

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)

**REPLY COMMENTS OF DIVISION OF RATEPAYER ADVOCATES ON
INDEPENDENT REVIEW PANEL REPORT**

I. INTRODUCTION

In accordance with the Scoping Memo and Ruling of the Assigned Commissioner (“Scoping Memo”)¹ issued on June 16, 2011 in the above-captioned proceeding, the Division of Ratepayer Advocates (“DRA”) hereby submits its reply comments regarding the Report of the Independent Review Panel (“IRP Report”)² released on June 9, 2011.

DRA responds to some of the other parties’ opening comments, specifically those filed by The Utility Reform Network (“TURN”),³ Pacific Gas and Electric Company (“PG&E”),⁴ the City and County of San Francisco (“CCSF”),⁵ and the Plumbers, Pipe

¹ Rulemaking (“R.”) 11-02-019, Scoping Memo and Ruling of Assigned Commissioner, June 16, 2011.

² Report of the Independent Review Panel, San Bruno Explosion, Prepared For California Public Utilities Commission, June 8, 2011, Revised Copy June 24, 2011. The June 24 revised copy of the report is available on the Commission’s website at http://www.cpuc.ca.gov/PUC/events/110609_sbpanel.htm.

³ R.11-02-019, Comments of The Utility Reform Network on the Independent Review Panel Report (“TURN Comments”), July 15, 2011.

⁴ R.11-02-019, Pacific Gas and Electric Company’s Comments on the Independent Review Panel Report (“PG&E Comments”), July 15, 2011.

⁵ R.11-02-019, Comments of the City and County of San Francisco on the Independent Review Panel
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Fitters and Steamfitters Local Unions Nos. 246 and 342 and their members (“Pipeline Locals”).⁶

As an initial matter, DRA would like to provide some clarification regarding its recommendation in opening comments “against changing any current directives in this rulemaking or establishing any new natural gas pipeline safety requirements until the National Transportation Safety Board (“NTSB”) releases its investigation report on the root cause(s) of the San Bruno incident.”⁷ This recommendation is not meant to convey any disagreement or opposition on the part of DRA with the directives or actions currently being undertaken by the Commission in this rulemaking. The recommendation is intended to forestall the promulgation of any new, permanent pipeline requirements addressing safety without the benefit of the NTSB report’s findings and conclusions.

II. REPLY COMMENTS

A. TURN

TURN suggests that several of the IRP Report’s recommendations pertaining to PG&E’s performance as an operator and Commission oversight be prioritized as shown in Attachment A to TURN’s opening comments.⁸ The first category of recommendations cited by TURN relates to PG&E: the IRP recommends that PG&E conduct a comprehensive review of its data and information management systems; take a fresh look at the budget for pipeline integrity efforts; review and restructure all division, regional and company emergency plans for consistency while incorporating best practices observed from Pipeline 2020; and organizationally separate the pipeline and distribution

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Report Issued June 8, 2011 (“CCSF Comments”), July 15, 2011.

⁶ R.11-02-019, Plumbers, Pipe Fitters and Steamfitters Local Unions Nos.246 and 342 and Their Individual Members’ Comments on Independent Review Panel’s Report and Recommendations Regarding Implementation Plan Directives (“Pipeline Locals Comments”), July 15, 2011.

⁷ R.11-02-019, Comments of Division of Ratepayer Advocates on Independent Review Panel Report, July 15, 2011, pp. 1-2.

⁸ See TURN Comments, pp. 8-9 and Attachment A.

integrity management programs within the company.⁹ The second category of recommendations relates to the Commission: the IRP recommends that the Commission adopt a formal goal to move to more performance-based regulatory oversight of utility pipeline safety; develop a plan and scope for future annual California utility initiated independent integrity management program audits; develop a holistic approach to identifying pipeline segments for integrity management audits based on intrastate pipeline risk; focus field audits based on an internal ranking of the most risk segments of the gas transmission system assets in the state; and raise the profile of the audits among all stakeholders, including adding the following requirements to the safety and pipeline integrity audits of the utilities:

1. posting of audit findings and company responses on the Commission’s website;
2. use of a “plain English” standard to be applied for both staff and operators in the development of their findings and responses, respectively; and
3. certification by senior management of the operator that parallels the certifications now required of corporate financial statements pursuant to Sarbanes-Oxley.¹⁰

DRA agrees that these and the other recommendations of the IRP Report merit consideration. TURN’s suggestion to prioritize the above recommendations is a reasonable approach to address the serious deficiencies identified in the IRP Report. The IRP Report found a considerable number of “gaps” in PG&E’s performance that implicate the safety, integrity, and reliability of PG&E’s natural gas transmission pipeline system.¹¹ With respect to the Commission, the IRP Report describes Commission regulation of safety as “a struggle for resources.”¹² Examination and implementation of the IRP Report’s recommendations will require a commitment of time and resources not

⁹ See IRP Report, Appendix A, sections 5.3.4.1, 5.6.4.1, 5.5.3.1 and 5.4.4.1.

¹⁰ See IRP Report, Appendix A, sections 6.2.4.1, 6.3.3.1, 6.5.3.2, 6.3.3.5 and 6.3.3.6.

¹¹ See IRP Report Executive Summary (“ES”), pp. 7-18.

¹² See IRP Report ES, pp. 18-22.

only by PG&E and the Commission, but by all stakeholders. Some of these recommendations will require long-term solutions as opposed to short-term fixes, and still some recommendations will continue to evolve as we go forward and gain new insight and information. Thus, since some may take several years to implement, TURN's recommendation to prioritize is a reasonable approach to addressing the IRP Report's recommendations. TURN has indicated in Attachment A of its comments which recommendations, in its view, should be priority 1 through 4. The challenge here is in establishing the basis for prioritization. DRA suggests that this process be addressed at a later time in this proceeding. The action items that should come first in line for priority should be those that contribute most to creating a culture focused on safety in all aspects of operations and service, among both utilities and regulators.

B. PG&E

PG&E states that “we agree in full spirit with the panel’s overall conclusions and in principle with its 18 formal recommendations (Appendix A)”¹³ aimed at PG&E. It is becoming more difficult to believe such statements as the public has yet to see better quality service from PG&E. While DRA expects a strong expression of PG&E’s willingness to earn back the public’s trust and full commitment to do whatever it takes to ensure public safety while providing affordable, safe, and reliable gas service, it will take much more than resolute words to convince the public because PG&E has a continuing credibility problem. The IRP Report’s findings on PG&E’s company culture help explain why:

“In the gas transmission business, management made a faulty assumption. It did not make the connection among its high level goals, its enterprise risk management process, and the work that was actually going on in the company ... We think this failing is a product of the culture of the company – a culture whose rhetoric does not match its practices.”¹⁴

¹³ PG&E Comments, p.1.

¹⁴ IRP Report ES, p. 1.10.

PG&E’s opening comments contain only rhetoric. PG&E needs to regain the public’s trust by backing up words with positive action that produces real results for public safety.

C. CCSF

CCSF believes that Public Utilities Code Section 583, “as currently phrased, ... runs directly counter to the public records policies of this state, which establish a presumption that records in the possession of public agencies should be available for public inspection.”¹⁵ Accordingly, CCSF “urges the Commission to propose and support before the Legislature amendments to Section 583 that would conform this provision to otherwise applicable state policy.”¹⁶ DRA would support efforts to revisit Section 583 in the interest of providing greater transparency and increasing public awareness of pipeline safety issues.

In Rulemaking (“R.”) 05-06-040, the Commission previously considered Section 583 in connection with the implementation of Senate Bill (“SB”) 1488 relating to the confidentiality of electric procurement data.¹⁷ SB 1488 required the Commission to “examine our practices regarding confidential information (Pub. Util. Code §§ 454.5(g) and 583, and the Public Records Act, Gov. Code § 6250, *et seq.*) to ensure meaningful public participation in our proceedings and open decision making, while taking into account our obligations under §§ 454.5(g) and 583 to protect the confidentiality of certain information.”¹⁸ Section 454(g) requires:

The commission shall adopt appropriate procedures to ensure the confidentiality of any market sensitive information submitted in an electrical corporation’s proposed procurement plan or resulting from or related to its approved procurement plan ... provided that [DRA] and other consumer groups that are nonmarket participants shall be

¹⁵ CCSF Comments, p.8.

¹⁶ CCSF Comments, p.9.

¹⁷ R.05-06-040, Order Instituting Rulemaking to Implement Senate Bill No. 1488 (2004 Cal. Stats., Ch. 690 (Sept. 22, 2004) Relating to Confidentiality of Information, June 30, 2005.

¹⁸ R.05-06-040, p.1.

provided access to this information under confidentiality procedures authorized by the commission.¹⁹

Section 583 provides:

No information furnished to the commission by a public utility, or any business which is a subsidiary or affiliate of a public utility, or a corporation which holds a controlling interest in a public utility, except those matters specifically required to be open to public inspection by this part, shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding. Any present or former officer or employee of the commission who divulges any such information is guilty of a misdemeanor.²⁰

In R.05-06-040, the Commission was confronted with the issue of balancing SB 1488's policy directive of open decision making with the existing confidentiality provisions that govern Commission activities. In its decision on the rulemaking, the Commission sought to achieve "the best balancing between the broadest disclosure and the narrowest confidentiality" by providing "detailed guidance ... explaining our confidentiality rules" for the energy procurement records of investor owned utilities and energy service providers, and by establishing "specific procedures regarding requests for confidential treatment of documents."²¹ Here, the Commission could similarly examine how best to achieve this balance in the context of pipeline related information.

D. PIPELINE LOCALS

The Pipeline Locals recommend convening workshops in August 2011, prior to the utilities' submission of their pressure testing implementation plans, to discuss whistleblower protections, and permitting interested parties to include discussion of the issue in post-evidentiary hearing briefs. DRA supports the Pipeline Locals'

¹⁹ Cal. Pub. Util. Code § 454(g) (2010).

²⁰ Cal. Pub. Util. Code § 583 (2010).

²¹ Decision ("D.") 06-06-066, as modified by D.07-05-032, pp. 3, 5, Ordering Paragraphs ("OP") 3-4, Appendices 1-2; *see also* Resolution ALJ-164, General Order 66-C.

recommendation. Indeed, the Commission identified as one of its primary objectives in this rulemaking to “consider if we need further rules or other protection for whistleblowers to inform the Commission of safety hazards.”²² While the Commission has established a limited whistle blower program to facilitate the receipt of anonymous complaints in affiliate matters, it “does not have a comprehensive program to protect persons who have and wish to protect an ongoing relationship with a public utility but who are also in possession of information regarding a threat to public safety concerning the utility’s operations.”²³ DRA agrees that establishing stronger protections should be considered in this proceeding to encourage whistleblowers to come forward with information that would benefit public safety.

The need for strong whistleblower protections was evident in the Commission’s investigation (I.06-06-014) into Southern California Edison’s (“SCE”) operations pertaining to its performance-based ratemaking (“PBR”) mechanism. Prior to the Commission’s instituting its investigation, SCE had undertaken its own investigation in response to an anonymous employee letter alleging that SCE employees had been falsifying customer satisfaction survey data.²⁴ The survey data were used by the Commission to set SCE’s PBR rates through which the utility could earn rewards based on its performance.²⁵ The Commission’s Consumer Protection and Safety Division (“CPSD”) conducted its own investigation into the matter.²⁶ SCE and CPSD reached different conclusions regarding the extent of the misconduct and manipulation. CPSD found a larger scale of misconduct and manipulation than reported by SCE.²⁷ Ultimately, the anonymous letter from the SCE employee was an important factor in the

²² R.11-02-019, p.5.

²³ R.11-02-019, p.14, citing D.98-12-075.

²⁴ D.08-09-038, Finding of Facts (“FF”)1-5.

²⁵ D.95-12-063, as modified by D.96-01-009, introduced PBR as an alternative to cost-of-service regulation to focus on a utility’s performance and meeting performance benchmarks.

²⁶ D.08-09-038, p.8.

²⁷ D.08-09-038, p.8.

Commission’s findings on SCE’s PBR survey data manipulation. In D.08-09-038, SCE was found to have violated D.96-09-092, which adopted PBR standards for rate and service incentive mechanisms, and several sections of the Public Utilities Code²⁸ because: it failed to secure compliance by all of its officers, agents, and employees;²⁹ it received PBR rewards and collected revenues based on data known to management to be false or misleading;³⁰ and the reports and requests for rates submitted to the Commission regarding PBR and Results Sharing were found to be based on false and misleading data.³¹ The Commission also found that SCE violated Rule 1.1 of the Commission’s Rules of Practice and Procedure, because SCE management signed pleadings requesting PBR and Results Sharing awards based on false and misleading data, which did, in fact, mislead the Commission.³² SCE was ordered to refund \$80.7 million to ratepayers,³³ forego \$20 million in requested PBR rewards for customer satisfaction, forego \$15 million in requested PBR rewards for health and safety³⁴ and pay a fine of \$30 million to the General Fund.³⁵ However, no compensation was paid to the whistleblower.³⁶ What happened in the SCE case illustrates the importance of greater whistleblower protections. Without the persistence of the employee who sent the anonymous letters, the extent of the misconduct and manipulation as discussed in the foregoing might never have been known to the Commission.

In addition, the Pipeline Locals propose changing the procedural schedule to incorporate parties’ comments on the forthcoming NTSB report, to require utilities to

²⁸ Cal. Pub. Util. Code §§ 702, 451, 581.

²⁹ D.08-09-038, Conclusion of Law (“CL”) 1.

³⁰ D.08-09-038, CL 2.

³¹ D.08-09-038, CL 3.

³² D.08-09-038, CL 4.

³³ D.08-09-038, OP 1.

³⁴ D.08-09-038, OP 2.

³⁵ D.08-09-038, OP 3.

³⁶ D.09-05-027, FF 12.d.

provide updated, accurate information on pipeline classifications prior to filing their implementation plans, and to accommodate additional days of evidentiary hearings.³⁷ DRA supports providing parties with the opportunity to comment on the NTSB report in this rulemaking, similar to that provided with regard to the IRP Report. Since DRA and other parties such as TURN and the Pipeline Locals view the NTSB report, with its findings and conclusions on the root cause(s) of the San Bruno natural gas pipeline explosion, as likely the most credible report regarding the incident,³⁸ it would be reasonable to provide parties the opportunity to comment on the contents of the report. DRA supports the Pipeline Locals' suggestion to give the utilities an opportunity to update their implementation plans once the NTSB report is released.

The Pipeline Locals also recommend that the time for evidentiary hearings be extended from the five days currently scheduled to ten days for PG&E's implementation plan and at least five days for Southern California Gas Company ("SoCalGas") and San Diego Gas & Electric Company's ("SDG&E") implementation plan.³⁹ The Pipeline Locals believe that at least three weeks of hearings will be necessary to give parties adequate time to examine the utilities' implementation plans and to offer alternatives, and in light of "all the factual issues that have arisen in this proceeding, and the continual developments regarding PG&E's factual inaccuracies."⁴⁰ DRA agrees that five days could be insufficient given that PG&E, SoCalGas/SDG&E and Southwest Gas Corporation are all required to submit plans and presumably those plans will be complex and voluminous. However, until the implementation plans have been filed and parties have had a chance to review them, it is difficult to guess exactly how many days of hearings will be needed. If the Commission is to establish a complete evidentiary record in this proceeding, then it may be necessary to expand the hearing schedule to provide

³⁷ Pipeline Locals Comments, pp. 14-18.

³⁸ See TURN Comments, pp. 3-4, Pipeline Locals Comments, p.17.

³⁹ See Pipeline Locals Comments, p.14.

⁴⁰ Pipeline Locals Comments, p.18.

parties sufficient opportunity to examine the utilities' implementation plan submissions and supporting testimonies.

III. CONCLUSION

DRA respectfully requests that the Commission take DRA's opening and reply comments into consideration.

Respectfully submitted,

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