

Whistleblower Newsletter

Pipeline Safety

Improvement Act (PSI)

July 30, 2007

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PROTECTED ACTIVITY; WORK REFUSAL LOOSES PROTECTION ONCE PERCEIVED HAZARD INVESTIGATED, FOUND SAFE, AND ADEQUATELY EXPLAINED TO THE EMPLOYEE

In [*Rocha v. AHR Utility Corp.*](#), 2006-PSI-1 to 4 (ALJ July 25, 2007), the Complainants were experienced welders who refused to continue welding pipe for a gas line that would cross over an Interstate highway based on their belief that if they installed the pipe as requested, a safety risk to the public would result. The ALJ found that the Complainants held this belief in good faith, and that a reasonable person with the Complainants' experience and training would have, under the circumstances, believed that the pipe was unsafe to install in the gas line. The pipe had been left outside for a long period of time and was heavily corroded. The ALJ also found, however, that the representatives of the Respondents and the state DOT took the Complainants' concerns very seriously, and confirmed with engineering staff

that the pipe was acceptable. Moreover, they authorized the Complainants to cut back on pipe ends without limit to find acceptable weld locations. The ALJ found that this proposal appeared to have met the Complainants' safety and quality concerns, and fulfilled the Respondents' duty to respond to the Complainants' good faith work refusal. The ALJ found that "any protection the Complainants would have had for their work refusal ceased when they failed to give further explanation or make a further inquiry into the adequacy of respondents' response to their concerns." Slip op. at 12-13 (*citing Stockdill v. Catalytic Indust. Maint. Co., Inc.*, 1990-ERA-43, at 3 (Sec'y Jan. 24, 1996)).