

**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.

R. 11-02-019
(Filed February 24, 2011)

**RESPONSE OF THE CITY AND COUNTY OF SAN FRANCISCO
TO PACIFIC GAS & ELECTRIC'S MOTION TO AMEND THE AMENDED SCOPING
MEMO AND REASSIGN TESTIMONY ABOUT PG&E'S PAST PRACTICES TO
INVESTIGATION 11-02-016.**

I. INTRODUCTION

On February 3, 2012, PG&E filed a motion asking the Commission to issue an order (1) amending the Amended Scoping Memo and (2) reassigning testimony about PG&E's past practices to Investigation 11-02-016. In addition, PG&E asked the Commission to shorten the time to respond to seven days. In its motion, PG&E proposes to exclude testimony related to its past practices submitted by the City and County of San Francisco ("CCSF") because the cited portions of testimony are (1) outside the scope of this proceeding, (2) the testimony is duplicative of issues that will be decided in the record keeping investigation and (3) unless the Commission reassigns the testimony PG&E will be unable to perform the safety work in a timely fashion.

As the Amended Scoping Memo recognized, in order to evaluate the reasonableness of the proposed costs of the Implementation Plan, the Commission must examine the underlying reasons that lead it to order the work set forth in D. 11-06-017. That is, any decision on cost sharing and cost recovery must consider whether PG&E's past actions contributed or led to the need to pressure test or replace the pipeline segments. Thus, the testimony is directly responsive to issues raised by the Amended Scoping Memo. Moreover, denying PG&E's motion will not

lead to duplicative litigation, as the issues in this proceeding relate to the effect of PG&E's past practices on the reasonableness of PG&E's cost recovery. Finally, the Commission should not countenance PG&E's attempt to use safety as a cover for needing cost recovery, as PG&E is perfectly capable of performing the important safety work, without immediate approval of proposed costs.

II. DISCUSSION

A. **The Amended Scoping Memo Recognized That PG&E's Past Actions Are Entirely Relevant to the Commission's Consideration of PG&E's Implementation Plan.**

Contrary to PG&E's representations, the testimony it seeks to move to Investigation 11-02-016 is entirely relevant to the issues in this proceeding and responsive to the Amended Scoping Memo. PG&E seeks to reassign testimony from CCSF's witnesses addressing PG&E's past record keeping practices, compliance with Integrity Management rules, and corporate management. The testimony is relevant to this proceeding, however, because PG&E's past practices in these areas are relevant considerations when deciding cost sharing proposals and whether the safety actions proposed in the Implementation Plan are in fact incremental to pre-existing regulatory requirements.

CCSF's testimony responds to clear direction in the Amended Scoping Memo. That order explicitly states that "[t]he issues in this proceeding require an in-depth analysis of historical safety practices . . . The testimony that will be most useful to the Commission as it considers these issues *will include an assessment of past practices...*"¹ The Amended Scoping Memo also specifically requested testimony addressing the "reasonableness of the utilities' Implementation Plans and the associated cost estimates"² and "similar historical expenditures."³

As requested, CCSF's testimony provides an assessment of PG&E's past practices and provides analysis to assist the Commission in determining whether the proposal is incremental to

¹ Amended Scoping Memo at p. 2 (emphasis added).

² Amended Scoping Memo at p. 3.

³ *Id.*

pre-existing regulations. To evaluate the reasonableness of PG&E's proposal, the Commission must determine if the proposed safety actions are actually incremental to the pre-existing safety regulations. Aspects of PG&E's Implementation Plan that are not incremental should not be considered to be reasonable. Indeed, in its testimony PG&E itself recognized the importance of distinguishing the Implementation Plan from pre-existing regulatory requirements and costs already included in PG&E's 2011 GRC and 2011 GT&S rate case when it asserted that all of the actions proposed in the Implementation Plan are incremental to the pre-existing requirements. Thus, PG&E itself invited testimony on its past practices.

The flimsiness of PG&E's motion is apparent in PG&E's understanding of Question 21 of Attachment A to the Amended Scoping Memo. Question 21 directly raises the issue of PG&E's past practices. That question asks:

Q21. Should parties and the Commission 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 and possibly new safety regulations, in order to determine a fair sharing of costs?

PG&E baldly contends that by providing testimony on PG&E's past actions CCSF and other intervenors misunderstood the import of Question 21.⁴ According to PG&E, rather than providing analysis and evidence on how PG&E's past actions may have led to the necessity of the gas implementation plans, CCSF and other intervenors should simply have provided a yes or no answer. In order to provide well-supported testimony on whether the actions proposed in the Implementation Plan are actually incremental to pre-existing regulatory requirements, CCSF and other intervenors must be able to provide testimony on PG&E's past practices and demonstrate how those actions contributed to the need for the Implementation Plans.

If the Commission grants PG&E's motion, it will have no context in which to determine whether or not the Implementation Plan is in fact incremental. In essence, PG&E's motion asks the Commission to make a decision on the reasonableness of the proposed costs, and the

⁴ PG&E Motion at p. 5.

proposed cost sharing in a vacuum without considering evidence of PG&E’s own culpability. Thus, the Commission should not amend the amended scoping memo, and should not reassign any of the testimony to I. 11-02-016 as that proceeding is limited to PG&E’s record keeping practices.

B. Denying PG&E’s Motion Will Not Create Duplicative Litigation.

PG&E attempts to obfuscate the relationship between the record keeping investigation and this rulemaking proceeding. The two proceedings present two disparate questions related to record keeping. Investigation 11-02-016 will evaluate PG&E’s past record keeping practices and whether those practices constituted violations of its obligation to provide safe and reliable service at a reasonable cost. As PG&E states, it will be a “backwards looking” exercise. This rulemaking and the hearings on PG&E’s Implementation Plan will consider whether many of the proposed actions in PG&E’s Implementation Plan, and their associated costs, could have been avoided had PG&E complied with those same record keeping regulations and industry standards. This proceeding examines the reasonableness of the proposed cost recovery and cost sharing and is a separate question that is “forward looking” and appropriately decided in the rulemaking. As CCSF proposed in its testimony, and as discussed below, it is reasonable to delay any decision on the cost recovery and cost sharing until the relevant investigations are complete.

C. PG&E Should Not Delay Important Safety Work.

PG&E asserts that it is necessary to reassign the testimony on its past practices because it will allow the rulemaking proceeding to stay “focused on safety – the technical aspects of PG&E’s Pipeline Safety Enhancement Plan (Safety Plan) *and the reasonable cost of executing it.*”⁵ PG&E does not explain, however, why it needs to delay any work. There is no need for PG&E to tie the performance of the safety work to approval of cost recovery in this proceeding.

⁵ Amended Scoping Memo at p. 1 (emphasis added).

If PG&E is truly focused on safety, it should proceed with the work in the priority ordered by the Commission with the knowledge that it will recover the reasonable costs of performing such work.

One way to ensure that the safety work is performed without delay is to require PG&E to set up a regulatory asset, as proposed by CCSF. By divesting costs from safety, PG&E can keep its focus on delivering safe and reliable natural gas services while performing the safety work that needs to be performed.

D. The Assigned Commissioner and Administrative Law Judge in Investigation 11-02-016 Should Take Official Notice of Testimony on the Effect of PG&E's Record Keeping Practices.

As identified above, this proceeding and Investigation 11-02-016 address two different issues related to record keeping. However, not all parties to the rulemaking are parties to Investigation. Therefore, as the Assigned Commissioner and the Administrative Law Judge in Investigation 11-02-016 consider the appropriate penalty for PG&E's alleged violations, they may find the testimony in this proceeding identified in Attachment A of PG&E's motion to be helpful to the extent it demonstrates the overarching effect and impact poor record keeping have on utility operations.

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III. CONCLUSION

The fact that PG&E asks the Commission to *amend* the Amended Scoping Memo demonstrates that the testimony is sought to be reassigned is appropriately responsive to the Amended Scoping Memo. For the reasons stated above, CCSF respectfully requests that the Commission deny PG&E's motion.

Respectfully submitted,

DENNIS J. HERRERA
City Attorney
THERESA L. MUELLER
AUSTIN M. YANG
Deputy City Attorneys
By: /S/
AUSTIN M. YANG

Attorneys for:
CITY AND COUNTY OF SAN FRANCISCO
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682
Telephone: (415) 554-6761
Facsimile: (415) 554-4763
E-Mail: austin.yang@sfgov.org

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