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)

RESPONSE OF THE UTILITY REFORM NETWORK TO THE MOTION OF PACIFIC GAS AND ELECTRIC COMPANY TO AMEND THE SCOPING MEMO AND REASSIGN TESTIMONY ABOUT PG&E'S PAST PRACTICES

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I. INTRODUCTION

The Utility Reform Network (TURN) submits this response to the Motion of Pacific Gas and Electric Company ("PG&E") to Amend Scoping Memo and Reassign Testimony About PG&E's Past Practices to I.11-02-016 ("Motion"). The Motion seeks to re-assign certain intervenor testimony that PG&E describes as relating to its "past practices" to the Record-Keeping OII (I.11-02-016). The Commission should not hesitate to deny the Motion because: (1) the identified testimony is clearly within the scope of this proceeding; 2) PG&E itself includes past practices testimony and argumentation in its case-in-chief; 3) the Record-Keeping OII and other enforcement dockets are inappropriate for the resolution of cost recovery and ratemaking issues; 4) the Commission's enforcement OIIs have made clear that the issue of PG&E shareholder responsibility for Implementation Plan costs should not be resolved in those dockets, but rather in this rulemaking; and 5) it would be highly unfair to TURN and other intervenors to divorce cost responsibility and disallowance issues from the cost recovery determination.

II. TESTIMONY DISCUSSING THE IMPORTANCE OF PG&E'S PAST PRACTICES TO THE COST RECOVERY DETERMINATION IS CLEARLY WITHIN THE SCOPE OF THIS RULEMAKING

PG&E devotes much of its Motion to an assertion that testimony about its past

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practices is outside the scope of this proceeding.[1] PG&E is dead wrong.

PG&E cites the testimony of Thomas J. Long and portions of the testimony of Richard Kuprewicz and William Marcus, all on behalf of TURN, as examples of testimony that is, or should be, outside the scope of this rulemaking. In that testimony, TURN pointed out (among other things) that PG&E's past practices are highly relevant to this proceeding, in that, consistent with Public Utilities Code Section 463 and longstanding Commission policy, work proposed by PG&E in its Implementation Plan ("IP") that results from past imprudent conduct ("errors or omissions" in the words of Section 463) must be disallowed from rate recovery.[2] TURN's testimony goes on to show that several reports – including the NTSB report, the Independent Review Panel Report, CPSD's San Bruno Incident Investigation Report, and the Overland Audit Report -- have either documented or alleged significant errors, omissions, and other questionable practices that call into question whether PG&E should be allowed to recover any IP expenditures in rates.[3] TURN's testimony further notes that certain of PG&E's past practices will be considered in pending enforcement dockets – the Record-keeping OII (I.1-02-016), the San Bruno Explosion OII (I.12-01-007), and the High Population Density OII (I.11-11-009) – and that the records of these other dockets can and should inform the eventual disallowance determination in this docket.[4]

TURN's testimony is not only within the scope of the proceeding, it is directly

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[1] Motion, pp. 2-5.

[2] Long Testimony, pp. 3-5.

[3] *E.g.*, Long Testimony, pp. 3, 6, 8-9, 11-12, 15.

[4] Long Testimony, pp. 7-8.

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responsive to the directions and questions posed in the Amended Scoping Memo.[5] In direct refutation of PG&E's claim, the Amended Scoping Memo states that "[t]he issues in this proceeding require an in-depth analysis of historical safety practices and ratemaking treatment . . . ." It then goes on to emphasize that "the testimony that will be most useful to the Commission" will include "an assessment of past practices."[6] TURN's testimony is fully consistent with these Commission statements.

Moreover, questions 20 and 21 in Appendix A to the Amended Scoping Memo asked for parties to discuss, among other things, what would be "a reasonable basis for determining the level of costs shareholders should absorb" and whether "parties and the Commission" should "examine the history of PG&E's past expenditures, management practices with regard to safety, and record keeping practices that has led to the necessity for gas safety implementation plans." TURN's testimony directly addresses these questions. PG&E's position boils down to the patently absurd assertion that any answer to these questions that actually referenced PG&E's past practices should not be considered in this docket.

Although PG&E devotes almost half of its Motion to argument that the identified testimony is outside the scope of this rulemaking, PG&E implicitly concedes that this position is incorrect by seeking to amend the Amended Scoping Memo to re-assign the testimony to the Record-Keeping OII. The remainder of this Response explains why that request should be rejected.

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[5] Amended Scoping Memo and Ruling of the Assigned Commissioner ("ASM"), Nov. 2, 2011.

[6] ASM, p. 2.

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III. PG&E'S OWN TESTIMONY SHOWS THE RELEVANCE OF PG&E'S PAST CONDUCT TO THE COST RECOVERY DETERMINATION

PG&E's claim that discussion of its past practices does not belong in this proceeding rings false in light of the fact that PG&E's own cost recovery proposal relies on PG&E's (distorted) view of its past conduct in relation to safety standards. PG&E acknowledges that no cost recovery should be allowed for expenses resulting from its failure to comply with its (overly constrained) view of previous requirements. In particular, PG&E emphasizes that it is not seeking cost recovery to validate the MAOP of post-1970s pipeline for which it failed to retain complete documentation; PG&E estimates the cost of remedying this violation at $98 million.[7] In addition, to buttress its argument that all of the other costs for which it seeks recovery are not the result of past errors or omissions, PG&E presents a revisionist history[8] of past regulations and PG&E's supposed compliance with those regulations in Chapter 2 of its testimony.[9] In comparison, when DRA's witness Pocta presents a very different view of past standards and regulation,[10] PG&E claims that such testimony is outside the scope of this proceeding.[11]

PG&E's claim that the costs in its IP are all "incremental"[12] is just another way of asserting that it is not seeking recovery for any costs resulting from failure to comply

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[7] PG&E Testimony, p. 1-13.

[8] For example, PG&E glosses over pre-1961 (the year GO 112 was adopted) industry standards that are highly relevant to the prudence of PG&E's past practices.

[9] PG&E Testimony, pp. 2-7 to 2-19.

[10] Pocta Testimony for DRA, pp. 20-29.

[11] Motion, Attachment A (seeking to reassign DRA Pocta testimony, pp. 20-29, which discusses industry standards dating back to 1935).

[12] PG&E Testimony, p. 1-12.

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with prior pipeline safety requirements. TURN and other intervenors disagree strongly with PG&E's view that the proposed work is all unrelated to past compliance or prudence failures, and are entitled to rebut PG&E's testimony and have such rebuttal heard at the same time that PG&E presents its case. That rebuttal consists of showing that PG&E has, in fact, failed to meet prior safety standards and that such failures may contribute to the need for most, if not all, of PG&E's IP expenditures.

III. COST RECOVERY AND RELATED PRUDENCE ISSUES DO NOT BELONG IN ENFORCEMENT DOCKETS

PG&E contends that any testimony relating to past practices should be restricted to the Record-Keeping OII, I.11-02-016. This argument reflects a fundamental confusion regarding the different purposes of this proceeding and enforcement dockets.

As each of the enforcement dockets make clear, their main purpose is to determine whether PG&E violated applicable regulations and orders and to assess whether penalties or other remedies should be levied. In comparison, a primary purpose of this docket is to determine the extent to which PG&E's proposed IP expenditures are reasonable and should be recovered in rates. Key to that reasonableness determination is an examination, in accordance with Public Utilities Code Section 463 and longstanding Commission practice, of the extent to which PG&E's proposed expenditures result from imprudent conduct and hence should be disallowed. PG&E seems to erroneously believe that the Commission's sole concern in examining its past practices is to adjudicate violations. But, as Section 463 shows, prudency is a broader inquiry that embraces not just violations, but also asks whether there were other unreasonable errors or omissions that contribute to the expenditures PG&E is seeking to impose on ratepayers. Put another way, past behavior that did not violate a particular rule or order may still be imprudent

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and the basis for a disallowance. Consequently, the Commission's findings in the various enforcement dockets will be highly relevant to the prudence inquiry in this docket, but those findings will not end the analysis.

The Commission clearly recognizes that this rulemaking, not the enforcement dockets, is the appropriate place to apportion responsibility between shareholders and ratepayers for PG&E's IP costs, *i.e.,* to determine how much of those costs should be disallowed from rate recovery. Both the Record-Keeping and San Bruno OIIs state that this rulemaking, not the OIIs, is the place where the Commission will decide "whether PG&E ratepayers or shareholders, or both, will pay for PG&E testing, pipe replacement, or other costs."[13] Accordingly, PG&E's view that disallowances resulting from PG&E's imprudent past practices will or should be determined in enforcement dockets is plainly at odds with the Commission's decisions. Indeed, PG&E's own Motion contravenes the language in those other Orders Instituting Investigation, a fact that PG&E does not even mention.

IV. COST RECOVERY AND DISALLOWANCE ISSUES CANNOT AND SHOULD NOT BE ADDRESSED SEPARATELY

PG&E's proposal to re-assign testimony is a transparent and self-serving effort to move to a different proceeding any testimony that could form the basis of a disallowance of its IP costs based on a finding of imprudent behavior. The Commission should not allow such an unfair, one-sided record.

Issues of cost responsibility, cost sharing, or cost disallowances – whatever label one chooses to use – cannot and should not be divorced from the ultimate question of what costs should be recovered from ratepayers. The Amended Scoping Memo

[13] OII.11-02-016, p. 15; OII 12-01-007, p. 11.

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recognizes this point when it identifies "Revenue Requirements" as one of the topics for testimony and includes within that topic the issue of shareholder responsibility for costs.[14] TURN and other parties show in their testimony that, based on the current knowledge of PG&E's past practices, a very large portion of PG&E's IP expenditures should be subject to disallowance, thereby significantly reducing PG&E's revenue requirements. The Commission cannot make any finding that PG&E is entitled to rate recovery until it has determined the extent to which PG&E's past misdeeds have contributed to the need for its IP expenditures.

V. THE COMMISSION NEED NOT RELITIGATE IN THIS DOCKET FINDINGS OF VIOLATIONS MADE IN ENFORCEMENT DOCKETS

PG&E states that keeping in this docket the testimony of TURN and others listed in PG&E Attachment A will cause unnecessary duplication in pending proceedings.[15] PG&E is incorrect.

TURN is not suggesting that the upcoming hearings in this rulemaking should be used to decide issues of whether or not PG&E violated applicable regulations that are being addressed in pending enforcement actions. In fact, as PG&E acknowledges, TURN and the City and County of San Francisco recommend that the violation determinations should be made in those other dockets and then the records of those enforcement proceedings should be considered in this case as part of the broader prudency/cost disallowance inquiry.[16] This is precisely the approach the Commission envisioned in its various OIIs, in which the CPUC explicitly places PG&E on notice that, in this

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[14] ASM, p. 3.

[15] Motion, pp. 5-6.

[16] See Section III above contrasting enforcement and ratemaking cases.

rulemaking, the Commission may "take note of the record evidence" in the investigations.[17] Accordingly, TURN's testimony recommends that the Commission not make any final rate recovery determinations here until the relevant records in the enforcement dockets have been developed and considered in this rulemaking.[18]

If the Commission believes that this proceeding is not yet ripe to fully evaluate all issues of past conduct, the more efficient and rational solution is not to amend the scope of this proceeding and re-assign testimony, but rather to phase this proceeding so that all ratemaking issues – including "past practices," cost responsibility/cost sharing, and cost recovery – are deferred to a later phase that will resume after findings in the relevant enforcement proceedings are made.

IV. CONCLUSION

For all the reasons set forth above, PG&E's Motion should be denied.

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Respectfully submitted,

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[17] OII 11-02-016, p. 15; OII 12-01-007, p. 11.

[18] Long Testimony, pp. 8-9.