accepted by the Chief, the respondent will be notified in writing that the acceptance is in full settlement of the proposed civil penalty. If an offer in compromise submitted under paragraph (a)(2) of this rule is rejected by the Chief, it shall be returned to the respondent with written notification. Within 10 days of his receipt of such

notification, the respondent shall again respond to the Chief in one or more of the ways provided in paragraph (a) of this rule.

- (d) If the respondent fails to respond in accordance with this rule, the Notice of Probable Violation shall be set for hearing at a time and place convenient to the Commission.

Rule 9. Hearing.

- (a) A request for a hearing in response to a notice of probable violation issued under Rule 7 shall be accompanied by a statement of the issues which the respondent intends to raise at the hearing. The issues may relate to the alleged violations, new information or to the proposed compliance directive or proposed civil penalty amount. A respondent's failure to specify an issue may result in waiver of his right to raise that issue at the hearing.
- (b) The hearing shall be held in accordance with the Rules of Practice and Procedure of the Commission, 4 CCR 723-1 and article 6 of Title 40, Colorado Revised Statutes.

Rule 10. Consent stipulations.

- (a) At any time before the issuance of a compliance directive under Rule 10, the Chief and the respondent may agree to dispose of the case by joint execution of a consent stipulation.
- (b) A consent stipulation executed under paragraph (a) of this rule shall include:
- (1) An admission by the respondent of all jurisdictional facts;
 - (2) An express waiver by the respondent of further procedural steps, including his right to a hearing under Rule 9, his right to seek judicial review or otherwise challenge or contest the validity of the stipulation;
 - (3) An acknowledgement by the respondent that the notice of probable violation may be used to construe the terms of the consent stipulation; and
 - (4) A statement of the actions required of the respondent and the time by which such actions shall be accomplished.

Rule 11. Civil penalties.

- (a) As provided in Section 40-7-117, C.R.S., any person who is determined to have violated a provision of the NGPSA or any

state rule, regulation or order issued thereunder, shall be subject to a civil penalty not to exceed \$10,000 per violation; except that, in the case of a group or series of related violations, the aggregate amount of such penalties shall not exceed \$500,000. Each day of a continuing violation shall constitute a separate violation.

- (b) No person shall be subject to a second civil penalty for the violation of any provision of the NGPSA, or any State rule or regulation adopted thereunder, or any order issued pursuant to Rules 10, 11, or 15, if both violations are based on the same act.

Rule 12. Civil penalty considerations.

The presiding official may impose a civil penalty under these rules only after considering:

- (a) The nature, circumstances and gravity of the violation;
- (b) The degree of the respondent's culpability;
- (c) The respondent's history of prior offenses;
- (d) The respondent's ability to pay;

- (e) Any good faith efforts by the respondent in attempting to achieve compliance and to prevent future similar violations;
- (f) The effect on the respondent's ability to continue in business;
- (g) The size of the business of the violator; and
- (h) Such other matters as equity and fairness may require.

Rule 13. Payment of penalty.

- (a) Payment of a civil penalty under these rules shall be by check or money order payable to the "Public Utilities Commission of the State of Colorado".
- (b) If a respondent fails to pay the full amount of a civil penalty assessed under these rules within 45 days after service of an administratively final decision, the Commission may refer the case to the Attorney General's Office with a request that an action be commenced in court to collect the civil penalty.
- (c) If a respondent elects to make an offer in compromise of a civil penalty proposed in a notice of probable violation issued under Rule 7, he shall do so in accordance with the procedures set forth in Rule 8.

Rule 14. Hazardous facility orders.

- (a) Except as provided in paragraph (b) of this rule, if the Commission finds, after reasonable notice and opportunity for hearing in accordance with paragraph (c) of this rule, a particular pipeline facility to be hazardous to life or property, it shall issue an order pursuant to this rule requiring the owner or operator of the facility to take corrective action. Corrective action may include suspending or restricting the use of the facility, physical inspection, testing, repair, replacement, or other action, as appropriate.
- (b) The Commission may waive the requirement for notice and hearing under paragraph (a) of this rule before issuing an order pursuant to this rule when it determines that notice and hearing may result in the likelihood of serious harm to life or property. However, the Commission shall include with the order a notice informing the owner or operator of his right to a hearing upon request as soon as practicable after issuance of the order. The provisions of paragraph (c)(2) of this rule apply to an owner or operator's decision to exercise his right to a hearing. The purpose of such a post-order hearing is for the Commission to determine whether the order should remain in effect or be amended, rescinded or suspended in accord with paragraph (g) of this rule.

(c) Notice and hearing:

- (1) An order to show cause and notice of hearing under this rule shall be served in accordance with Rule 3, upon the owner or operator of an alleged hazardous facility. The order to show cause shall allege the existence of a hazardous facility, stating the facts and circumstances supporting the issuance of a "hazardous facility order", and providing the owner or operator an opportunity for a hearing, identifying the date, time and location of the hearing.
- (2) A hearing under this rule shall be presided over by a presiding officer from the Commission. The hearing shall be conducted in accordance with the Rules of Practice and Procedure of the Commission and article 6 of Title 40, C.R.S.
- (3) Within 48 hours after conclusion of a hearing under this rule, the presiding officer shall issue a recommended decision to the Commission. If the presiding officer finds the facility to be hazardous to life or property he shall issue an order in accordance with this rule. If he does not find the facility to be hazardous to life or property, he shall discharge the order to show cause.

(d) The presiding officer may find a pipeline facility to be hazardous to life or property under paragraph (a) of this rule:

- (1) If under the facts and circumstances he determines the particular facility is hazardous to life or property; or
- (2) If the pipeline facility or a component thereof has been constructed or operated with any equipment, material, or technique which he determines is hazardous to life or property.

(e) In making a determination under paragraph (d) of this rule, the presiding officer shall consider, if relevant:

- (1) The characteristics of the pipe and other equipment used in the pipeline facility involved, including its age, manufacturer, physical properties including its age, manufacturer, physical properties (including its resistance to corrosion and deterioration), and the method of its manufacture, construction or assembly;
- (2) The nature of the materials transported by such facility (including their corrosive and deteriorative qualities), the sequence in which such materials are transported, and the pressure required for such transportation;

- (3) The aspects of the areas in which the pipeline facility is located, in particular the climatic and geologic conditions (including soil characteristics) associated with such areas, and the population density and population and growth patterns of such areas;
 - (4) Any recommendation of the National Transportation Safety Board issued in connection with any investigation conducted by the Board; and
 - (5) Such other factors as the presiding officer may consider appropriate.
- (f) A recommended decision finding a facility to be hazardous shall contain the following :
- (1) A finding that the pipeline facility is hazardous to life or property.
 - (2) The relevant facts which form the basis for that finding.
 - (3) The legal basis for the recommended decision and order.
 - (4) The nature and description of particular corrective action required of the respondent.
 - (5) The date by which the required action must be taken, or completed and, where appropriate, the duration of the order.

- (g) The Commission shall rescind or suspend a "hazardous facility order" whenever it is shown to the Commission's satisfaction that the facility is no longer hazardous to life or property. When appropriate, however, such a rescission or suspension may be accompanied by a notice of probable violation issued under Rule 7 of these rules.
- (h) At any time after a hazardous facility order issued under this rule has become effective, the Commission may request the Attorney General to bring an action in court to enforce the order as provided in article 7 of Title 40, C.R.S.

Rule 15. Injunctive action.

Whenever it appears to the Commission that a person has engaged, is engaging in, or is about to engage in any act or practice constituting a violation of any provision of the NGPSA, or State rules, regulations or orders issued under the NGPSA, the Commission may request the Attorney General to bring an action in the appropriate district court for such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and monetary penalties as provided in article 7 of Title 40 of the C.R.S.