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October 26, 2011

Karen V. Clopton
Chief Administrative Law Judge
California Public Utilities Commission
505 Van Ness Avenue
San Francisco CA 94102

**Re: Reply Comments of Center for Accessible Technology
on Draft Resolution ALJ-274**

Dear ALJ Clopton:

The Center for Accessible Technology (CforAT) submits these Reply Comments on Draft Resolution ALJ-274, issued on October 10, 2011. As set forth below, CforAT supports adoption of the Resolution, with the addition of provisions for greater transparency as recommended in the Opening Comments of the City of San Bruno and the City and County of San Francisco (CCSF). CforAT believes that the lengthy and drawn-out compliance processes proposed by the Sempra Utilities and Southwest Gas in place of the process that would be established by the Draft Resolution would fail to advance an important concern of both the Independent Review Panel Report¹ and the NTSB Report,² as well as the Commission itself, in that they would not restore public confidence in the gas utilities or in the Commission's own ability to provide effective oversight of the state's natural gas system.

1. Public Confidence is an Important Aspect of Efforts to Enhance Pipeline Safety

¹ On September 23, 2010, the Commission issued Resolution L-403, which, among other things, established an Independent Review Panel to review facts related to the San Bruno explosion and make recommendations. The Panel issued its final report on the incident on June 9, 2011.

² The National Transportation Safety Board issued its Pipeline Accident Report making recommendations in response to the San Bruno explosion on September 26, 2011.

The Independent Review Panel Report highlights issues of concern with both gas utilities³ and with the CPUC itself. These issues not only impact the actual ability of utilities and the Commission to ensure the safety of the state’s natural gas distribution system, but they also impact the public perception of the safety of a system they rely on every day. While efforts are broadly underway to enhance actual safety, including important provisions of the draft resolution, other parties are better situated to address the content of these measures. As the representative of a community that is at heightened risk in the event of an emergency, people with disabilities, CforAT speaks here to the need to provide reassurance to the public that their demand for improved oversight and greater separation between regulators and the utilities being regulated is being met.

Commission President Peevey himself noted upon the release of the Independent Panel Report that the Commission has “drifted into a culture of complacency.” The report raised the question of “whether the CPUC was 'tough' enough or inquisitive enough to provide vibrant oversight.” Reporting on these concerns was widespread throughout the state. Customers are questioning whether there is effective oversight of natural gas pipeline safety, or whether the gas utilities are effectively writing their own rules and acting without adequate review.

The pending Draft Resolution, which seeks to implement the Independent Panel recommendation to provide for the ability of safety staff to levy civil penalties for safety violations, and the similar recommendation from the NTSB Pipeline Accident Report that the Commission’s Pipeline Safety Division should be granted enforcement authority including the ability to issue fines and penalties, is needed not only to improve enforcement but also to demonstrate to the public that the regulatory agency is capable and willing to provide meaningful oversight of the utilities it regulates.⁴

2. The Gas Utilities’ Proposals Will Not Enhance Public Confidence

In their comments, the Sempra Utilities and Southwest Gas first propose use of the Rulemaking process before any changes to the existing enforcement system could be adopted, *see Sempra Comments at p. 2 (noting preference for rulemaking process);*

³ The Panel Report focuses on PG&E, the utility involved in the San Bruno explosion. PG&E did not submit comments on the draft resolution. However, the Report discusses safety and confidence issues that go beyond PG&E and are relevant to all gas utilities in California.

⁴ As noted by CCSF, speaking on the issue of making citations public, increased disclosure creates increased accountability for both the regulated utilities and the Commission. Such public review may increase public safety, as utilities know that any violations will not be hidden. Additionally, “the Commission demonstrates to the public in a transparent manner that it is working to meet its mandate to oversee the safety of gas operations.” CCSF Comments at p. 3. This public commitment to safety is an important goal on its own.

Southwest Gas Comments at p. 1 (requesting initiation of rulemaking), and then propose processes that would require prolonged and uncertain amounts of time from when a violation is identified before a cure would be put in place.

Southwest Gas proposes first a 30-day response time upon issuance of a citation, with the burden on enforcement staff to obtain an order from the Commission in order to require an expedited schedule. Southwest Gas Comments at pp. 2-3. Southwest then requests an open-ended method for determining time to cure, including options for unlimited extensions. *Id.* at p. 3. Finally, despite the fact that information is routinely shared virtually instantaneously through electronic communications, Southwest asks for five additional days beyond any established timeline for delivery by mail. *Id.*

The Sempra Utilities want any enforcement process to begin with a warning letter, then provide an opportunity for the utility to cure the violation prior to issuance of a citation. Sempra Comments at p. 4-5. The Sempra Utilities seek 30 days to respond to a warning, with the option of requesting unlimited additional time. Only after this process could a citation be issued, triggering another 30 day period for a response, which could include a request for hearing which would delay any action yet further. *Id.* at pp. 5-6. Finally, if a violation warranted a fine of greater than \$1 million, the Sempra proposal would require a full OIR process. *Id.* at p. 5.

As numerous articles in publications across the state show, the San Bruno explosion substantially reduced public confidence in the safety of California's natural gas system. The public's confidence in the Commission's effective oversight of the system has similarly been harmed. One key factor in the low level of confidence in the Commission is the impression that the utilities are effectively writing their own rules and providing their own oversight. The proposals by Southwest Gas and Sempra, if adopted, would not only fail to address these problems, but rather they would indicate that regulatory capture continues.

The Independent Panel Report and the NTSB Report both clearly demonstrate the need for efforts that will rebuild confidence in the system (along with efforts to provide actual safety improvements, of course). Adoption of a enforcement mechanism that provides for prompt cures of any violations according to defined timelines, as well as meaningful penalties for safety violations, will help show that the concerns of the public are being addressed. In contrast, if the Commission were to demand a lengthy OIR process before taking any action to improve its enforcement mechanisms, it would signal to the public that it is unable to act in a meaningful way on its safety obligations. Similarly, if it does not create a system that sets defined timelines for violations to be fixed, the public will not have a basis for increased confidence that safety is a meaningful priority.

3. Increased Transparency, as Proposed by San Bruno and CCSF, Would Enhance Public Confidence

In its opening comments, CCSF argues that all citations issued under the process proposed in the Draft Resolution, as well as related correspondence, should be public. CCSF Comments at pp. 2-3. CforAT agrees, and strongly concurs with the recommendation that this information be made available on the Commission's website.⁵ Both CCSF and San Bruno also assert that local governments should receive notice when a citation is issued. CCSF Comments at p. 3; San Bruno Comments at pp. 3-4. Again, CforAT agrees that such information should be provided to local governments so that they can be aware of potential safety hazards and take precautions on behalf of their local residents. Many vulnerable customers, including people with disabilities, are registered or otherwise known to their local governments as needing targeted notice or other forms of assistance if an emergency were to occur. In order to provide the greatest opportunity for an effective response that will serve the needs of vulnerable individuals if an emergency occurs, community notice is key. Additionally, many members of the public have greater confidence in their local governments than in the gas utilities. By ensuring that local governments are aware of potential risks, the Commission will again increase the public's confidence that their safety is being prioritized appropriately.

4. Conclusion

For the reasons set forth above, CforAT urges the Commission to act promptly via the resolution process to adopt a stringent enforcement procedure that will enhance compliance with safety requirements, increase public confidence in both the gas utilities and the Commission, and provide enhanced notice to communities at risk of a potential emergency situation.

Very truly yours,

/s/Melissa W. Kasnitz

Melissa W. Kasnitz
Legal Counsel
Center for Accessible Technology

cc: ALJ Angela Minkin
Service List for A.10-12-005/A.10-12-006
Service List for A.09-09-013
Service List for R.11-02-019

⁵ The Commission should ensure that such information, when posted, is provided in a manner that it is easy to find and that is accessible to people who access the Commission's website using screen readers.