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Craig R. Roecks, Assistant General Counsel/Legal Affairs

January 11, 2005

Arizona Corporation Commission
DOCKETED
JAN 13 2005
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VIA AIRBORNE EXPRESS

Attn: Colleen Ryan
Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Re: Filing of **Transcript From Audio Recording of Open Meeting Proceedings Held on November 23, 2004**
Docket No. RG-00000A-04-0169

Dear Ms. Ryan:

Accompanying this letter are the original and fourteen (14) copies of a **Transcript From Audio Recording of Open Meeting Proceedings Held on November 23, 2004**. Please accept the original and thirteen (13) of the copies for filing and date/time stamp the remaining copy and return it to me in the stamped, self-addressed envelope which also accompanies this letter.

The enclosed is a transcription of an audio recording that I created by recording the streaming-audio transmission of the meeting from the Arizona Corporation Commission's website[1]. I used commercially available software to record the transmission as a digital audio file (MP3) directly onto the computer that received the transmission. Although Southwest Gas Corporation obtained an audio tape of the meeting from Linda Hogan, the Administrative Assistant to Executive Secretary Brian McNeill, the transcriptionist reported that the tape was inaudible.

I appreciate your assistance and thank you for your consideration. If you have any questions, please do not hesitate to contact me.

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Sincerely,

Craig Roecks

Craig R. Roecks

Enclosures

[1] www.cc.state.az.us/utility/electric/Streaming_Audio.htm

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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE PROPOSED AMENDMENTS REGARDING THE TRANSPORTATION OF NATURAL GAS, OTHER GASES AND HAZARDOUS LIQUIDS BY PIPELINES	DOCKET NO. RG-00000A-04-0169 OPEN MEETING AGENDA ITEM U-1

Transcript of Proceedings

November 23, 2004

ARIZONA REPORTING SERVICE, INC.
Court Reporting
Suite Three
2627 North Third Street
Phoenix, AZ 85004-1126

Transcribed by:

DEBRA K. KIDWELL

Transcriptionist

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6 BEFORE: MARC SPITZER, Chairman
WILLIAM MUNDELL, Commissioner
7 JEFF HATCH-MILLER, Commissioner
MIKE GLEASON, Commissioner
8 KRISTIN K. MAYES, Commissioner

9 Linda Hogan, Secretary

10

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12 APPEARANCES:
Alan Bohnenkamp
13 Mike Comstock
Jason D. Gellman
14 Ernest Johnson
Amanda Pope
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1 **THIS TEXT WAS TRANSCRIBED FROM AN AUDIO RECORDING**
2 (Beginning of CD, 1 of 1, Time 3:15)
3 CHMN. SPITZER: This is the time set for the
4 Commission Open Meeting, November 23. We will be hearing the
5 Line Siting item at 9:00, so there has been a change in the
6 calendar. Uh, it will be heard at 9:00 Wednesday, that is
7 tomorrow, and then we'll proceed with the items, uh, on the
8 agenda.
9 Before we do, uh, we had a setback, uh, for the
10 entire Commission. Uh, we know that, uh Claudio had a very,
11 very rough couple of years with his cancer, with, uh, the
12 passing of his wife, uh, and he passed away after a very long
13 and difficult struggle. Uh, and we're appreciative of his many
14 years of service to the Commission, um to the State of Arizona,
15 uh, and we, uh, extend our sympathy to his family, all those
16 who work with him, particularly in the Utilities Division,
17 Mr. Johnson. So we convey our sympathy again, and, uh, I'd
18 like to have a moment of silence, uh, in honor of the memory of
19 Claudio Fernandez.
20 (Brief pause.)
21 CHMN. SPITZER: Thank you all very much.
22 Uh, the first item on the calendar is Utilities
23 Division Pipeline Safety in the matter of proposed amendments
24 regarding the transportation of natural gas, other gases, and
25 hazardous liquids by pipelines.

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2 Good morning.
3 ALJ POPE: Good morning, Mr. Chairman,
4 Commissioners. Amanda Pope for the Hearing Division. Sorry.
5 Thank you.
6 The Recommended Order adopts amendments to the
7 Pipeline Safety Rules which update the Commission's rules to
8 incorporate the most recent amendments to the Code of Federal
9 Regulations, set forth annual report filing requirements for
10 operators of hazardous liquid pipelines, set forth shading and
11 bedding requirements for both plastic and steel pipelines, and
12 set forth laboratory and test selection procedures for both
13 intrastate pipeline and master meter operators.
14 In reference to the laboratory and test selection
15 procedures, the proposed rules specifically require that
16 operators notify the OPS within two hours of the removal of a
17 portion of failed pipeline where the cause of the failure is
18 unknown and is the result of an incident requiring a telephonic
19 or written incident report under R14-5-203(B) or (C). The
20 Office of Pipeline Safety, uh, notifies the operator whether it
21 is directing laboratory testing, and the Office of Pipeline
22 Safety determines the laboratory as well as the number and
23 types of tests to be performed, should it direct such testing.
24 As detailed in Appendix B to the Recommended Order,
25 comments were filed and offered at the Public Comment Hearing

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2 primarily objecting to the laboratory and test selection
3 provisions found in R14-5-202(S)(2) through (S)(4). The
4 parties reached consensus, however, on the language in
5 R14-5-202(S)(1) which essentially sets forth the trigger for
6 notifying the OPS of a failure and specifies the items to be
7 provided upon notification. The Recommended Order adopts the
8 rules in essentially the same format as drafted by Staff with a
9 few clarifying exceptions which are noted in Appendix B, and
10 instructs the Utilities Division to submit the adopted amended
11 rules and required appendices to the Attorney General for
12 endorsement pursuant to ARS41-1044.
13 CHMN. SPITZER: Thank you, Ms. Pope. It seemed
14 that there were just a couple of issues raised, uh, and I
15 wanted to walk through them. Uh, the first I guess, the
16 easiest to address is the, is the City of Mesa with a potential
17 conflict between its procurement. And is it fair to say that,
18 that since we don't actually have a dispute or even a potential
19 dispute on the table now that it's, it's speculative and not
20 ripe?
21 ALJ POPE: That's the position that I took with
22 regard to the, um, issue that was raised by the City of Mesa
23 with regard to a potential for a conflict with the procurement
24 laws.
25 CHMN. SPITZER: And if there is ultimately some

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2 problem between the governmental entity, I mean, they're a
3 charter city. Uh, if there is some problem going forward,
4 they, they, the City of Mesa would have the opportunity to, uh,
5 file either a waiver or some other --
6 ALJ POPE: That is correct.
7 CHMN. SPITZER: -- relief from the Commissions.
8 But right now, since it's not problematic, and, and nobody, uh,
9 nobody has, uh, filed slips, um, on this, so -- okay.
10 The second issue, I guess, is the -- and I'd like,
11 uh, the discussion of the state of the current law regarding
12 the Commission's liability, because that was an issue that was
13 brought up. And, uh, maybe someone could educate me what --
14 uh, I'm not, uh, persuaded that the Commission becomes an
15 operator by virtue of testing, but under, under the current
16 law, I understand there's been a lawsuit filed. What is the
17 scope of the Commission liability?
18 MR. GELLMAN: Mr. Chairman, for the record, Jason
19 Gellman for Commission Staff.
20 Is your question directly pertaining to the
21 proposed rules and specifically the proposed laboratory rules?
22 CHMN. SPITZER: Well, no, there was a discussion in
23 the, in the appendix regarding a lawsuit that had been filed
24 under current law. So without getting to the question, the,
25 the issue raised is whether somehow the independent testing

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2 format gives rise to liability. I would like to know what is
3 the Commission's liability under current law.
4 MR. GELLMAN: Mr. Chairman, I can only speak
5 briefly to the details of the particular case that was raised.
6 Um, it's a case that stemmed from an incident down in Tucson.
7 Um, we are a, I guess a defendant in that case as a non-party
8 at fault, um, along with several other parties including the
9 operator. I don't know the specific causes of action in, in
10 that case, however, at this time.
11 CHMN. SPITZER: Where, where procedurally is this
12 case?
13 MR. GELLMAN: Um, I believe they're, they're taking
14 depositions. I believe it's in the discovery phase. I don't
15 think the, I don't know this for certain, but I don't believe
16 that the matter has been set, set for a trial date at this
17 time.
18 CHMN. SPITZER: All right. So it's, there's not
19 been, been no motion to dismiss filed?
20 MR. GELLMAN: There has been no motion at this
21 time. I think the AG's office down in Risk Management Division
22 down in Tucson is handling, uh, the case, and representing, uh,
23 the Commission in that case.
24 CHMN. SPITZER: Okay.
25 And then I guess the third issue is, uh, this

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2 constitutional due process issue, and it's found at page 26 of
3 the appendix. Uh, and it's my understanding that the
4 resolution is that, uh, the rules do not have any, uh, due
5 pro- -- actually, there are two different due process issues
6 raised on that page, issue 2 and issue 3. Issue 2 is the one
7 that my question would be about. That, uh, is the theory that
8 an entity aggrieved would always have the opportunity to file
9 something before the Commission and presumably be assigned to
10 an ALJ. So it's the same route that would be otherwise
11 requested by the, by the operator as what would happen anyway?
12 ALJ POPE: That was my understanding.
13 CHMN. SPITZER: Okay. So anybody who's aggrieved
14 can always file, on any side of an issue can file before the
15 Commission?
16 ALJ POPE: Correct.
17 CHMN. SPITZER: Okay. Is that your understanding,
18 Mr. Gellman, as well so that the proposed language is
19 unnecessary?
20 MR. GELLMAN: Yes, Mr. Chairman. That's my
21 understanding.
22 CHMN. SPITZER: Okay.
23 Commissioner Mayes.
24 COM. MAYES: Thank you, Mr. Chairman.
25 Um, let me just first say that I think this is, um,

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2 this Order is an important first step for pipeline safety. I
3 think we're, uh, making a real, real strides today in, in
4 passing these rules, um, and I commend our Pipeline Safety
5 division for their efforts, for sticking with this, um, and,
6 uh, for working out all the issues.
7 Um, just as a way of background, it all really
8 started after the Kinder Morgan pipeline burst, or at least
9 parts of these rules did, and as you know, um, uh, Kinder
10 Morgan, uh, the federal government was going to allow Kinder
11 Morgan to do the only test of the rupture in Tucson in July of
12 2003. I thought that was outrageous. I know Commissioner
13 Mundell thought it was absurd, too, and we went to work on the
14 federal government trying to persuade them to let us do an
15 independent test of the rupture that occurred.
16 That was obviously on an interstate pipeline, and
17 we succeeded, uh, for the first time in United States history,
18 we think in allowing us as a state to do or have conducted, uh,
19 an independent test of that rupture. And I think then we
20 started to think about, um, or maybe really our guys were
21 thinking about it before, but we started to think about what we
22 could do at a state level, um, to encourage or to require
23 independent testing of intrastate pipelines that, that rupture.
24 Um, and our inspectors came up with these rules or this
25 addition to the rules, um, based on their experience and their

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2 knowledge, and, and what they knew we needed to do to make our
3 pipeline safe in Arizona. So this is, um, at least in part,
4 uh, an outgrowth of what occurred down in Tucson, and I think
5 for that reason, um, that it's an important thing.
6 Um, let me just ask a few questions, though, about
7 the, uh, compromises that we came to. You said that there
8 were, there was some, um, sort of back and forth, or, or, or
9 compromise between the parties on the testing issue. Where was
10 the give, what was the primary issue in terms of the, the
11 various objectors?
12 ALJ POPE: I -- Commissioner Mayes, the primary
13 issue, at least as it was discussed at the, um, the hearing was
14 the provisions set forth in 14-5-22(S)(1), and the parties had
15 met prior to and subsequent to the Public Comment Hearing, um,
16 to discuss how they could reach a consensus. And I think that
17 part of the issue was for the industry representatives, um,
18 there was a concern that failure was not adequately defined
19 such that they may end up, um, reporting to the Commission far
20 too often. Um, and I think that Staff and the industry reached
21 a good resolution in, um, finding a way to define what a, what
22 a failure is for the parties.
23 COM. MAYES: Okay. And my only concern is that we
24 not, you know, so narrowly define failure that we don't end up
25 with, with a real, uh, protection here. And so I guess I want

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2 to read, and maybe, correct me if I'm not right, reading from
3 the correct section, but letter F under P.1., well, let's see,
4 this is the master meter systems. Is this the right --
5 ALJ POPE: It's an identical provision.
6 COM. MAYES: It's an identical provision, okay.
7 But where's the provision that --
8 ALJ POPE: Page 15 of Appendix B.
9 COM. MAYES: Page 15, okay.
10 ALJ POPE: Yes.
11 COM. MAYES: I'll read from that. Yeah, okay.
12 Yes, okay, right. Letter F, um, an unknown failure, it says,
13 "An unknown failure is any failure where the cause of the
14 failure is not observable, external corrosion, third-party
15 damage, natural or other outside forces, construction or
16 material defect, equipment malfunction or incorrect operations
17 or is any failure where the pipeline safety, Office of Pipeline
18 Safety and the operator do not agree to the cause of the
19 failure."
20 I think that last, uh, provision is a good one,
21 because I think it leaves us an out. I mean, if our guys
22 believe there needs to be a test, I think we can rely on that.
23 But there's an awful lot, um, in that definition of an unknown
24 failure. Is that, is that too -- I guess my question, maybe
25 this is for Mr. Bohnenkamp, but is that too much? Does that

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2 give the pipeline operators too much of an out to claim that
3 they know what it was, therefore, therefore, we don't need an
4 independent test?
5 MR. BOHNENKAMP: Chairman, Commissioner Mayes, uh,
6 no, I don't believe so, and in particular, the, the last line
7 where if and when we do not agree, then the button gets pushed
8 and we go the third party.
9 COM. MAYES: Okay. And that was my reading of it
10 as well, which is if you, if you disagree, if you believe this
11 is an unknown failure, you're going to trigger the independent
12 test.
13 MR. BOHNENKAMP: Yes, I agree with that.
14 COM. MAYES: Okay. Was this part of, was this at
15 the center or at least partially at the center of the, of the
16 discussion and disagreement?
17 ALJ POPE: I believe that it was. I would have to
18 defer to Mr. Gellman with regard to the fact that this
19 consensus language, um, was agreed upon after public comment,
20 and I really wasn't privy to those discussions.
21 COM. MAYES: Mr. Gellman, is that --
22 MR. GELLMAN: It's, as to the origins of the
23 language, commissioner Mayes, there was, after the Public
24 Comment Hearing, I think there was other suggestions and
25 comments from, from Southwest Gas, Unisource Gas, and I believe

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2 the Arizona Utility Group, and based on that, there was, based
3 on several arguments quite frankly that Southwest gas raised in
4 a couple of their briefs, there appeared to be a genuine issue
5 of controversy, uh, with the definition of failure, what is an
6 unknown failure, what exactly are we talking about.
7 And so based on that, I think Staff believed that
8 it, that it was appropriate to enter into discussions with
9 these operators and the utility group, see if we could maybe
10 tighten up the language, because it wasn't Staff's intention
11 for every instance where a pipeline was, part of a pipeline was
12 removed that it be subject to this rule. We were talking
13 principally to instances that occur, ruptures, explosions,
14 where there is some genuine need to have some independent
15 testing. And I believe based on that was sort of the genesis
16 of why the parties came together and, and agreed on this
17 language because the language focuses on incidents.
18 On the flip side of that, I don't believe it's too
19 narrow, because it's linked to 203(B) and (C), and if you look
20 at those provisions talking about when a telephonic report and
21 when a written report is required, we're talking about when
22 there's an injury or a death, we're talking about property
23 values or property damage over $5,000, and whenever there is
24 news or media inquiries. So we believe that the language
25 strikes that balance of not being too broad, but not being too

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2 narrow.
3 COM. MAYES: Okay. And, uh, you know, another, um,
4 major, um, concern of mine, uh, after the Kinder Morgan, uh,
5 rupture was, um, the issue of chain of custody. And again, I
6 know these, these rules don't cover interstate pipelines, but,
7 um, in terms of what, what, you know, what I learned after the
8 Kinder Morgan pipeline rupture was that, um, there was really
9 no regulatory control over chain of custody of the pipeline,
10 um, and the evidence, um, of that burst. In fact, um, we only
11 found out months later what had happened to the section of the,
12 of that pipe, and Kinder Morgan had hauled it away and was
13 storing it in one of their facilities, and one -- which again I
14 think both Commissioner Mundell and I thought was unacceptable
15 because, you know, as a regulator and as an investigator, you
16 want, you want to have control over the evidence. And so I
17 think, I believe that these rules do address that issue, at
18 least as it pertains to intrastate pipelines.
19 So Alan, can you describe how that would be dealt
20 with?
21 MR. BOHNENKAMP: Chairman, Commissioner, um, boy, I
22 don't know how to answer this.
23 Yes, it will be dealt with, and typically, what we
24 do in the field is, uh, we are there when it comes out of the
25 ground, pictures are taken, of course, and that's our strongest

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2 piece of evidence should we ever lose that custody. Uh, but in
3 the past, we've always followed it all the way through.
4 Typically, the operator has maintained control, but it's locked
5 in a certain area with one person maintaining that key. And we
6 follow the, the shipping all the way through. I, I think we
7 did a pretty good job here under the circumstances and the
8 disagreements that we all had.
9 COM. MAYES: But under these rules, um, you would,
10 the operator is required to tell you where it's being stored,
11 how it's being stored, um, that kind of information, correct?
12 MR. BOHNENKAMP: They go through that, and I, I
13 mean that's part of their procedures. Their manuals,
14 operations and maintenance manuals require them to have that
15 procedure, as well as typically we follow up days later and
16 take pictures of it prior to it being shipped out and we're
17 there for that process of it being shipped out.
18 COM. MAYES: Okay. And in terms of, um, the,
19 another major issue that I think is dealt with by the rules is
20 the issue of the choice of the laboratory. Um, and Judge Pope,
21 was that, that also an issue of disagreement in terms of who
22 gets to choose the laboratory and how the laboratory is chosen?
23 ALJ POPE: Yes.
24 COM. MAYES: Okay.
25 ALJ POPE: I would say was one of the major points

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2 of contention.
3 COM. MAYES: One of the major bones of contention.
4 And my view of was always that we should have as much control
5 over the choice of the laboratory as possible. So how was
6 that, um, resolved?
7 ALJ POPE: The rules resolve it in favor of the
8 Commission having the final say with regard to the laboratory
9 determination. There is provision within the rules, however,
10 for any operator to make suggestions with regard to the number
11 and types of tests, and, um, so I think it does afford them the
12 opportunity to work with the OPS, but, you know, ultimately,
13 the decision rests with the Commission.
14 COM. MAYES: The final call is, is ours?
15 ALJ POPE: Right.
16 COM. MAYES: And they can within a certain window
17 make some suggestions about the types of tests they think would
18 be appropriate?
19 ALJ POPE: Correct.
20 COM. MAYES: And we take that under advisement?
21 ALJ POPE: Yes.
22 COM. MAYES: Okay. Thank you.
23 CHMN. SPITZER: Ms. Pope, at, I have a question
24 regarding the, uh, telephonic notification. Uh, and I know it
25 appears at Appendix A, uh, it's not paginated, but Rule 14-5-

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2 203, 12th page. It's, I apologize, it's not paginated, but
3 R14-5-203(B), required incident reports by telephone.
4 ALJ POPE: Yes, sir.
5 CHMN. SPITZER: At paragraph, subparagraph (B)(1),
6 what is the, is there some standard for the temporal
7 determination upon discovery? I mean, upon discovery could be
8 immediately upon discovery, it could be two weeks after
9 discovery. What is, is there some common understanding of that
10 term?
11 ALJ POPE: Um, Chairman, in reading this portion of
12 the rule, I understand that there is a time frame set forth for
13 written notification, but my understanding of this subsection
14 is that there is no specific provision for, um, telephonic
15 notification in terms of a time frame.
16 CHMN. SPITZER: Mr. Bohnenkamp, is there some
17 commonly understood -- I mean, I would suspect that we want it
18 immediately upon discovery, and that the words, insertion of
19 the word immediately might be helpful.
20 MR. BOHNENKAMP: Mr., Commissioner, Chairman, um,
21 I'm not sure where you're looking under. I just found the (B),
22 and, and I guess I need to clarify.
23 CHMN. SPITZER: "Will notify by telephone the
24 Office of Pipeline Safety upon discovery of the occurrence of
25 any of the following."

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2 MR. BOHNENKAMP: Well, and, and, I'm sorry, the
3 question is, is that soon enough or --
4 CHMN. SPITZER: Is, is that, do we need some
5 additional language, because upon discovery, you know, I think
6 it would be unfortunate if somebody were to take the position
7 that two weeks, telephonic notification two weeks after the
8 incident would be considered upon discovery.
9 COM. MUNDELL: Well, and, and I think the Chairman
10 raises a very good point, because as I recall, we had that
11 issue in a matter before us on when disclosure to the
12 Commission needed to be made, and there was a discussion of,
13 you know, how quickly it needed to be made. And so I, I think
14 that's a, your point is well taken, Mr. Chairman, and I'd like
15 some more discussion on it, and maybe we do need to clarify it.
16 CHMN. SPITZER: Mr. Gellman, did you have a --
17 MR. GELLMAN: Mr. Chairman, Commissioner Mundell, I
18 think in the case that Commissioner Mundell is referring to, it
19 was a case where, uh, we weren't notified for I believe around
20 24 hours after the incident, and, uh, we argued that. We
21 brought a, a complaint. It was our belief in that complaint
22 that 24 hours was too long.
23 Um, so we have, we have interpreted, interpreted
24 that provision to be easily less than a day, and I think if Mr.
25 Bohnenkamp can correct me if I wrong, but I think we've tried

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2 to argue in other cases where if they don't notice, notify us
3 within two hours, um, of the incident, then, then that's not
4 upon discovery, and that we have on occasion listed that as a
5 probable noncompliance. So I, I think that's how we've, uh, in
6 the past, interpreted upon discovery in prior cases.
7 CHMN. SPITZER: And let me clarify my question.
8 And I've learned that there are terms of art in my years as a
9 tax lawyer, and I don't want to do anything inconsistent with
10 estab-, our established rules and operations of practices. I'm
11 just inquiring. You know, I'm not insisting on amendment here
12 yet. I would want further information, but the questions would
13 be would the word immediately be beneficial, or would it be,
14 would it cause a problem and be inconsistent?
15 MR. GELLMAN: Mr. Chairman, I think based on how
16 pipeline, the Pipeline Safety Section has interpreted the rule,
17 I think we are trying to interpret it, I don't know if the word
18 immediately is, is necessarily needed based upon our
19 interpretation in the past. It certainly wouldn't have, I
20 wouldn't have an objection to it necessarily, but, um, again,
21 we've tried to in, in past cases, tried to say that if they
22 don't notify us within two hours of an incident, that, that
23 there's a problem there. Now, if it's two hours, I think we've
24 been a little flexible with that, but if it's something like 24
25 hours, um, since an incident is not something that I believe

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2 would be acceptable to our Pipeline Safety Section.
3 CHMN. SPITZER: I guess the question is should
4 there be any temporal modification or adjective applied to the
5 discovery. Would that be helpful? And if not, you know, let
6 me know, but I -- I mean, we want to know as soon as possible,
7 and, and obviously, uh, it's going to be a fact and
8 circumstances basis, but the, the, we, we do have, uh, it's
9 upon discovery of the event, not upon the event. So we're,
10 we're, where you have a very remote location, it wouldn't seem
11 to be to be a, uh, a burden but we could, I could go with
12 immediately or within two hours. But I, I want to know what
13 is, what is the best for the OPS.
14 MR. BOHNENKAMP: Commissioner, Chairman, I don't
15 believe, uh, upon discovery, other than one incident, uh, where
16 they failed to call for 24 hours, we haven't had that problem
17 with, with them. They've always made us aware of what, what we
18 needed to be involved with, to my knowledge.
19 CHMN. SPITZER: Commissioner Mundell.
20 COM. MUNDELL: Well, I guess I'm, I'm trying to
21 understand what would be the, for lack of a better word, the
22 down side of adding immediately. I mean, we did have the
23 problem. It's not like it's some speculative example where --
24 and I guess my concern is I understand what counsel, the
25 position that the Commission took, and we ultimately as I

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2 recall reached a settlement, but I'm not sure if that matter
3 had been litigated how that would have been interpreted, and,
4 uh, whether we would have been successful in our interpretation
5 or not. And correct me if I'm wrong: I thought we reached a
6 settlement so that issue was never in fact, uh, litigated and
7 where a court or the Commission had to make a determination on
8 what, whether or not the notification was, you know, timely.
9 And if I'm wrong, you know, just tell me, and that's fine.
10 CHMN. SPITZER: Mr. Johnson, you wish to be
11 recognized?
12 MR. JOHNSON: Mr. Chairman, Commissioners,
13 insertion of the term that the chairman utilized, immediately
14 or an identificationary specific time frame would bring more
15 certainty, and from our vantage point, we have no objection to
16 that. We see, you know, we weren't urging it, but in light of
17 this discussion, we can see how it would be relevant, and
18 certainly where there was a highly-contested litigated
19 proceeding, this issue, uh, or interpretation of how soon the
20 obligation to inform arose could be subject to differing
21 interpretations. So we, we can understand in this case why
22 something more definitive would be appropriate.
23 CHMN. SPITZER: Okay. Is there further discussion
24 before the item's moved?
25 COM. MAYES: Uh, Mr. Chairman --

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2 CHMN. SPITZER: Commissioner.
3 COM. MAYES: -- just a point of clarification on,
4 again, in Appendix A, letter F. I wanted to just ask about,
5 this provision deals with encroachment, which as we all know
6 has become a, a terrible problem around pipelines and, and in
7 fact, you know, was an issue during the Kinder Morgan pipeline
8 burst.
9 Um, Mr. Bohnenkamp, has this provision changed? Is
10 this something that has been in our rules all along, and is
11 there anything else that we need to be doing to address the
12 issue of encroachment, either on intrastate or interstate
13 pipelines? Again, I know we're dealing with intrastate
14 pipelines, but, I'm, I'm very interested in, in, in addressing
15 this issue of, of encroachment by housing developments on, and
16 other construction on the pipeline.
17 Just for those who don't have it in front of them,
18 this provision says that, um, uh, "Operators of an intrastate
19 pipeline transporting LNG, hazardous liquid, natural gas or
20 other gas will not construct any part of a hazardous liquid,
21 LNG, natural gas, or other gas pipeline system under a
22 building. For building encroachments over a pipeline system,
23 the operator may require the property owner to remove the
24 building from over the pipeline or reimburse the operator the
25 cost associated with relocating the pipeline system. The

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2 encroachment shall be resolved within 180 days of discovery or
3 the operator shall discontinue service to the pipeline system.
4 When the encroachment cannot be resolved within the 100 days,
5 the operator shall submit to the OPS within 90 days of
6 discovery a written plan to resolve the encroachment."
7 Has, I guess, before you answer my first question
8 which is a little broader, has this, has this provision ever
9 been triggered? Have we ever had a situation where a pipeline
10 operator was trying to build under a building or then, or
11 wanted to, or had somebody build on top of his pipeline and
12 then objected?
13 MR. BOHNENKAMP: Commissioner, yes and no. I, we
14 have had encroachments over the pipeline, and we've been
15 working diligently to clear up quite a few of them, and
16 particularly on the distribution side, and, uh, have made big
17 strides forward, actually.
18 As far as interstate and transmission, we've had a
19 few that have gotten close, and the rule requires another foot
20 of, of cover over the pipeline as you get near to or are
21 encroached by a building. Integrity Management on the
22 interstate side as well as on the intrastate, both federal and
23 state jurisdictions, will, should take care of a lot of this,
24 or will certainly bring it to a head, and we're all going to
25 have to deal with it.

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2 COM. MAYES: When you say an extra foot of cover,
3 you mean an extra foot of dirt on top of the pipeline?
4 MR. BOHNENKAMP: Yes.
5 COM. MAYES: But, but that can't, is that possibly,
6 that can't possibly be the case right now because we're seeing
7 so much development. I mean, you just drive down 51st Avenue,
8 or is it 53rd Avenue that runs from the tank farm down, and
9 that's the pipeline that runs down to Tucson, and you're seeing
10 all sorts of construction right up, you know, as we've talked
11 about many times, right up to the pipeline practically.
12 They're not putting another foot of dirt on top of that
13 pipeline, are they? Are they doing anything different as a
14 result of that growth?
15 MR. BOHNENKAMP: In some cases, they're, they're
16 adding that foot of dirt. Typically speaking, they've got to
17 be within I think it's 220 feet of, or 220 yards, 660 feet of
18 the pipeline, and then the operator is required to, to do
19 different things as far as, as driving his right of way and
20 what he does as far as integrity management. But, uh, it, it
21 really, in the case of, of a major rupture, that extra foot of
22 dirt's just going to be an extra foot of dirt that gets pushed
23 out of the way.
24 COM. MAYES: Yeah.
25 MR. BOHNENKAMP: I don't know that it would, would

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2 stop the biggest problems we have out there.
3 COM. MAYES: All right.
4 MR. BOHNENKAMP: Integrity Management is intended
5 to deal with that.
6 COM. MAYES: Okay. All right. Which is
7 something --
8 MR. BOHNENKAMP: (Indiscernible) getting pretty big
9 here as we go along.
10 COM. MAYES: Okay.
11 CHMN. SPITZER: Commissioner Hatch-Miller.
12 COM. HATCH-MILLER: Well, to that point, it, the
13 other day we were discussing this, and I understand that a
14 major, uh, break, the eruption can be such that a trench many,
15 many feet long with dirt just spewed over a period, a distance
16 of many yards, not just inches or feet. So, uh, it's, it
17 explodes with a force that, uh, bursts with a force that is
18 pretty dramatic.
19 MR. BOHNENKAMP: Commissioner, yeah, that, yes,
20 they call that a sonic rupture, I believe, and air lines, or
21 gas, natural gas lines respond differently to a rupture than a
22 gasoline line would. They tend to, uh, split wide open and can
23 cover several sections of pipe, 20, 40, 60, 100 feet. And, uh,
24 Integrity Management, what they're trying to determine is what
25 is the area around a potential rupture site that would be

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2 affected by that rupture, and minimum seems to be somewhere
3 between 4 to 600 feet on either side of that right of way.
4 Under a gas transmission, a gasoline or a liquid
5 line as we would call it is a different animal. There you've
6 got flow downhill, and it's going to go to the lowest spot, and
7 ignition isn't as critical as it is with a natural gas under
8 high pressure. It, it, they're two different animals. And
9 again, Integrity Management is trying to figure out how they're
10 going to deal with that, and not only is it operators and
11 regulators, but we've got real estate and development that's
12 going to get involved, and probably cities and counties, and
13 we're going to have to figure out how we're going to deal with
14 the encroachment getting up to and sometimes actually building
15 over that pipeline.
16 COM. HATCH-MILLER: So there's still more work to
17 do. There's still more work to do, in other words?
18 MR. BOHNENKAMP: Yeah, a lot of work.
19 CHMN. SPITZER: Commissioner Mundell.
20 COM. MUNDELL: Well, to that point, uh, and I've
21 heard you use the term Integrity Management a couple times now,
22 how do we facilitate to make sure that, you know, as I always
23 say, out of sight, out of mind here. We're going to pass these
24 rules today, but how do we, or who facilitates the meeting of
25 the different political subdivisions in the state, county,

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2 city, the Commission, the Department of Real Estate? How do we
3 keep the ball rolling here so that there is a focus on this
4 encroachment issue that with 10,000 people a month moving to
5 Arizona or whatever the figure is, 12,000, there are different
6 figures that are batted around, um, you know, I heard you say
7 that, and I'm, I appreciate your answer, and I'm just wondering
8 where do we go from here? What's the next step?
9 MR. BOHNENKAMP: Commissioner, from my point of
10 view, as Pipeline Safety, we will continue to do the audits
11 and, and join in on the integrity management. Since it's a
12 federal program, we are invited, and do at every occasion, as
13 well as work on rule changes where we can. And I believe we
14 have several of, uh, of state officials are representing, are,
15 are working on these new rules and regulations that, that we're
16 trying to, trying to form.
17 COM. MUNDELL: And I appreciate that. And maybe as
18 a courtesy, and maybe we're going to do this anyway, I don't
19 know, but maybe as a courtesy, maybe it would make some sense
20 to send these new rules to the City of Tucson and the City of
21 Phoenix and the City of Mesa. I mean, Mesa must know about it
22 because they're involved in the process. But, you know, I see
23 a lot of municipalities not represented here today, and I'm
24 just saying just to let them know what we're doing and what the
25 new rules are, especially the ci-, and I know we've been

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2 working on a regular basis with the City of Tucson. I mean,
3 I'm aware of our interaction with them. But it just seems to
4 me that that might be a way to continue to, to keep the issue
5 on the front burner, so to speak, and let them know we are
6 concerned about it, it's not out of sight, out of mind, and
7 here are the new rules, and we need to continue to be vigilant
8 on this encroachment issue.
9 CHMN. SPITZER: Commissioner, I appreciate that
10 comment, and my, my sense from, uh, you know, obviously we have
11 a couple years of history now of this is that there may be some
12 need for federal involvement. The federal government has
13 preempted issues regarding nuclear plants, airports, military
14 facilities where there's hazardous activity going on. And
15 recognizing that zoning and planning are local, historically
16 local issues reserved to municipalities, we don't want to go
17 roughshod over the rights of the, of those municipalities, but
18 there are, where there's a, where there's a demonstrable,
19 particularly where the federal government is siting interstate
20 lines, a history of federal preemption where appropriate in
21 those cases I just denominated, uh, may be appropriate. And I
22 know that there's been some discussion, and when I've
23 participated in federal proceedings, the issue of zoning has
24 been raised. I understand it's a ticklish one, but I think
25 you're right, it's one where it's best if the municipalities

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2 are working with us. And I don't think there's any great hew
3 and cry when the FAA promulgated rules preempting zoning around
4 airports. So I think this is the analogy.
5 COM. MUNDELL: Yeah, and -- no, your point is well
6 taken. I was really, just from our perspective here today,
7 just giving notice of what we're doing. And you're right, if
8 it's, it's more than a, I was going to say it may be a two-
9 pronged approach, it's certainly more than that, and your
10 suggestion is well taken also.
11 CHMN. SPITZER: Further discussion?
12 Mr. Gleason.
13 COM. GLEASON: (Indiscernible)
14 CHMN. SPITZER: Mr. Bohnenkamp.
15 MR. BOHNENKAMP: Yes, Mr., or Commissioner Gleason.
16 COM. GLEASON: (Indiscernible)
17 MR. BOHNENKAMP: Yeah, the, taking a chunk out of
18 it, we would have to determine how to do that, but I would like
19 to think we would all come to an agreement. And yes, that
20 would be the, we would send it to that third party and get the
21 third-party testing, the independent testing.
22 COM. GLEASON: (Indiscernible)
23 CHMN. SPITZER: Mr. Gellman.
24 MR. GELLMAN: Mr. Chairman, Commissioner Gleason, I
25 don't think there's anything in the proposed rules and

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2 specifically the proposed laboratory rules that prevent the
3 operator from, uh, having a (Indiscernible) of the pipeline
4 tested at a lab different than what the Pipeline Safety Section
5 chooses.
6 COM. GLEASON: It's a question of can they get a
7 chunk of the pipe. That's the --
8 MR. BOHNENKAMP: Yeah, Commissioner Gleason, I'm
9 sorry, it's possible that -- the biggest thing that would limit
10 that is the amount of damaged area to be tested. I mean, if
11 we're talking a couple of inches of pipe, hopefully we as a
12 regulatory and pipeline operator will come to agreement on
13 which lab is best suited to do the testing, and the only
14 limiting factor would be we only have one, we can only get one
15 test out of the sample that we have. Typically, uh, Kinder
16 Morgan as an example, we cut out 50 feet of pipe, and they did
17 not destructively test all 50 feet of pipe, so we were able to
18 do other testing, perform other tests on that pipe, and I would
19 imagine that would be typical to most incident sites. We can,
20 there will be enough parts to send it to several labs probably.
21 COM. GLEASON: Yeah. The other question is in
22 here, is there, uh, a definition of the, uh, qualifications of
23 the lab? I know we've talked about this. There are no, there
24 are no certified labs, but there are, I'm using certified
25 operators. Am I using it correct?

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2 MR. BOHNENKAMP: Uh, there are no certified labs.
3 Um, I guess we're back to that agreement between us which is
4 the best, I mean, they do the job, and, and, there's --
5 COM. GLEASON: But they're --
6 MR. BOHNENKAMP: -- (Indiscernible) to say their
7 quality is and just --
8 COM. GLEASON: Yeah, but they're, maybe I'm looking
9 for a term, but they're probably licensed engineers or they're
10 licensed --
11 MR. BOHNENKAMP: Uh, yes.
12 COM. GLEASON: -- somehow the people that -- is
13 there a definition of that in the agreement here?
14 MR. BOHNENKAMP: Boy, I'll defer (Indiscernible).
15 CHMN. SPITZER: Mr. Gellman.
16 MR. GELLMAN: Mr. Chairman, Commissioner Gleason, I
17 think there's no definition of what a qualified lab is, um, for
18 some of the reasons that, that Mr. Bohnenkamp explained. What
19 we did try to dual, do to, I guess to deal with that issue is
20 to have, uh, 202(S)(4), which, uh, which says in determining
21 the laboratory, consider these number of factors. Not an
22 exclusive list, not a limiting list, but these are the factors
23 that, that the Pipeline Safety Section should take into
24 consideration when, when selecting a lab if more than one bid
25 is received from, from laboratories. I think given some of

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2 the, uh, give the fact that a qualified lab is a bit of a
3 nebulous type of area, we felt like this was the best way to
4 deal with that issue.
5 COM. GLEASON: Yeah, well, I'm, the reason -- I'm
6 used to operating with certified labs in, in running tests.
7 But I realize I've asked the question before, evidently in this
8 area, there is, is, is none of them. But, uh, uh, I guess if
9 you have that list, that's probably the best we can do under
10 this. But, but there are, are, are there, I can't find, are
11 they licensed, are they licensed engineers doing -- well, let
12 me ask, who does the testing on this? Is it a, is it a
13 metallurgist or a --
14 MR. BOHNENKAMP: Commissioner, each test or each
15 laboratory are item specific, I suppose is the best way to
16 explain that. Some people are going to test for SCC, some
17 people do the testing for seam failure. There's plastic pipe
18 testers, and, and one company will not do all the possible
19 tests that we would do in the event of an investigation, and
20 therein lies our biggest problem. We as regulators, and, and
21 I'd like to think the operator are going to decide which tests
22 are required and, and pick the best lab or labs to, to have
23 that bidding process, to, to get the answers that we're looking
24 for. And they are registered engineers in, in all the cases
25 that I've ever dealt with a laboratory. There's an engineer or

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2 somebody at the top who knows, who is qualified to make those
3 tests, to do that testing I guess is the best way to explain
4 that.
5 COM. GLEASON: Okay. So I guess, we, we rely on
6 your and your operators' expertise. Is that the -- of what
7 should be done. That's what ultimately will end up, right?
8 MR. BOHNENKAMP: Commissioner, yes, I believe that
9 is the end. We do the best, we do real good, let's put it that
10 way. We haven't missed yet.
11 COM. GLEASON: Okay. Thank you.
12 CHMN. SPITZER: Thank you.
13 Further discussion?
14 Commissioner Mundell.
15 COM. MUNDELL: I'll move U-1, Mr. Chairman.
16 CHMN. SPITZER: U-1 has been moved. Uh, I would
17 move an amendment, uh, at R14-5-203(B)(1), and Ms. Pope, does
18 this occur elsewhere, the same verbiage?
19 ALJ POPE: Mr. Chairman, in (B)(2) I believe, you'd
20 probably also want to make the same insertion of immediately.
21 COM. GLEASON: Where is that, (B) --
22 CHMN. SPITZER: That would be (B)(2), which
23 subparagraph? I mean 202.
24 ALJ POPE: 14-5-203(B)(2).
25 CHMN. SPITZER: Okay.

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2 ALJ POPE: "Operators of an intrastate pipeline
3 transporting hazardous liquid will," and then insert
4 immediately notify.
5 CHMN. SPITZER: Uh, actually, I was thinking of,
6 uh --
7 ALJ POPE: Oh, I'm sorry --
8 CHMN. SPITZER: Immedi- --
9 ALJ POPE: -- prior, before discovery.
10 CHMN. SPITZER: -- immediately upon discovery. So
11 the words would be after Office of Pipeline Safety,
12 "immediately upon discovery."
13 ALJ POPE: Okay.
14 CHMN. SPITZER: And wherever else, all other
15 conforming changes.
16 COM. GLEASON: (Indiscernible)
17 CHMN. SPITZER: I'd rather have a discussion about
18 it immediately than wait two hours is, would be my sentiment.
19 COM. GLEASON: (Indiscernible)
20 COM. MUNDELL: It's (Indiscernible) by phone.
21 COM. MAYES: Get on your cell phone.
22 CHMN. SPITZER: By telephone.
23 COM. MUNDELL: Cell phone.
24 CHMN. SPITZER: So if there's no telephone
25 available, if it doesn't, if the, you're out of cell phone

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2 range --
3 COM. GLEASON: Yeah, you're down in a valley where
4 the cell phone doesn't work.
5 CHMN. SPITZER: Well, that's the loophole. That's
6 the -- as soon as you, as soon as a telephone becomes
7 available, you phone. I think that's, it seems to me that's
8 what we'd want.
9 Is there further discussion? Does anyone -- the
10 Staff indicated there was not a rejection, is that correct,
11 Mr. Bohnenkamp? Is there anyone from the industry that wishes
12 to be heard on that point? I assume they use, the companies us
13 their best efforts to communicate immediately in any event. It
14 seems to me that this is -- I mean, we can always, you can
15 always create litigation over everything, but I, I think we
16 have a sense of urgency here.
17 Sir, if you could approach.
18 MR. COMSTOCK: Chairman Spitzer, Mike Comstock
19 representing the City of Mesa.
20 CHMN. SPITZER: Yes, sir.
21 MR. COMSTOCK: Concerning your amendment to
22 immediately, we do our best effort to make those contacts as
23 soon as practical when we find out about the incident that
24 occurs. In today's society of scanners followed by the news
25 stations, and so sometimes they react quicker to an incident

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2 over a fire department scanner or police department scanner
3 than we find out about it. Uh, in fact, there's been occasions
4 when Office of Pipeline Safety has called us and said, "We've
5 heard about this on the news. What's going on?" And it's on a
6 rare occasion, but it does happen. So the term immediately
7 puts us in a bind to say we have to react as soon as, uh, as
8 the term what I interpret immediately to mean, and hearing Mr.,
9 Commissioner Gleason's interpretation of that.
10 CHMN. SPITZER: Well, it's upon discovery is my
11 only -- I, I don't think it's unreasonable to have it
12 immediately upon discovery. If it's immediately upon
13 (Indiscernible) so I would, I could see that not being fair,
14 but I think --
15 MR. COMSTOCK: And that would be an issue, excuse
16 me, sir, that would be an issue for us, immediately upon the
17 episode. Sometimes they find out about it before we do, and we
18 try to move as quickly as we can.
19 CHMN. SPITZER: But that's not what it says. It
20 says immediately upon discovery.
21 MR. COMSTOCK: Okay. As long as that's where we're
22 going.
23 CHMN. SPITZER: Right. That's where we're going.
24 MR. COMSTOCK: Okay. Thank you very much.
25 CHMN. SPITZER: Mr. Gleason.

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2 COM. GLEASON: Wasn't this the, in the, uh,
3 Southwest Gas thing, wasn't that the argument, argument being
4 immediately and within two hours? That's why we, within the
5 Southwest Gas we ended up with two hours?
6 CHMN. SPITZER: I think if we had immediately in
7 the rule then, we would, Southwest Gas would not have had much
8 in that case. I think that would have strengthened the
9 Commission's litigation position rather than weakened it.
10 COM. GLEASON: If they could have done it, is
11 that --
12 CHMN. SPITZER: Well, and, you know, a court may
13 have to determine what is immediately, but I think that that
14 language reduces the scope of litigation rather than expands
15 it, and I think it resolves disputes rather than creates them
16 would be my, just one lawyer's opinion.
17 Is there further discussion on, uh, my verbal
18 amendment? Hearing no further discussion, all in favor will
19 please signify by saying aye.
20 (A chorus of ayes.)
21 CHMN. SPITZER: Opposed, no.
22 (No response.)
23 CHMN. SPITZER: The ayes appear to have it. So
24 ordered.
25 Commissioner Mundell.

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2 COM. MUNDELL: Mr. Chairman, uh, I'll move U-1 as
3 amended. Is there any further discussion? Is there anyone
4 else who wishes to be heard?
5 Hearing no further discussion, Madam Secretary will
6 please call the roll.
7 SECRETARY HOGAN: Commissioner Mayes.
8 COM. MAYES: Just briefly explain my vote,
9 Chairman.
10 CHMN. SPITZER: Please.
11 COM. MAYES: Again, I, uh, I'm grateful to the
12 Commission and to our Staff for, for these rules. Um, I think
13 that Kinder Morgan pipeline rupture in Tucson taught us a lot,
14 and today, we are responding to the lessons of July 30th, 2003.
15 Um, and I think we are taking the lead with these new rules.
16 Um, I hope the federal government follows Arizona's
17 lead and makes independent testing a requirement for all
18 ruptures on interstate pipelines. Um, I, after the rupture, I
19 asked, uh, Senator McCain to consider legislation on that
20 issue, and I got a very good response from him, and we will
21 continue to, um, uh, to ask that that legislation be considered
22 at the federal level.
23 But I think that with the passage of these rules,
24 uh, Arizonans will be assured that pipeline companies will no
25 longer control, uh, the testing of future ruptured intrastate

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2 pipelines. Um, and I think they can also be assured that we
3 are, we have continued, we are continuing to strengthen, uh,
4 uh, regulations, uh, and, and, and the safety of our pipelines.
5 Um, and I think, um, in the year, um, I guess it's been a
6 little more than a year, but a year, uh, since the Kinder
7 Morgan rupture occurred, we've made great strides, and I think,
8 this Commission has, um, always been very, very active in the
9 area of pipeline safety, but we've made a lot of strides since
10 the rupture occurred, and I think we have a lot more to do.
11 But I really do commend our Staff, I commend you,
12 Alan, and everybody in the Pipeline Safety Division for all the
13 work that you've been doing, uh, and I vote aye.
14 CHMN. SPITZER: Thank you.
15 SECRETARY HOGAN: Commissioner Gleason.
16 COM. GLEASON: I vote aye.
17 SECRETARY HOGAN: Commissioner Hatch-Miller.
18 COM. HATCH-MILLER: I'd like to commend the
19 Pipeline Safety Division, uh, for a job well done. Uh, I'd
20 like to commend those that participated for the industry
21 representatives to make this a possibility. Obviously, the,
22 uh, break in the pipeline in Tucson put a fire under us, if you
23 will, and it got us to move faster. Uh, oftentimes government
24 moves at kind of a glacial speed, uh, and, uh, we moved up the
25 pace a bit.

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2 Um, the goal's always been the same, and that's
3 safer pipelines, uh, whether they transport hazardous liquids
4 or natural gas or whatever, but just safer pipelines. And the
5 way you do it as far as I know is you have (Indiscernible)
6 improved standards for siting the pipelines, for constructing
7 them, for operating them, for maintaining them, for notifying
8 when the problems occur. And, uh, we're giving these rules an
9 expanded toolbox to, our Pipeline Safety Division for
10 investigating, for inspecting, and, uh, also giving stronger
11 enforcement powers to some degree. Uh, so those are really the
12 three-pronged, uh, approach, updated standards, expanded
13 toolbox for our, uh, inspectors, and, uh, stronger enforcement
14 powers. Uh, this is just one step of a journey. I want
15 everybody to know that. I mean, there's been a lot of steps
16 for years. I was reading the first annual edition, uh, 1912
17 edition of the Corporation Commission, uh, minutes, and they
18 were dealing with these kinds of issues in 1912. So, I mean,
19 this commission has been dealing with them for 100 years. Uh,
20 this is just one step.
21 But I want everyone here to know, uh, we haven't
22 announced this yet, but as a result of our Pipeline Safety
23 Division's, uh, expertise and work on this matter, uh, our
24 expertise as a Commission and our efforts on these pipeline
25 safety rules, the Arizona Corporation Commission has been given

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2 a seat at the National Pipeline Safety table. And I have, uh,
3 just been appointed by Secretary Minetta of the U.S. Department
4 of Transportation, uh, to a seat on their, uh, on their
5 Technical Pipeline Safety Standards Committee. And I'll be
6 meeting with that group, a group of ten of us from around the
7 country here in just about three weeks in Washington, D.C. And
8 we will be working on issues, uh, related to, in particular,
9 crisis communication, how do you communicate when something's
10 gone wrong and public education awareness, how do you make the
11 public aware where the pipelines are, what the dangers are, how
12 do you incorporate that in buying decisions for a house or
13 business and the like. And so we're working on those National
14 Pipeline Safety Standards. So our work here continues, uh, at
15 the national level. I'm, uh, pleased to be able to represent
16 the Commission, uh, on that committee, and be appointed by
17 Secretary Minetta, and I vote aye on this important step.
18 CHMN. SPITZER: Thank you, Commissioner.
19 Congratulations.
20 COM. HATCH-MILLER: Thank you.
21 SECRETARY HOGAN: Commissioner Mundell.
22 COM. MUNDELL: Thank you, uh, Mr. Chairman.
23 I, too, want to thank Staff for their, uh, hard
24 work on this matter. And I, I look at these rules as part of
25 an ongoing, uh, process to protect the people of Arizona. And

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2 they do have some significant, uh, provisions. Uh, the
3 independent testing is certainly, uh, very significant along
4 with the immediate notification.
5 And I would agree with Commissioner Mayes, that we
6 need to continue to press the federal government, uh, to
7 require, uh, independent testing, uh, on interstate pipelines
8 as we did when the Kinder Morgan, uh, pipeline burst. We used
9 the bully pulpit and it was an effort of all, uh, the
10 Commissioners to, uh, put pressure on the federal government to
11 allow an independent test. I don't think it should take that.
12 I think it should be routine. I think it should be part of the
13 federal law just like there are independent tests when you have
14 an airline crash. Uh, you have, you don't have the airlines
15 that do the only testing. You have an independent agency that,
16 uh, immediately sends out investigators to determine the cause
17 of the crash, and I think something similar should occur on the
18 federal level. And, uh, we'll continue to push for a change in
19 the federal law.
20 I vote aye.
21 And lastly, I think we ought to thank the
22 administrative law judge. She did a, she did a, we've thanked
23 Staff, but she did a yeoman's work on this also.
24 I vote aye.
25 CHMN. SPITZER: Thank you, Commissioner.

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2 I, uh, well, Morris Udall always said it's all been
3 said, but not by everybody. Uh, he's a very wise man, Morris
4 Udall.
5 Uh, I want to acknowledge, uh, Mr. Fronterhouse,
6 Mr. Bohnenkamp's predecessor, who initially started work on
7 these rules, and, uh, uh, it was his leadership that, uh,
8 helped, and Alan, you persevered. I appreciate that. And, uh,
9 as was discussed, uh, Ms. Pope adjudicated, uh, through all the
10 disputes, uh, like Louis IX under an oak tree: Everything was
11 settled and everybody was happy. And, uh, the industry
12 participated, too, which was a, uh -- and we don't' have any
13 slips, we don't have any opposition to these rules, and that's
14 a testament to the, uh, effort.
15 Uh, it is my hope that the rules would be swiftly
16 approved by the office of the Attorney General and promptly,
17 uh, certified by the Secretary of State and put into the, uh,
18 Arizona Administrative Code, uh, so to take effect.
19 It has been observed that Arizona's Office of
20 Pipeline Safety, uh, is aggressive. Uh, we've seen that in
21 some contested matters where the industry thinks the OPS is too
22 aggressive. Uh, and we do have, we do have a country in which
23 there is a judicial process, but the judicial process has not
24 found that the aggressive pursuit of safety by the Arizona
25 Office of Pipeline Safety, uh, has, uh, been outside the bounds

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2 of the law. In fact, it's been consistent with the law, and to
3 me, that's a, that's a reputation that is a, when it comes to
4 public safety, is a positive and appropriate reputation, and,
5 uh, I'm pleased that that reputation continues, and, uh, that
6 that reputation will be codified in the rules that we have
7 approved today.
8 I vote aye.
9 By your vote of five ayes and zero nos, Item 1 as
10 amended has been approved.
11 Thank you very much.
12 (End of CD 1 of 1, Time 65:21)
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DISCLAIMER OF TRANSCRIBER OF AUDIOTAPE

That the foregoing 44-page transcript was prepared from the CD provided (1 of 1, Beginning time, 3:15, Ending time, 65:21);

That the transcriptionist attempted to capture verbatim the proceedings;

That research was performed on the spelling of proper names, and when information was unavailable, spellings reflect educated guesses;

That the transcript was prepared by me or under my direction, and was done to the best of my ability.

Dated at Phoenix, Arizona, this 21st day of December, 2004.

DEBRA K. KIDWELL
Transcriptionist