

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the
Commission's Own Motion to Adopt New
Safety and Reliability Regulations for Natural
Gas Transmission and Distribution Pipelines
and Related Ratemaking Mechanisms.

Rulemaking 11-02-019
(Filed February 24, 2011)

**PRELIMINARY COMMENTS OF THE UTILITY REFORM NETWORK
IN RULEMAKING 11-02-019**



Marcel Hawiger, Energy Attorney

THE UTILITY REFORM NETWORK

115 Sansome Street, Suite 900
San Francisco, CA 94104
Phone: (415) 929-8876 ex. 311
Fax: (415) 929-1132
Email: marcel@turn.org

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Pursuant to the directions and schedule in the Order Instituting Rulemaking, as amended by the Assigned Commissioner's Rulings ("ACR") of March 24 and April 7, 2011, the Utility Reform Network ("TURN") submits these opening comments on certain issues identified in the OIR and the Rulings.

I. SCOPE OF THESE OPENING COMMENTS

The scope of these opening comments was outlined in Sections 13.1 and 13.2 of the OIR, as well as in the two subsequent Assigned Commissioner's Rulings of March 24 and April 7. The primary direction for the parties was to 1) provide substantive comments on the rules proposed in Attachment A to the OIR, 2) provide substantive comments on certain specific items in the March 24 ACR, 3) respond to certain procedural questions, and 4) identify any substantive issues that "should be included in the scope of this proceeding but are not stated in this order." The April 7 ACR set a separate deadline of May 27 for responding to specific proposals in the letter from Congresswoman Jackie Speier.

The OIR identified a large number of issues for this proceeding, as is apparent from the summary of objectives in Section 3 of the OIR. Some of the issues involve complex technical matters (for example, changing natural gas pipeline regulations), while others may be highly contentious and quite broad (for example, a comprehensive industry risk assessment or aligning ratemaking policies to foster a utility culture of safety). The OIR explicitly cautioned that

“fully exploring all aspects of all of the issues set forth in today’s decision would be impractical. Our goal will be to prioritize based on information obtained in the initial stage.”¹ The OIR envisioned determining the scope and schedule after the utilities submit requested reports and after the Independent Review Panel submits its report. The Assigned Commissioner has scheduled a prehearing conference for June 2, 2011.

TURN submits these comments with the explicit understanding that the Commission is at this time *not seeking input* on the numerous substantive issues identified in the OIR and its Attachment B. However, it is difficult to provide procedural recommendations concerning workshops, hearings and scheduling without at least somewhat addressing the substantive issues in the case. Therefore, keeping in mind that the Commission is awaiting additional information prior to finalizing the scope and schedule, TURN focuses these comments on a recommended process to help prioritize the issues and move forward expeditiously but in an orderly manner. TURN also offers some preliminary suggestions of items that should be prioritized for consideration. It may be useful for the Commission to allow for prehearing conference statements to address these issues further in advance of the prehearing conference, especially if additional information is available prior to that time.

¹ OIR, Sec. 13.1, p. 14.

II. INTEREST OF PARTY

As requested in Section 13.2, TURN identifies our interest in this proceeding. The Utility Reform Network (“TURN”) is a statewide private non-profit advocacy organization representing the interests of residential and small commercial customers (or ratepayers) of all the private investor-owned utilities. For purposes of this proceeding, we represent the interests of residential and small business customers of Pacific Gas and Electric Company (PG&E), Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E).

TURN has participated extensively in the rate cases of all three gas (SoCalGas) and combined gas and electric (SDG&E, PG&E) utilities, including the separate rate cases for the gas transmission and storage functions of PG&E (the “Gas Accord” proceedings). We have also participated in various proceedings concerning natural gas policies related to the unbundling and deregulation of gas storage, noncore commodity services and backbone transmission services. TURN is a signatory to the pending Settlement Agreement in PG&E’s current gas storage and transmission (Gas Accord) rate case proceeding (A.09-09-013), which resolves revenue requirement issues related to gas storage and transmission services and investments for 2011-2014. Parties have made clear that this Settlement does not cover future incremental investments made necessary pursuant to any new state or federal requirements stemming from the San Bruno pipeline explosion.

TURN filed a joint motion together with the Consumer Federation of California requesting that the Commission open a public investigation into the San Bruno explosion that coordinates the several proceedings and separate investigations that are underway relating both to the San Bruno explosion as well as to related pipeline inspection and management practices of PG&E.² TURN strongly supports the Commission's stated desire in this Rulemaking to "consolidate and coordinate our efforts" in order to most effectively evaluate the need for changed rules and procedures.

TURN anticipates securing the services of outside consultants with expertise in pipeline safety and maintenance to assist us with issues raised in this proceeding. We submit these preliminary comments based on our historical experience reviewing utility testimonies and cost estimates for various programs and capital projects associated with pipeline integrity management, pipeline safety and pipeline reliability.

² See, "Motion of the Utility Reform Network and Consumer Federation of California for a Coordinated and Public Investigation of Factors Leading to the San Bruno and Similar Catastrophes and Appropriate Preventive and Remedial Measures," filed on January 26, 2011 in A.09-12-020/I.10-07-027.

III. PROCEDURAL ISSUES

A. SCOPE

1. Prioritization and Process

The OIR identifies a fairly broad number of issues to cover in this proceeding.³ The issues range from technical matters concerning pipeline operations and maintenance to general matters of ratemaking and regulation. As noted above, one of the key tasks will be to prioritize the issues in order to ensure an orderly and thoughtful process.

While the hard work of prioritization will fall on the Presiding Officer and Commission staff, TURN recommends that the Commission convene a stakeholder technical working group – the “Gas Safety Advisory Group” or GSAG – that could assist staff to prioritize issues, develop background materials and determine a process for evaluating the issues. The GSAG should hold technical workshops to solicit stakeholder input prior to proposing any new regulations. In addition to utilities, the GSAG should include representation from labor, consumer groups and municipal first responders.

At this stage, TURN emphasizes a key issue that should be resolved sooner rather than later. Based on news reports, as well as statements from representatives of the legislature and governments, it appears that “the public” is quite concerned about moving forward with physical infrastructure

³ While various topics are raised throughout the text of the OIR, TURN notes that particularly many issues are covered in Section 6 and 8 and Attachment B of the OIR.

improvements, including pipeline testing, replacement and/or valve installations.

The OIR appears to contemplate a two-step process. The first step would be to determine which pipeline segments require additional testing due to lack of documentation or certain characteristics. Once such testing is completed, a comprehensive “infrastructure and replacement policy and program that is likely to take place over at least the next decade” would be implemented.⁴

TURN strongly supports an orderly process for evaluating the efficacy and need for specific safety investments. We want to ensure public safety, but we do not want ratepayers to fund unnecessary infrastructure. For example, there should be appropriate field work conducted to determine whether any pipeline segments must be replaced rather than retrofitted for pigging.

The large-scale replacement of valves is another example of a potentially necessary step that should first be evaluated and planned. While there seems to be almost universal agreement that automatic or remote-controlled valves will improve safety, we have seen little technical analysis of this issue. The proper role of new valves, and the need for any specific number of valves, should be established pursuant to a plan that accounts for the actual safety benefits of the valves in different situations and geographic areas.⁵

⁴ See, OIR, Section 8, p. 11.

⁵ While it may seem obvious that such valves minimize destruction due to faster shutoff of gas, TURN has seen documents alleging that most of the impact (at least to human life) is caused by the initial explosion rather than the continuing fire. Furthermore, reliance on valves that require “electricity” for

Thus, TURN recommends that the Commission prioritize the following items for consideration as early as possible:

- the first two topics identified in Attachment B (developing rules and criteria for pipeline retrofitting and valve installation),
- additional testing of pipeline segments without adequate records (identified in Section 6),
- ratemaking adjustments for safety investments (identified in Section 6).

Undoubtedly, the question of cost recovery will be central for the utilities. While this may prove a contentious issue, TURN recommends that the Commission move forward at least to adopt a preliminary policy concerning cost recovery. TURN fully agrees that the special circumstances regarding the need to test and/or replace pipeline infrastructure warrant modifications to standard ratemaking practices to prevent undue and unfair rate increases.

TURN fully supports the intention of the Commission to take official notice of any relevant evidence introduced in other proceedings, including the investigation into PG&E's gas system record-keeping, I.11-02-016.⁶ TURN suggests that adopting reasonable ratemaking adjustments may also require

operation should be scrutinized, given that one of the factors associated with the San Bruno explosion was the automatic opening of a valve at the Milpitas station due to loss of electrical power. This does not at all imply that TURN has an *a priori* position on valve replacement. Rather, we believe that a valve replacement program should be guided by rules developed after full consideration of available data on the efficacy of different valves and their impact on safety and operations.

⁶ OIR, p. 10, fn. 6.

evaluation of past spending and maintenance practices of the utilities. Such a review of past actions may require extensive evidence and analysis. However, rather than complete any such litigation prior to authorizing investments, the Commission could adopt ratemaking policies for future investments explicitly subject to rebate should additional evidence of mismanagement, deferred maintenance or negligence be found in the future.

TURN provides the following additional high-level observations.

- Various technical matters in Attachment B could be addressed separately by technical staff through a working group and workshop process;
- Emergency response and disaster preparedness are vital topics, but hopefully will not require significant time in the regulatory process;
- The issue of a comprehensive risk assessment should perhaps be relegated to a lower priority at this time;
- While the issues of “enhanced penalties” and “aligning ratemaking policies and incentives” to promote safety concerns are important, TURN suggests that they could likewise be deferred at this time. It is our impression that utility behavior can be guided by *appropriate use of existing enforcement mechanisms*. The Commission already has fairly broad authority to penalize utility infractions. But in the past decade that Commission has apparently adopted a philosophy that it is counter productive to penalize for certain infractions, based on the

notion that this will impair open communications with the utilities. Rather than adopt any new incentive and penalty mechanisms, the Commission should at this stage make clear its intent to enforce existing rules with appropriate penalties, if necessary.

2. Additional Issues for Consideration in This Proceeding

TURN generally believes that the OIR fairly comprehensively covered the issues that should be addressed.

There is only one specific reporting issue that we believe should be, and easily could be, added to the scope. The OIR specifies that it will “consider whether the rules and requirements we adopt in the safety phase of PG&E’s gas transmission and storage rate case” should apply to other utilities.⁷ However, in the first phase of that proceeding the Commission on its own proposed reporting requirements concerning various aspects of PG&E’s capital and expense spending for safety and reliability.⁸ The Commission should determine whether any or all of the reporting requirements identified in that “Safety Report” should be applied to other gas operators.

TURN understands that other intervenors may propose some additional issues for inclusion in the scope, especially related to emergency management and emergency contact with the public. We look forward to evaluating those suggestions.

⁷ OIR, Section 6, p. 8.

⁸ See, Proposed Decision of ALJ Wong, A.09-09-013, March 15, 2011, Appendix C.

B. HEARINGS AND SCHEDULE

TURN suggests that many of the issues, especially concerning new rules for GO 112-E, should be addressed through technical workshops and comments. Issues concerning ratemaking policies are probably best addressed through written comments, while adjustments based on specific past practices may involve sworn testimonies subject to cross examination. TURN will be pleased to provide further recommendations concerning schedule and process in advance or at the June 2nd prehearing conference.

IV. RULES PROPOSED FOR IMMEDIATE ADOPTION

In general, TURN supports the expeditious adoption of the rule changes and amendments proposed in Attachment A. If the utilities raise any significant technical issues, those should probably be addressed through a technical workshop held as soon as practicable.

A. Proposed Rule 145

The proposed rule limits the operating pressure of pipelines installed by PG&E prior to January 1, 1970 in certain CHA areas and that do not have complete strength test records to no “more than 80% of actual maximum operating pressure reliably and verifiably recorded during the period February 15, 2006 through February 15, 2011.” The March 24th Ruling asks whether this rule should apply to other gas pipeline operators, and whether there is a basis to distinguish more finely between pipelines installed prior to 1970.

TURN has two suggestions concerning this proposed new Rule 145.

First, TURN recommends that the operating limit should be based on the *lower of* the actual recorded pressure *or* the MAOP established for the pipeline.

Since this rule applies to pipelines installed prior to 1970 without strength test records, TURN assumes that the majority of such pipe would have an MAOP established pursuant to the 619(c) exemption.⁹ The implicit assumption of the proposed rule is that actual recorded pressure in 2006-2011 is lower than the MAOP for these pipelines. There have been media reports stating that PG&E has experienced numerous over-pressure events in the recent past, such that maximum recorded pressure would be above MAOP levels.¹⁰ TURN has seen no data confirming or denying these allegations. If true, TURN would be concerned that the proposed rule might authorize higher operating pressures than warranted based on the pipeline MAOP. Adding a clause to ensure that operating pressure is no more than 80% of the MAOP or the actual recorded pressures in 2006-2011 should prevent any such uncertainty.

Second, with respect to differentiating pipelines by age, TURN's concern is that the restriction is *too narrow*. PG&E has not found records (or found only partial records) of pressure testing for 71 miles of pipeline installed after July 1,

⁹ 49 CFR 192.619(c). TURN is still evaluating the relationship between the strength test requirements of Subpart J (49 CFR 192.505) and the MAOP requirements of Subpart L (49 CFR 192.619). It is not clear to us whether the "pressure test" records are equivalent to the "strength test" records as discussed in proposed Rule 145.2.4.

¹⁰ See, for example, *San Jose Mercury News*, February 4, 2011, "PGE's Gas Pressure Hikes Over Legal Limits Raise Grave Concerns," by Steve Johnson.

1970.¹¹ TURN suggests that perhaps the requirement that only pipeline installed prior to January 1, 1970 should be eliminated. From a safety perspective, TURN recommends that any pipeline without adequate strength test records should be operated below recorded or MAOP pressures. If necessary, a clause could be added clarifying that once adequate test records are present this operational restriction would be lifted.

TURN does not see any reason why this proposed rule should be limited only to PG&E. We would support applying it to other utilities as well. The only potential problem is if the 80% of actual pressure limitation for 619(c) pipelines is so low as to cause concerns regarding reliability during extreme demand conditions. If any operators believe this is a valid concern, the Commission should 1) require the operators to provide data on recorded pressures and forecast pressures under high demand conditions for relevant pipeline segments, and 2) provide data on the number of miles and number of potential customers affected by this proposed rule, and 3) hold a technical workshop to address the issue.

The high-pressure transmission network of PG&E is somewhat different in configuration than those of SDG&E and SoCalGas. TURN cannot speculate at this time whether these differences are meaningful with respect to application of proposed Rule 145.

¹¹ PG&E Report, March 15, 2011, p. 13. TURN notes that the July 7, 1970 date corresponds to the MAOP determination under 49 CFR 192.619(c). We are not sure of the basis of the January 1, 1970 date proposed in Rule 145.2.2. We would recommend at a minimum changing that date to July 1, 1970.

B. Proposed Revisions to Rule 122.2

The proposed changes to increase reporting requirements appear reasonable. TURN fully supports the most transparent and complete reporting of incidents which provide information concerning the safety of pipeline systems.

TURN does not have sufficient knowledge concerning “under-pressure conditions” to ascertain whether the proposed rule is too broad. We look forward to reviewing utility comments on this issue.

TURN does not presently have sufficient information to comment on the change proposed in the March 24th ACR, which would lower the pressure threshold for reporting.¹²

TURN fully supports eliminating the reporting exemption in 49 CFR 191.23(b)(4) for conditions which have been repaired, at least for purposes of the Quarterly Summary Reports provided to the Commission.¹³ Having such incident information, regardless of repair status, will be useful for planning and prioritizing future pipeline maintenance and replacement activities.

C. Proposed Rule 125

This Rule proposes a new reporting requirement for pipeline installations. Again, the Rule appears reasonable on its face, especially given the exceptions for pipelines that do not involve relocation or for emergency installations.

¹² See, ACR, March 24, 2011, Sec. 2.2.

¹³ See, ACR, March 24, 2011, Sec. 2.3.

D. Proposed Rule Concerning Threat Identification

TURN has no opinion on this proposed rule at this time.¹⁴

V. CONCLUSION

TURN fully supports the Commission's stated objectives of proceeding in a coordinated manner to address the numerous important issues affecting the safe delivery of natural gas to California customers. We believe the Commission has properly identified most of the relevant issues. We recommend that the Commission convene a stakeholder Gas Safety Advisory Group to assist with the prioritization and consideration of issues which are necessary to address in order to better inspect, maintain and repair the natural gas delivery system.

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Respectfully submitted,

By: _____/s/_____
Marcel Hawiger, Energy
Attorney

THE UTILITY REFORM NETWORK
115 Sansome Street, Suite 900
San Francisco, CA 94104
Phone: (415) 929-8876, ex. 311
Fax: (415) 929-1132
Email: marcel@turn.org

¹⁴ See, ACR, March 24, 2011, Sec. 2.4.