

**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

**THE COALITION OF CALIFORNIA UTILITY EMPLOYEES' RESPONSE TO
PACIFIC GAS AND ELECTRIC COMPANY'S MOTION TO AMEND
SCOPING MEMO AND REASSIGN TESTIMONY ABOUT PG&E'S PAST
PRACTICES TO I.11-02-016**

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Marc D. Joseph
Rachael E. Koss
Adams Broadwell Joseph & Cardozo
601 Gateway Blvd., Suite 1000
South San Francisco, CA 94080
(650) 589-1660 Telephone
(650) 589-5062 Fax
mdjoseph@adamsbroadwell.com
rkoss@adamsbroadwell.com

Attorneys for the Coalition of California
Utility Employees

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Pursuant to Rule 11.1(e) of the California Public Utilities Commission's Rules of Practice and Procedure, the Coalition of California Utility Employees (CUE) submits this response to Pacific Gas & Electric Company's Motion to Amend Scoping Memo and Reassign Testimony About PG&E's Past Practices to I.11-02-016.

I. INTRODUCTION

CUE supports PG&E's Motion. The Motion correctly states that this Rulemaking is not the place to assess PG&E's past failures (and institute any associated penalties). Rather, this Rulemaking is "a forward-looking effort to establish a new model of natural gas pipeline safety regulation applicable to all California pipelines."¹ The Motion provides good reasons for moving testimony involving PG&E's past practices to I.11-02-016² and for amending the Scoping

¹ R.11-02-019, Order Instituting Rulemaking, February 25, 2011, p. 1.

² I.11-02-016 is the OII addressing PG&E's past gas system recordkeeping practices. There are two additional pending OIIs that address PG&E's past practices: I.12-01-007 (the penalty consideration case) and I.11-11-009 (the transmission operations investigation for locations with higher population density). In its Motion, PG&E recommends that testimony in this rulemaking related to PG&E's

Memo in this Rulemaking. As CUE stated before, “the Commission should determine PG&E’s fault and appropriate penalty for its past failure separately from assessing the cost of future work required to achieve a safe gas system for Californians.”³ The Commission should grant PG&E’s Motion.

II. DISCUSSION

This Rulemaking should focus on the Commission’s important task of improving the safety of natural gas transmission pipelines in California. This Rulemaking should not mix assessing PG&E’s culpability for its past failures with future work necessary to ensure a safe gas system. These are two distinct tasks that the Commission should coordinate, but not confuse. Fortunately, there are already three pending Commission proceedings that address PG&E’s past failures (and any associated penalties) related to its gas system (I.11-02-016, I.12-01-007 and I.11-11-009). Any testimony served or issues raised in this proceeding that are associated with PG&E’s past practices, including how the Commission should allocate costs between shareholders and customers based on PG&E’s past failures (i.e., ratepayers not paying twice for the same work), should instead be addressed in the appropriate OII. It would be duplicative to do the same in this Rulemaking.

Furthermore, the jury is still out on what exactly were PG&E’s past failures. The Commission has not made a decision in any of the OIIs, and thus has not determined whether PG&E violated any laws which adversely affected its gas

past practices be moved to I.11-02-016. However, Commissioner Florio may determine that some of the testimony should be moved to one of the other two OIIs. Since the OIIs are undoubtedly related, CUE would support that decision.

³ Comments of the Coalition of California Utility Employees on ALJ Bushey’s Proposed Decision, R.11-02-019, May 31, 2011.

system. Thus, it would be premature to put a price tag on PG&E's punishment, and any allocation of cost responsibility between shareholders and ratepayers based on PG&E's past failures cannot precede the results of the OIIs.

Finally, by mingling PG&E's culpability for its past failures with future work necessary to ensure a safe gas system, the Commission may "unintentionally provid[e] incentives for PG&E to avoid doing all of the needed future work."⁴ As explained by David Marcus in his recent testimony served in this proceeding, if PG&E failed to spend enough money in the past on gas safety and the Commission requires shareholders to pay for future work needed to make up for past underspending, PG&E

will have a direct and strong financial incentive to resist making the investment in the first place, since the more they spend, the more they will lose. Also, if they are told they will only be reimbursed up to X dollars for investments that ought to cost more than X, with shareholders making up the difference, they will have a direct and strong financial incentive to cut corners in order to keep the total investment as close to X as possible.⁵

Instead, "PG&E's shareholders should bear responsibility for past misdeeds through a penalty proceeding, but not by giving counterproductive incentives to avoid doing the work needed to provide safe gas service."⁶

III. CONCLUSION

The Commission should grant PG&E's Motion to move testimony involving PG&E's past practices to I.11-02-016 (or another appropriate OII) and to amend the Scoping Memo in this Rulemaking. The Commission should not mix PG&E's

⁴ Testimony of David Marcus on Behalf of the Coalition of California Utility Employees, R.11-02-019, January 31, 2012, p. 2.

⁵ *Id.*, pp. 2-3.

⁶ *Id.*, p. 4.

culpability for its past failure with future costs for improving the safety of California's gas system. PG&E's liability for its past failures is a wholly separate question from what future work must be done to upgrade PG&E's system. The Commission already has three pending OIIs to hold PG&E accountable for any poor past practices. Further, by combining PG&E's culpability for its past failures with future work necessary to ensure a safe gas system, the Commission may actually provide incentives for PG&E to avoid doing all of the needed future work. Thus, the Commission should determine PG&E's fault and appropriate penalty for its past failures separately from assessing the cost of future work required to achieve a safe gas system.

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Respectfully submitted,

/s/

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Rachael E. Koss
Adams Broadwell Joseph & Cardozo
601 Gateway Blvd., Suite 1000
South San Francisco, CA 94080
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