

**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, 2009)

**RESPONSE OF THE NORTHERN CALIFORNIA  
INDICATED PRODUCERS TO PG&E'S MOTION  
TO AMEND SCOPING MEMO**

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Pursuant to Rule 11.1 of the California Public Utilities Commission's Rules of Practice and Procedure, the Northern California Indicated Producers (NCIP)<sup>1</sup> submits this response to PG&E's February 3, 2012 motion to exclude evidence on past practices (Motion).

**I. INTRODUCTION AND EXECUTIVE SUMMARY**

PG&E's effort to exclude evidence of its past practices should be denied outright. PG&E contends that evidence regarding its past practices is beyond the scope of the proceeding and amounts to relitigation of claims pending in the records investigation. To the contrary, past-practice evidence is highly relevant to the Commission's determination of Pipeline Safety Enhancement Plan (PSEP) cost sharing between shareholders and ratepayers. Both the Scoping Ruling and intervenor testimony demonstrate the relevance. Moreover, PG&E's motion is untimely and would prejudice intervenors who have already filed testimony in this proceeding relying on past practice evidence. Finally, contrary to PG&E's

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<sup>1</sup> Member companies include Aera Energy LLC, ConocoPhillips Company, Chevron U.S.A. Inc. and Equilon Enterprises, LLC dba Shell Oil Product U.S.

assertions, intervenors do not seek to relitigate past practices; the evidence is used solely to draw the line between shareholder and ratepayer funding of the PSEP costs and to ensure that the PSEP is properly implemented.

## **II. THE SCOPING RULING CONCLUDES THAT EVIDENCE OF PAST PRACTICES IS HIGHLY RELEVANT TO PG&E'S PSEP REVIEW**

PG&E's efforts to exclude evidence of past practices should be rejected. PG&E claims that evidence of past practices is beyond the scope of the current proceeding and that the Commission intended for this proceeding to focus solely on the implementation plans.<sup>2</sup> While the plan is to include a proposal to share costs between shareholders and ratepayers, PG&E contends that the records investigation and the current proceeding were not meant to overlap.<sup>3</sup> However, evidence of past practices was explicitly identified as a topic within the scope of this proceeding in the Commission's June 16, 2011 Scoping Ruling.

*20. Is PG&E's proposed shareholder sharing of expenditures reasonable? What factors should be considered in determining a fair amount of shareholder sharing? What is a reasonable basis for determining the level of costs shareholders should absorb? What are alternative forms or mechanisms of shareholder sharing?*

*21. 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?*<sup>4</sup>

Moreover, while the scope was later amended in the November 2, 2011

Amended Scoping Ruling, past practices remains relevant within the

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<sup>2</sup> PG&E Motion, at 3-5.

<sup>3</sup> PG&E Motion, at 4

<sup>4</sup> Scoping Ruling, at A3.

proceeding.<sup>5</sup> In fact, the Amended Scoping Ruling explicitly calls for parties to use and rely on evidence of past practices:

*In these Implementation Plans, the gas system operators, this Commission, and parties will consider and evaluate far-reaching safety and rate proposals. The issues in this proceeding require an in-depth analysis of historical safety practices and ratemaking treatment, as well as innovative proposals to address prospectively safety and ratemaking. The testimony that will be most useful to the Commission as it considers these issues will include an assessment of past practices and proposals for future operations and ratemaking based on rigorous analysis.<sup>6</sup> (emphasis added)*

Not only have the Assigned Commissioner and Administrative Law Judge determined that past practices are relevant, they have ruled that an “*in depth analysis*” of these practices is necessary.

### **III. PG&E’S MOTION IS UNTIMELY AND WILL PREJUDICE INTERVENORS**

PG&E’s untimely request to amend the scope of the proceeding is untimely and, as a result, will prejudice intervenors. The Scoping Ruling, which highlights the relevance of PG&E’s past practices, was issued on June 16, 2011. Until now – nearly seven months later -- PG&E has not challenged the scope. Moreover, it appears to have waited until intervenors filed testimony before deciding to challenge the scope of the proceeding. In fact, testimony of five of six intervenors relied on past practices to support shareholder responsibility recommendations.<sup>7</sup> The effect of PG&E’s motion would be to exclude all

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<sup>5</sup> Amended Scoping Ruling (dated November 2, 2011), at A3.

<sup>6</sup> Amended Scoping Ruling (dated November 2, 2011), at 2.

<sup>7</sup> PG&E’s Attachment A seeks to exclude references to past practices in the testimonies of TURN, DRA, NCIP, and CCSF. CCUE’s testimony additionally references past practices.

evidence that supports intervenor recommendations for PG&E's shareholders to share the costs associated with the PSEP.

Intervenors in this proceeding have taken the position that PG&E's ability to increase rates and recover more than \$529 million in expenses and \$1.364 billion in capital expenditures from ratepayers should be based on its record of past practices and cost recovery. TURN's testimony most succinctly explains why evidence of past practices must be considered in this proceeding:

*PG&E's past conduct is highly relevant to the cost responsibility determination. Past conduct is also relevant because if PG&E had acted prudently in its records-keeping and pipeline maintenance practices, it would have discovered and addressed many of the problems we now face at a potentially lower cost than must now be spent to play catch-up. While the Commission has the benefit of completed reports by the NTSB and the Independent Review Panel, the record regarding highly relevant past practices is still being developed in the Record-Keeping OII (I.11-02-016), the San Bruno Explosion OII (I.12-01-007), and the High Population Density OII (I.11-11-009). As these records are developed and Commission findings made, TURN and other parties will have a better factual base on which to assess the impact of past conduct on cost responsibility.<sup>8</sup>*

Without evidence of past practices, intervenors' recommendations on shareholder responsibility will be unsupported. In other words, PG&E's motion will effectively cripple the ability of parties in this proceeding to recommend that shareholders bear any of the costs of the PSEP. It will also preclude the active participation of parties and the issuance of an informed decision. In light of the testimony served by intervenors and the recommendations included therein, the Commission should deny PG&E's motion.

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<sup>8</sup> Thomas Long/TURN, at 8.

#### IV. INTERVENOR TESTIMONY CLARIFIES THAT PARTIES DO NOT INTEND TO LITIGATE EVIDENCE OF PAST PRACTICES

References to past practices do not amount to the relitigation of these facts. Moreover, PG&E's efforts to exclude citations to the findings of the Consumer Protection Safety Division (CPSD), National Transportation Safety Board (NTSB), and Independent Review Panel (IRP) should be rejected. The November 2, 2011 Scoping Ruling clarifies that the use of technical reports is appropriate in this proceeding:

*To further assist the parties in preparing their testimony, the Commission's Consumer Protection and Safety Division (CPSD) will be preparing reports on the technical aspects of the Implementation Plans.<sup>9</sup>*

As noted above, the Commission has also explicitly found that an analysis of past practices is important in its evaluation of safety and rate proposals. The references to findings of the CPSD, IRP and NTSB reports are therefore appropriate. Intervenor testimony also references past spending and regulatory requirements but intervenors have not sought to relitigate issues under consideration in the records investigation. Instead, these references are used to draw the line between ratepayer and shareholder cost responsibility under the PSEP:

- *NCIP: As stated in the findings of both the NTSB and the IRP, PG&E clearly has not maintained its records in a manner that is capable of supporting a safe pipeline system. Ratepayers should not bear the costs of bringing PG&E's pipeline records for its existing system up to the point where the utility can support a state-of-the-art gas pipeline safety program that will meet current state and federal safety standards. Shareholders should bear the full \$107.1 million in direct expenses in 2012-2014 of PG&E's proposed MAOP validation effort required to validate and*

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<sup>9</sup> Amended Scoping Ruling, at 4.

modernize PG&E's records for the key variables associated with its gas transmission pipelines.<sup>10</sup>

- TURN: Consistent with Public Utilities Code Section 463 and sound public policy, the Commission “shall disallow” any direct or indirect costs resulting from unreasonable errors or omissions in PG&E’s management of its gas transmission pipelines, including the failure to prepare or maintain records necessary to “completely evaluate” the reasonableness and prudence of any proposed expenditure. Errors or omissions should not just be limited to violations of specific rules 1 (CPUC General Orders, federal regulations, CPUC decisions, and applicable statutes), but also deviations from industry standards and other imprudent behavior. This requirement will be particularly important in apportioning the costs of PG&E’s Implementation Plan in light of the many findings of unreasonable actions or inactions by PG&E that are already documented in the NTSB Report, the Independent Review Panel Report,<sup>4</sup> and in other reports that will be considered in pending enforcement dockets, including the Commission’s Consumer Protection & Safety Division (“CPSD”) Incident Investigation Report regarding the San Bruno explosion, and the Overland Consulting Audit Report, each of which is incorporated by reference.<sup>11</sup>
  
- DRA: The NTSB Report has provided additional evidence regarding inadequacies in PG&E’s pipeline integrity management program. These factors are reason enough to support a Commission finding that any costs incurred prior to the next PG&E GT&S GRC should be borne by PG&E shareholders. One of the primary concerns identified subsequent to the San Bruno explosion by various government entities has been PG&E’s lack of records and proper record maintenance associated with its natural gas system including but not limited to hydrostatic testing which has been an industry standard for over 75 years. The San Bruno explosion and PG&E’s gas system recordkeeping are inextricably linked to the Gas OIR and resulting costs associated with PG&E Implementation Plans submitted pursuant to this rulemaking. A basic lack of verifiable records to assure the integrity of the pipeline system is one element that gives rise to a need for new hydrostatic tests and potentially additional investment in new pipeline. PG&E is responsible for identifying solutions to address the expenses and investment associated with ensuring safe gas operations rather than simply looking to ratepayers as deep pockets to finance this significant project. The Commission should hold PG&E management responsible for this undertaking.<sup>12</sup>
  
- CCSF: Before PGE’s proposed projects are approved for additional funding beyond the existing rate case agreement, I recommend that the

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<sup>10</sup> R. Thomas Beach/NCIP, at 24.

<sup>11</sup> Thomas Long/TURN, at 13-14.

<sup>12</sup> Robert Pocta/DRA, at 9-10.

*Commission audit PG&E's TIMP to determine which actions and projects should have been performed as a prudent operator or pursuant to federal law. Only those projects that are truly incremental should be included within the new proposed Implementation Plan.<sup>13</sup> .....*

*...much of the work that PG&E identifies as incremental and has included under its proposed Implementation Plan is a result of PG&E not maintaining or establishing records for its transmission lines, or not previously pressure testing the pipelines as was required under existing industry consensus standards. The requirements for pressure testing and record keeping were first established by ASA B31.1.8 in 1955, further confirmed by the California Decision and General Order 112 in 1960, and again confirmed by federal regulations 49 CFR Part 192 Subpart J. Ratepayers should not be required to bear the cost of re-establishing pipeline records and pressure testing records as a result of PG&E's poor design, quality control, construction, pressure testing and oversight practices of the past, or deficiencies in carrying out its current IMP plan.<sup>14</sup>*

As such, the Commission should reject PG&E's effort to characterize the use of past practices evidence as an attempt to relitigate issues

## **V. CONCLUSION**

The NCIP respectfully requests that the Commission deny PG&E's Motion to exclude evidence on PG&E's past practices from the proceeding.

Respectfully submitted,



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February 10, 2012

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<sup>13</sup> Gawronski/CCSF, at 14.

<sup>14</sup> Gawronski/CCSF, at 15.