

**TESTIMONY OF CARLITO P. CALIBOSO
CHAIRMAN, PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE
HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

FEBRUARY 11, 2009**

MEASURE: H.B. No. 1062
TITLE: Relating to Gas Pipeline Systems.

Chairs Herkes and Members of the Committees:

DESCRIPTION:

This bill proposes to repeal part IV of chapter 269, Hawaii Revised Statutes ("HRS"), relating to gas pipeline systems and inspections.

POSITION:

The Commission strongly supports this Administration bill and offers the following comments.

COMMENTS:

- **Currently, part IV of chapter 269, HRS, requires the Public Utilities Commission ("Commission"), by rule, to establish safety standards consistent with regulations adopted by the United States Department of Transportation Office of Pipeline Safety ("OPS"), for pipelines and master meter systems, and authorizes the Commission to enforce compliance with those rules through inspections.**
 - Prior to 1993, the State had participated in the federally authorized pipeline safety program.
 - In March, 1993, the OPS terminated the State's certification under that program as a result of failure to meet the OPS' staff training and inspection criteria, and since that time, March, 1993, the OPS notified the State that it asserts jurisdiction over gas pipeline operators in the State, thereby preempting the State from asserting authority over gas pipeline operators and the safety of the system.

- As a result of the preemption by the federal government over pipeline and master meter systems, the Commission believes that the existence of part IV of chapter 269, HRS, in statute is unnecessary as the entire function of inspections, enforcement, and jurisdiction over pipeline safety in the State is under federal control and strongly suggests that the statute be repealed in order not to cause undue confusion in the pipeline industry and public at large.

Attached is the letter from OPS for your reference.

Thank you for the opportunity to testify in strong support of this Administration bill.



U.S. Department
of Transportation

Western Region
Office of Pipeline Safety

12300 W. Dakota Ave., #110
Lakewood, CO 80228

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copy

**Pipeline and
Hazardous Materials
Safety Administration**

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

March 4, 2005

Mr. Richard VanDrunen
Engineer
State of Hawaii Public Utilities Commission
465 S. King Street, #103
Honolulu, HI 96813

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PUBLIC UTILITIES
COMMISSION
FILED

Re: Status of the Natural Gas Pipeline Safety Program in Hawaii

Dear Mr. VanDrunen:

We appreciate your attempt to update your files with respect to the status of the Natural Gas Pipeline Safety Program in Hawaii. The Office of Pipeline Safety (OPS), within the U.S. Department of Transportation, is currently providing pipeline safety oversight for Hawaii as follows:

- The U.S. Department of Transportation's Office of Pipeline Safety exercises the authority to issue and enforce safety regulations for the transportation of natural gas by pipeline under the Natural Gas Pipeline Safety Program of 1968, as amended (NGPSA). These regulations cover the design, construction, inspection, testing, operation, and maintenance of pipeline facilities. The OPS enforces compliance with the regulations through a comprehensive inspection program and, when appropriate, the imposition of administrative, civil, or criminal remedies.
- We inspect all pipeline facilities in Hawaii, both hazardous liquid and natural gas, at a minimum inspection frequency of at least once per year. Our OPS inspectors examine the sole natural gas operator in Hawaii, The Gas Company, more frequently. Each year, our inspectors audit the following Gas Company facilities:
 1. Oahu Transmission Line
 2. Oahu Propane Distribution Systems
 3. Citizens Outer Islands
 4. Oahu Distribution System
- Most recently, two Warning Letters were issued by OPS as a result of the inspections conducted during the month of December 2004. These are notices of probable violations and require the operator to correct the deficiencies.

- The State of Hawaii participated in the Federally-authorized pipeline safety program until March of 1993, when OPS terminated Hawaii's 5(a) Certification due to a lack of inspection staff (see attached letter). The lack of inspection staff was attributed to the resignation of Mr. Vern Abe, pipeline inspector, and the failure to fill his vacant position. The State, having been in the pipeline safety program previously, still maintains in its state laws the necessary requirements for Certification. This is your written confirmation that without Certification by the U.S. DOT the State of Hawaii is preempted under federal law from asserting authority over gas pipeline safety in the State. Therefore, Hawaii is precluded from operating a gas pipeline safety program until such time as Hawaii applies for and receives State Certification. If Hawaii receives Certification, then Hawaii's enforcement actions would need to parallel or be equal to the duties of the OPS.

We appreciate your interest in this matter. If you have any questions, please do not hesitate to contact me or Tom Finch at (720)963-3160, or via email at chris.hoidal@dot.gov or thomas.finch@dot.gov.

Sincerely,



Chris Hoidal, P.E.
Director, Western Region

Attachment: US DOT Letter to Mr. Yukio Naito dated March 8, 1993

cc: Tom Fortner
DPS-28 (T. Finch)

PUBLIC UTILITIES
DIVISION

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U.S. Department
of Transportation

Research and
Special Programs
Administration

The Administrator

400 Seventh Street, S.W.
Washington, D.C. 20590

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MAR - 8 1993

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Yukio Naito
Chairman
Hawaii Public Utilities Commission
465 South King Street
Honolulu, HI 96813

Dear Mr. Naito:

The purpose of this letter is to advise you that we have terminated the State of Hawaii's certification under Section 5(a) of the Natural Gas Pipeline Safety Act of 1968, as amended (NGPSA). Regrettably, the Hawaii Public Utilities Commission (PUC) has been unable to deliver an adequate pipeline safety program in compliance with Section 5(a) requirements. Our letters of June 16, 1992, October 7, 1992, and December 10, 1992, explained PUC program inadequacies in detail. The PUC has not offered us any assurances that it will be able to implement a satisfactory program in the next several years and has not responded to our offer of an opportunity for an informal hearing in regard to its certification status.

Effective immediately, the Office of Pipeline Safety Western Regional Office is asserting Federal jurisdiction over gas pipeline operators in the State of Hawaii. As such, the PUC will no longer be eligible to receive grant funds under Section 5(d) of the NGPSA to cover state costs of personnel, equipment, and activities to carry out a safety program.

The Regional Office will inform the PUC in advance of any scheduled operator inspections and encourages PUC staff to observe these inspections in furtherance of our mutual aim to assure the safety of the citizens of Hawaii. Should circumstances change and the PUC be in a position to conduct a satisfactory pipeline safety program pursuant to Section 5(a), we stand ready to reconsider state certification.

Sincerely,

Rose A. McMurray
Acting Administrator

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COMMISSION