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June 21, 2004

AZ CORP COMMISSION  
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Docket Control  
Arizona Corporation Commission  
1200 W. Washington Street  
Phoenix, AZ 85007

**Re: Proposed Amendments to the Office of Pipeline Safety Rules  
Docket No. RG-00000A-04-0169  
Arizona Utility Group Comments**

Dear Mr. Fronterhouse:

The Arizona Utility Group (AUG) has reviewed the Staff's proposed amendments to the Arizona Pipeline Safety regulations. AUG respectfully submits the following comments on the proposed amendments to A.A.C. R14-5-202, R14-5-203, R14-5-204 and R14-5-205 outlined in the recommended decision in Docket No. RG-00000A-04-0169. AUG's comments and observations may also affect A.A.C. R14-5-201.

AUG believes that some of the proposed rules exceed or conflict with the intent of the DOT 49 Code of Federal Pipeline Safety Regulations. In addition, the proposed changes appear to have been developed without any input from the affected utilities or utility operators, or public representatives. Due to the substantive nature of these rules, AUG strongly recommends that the Commission postpone any decision with regard to these proposed changes until Staff and other interested parties can hold an informal workshop to discuss these rule changes. Direction from the Commission to workshop participants and Staff with respect to Commission areas of interest would certainly be welcome.

The attached commentary outlines the AUG's concerns with these regulations.

AUG appreciates the opportunity to continue our commitment towards safe and reliable service to our customers and the ability to work together on developing and revising the pipeline safety rules being proposed by the Commission. If you have any questions or would like to discuss this information further, please contact me at 480-644-4536.

Sincerely,

Kevin Kent  
AUG Chairman 2004

Arizona Corporation Commission  
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***Addresses***

Reference addresses for copies of all publications should be checked and updated. For instance, the address listed for NACE International is no longer valid. The correct address for NACE publications is: NACE International, 1440 South Creek Drive, Houston, Texas, 77084-4906. The address listed for CSSINFO is no longer valid. The correct address for CSSINFO publications is: CSSINFO, 777 East Eisenhower Parkway, Ann Arbor, MI, 48108. ASTM is now referred to as ASTM International. The United States Government Printing Office address should also be checked since the U.S. Government Printing Office closed all of its bookstores nationwide in September 1, 2003 and reorganized its warehouse services to: U.S. Government Printing Office, Warehouse Sales, 8660 Cherry Lane, Laurel, MD 20707. Contact information for the Office of the Secretary of State should also be provided in the regulation. AUG also suggests that Internet Web addresses for each referenced entity or agency also be provided in the regulation to facilitate contact.

***R14-5-202, Adoption and Incorporation by Reference***

AUG recommends that standards adopted by reference be updated to reflect the most recent editions of these standards throughout the regulation. For example, the definition of "sandy type soil," which has application in R14-5-202 Subsection O, means sand no larger than "coarse" as defined by ASTM D 2487-83 (1983 edition), incorporated by reference..." The most recent edition of that ASTM standard is in 2000; previous editions are generally unavailable and out-of-print.

The US Department of Transportation, Research and Special Programs Administration, Office of Pipeline Safety has commented recently in respect to updating of referenced standards. In the Preamble to the Final Rule, Pipeline Safety: Periodic Updates to Pipeline Safety Regulations (2001), published in the Federal Register on Monday, June 14, 2004, Docket No. RSPA-99-6106; Amdt. Nos. 191-16, 192-94, 195-81, 199-20 such adoptions are referred to in the following light: "The organizations responsible for developing these standards and specifications periodically publish revised editions incorporating the most current technology. This rule updates the Federal pipeline safety regulations to reflect the most recent editions of each standard and specification incorporated by reference to enable pipeline operators to utilize the latest technology, materials, and engineering practices. *Because some of the standards proposed in the NPRM are no longer available* (Emphasis added), we reviewed and referenced the next available edition. Adoption of these updated documents ensures that pipeline operators will not be unnecessarily burdened with outdated material, design, and construction requirements."

AUG feels strongly that any Arizona pipeline safety rulemaking should incorporate the latest versions of any incorporated standards or specifications, or at least the most current standards and specifications as listed in the most current edition of CFR 49, Part 190, 191, 192, 193, 195 and 199.

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***References to Commission and Office of Pipeline Safety***

In some cases, the “Office of Pipeline Safety” is used; in other cases, the “Commission Office of Pipeline Safety” is used. AUG suggests that references to the “Office of Pipeline Safety, Arizona Corporation Commission” be consistent and in accord with R14-5-202 (C).

***R14-5-202, Subsection O***

The change in language to this section expands its application to all pipe, not just plastic pipe. Coated steel piping has very different material properties than plastic pipe; however, no technical basis for this revision was presented in the Notice of Proposed Rulemaking. The Notice neither makes a case for why existing regulations do not provide for an adequate level of pipeline safety, nor does it indicate why the revisions are necessary. This type of proscriptive language may have a significant economic impact in areas that do not have access to sandy type soil and precludes, without special approvals from the Commission Office of Pipeline Safety, the use of other suitable materials. The Notice of Proposed Rulemaking indicates that this revision should have no impact; however, hauling in fill dirt to meet this new requirement could add, for example an estimated \$20,000 per mile to the installation of 30 inch diameter steel transmission pipeline. AUG feels that CFR 49, Part 192.319 provides adequate direction for protection of steel transmission pipelines installed in a ditch.

***R14-5-202, Subsection P***

This proposed change requires all plastic pipe *and fittings* (Emphasis added) shall be marked “GAS” and shall be marked CD, CE, CF or CG as required by ASTM D 2513 (1995c Edition and no future editions). The 1995 edition of ASTM D 2513 (95c), Section 7.0 Marking, 7.1 Pipe, does require the specific word “GAS” to be a part of the marking of all pipe. The specific reference to “fittings” in this standard can be found in Section 7.0, 7.3 Fittings. All that is required for fittings is that they be marked with ASTM D 2513 (we can find no fitting specifications that require more information). AUG respectfully concludes that the current markings of “ASTM D 2513” on fittings used by operators in the State of Arizona are already in compliance with this adopted standard and thus this rule change is unnecessary. In addition, any such rule change would impose an unnecessary economic burden on pipeline operators in obtaining the required changes to fitting markings and would also have an unevaluated impact on existing stores of fittings, some of which may be stored and not used for several years.

AUG also suggests that R14-5-202(P) should reflect the identical standard that is found in the most current issue of the federal rule, CFR 49, Part 192, Appendix A which is *ASTM D2513-87 for 49 CFR 192.63(a)(1)*, otherwise *ASTM D 2513-96a*.

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***R14-5-202, Subsection R.***

The ACC adopts by reference the American Society of Mechanical Engineer's (ASME) Guide material in Appendix G-11 (1983). AUG has noted that a number of changes to the Federal regulation may make parts of this referenced guide material outdated and incorrect. In fact, the ASME document was superceded in about 1990 by the AGA's Gas Pipeline Technology Committee, which was approved as American National Standards Institute (ANSI)/Gas Pipeline and Technology Committee (GPTC) Z380.1 in December 1992. DOT acknowledged this guidance document in November 1997 as "an excellent means of helping operators comply with the (49 CFR 192) standards." The ASME reference material was developed as guide material for operators and therefore not a standard to be used in all situations.

Appendix G-11 is used nationally by natural gas operators as a *guide* to develop procedures for compliance with the federal pipeline safety regulations and allows operators to make prudent judgments based upon working conditions, the environment and other unique situations. As guide material, it may not be applicable in all circumstances for all operators.

AUG has also noted that the existing regulation in this section does not address propane systems for which guide material is contained in another part of the ANSI/GPTC Z380.1 under Appendix G-11A.

***Section R14-5-202(S) (New Section)***

This proposed section of the regulation appears to be an outgrowth and reaction to an incident or incidents on an interstate pipeline facility. This regulation poses substantial legal issues and cost concerns to all Arizona operators. For the reasons described below, AUG feels that this section should be stricken.

In order to remain in compliance with CFR 49, Part 192, 192.617, members of the Arizona Utility Group have some form of product/materials evaluation facilities or equipment or methods that will allow for "routine" analysis of the most common types of pipe or material failures. In the event of a high-profile incident (incidents that meet the criteria for reporting to the National Response Center as outlined in CFR 49, Part 191, 191.3(1) and 191.5), circumstances will normally require that failed pipelines or materials be sent to an independent testing laboratory. Legal concerns, requests or protocols will often dictate use of such independent testing facilities.

An initial concern that AUG has with this proposed rulemaking is that there is not a definition of "failed" in the existing Arizona state pipeline safety rules. This being the case, it leaves the condition mentioned in R14-5-202(S)(1) ambiguous as to what constitutes when a "portion of pipeline has failed for any reason...other than observable external corrosion or third-party damage." It is not clear if "failed" would even apply to

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pipelines removed due to obsolescence. If “failed” applies to every rock impingement, damage, poor fusion, leak at a mechanical fitting, etc. There is the potential for a great increase in the number of telephonic reports that will not increase pipeline safety. The proposed rule is also ambiguous as to whether these “failures” also apply to malfunctions of regulators, valves and other appurtenances to the pipeline as described in CFR 49, Part 192, 192.5. If so, the number of telephonic reports that do nothing to increase pipeline safety will additionally increase with a corresponding impact to the operator’s resources. Also, the rule does not address situations in which a pipeline has “failed” but is simply repaired and not removed.

In Paragraph 1, item f, of the proposed rule, a notice made pursuant to this section require the “operator’s opinion regarding the probable cause or causes of the failure.” This is very problematic when the cause is not "readily apparent". This implies a minimum level of qualification for operator personnel to determine cause of failure, and this minimum level is not specified. In many cases, it would be premature to speculate on a “probable cause” of a failure and in doing so, the operator could be subject to future legal liabilities should the speculation turn out to be incorrect. Current federal incident reporting requirements allow an operator up to 30 days to complete an incident report and even allow for the operator to indicate that the incident is still under investigation.

AUG has a concern in regards to Paragraphs 3 and 4, of this proposed rule in which the ACC Office of Pipeline Safety will select a testing laboratory and approve the number and types of tests that are to be performed by choosing a “balance between cost and demonstrated ability.” It appears that there could be legal conflicts with the State of Arizona becoming involved in selection of laboratories and types of tests, especially if litigation is involved. In some cases a particular laboratory is selected due to expertise and past experience with certain pipeline facilities. There are also potential problems with a “bid” process conducted by the State of Arizona in which the operators will be limited to three laboratories and no provisions are mentioned for cases in which three bids are not available. AUG operators will typically work with company employed Professional Engineers and the engineers at the testing laboratory to determine the type and number of tests that are required. In other cases, legal counsel may also have input into the type and number of tests required. Operators expect to have input and welcome oversight from the Office of Pipeline Safety related to laboratory testing of failed materials; however, we believe that the increased legal liabilities that may result from this revision are too great for industry to bear. AUG therefore recommends that the ACC OPS not direct laboratory testing as described in Paragraph 3, subparagraph a, of this proposed rule.

If this rule is written, AUG suggests that there should be a process in place for neutral third party arbitration in the event that there is a dispute with the laboratories chosen, number and types of tests performed, test procedures, etc. This would serve to help alleviate the State of Arizona from potential legal liabilities and would provide a fair avenue of resolution where there was a dispute related to laboratory tests.

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As a general note, the Commission has regulatory authority over operators in the State of Arizona and can make a request for third party testing now.

The requirements for notification are defined in the proposed regulations but apparently have no relation to what the current notification requirements are as outlined in R14-5-203. Does the new requirement apply only to those incidents as defined by this proposed regulation or will an operator have to report this information for all calls that it is making now? Would the notification portion of this proposed regulation also be incorporated into R14-5-203?

***R14-5-203(A)(3), R14-5-204***

As a general note, AUG recommends that the report forms used by the Commission be the current forms specified by the federal regulations. As an example, the proposed regulation references Form RSPA F7100.2-1 (January 2002 Edition); the federal regulation adopts Form RSPA F 7100.2-1 (December 2003 Edition) with an even newer form being implemented by RSPA that was effective in March of 2004. AUG suggests that ACC OPS adopt the most current version of the federal pipeline incident reporting and Annual Report forms.

***Economic Impact Statement***

The proposed rule revisions, as drafted, exceed the federal regulations in some areas and may have significant economic impact on various business entities. Some of the proposed revisions potentially restrict utilities from the use of standard industry approved practices, or require utilities to adopt practices that have been long since superceded, and may limit an operator and businesses, either directly or indirectly, when dealing with daily utility economic decisions. A more detailed analysis of each regulation proposed to be more stringent than the federal regulations should be provided and the economic impact on the natural gas industry, businesses, contractors, ratepayers and shareholders should be conducted. AUG feels that ACC OPS has an obligation to perform a comprehensive Economic Impact analysis as required by federal regulation.

***Rules Impact on Affected Classes of Persons***

The rules being proposed may also affect a wide variety of other related industries, such as: home builders, homeowners, plumbers, electricians, electric companies, telephone companies, cable companies, and government agencies and municipal organizations. These proposed rules should also be considered carefully as to their affect on deregulation and unbundling of services.

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***“Negotiated Rulemaking”***

In the spirit of recent efforts between the federal Office of Pipeline Safety and industry, AUG would like to suggest that the process for pipeline safety rulemaking in the State of Arizona be re-examined. AUG would recommend that a “Negotiated Rulemaking” process be instituted for all future new regulations and amendments. This would not only help to further the communication and cooperation between ACC, OPS and the operators, but it would be a benefit to the ratepayers, allowing for a more comprehensive review of any proposed regulations or amendments and also allowing for all perspectives to be considered prior to publication for comment. Further, we request that thorough and reasonable studies of potential economic impacts be done for all proposed rulemaking in accordance with A.R.S. Section 41-1055.

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