

**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)

**OPENING BRIEF OF THE BLACK ECONOMIC COUNCIL, NATIONAL ASIAN
AMERICAN COALITION AND THE LATINO BUSINESS CHAMBER OF GREATER
LOS ANGELES (JOINT PARTIES)**

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I. Introduction

On September 9, 2010, the gas pipeline in San Bruno exploded, killing eight people and causing millions in property damage. While the investigation into this incident is the focus of a separate proceeding,¹ it is important to center this brief around the importance of this proceeding and the paramount need for safety in our communities.

The Black Economic Council, National Asian American Coalition and Latino Business Chamber of Greater Los Angeles (hereafter referred to as “the Joint Parties”) were the first parties to request party status in this proceeding on March 3, 2011.² The National Asian American Coalition (NAAC) is located in San Bruno and engages in local grassroots organizing, housing counseling, and small business initiatives. The Joint Parties were active in informing community members of the public participation hearing in San Bruno on this matter, and were responsible for recruiting 44 of the approximately 140 persons at the public participation hearing.³ The Joint Parties have also conducted a survey of 190 ratepayers and introduced this as evidence before the Commission in this matter.⁴ All of the Joint Parties’ recommendations are contained in the conclusion of this brief, as well as included in the Appendix in proposed language to be adopted by this Commission.

¹ I.11-02-016.

² Joint Motion Requesting Party Status, R.11-02-019 (Mar. 3, 2011).

³ A list of attendees attributed to NAAC’s outreach efforts is available upon request.

⁴ Exhibit 22.

The Joint Parties occupy a unique space in this proceeding. The National Asian American Coalition is located in San Bruno itself. It is the only non-profit party located in San Bruno that is working closely with the San Mateo and San Bruno elected officials, local chambers of commerce, and community leaders on this matter. In addition, there is only one other intervenor in this proceeding who represents minorities, even though the majority of ratepayers within PG&E's service territory—including in San Mateo County—are minorities.

a. Capacity Issues and Motion to Create Ratepayer Confidence Fund

The Joint Parties note that their participation in this proceeding was necessarily limited because of their lack of technical expertise on gas pipeline safety testing. The Joint Parties have participated in eleven matters before this Commission, but still have not received any compensation for their efforts. Due to this situation, the Joint Parties, as non-profit organizations, did not have the up-front funding to hire a technical expert in this matter.

The Joint Parties emphasize how perceptions of safety can necessarily affect the reality of safety. For example, examine the cases of Japan, Germany, and Italy. All of these countries have been forced to make decisions that are potentially harmful to their energy self-reliance. Japan, for example, has now shut down every one of its nuclear plants,⁵ even though one third of Japan's energy comes from nuclear power. Germany and its Prime Minister were once a primary proponent of nuclear energy; however, Germany has arbitrarily decided to terminate any reliance

⁵ Martin Fackler, *Last Reactor of 50 in Japan is Shut Down*, N.Y. Times (May 5, 2012).

on nuclear by 2022 due to safety concerns.⁶ Italy has taken similar actions also due, as in Japan⁷ and Germany, to public opposition that is often unrelated to accurate scientific data as to safety.

These cases strongly illustrate that public confidence is fundamentally necessary in the energy industry. These cases are particularly apt because of the current safety concerns regarding the nuclear reactors in San Onofre and Diablo Canyon. Similarly, unchecked and uninformed fears regarding gas safety could cause significant policy changes that limit the ability of the utilities to fulfill their mandates.

The Joint Parties noted in their opening filings⁸ that complex technical matters are generally beyond the province of virtually all non-profit groups that participate in CPUC or general Pacific Gas & Electric (PG&E) rate cases and customer service issues. The Joint Parties filed a motion to create a Ratepayer Confidence Fund to remedy this issue;⁹ the ultimate goal of this motion was to restore community trust in the Commission's proceedings after the September 9th explosion. However, this motion was ultimately denied by Commissioner Florio.¹⁰

Although this motion was denied, it is important to keep in mind that although this proceeding necessarily addresses technical issues regarding hydrotesting and replacement of gas

⁶ Patrick McGroarty and Vanessa Fuhrmans, *Germany to Forsake its Nuclear Reactors*, Wall St. J., (May 30, 2011).

⁷ See Mari Iwata, *Japan Nuclear Stress Tests Fail to Assuage Public Fears*, N.Y. Times (Mar. 3, 2012).

⁸ Opening Comments From the Black Economic Council, the Latino Business Chamber of Greater LA and the National Asian American Coalition, Joint Parties, R.11-02-019 (May 25, 2011). The Joint Parties also noted that they agreed with many of the recommendations of TURN and DRA in their Reply Testimony filed February 28, 2012 but also did not possess the technical expertise to evaluate issues independently from a minority perspective.

⁹ Joint Parties Motion to Create A Ratepayer Confidence Fund, R.11-02-019 (Oct. 4, 2011).

¹⁰ Amended Scoping Memo and Ruling of the Assigned Commissioner, R.11-02-019 (Nov. 2, 2012).

pipelines, the ultimate objective is to ensure the safety of the public. Even if all the safety upgrades are made, ratepayers will not necessarily feel safer until they are fully informed on the status of the pipelines.¹¹ PG&E should not rely on the news media to drive this communication, as it has with its public press statements through its CEO, Anthony Earley.¹²

II. Ratepayer Views

As explained above, ratepayers need to feel safer in their communities. However, this is not limited to outreach by PG&E, although that is certainly necessary. What is also required is ratepayer input into the safety process beyond what is allowed for in these highly technical and specialized proceedings before the Commission.

a. Need for Direct Ratepayer Input

PG&E has made an extremely limited effort to solicit the views of ratepayers in regards to gas pipeline safety upgrades. The only efforts PG&E made to receive ratepayer input and views was an extremely limited survey regarding PG&E's outreach on gas pipelines.¹³

i. Joint Parties' Ratepayer Survey

¹¹ Exhibit 109.

¹² See Mark Chediak, *PG&E CEO Says Big Blast Fine Would Threaten Financial Viability*, Bloomberg News, Feb. 23, 2012, (available at: <http://www.bloomberg.com/news/2012-02-24/pg-e-ceo-says-big-blast-fine-would-threaten-financial-viability.html>).

¹³ Exhibit 23.

In contrast to PG&E, the Joint Parties value direct ratepayer input and conducted a survey of 190 ratepayers in San Mateo and Santa Clara counties on issues regarding gas pipeline safety. The results of this survey will be discussed in the cost allocation section below. However, what is relevant to this discussion is that “when asked whether the CPUC should punish PG&E or fix the problem first, 85% said to fix the problems first so that it should not happen again.”¹⁴ Once the gas transmission issues are repaired, the ratepayers must receive information that “the problem has been fixed” in order to quell fears.

ii. PG&E Customer Survey

The only survey PG&E conducted in regards to safety after the gas pipeline explosion was a 600 person telephone survey that investigated satisfaction with PG&E’s outreach efforts regarding gas pipeline safety.¹⁵ Although the Joint Parties commend PG&E for soliciting ratepayer views on this issue, the efforts were unfortunately very limited.

PG&E’s witness on outreach efforts and this survey was Mr. Hoaglin. Mr. Hoaglin testified that he directed this survey,¹⁶ but that he was actually six levels below the policy decision-making executive level regarding outreach and survey projects.¹⁷ Mr. Hoaglin testified that his job typically does not involve surveying customers¹⁸ and that PG&E, unlike the Joint

¹⁴ Exhibit 23, pg. 2.

¹⁵ Exhibit 111, pg. 3.

¹⁶ Transcript, pg. 1878.

¹⁷ Transcript, pg. 1873 and 1875.

¹⁸ Transcript, pg. 1877.

Parties, had not even considered doing a survey on ratepayers' views on gas pipeline safety. ¹⁹

Mr. Hoaglin testified that the one survey that PG&E did conduct “basically confirmed... [that PG&E’s] communications and education of [their] customers was effective.”²⁰

However, the Joint Parties identified numerous issues with the survey conducted by PG&E:

- Only 25% of the respondents were women, even though women make up more than half of the population;²¹
- Only 10% of the respondents were Latino;²²
- 53% of the respondents indicated their income was more than \$100,000 annually;²³
- On average, less than six persons attended each PG&E open house the survey referred to;²⁴ and
- Over 95% of the respondents gave the equivalent of an “A or B” grade to the products and services offered by PG&E.²⁵

¹⁹ Transcript, pg. 1874.

²⁰ Transcript, pg. 1878.

²¹ Exhibit 111, pg. 6.

²² Exhibit 111, pg. 6.

²³ Exhibit 111, pg. 6.

²⁴ Exhibit 111, pg. 2.

²⁵ Exhibit 111, pg. 8.

When asked to comment on these disparities, PG&E's expert indicated that he believed these discrepancies to be a result of the fact that the surveys were only given to the population of customers who had received outreach materials regarding gas pipeline upgrades in their neighborhoods. However, the Joint Parties find this explanation to be flimsy: it is extremely unlikely there is any neighborhood in the cities surveyed²⁶ where women are only 25% of the population.

Additionally, the Joint Parties believe it highly unlikely that 95% of ratepayers surveyed indicated such a high satisfaction rate with PG&E given the circumstances surrounding the San Bruno incident. Mr. Hoaglin did not seem to think this was an issue:

Q: Given that the [survey] said that 95% [of ratepayers] were satisfied, did you maybe think that the study had gotten a skewed result because 95% is pretty high?

A: No. Again, this was a specific population of customers so it was not deemed to be anything unusual....²⁷

It seems that PG&E endorses its clearly inadequate survey to validate PG&E outreach efforts,²⁸ but when pressed to endorse results that are illogical, PG&E conveniently uses the study only to represent a small sub-set of the population. However, even for this small population, the results are suspect, given the highly improbable result of a 95% satisfaction rate. No wider conclusions can be drawn, especially about all ratepayers (including minority and low-income ratepayers), from such a localized and flawed study. Thus, this study only serves to

²⁶ The cities surveyed were Oakland, Brentwood, Mountain View, Sunnyvale, San Jose, San Leandro, and Techachapi. Exhibit 111, pg. 3.

²⁷ Transcript, pg. 1881.

²⁸ As indicated above, Mr. Hoaglin testified that the one survey that PG&E did conduct "basically confirmed... [that PGE's] communications and education of [their] customers was effective." Transcript, pg. 1878.

illustrate the need for comprehensive outreach and additional ratepayer input, as indicated by the Joint Parties in their testimony.²⁹

Recommendations:

- PG&E should be ordered to solicit ratepayer views, either by a survey or through some other means, which directly addresses the gas safety issues arising from this proceeding.
- The Joint Parties recommend that the Commission adopt the following language:
“This Commission recognizes the need for direct ratepayer input into this proceeding beyond the traditional methods normally utilized in these matters. Specifically because this proceeding relates to a fundamental safety issue that affects each and every ratepayer, this Commission directs PG&E to undertake a survey designed to directly input the views of the ratepayers into this proceeding. The topics covered in this survey should include general ratepayer satisfaction, customer outreach ratings, cost allocation issues, ratepayers’ confidence in the CPUC and PG&E to fix the issue, and include their concerns about gas safety. The survey should reflect the demographics of PG&E’s ratepayer base.”

b. Need for Comprehensive Outreach

In both their initial and reply testimony, the Joint Parties’ experts Len Canty, Jorge Corralejo, and Faith Bautista emphasized the need for comprehensive community education and outreach, indicating, “All the upgrades in the world are useless to the ratepayers if they have no understanding of the changes made and have a restored confidence in the safety of themselves

²⁹ Exhibit 109, pg. 10.

and their families.”³⁰ Indeed, PG&E’s own witness, Mr. Hoaglin, affirmed, “Public safety can only be assured through education and consistent communications...”³¹

The Joint Parties have recommended several methods of outreach, based on their expertise as community advocates and in minority issues.³²

i. Outreach Conducted with Community-Based Organizations (CBOs)

First, the Joint Parties indicated that they “believe that the best method for conducting community outreach is when utility companies collaborate with trusted local community based organizations (CBOs).” They added, “due diligence should be conducted by the utilities on any CBO they plan to work with in specific communities.”

PG&E’s witness, Mr. Hoaglin, indicated that PG&E “believes potential exists to work with CBOs on gas pipeline issues.”³³

The Joint Parties particularly emphasize this need when working in minority or hard to reach communities: “The utilities should also consult with CBOs to ascertain what prominent minority and ethnic media publications they should advertise in. There has been little consistency with ethnic media outreach and this method must be further utilized in order to make information available to hard to reach ratepayers.”³⁴

³⁰ Exhibit 109, pg. 10-11.

³¹ PG&E Rebuttal Testimony, Chapter 8, Customer Outreach, pg. 8-6.

³² The Joint Parties’ experts all detail their expertise in outreach and other areas in their testimony, Exhibit 109.

³³ Transcript, pg. 1884.

³⁴ Exhibit 109, pg. 12-13.

Mr. Hoaglin also affirmed this recommendation, indicating that PG&E particularly uses CBOS when “language barriers or cultural difficulties” exist.³⁵ Therefore, this Commission should require PG&E to work hand -in-hand with CBOs on gas pipeline issues, especially (but not limited to) when language barriers or cultural differences exist.

ii. Outreach Led by CEO Anthony Earley

Second, in their testimony, the Joint Parties’ experts indicated:

However, we want to be careful to note that our endorsement of comprehensive community education does not indicate that we support general public relations campaigns on behalf of the utilities. We support clear education programs based on understanding the upgrades to the gas safety system and how to interact with it in the event of another emergency. In this sense, the outreach campaign we endorse is based both in education and preparedness. This type of outreach will not only instill public confidence in their avenues in the event of another emergency, but will also lend further confidence into the decision in this case.³⁶

PG&E seems to recognize this need as well. In his testimony, Mr. Hoaglin indicated that “while there has been much public interest and media attention, there is much that our customers and public officials do not know about these projects and the impacts they might have on their communities.”³⁷ In their reply testimony, the Joint Parties emphasized, “a large part of addressing these gas safety issues is raising the confidence of the ratepayers in San Bruno and its surrounding areas.”³⁸

³⁵ Transcript, pg. 1874.

³⁶ Exhibit 109, pg. 11.

³⁷ PG&E Rebuttal Testimony, Chapter 8, Customer Outreach, pg. 8-6.

³⁸ Exhibit 110, pg. 3.

The Joint Parties recommend that “effective communication should be personally led by the CEO of PG&E, Anthony Early, much as he has led the recent discussions on the appropriate level of fines.”³⁹ When queried as to the issue, Mr. Hoaglin gave this response:

Q: Can you give me—since you mentioned you think Mr. Earley is leading those [outreach] efforts, can you give me some examples?

A: I just think the fact that he is chairman of the company makes him the leader of the company. So he is leading. Whatever we are doing as a company he is leading. He is the leader of the company.⁴⁰

Given that Mr. Hoaglin, PG&E’s outreach expert, was clearly pressed to find an example of Mr. Earley’s leadership in outreach efforts, the Joint Parties recommend that Mr. Earley begins to personally conduct large-scale outreach efforts, including meetings with local communities affected by the gas pipeline explosion.

The Joint Parties, in particular, point to efforts in the 1980s by Lee A. Iococca, the CEO of Chrysler.⁴¹ In response to extremely negative public opinion resulting from a crisis at the Chrysler company, Mr. Iococca launched a series of full page ads in major national publications. These “open letters” contained personal guarantees from Mr. Iococca as to the satisfaction of car owners and quality assurances. This type of public outreach might be construed as general public relations efforts, unless it contains some very specific safety messages. The Joint Parties urge Mr. Earley to take leadership on this type of large-scale outreach in regards to public safety, as opposed to financial issues.

³⁹ Exhibit 110, pg. 4. See also Mark Chediak, *PG&E CEO Says Big Blast Fine Would Threaten Financial Viability*, Bloomberg News, Feb. 23, 2012, (available at: <http://www.bloomberg.com/news/2012-02-24/pg-e-ceo-says-big-blast-fine-would-threaten-financial-viability.html>).

⁴⁰ Transcript, pg. 1885.

⁴¹ Exhibit 110, pg. 5.

Recommendations:

- PG&E should attempt to reach out and collaborate with community organizations, such as the Joint Parties, and engage in an aggressive ratepayer input and outreach campaign in order to remedy these issues.
- When conducting outreach, PG&E should also consult with CBOs to ascertain what prominent minority and ethnic media publications they should advertise in. There has been little consistency with ethnic media outreach and this method must be further utilized in order to make information available to hard to reach ratepayers.
- Effective communication and outreach should be personally led by the CEO of PG&E, Anthony Early, much as he has led the recent discussions on the appropriate level of fines.
- The Joint Parties recommend that the Commission adopt the following language:
“PG&E should bolster its outreach efforts in this matter and particularly collaborate with community based organizations whenever possible in order to communicate information to ratepayers and also solicit information from them . This includes utilizing CBO expertise in language-specific or cultural minority communities and conducting outreach in ethnic media. These outreach efforts should extend to the highest levels of PG&E leadership.”

c. Cost Recovery & Allocation

Many parties have put forth their recommendations on how to allocate the implementation costs for the Pipeline Safety Enhancement Plan (PSEP). For example, in their Reply Testimony,⁴² the Joint Parties endorsed TURN's analysis which indicated:

PG&E should not be allowed to recover costs resulting from PG&E errors or omissions,⁴³ PG&E should have the burden of proof in this matter, ⁴⁴ ratepayers should not pay a second time for work that was not initially done right, ⁴⁵ ratepayers should not pay again for work they previously funded and was not performed,⁴⁶ and that PG&E should not be allowed to profit off work to achieve a safe system.⁴⁷

As noted in the Joint Parties' Reply Testimony:⁴⁸

The Joint Parties emphatically support these arguments and analysis, and have recommended that a minimum of 75% of the cost of safety upgrades be borne by a combination of shareholders and/or executives. However, the Joint Parties do recommend that the remaining 25% of the cost should be borne by ratepayers simply because the Joint Parties recognize that this type of massive undertaking may not be possible without a small amount of ratepayer funds. However, as noted in both our May 25, 2011 filing and our initial testimony in this matter, ratepayers should only bear this 25% burden if the Commission finds that PG&E is fully transparent, cooperative, and effective in addressing all of the underlying problems and in ensuring responsibility for full and active consumer education and preparedness.

i. Results of the Joint Parties' Ratepayer Survey

⁴² Exhibit 110, pg. 6.

⁴³ Prepared Testimony of Thomas J. Long on Cost Responsibility Issues, p. 2.

⁴⁴ *Id.* at 5.

⁴⁵ *Id.*

⁴⁶ *Id.* at 6.

⁴⁷ *Id.*

⁴⁸ Exhibit 110, pg. 6 - 7.

The Joint Parties' recommendations above are based on partly on the survey of 190 ratepayers in San Mateo and Santa Clara counties. On the cost allocation issue, the results of the survey were:

2. When asked who should pay the cost for making sure that no gas explosions happen again, 34% said PG&E shareholders should pay the costs, 38% said PG&E top executives should pay the costs and only 6% said ratepayers/consumers should pay the costs. Approximately 22% said it should be paid for by a combination of PG&E shareholders, top executives, and ratepayers.

4. When asked whether PG&E should receive a rate increase before it fixes all of its gas transmission problems, 88% said PG&E should receive a rate increase only after it addresses its gas problems.⁴⁹

ii. PG&E's Response

Rebuttal witness Mr. Marre discussed cost allocation recovery on behalf of PG&E. In his rebuttal testimony, Mr. Marre indicated that the Joint Parties' survey results "are not very useful."⁵⁰ However, this is most likely because Mr. Marre does not believe that ratepayers should have any impact on the cost allocation or recovery process:

Q: Did you take any ratepayer views into account when designing the cost recovery proposal?

A: If you're asking, did we go out and solicit information from customers to design our approach, no, we did not....

Q: Do you plan to do so at some later date?

A: I do not plan to do that.⁵¹

⁴⁹ Exhibit 109, pg. 8-9.

⁵⁰ Rebuttal Testimony of PG&E, pg. 17-16.

⁵¹ Transcript, pg. 1960.

PG&E clearly has no desire to solicit ratepayer input on this issue. That is a mistake. PG&E has a massive issue with ratepayer trust, as described above. It is a mistake for PG&E to attempt to force these costs down ratepayers' throats without even the appearance of measured consideration on behalf of the ratepayers. PG&E is facing a colossal public relations crisis with the additional issues surrounding the San Bruno gas pipeline explosion, the mistrust of PG&E auditors (described below), and general disgust with PG&E's attempt to foist these costs on the ratepayers. PG&E should attempt to reach out and collaborate with community organizations, such as the Joint Parties, and engage in an aggressive outreach and ratepayer input campaign in order to remedy these issues.

Recommendations:

- As per TURN's testimony, PG&E should not be allowed to recover costs resulting from PG&E errors or omissions, PG&E should have the burden of proof in this matter, ratepayers should not pay a second time for work that was not initially done right, ratepayers should not pay again for work they previously funded and was not performed, and that PG&E should not be allowed to profit off work to achieve a safe system.
- A minimum of 75% of the cost of safety upgrades be borne by a combination of shareholders and/or executives. However, ratepayers should only bear this 25% burden if the Commission finds that PG&E is fully transparent, cooperative, and effective in addressing all of the underlying problems and in ensuring responsibility for full and active consumer education and input.
- The Joint Parties recommend that the Commission adopt the following language:

“The shareholders will cover any costs related to PG&E errors and omissions with prior safety protocol. The ratepayers will bear only 25% of the costs related to safety upgrades since safety requirements are fundamental in natural gas operations. Further, this percentage may be adjusted at a later time depending upon PG&E’s transparency and cooperation with this Commission and the ratepayers.”

III. Accuracy of Independent Audits Performed by Deloitte & Touche

PG&E’s submissions in support of the Pipeline Safety Enhancement Plan assume that it received an independent, comprehensive and accurate audit from an independent CPA firm. However, the San Francisco Chronicle reported that PG&E, during the period it was audited by Deloitte & Touche, misappropriated ratepayer funds intended for gas safety and was used instead for executive bonuses.⁵² The Joint Parties filed on February 23rd an OIR seeking to ensure the accuracy and independence of regulated utility auditors. The OIR has been assigned to President Mike Peevey.⁵³ The Commission has now recognized the importance of the accuracy of financial audits and has ordered an additional financial audit in this proceeding.⁵⁴

It is undisputed that the Public Company Accounting Oversight Board found that in more than 40% of Deloitte & Touche’s audits of Fortune 500 companies, both in 2007 and in 2010, the

⁵² In the PG&E case, for example, the audits failed to uncover or note the diversion of 100 million dollars in gas, safety and operations money over a 15 -year period to shareholders and for executive bonuses. There is every reason to assume similar problems exist at the other major utilities. Eric Nalder, “PG&E Diverted Safety Money for Profit, Bonuses,” San Francisco Chronicle, Jan. 13, 2012, available at: <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2012/01/13/MNUSIMOSUC.DTL>

⁵³ P.12-02-016.

⁵⁴ D.12-04-010, pg. 26.

audits did not comply with generally accepted accounting principles and/or involved a cozy management relationship with the company Deloitte & Touche audited.⁵⁵ Such findings compromised the integrity of the audit by Deloitte & Touche and raised serious questions as to the judgment of management and PG&E's Board of Directors.

On March 19, 2012, the top PG&E policy witnesses were cross-examined by the Joint Parties. Mr. Botorff surprisingly admitted he had no knowledge of the PCAOB audits of Deloitte & Touche, any PCAOB findings regarding Deloitte & Touche, or of whether PG&E took any action when the PCAOB findings became public in October 2011.⁵⁶ (Deloitte & Touche has been PG&E's auditor for 13 years.)⁵⁷ This lack of knowledge was surprising, given Mr. Botorff's role as PG&E's Chief Regulatory Relations officer and his daily access to CEO Early and President Johns.

Related to the continued reliance of PG&E and this Commission on the accuracy of Deloitte & Touche's audits, the Public Company Accounting Oversight Board completed its hearings on these issues on March 21st and 22nd in Washington DC. This could prospectively, at least, eliminate the problems in the present case. Specifically, the PCAOB hearings, which the Joint Parties were a part of, will seek to ensure accurate and truly independent audits by possibly requiring the rotation of auditors every few years and possibly prohibiting the auditor from performing any other management services. As of the date of the filing of this brief, the PCAOB

⁵⁵ See, Michael Rapoport, "Accounting Board Finds Faults in Deloitte Audits," Wall Street Journal, Dec. 21, 2011, Floyd Norris, "Accounting Board Criticizes Deloitte's Auditing System," New York Times, Oct. 17, 2011, and Michael Rapoport, "Audit Watchdog Criticized Deloitte Quality Controls in '08," Wall Street Journal, Oct. 18, 2011.

⁵⁶ Transcript, pp. 758-759, 761.

⁵⁷ PG&E Data Response No. JointParties_004-01Supp01.

has taken no actions related to its comprehensive March 21 -22 Washington DC hearings. However, the Chairman of the PCAOB has discussed the possibility of holding a second hearing in San Francisco that may be hosted by the CPUC with NAAC President & CEO, Faith Bautista, who participated in the hearings.

The Joint Parties filed a Motion to Compel Testimony of PG&E’s Financial Audit Expert,⁵⁸ and are currently awaiting the ALJ and Assigned Commissioner’s ruling on this issue. Although the ruling ordering an independent financial audit is a good first step,⁵⁹ it is still necessary to conduct further investigation into the data that has already been submitted to this Commission.

The Joint Parties emphatically support the Commission’s decision to order an independent audit of gas companies in California.⁶⁰ The Joint Parties also urge the Commission to avoid a “Big 4” CPA firm⁶¹ and to hire a capable alternative firm. This independent audit is important for a number of reasons:⁶²

- To the extent the cause of the audits and other audits are included in revenue and other forecasts that serves as the basis for utility rates to pay for the PSEP , the

⁵⁸ Motion of the Joint Parties to Compel Testimony of PG&E’s Financial Audit Expert, R.11-02-019 (Mar. 21, 2012).

⁵⁹ D.12-04-010.

⁶⁰ D.12-04-010.

⁶¹ The “Big 4” CPA Firms are Deloitte & Touche, Ernst & Young, PricewaterhouseCoopers, and KMPG.

⁶² Some of these arguments were put forth by TURN in P.12-02-016. *See* Response of The Utility Reform Network to the Petition of Black Economic Council, National Asian American Coalition, and Latino Business Chamber of Greater Los Angeles to Adopt, Amend, or Repeal a Regulation Pursuant to Public Utilities Code § 1708.5, P.12-02-016 (Mar. 26, 2012).

utilities' practice with regard to selecting and compensating their auditors have a direct bearing on rates.

- If the utility occasionally put its auditing needs out to bid, it might obtain similar services at lower prices than those charged by the firm that has been providing services on a continuous basis for 13 years.
- The CPUC should consider whether the potential cost savings might be another factor warranting a change in practice for the utilities since PG&E averages \$5 million a year in payments to Deloitte & Touche.
- The long and cozy relationship between utility employees and audit personnel is much too intimate to be used for sound public judgment without further scrutiny. If a legislator and a lobbyist spent hundreds of hours working together on a personal one to one basis, few people would assume that the interaction was neutral and in the public interest.
- The PCAOB statement that a utility auditing firm failed to follow general accounting practices is such a disturbing pronouncement that full scrutiny of all auditing functions is clearly in the public and ratepayer interest. It should also be noted that although PG&E has the burden of proof, PG&E has never denied that the Deloitte & Touche was found by the PCAOB to contain major flaws. These flaws were a lack of adherence to generally accepted accounting principles and a lack of independence of Deloitte & Touche from company management.

Recommendations:

- Regarding the upcoming independent financial audit managed by the Commission, the Joint Parties recommend the Commission to avoid a “Big 4” CPA firm and to hire a capable alternative firm.
- The Commission should grant the Joint Parties’ Motion to Compel Testimony of PG&E’s Financial Audit Expert as it is still necessary to conduct further investigation into the data that has already been submitted to this Commission.
- The Joint Parties recommend that the Commission adopt the following language: “This Commission is skeptical of data audited by large corporate firms that have been investigated and criticized by the Public Company Accounting Oversight Board . Therefore, with respect to the audit ordered in D.12 -04-010, the Commission will utilize an independent auditing firm that has no such flaws.”

IV. Conclusion

The Joint Parties deplore the loss of life in San Bruno and urge the Commission to seriously consider the information and educational needs of the ratepayers in this proceeding in order to ensure that “this never happens again .” Although the matters involved are by nature extremely technical, this limits the ability of the ratepayers to fully engage with the Commission and ensure public confidence that this “never happens again .” The Joint Parties have many recommendations regarding this proceeding:⁶³

⁶³ Proposed language to implement these recommendations is included in the appendix.

- PG&E should be ordered to solicit ratepayer views, either by a survey or through some other means, which directly addresses the gas safety issues arising from this proceeding.
- When conducting outreach, PG&E should also consult with CB Os to ascertain what prominent minority and ethnic media publications they should advertise in. There has been little consistency with ethnic media outreach and this method must be further utilized in order to make information available to hard to reach ratepayers.
- PG&E should attempt to reach out and collaborate with community organizations, such as the Joint Parties, and engage in an aggressive outreach and ratepayer input campaign in order to remedy these issues.
- Effective communication and outreach should be personally led by the CEO of PG&E, Anthony Early, much as he has led the recent discussions on the appropriate level of fines.
- As per TURN's testimony, PG&E should not be allowed to recover costs resulting from PG&E errors or omissions ; PG&E should have the burden of proof in this matter; ratepayers should not pay a second time for work that was not initially done right; ratepayers should not pay again for work they previously funded and was not performed; and PG&E should not be allowed to profit off work to achieve a safe system.
- A minimum of 75% of the cost of safety upgrades be borne by a combination of shareholders and/or executives . However, ratepayers should only bear this 25% burden if the Commission finds that PG&E is fully transparent, cooperative, and

effective in addressing all of the underlying problems and in ensuring responsibility for full and active consumer education and input.

- Regarding the upcoming independent financial audit managed by the Commission, the Joint Parties recommend that the Commission avoid a “Big 4” CPA firm and to hire a capable alternative firm.
- The Commission should grant the Joint Parties’ Motion to Compel Testimony of PG&E’s Financial Audit Expert as it is still necessary to conduct further investigation into the data that has already been submitted to this Commission.

The Joint Parties urges this Commission to give this proceeding tantamount importance and to consider this decision in light of the new initiative to make safety the first priority in the culture and decisions of this Commission.

Dated: May 10, 2012.

Respectfully submitted,

/s/ Len Canty
Len Canty, Chairman
Black Economic Council

/s/ Faith Bautista
Faith Bautista, President and CEO
National Asian American Coalition

/s/ Jorge Corralejo
Jorge Corralejo, Chairman
Latino Business Chamber of Greater Los Angeles

/s/Robert Gnaizda
Robert Gnaizda, Of Counsel

/s/ Shalini Swaroop
Shalini Swaroop, Senior Staff Attorney

APPENDIX

I. Ratepayer Views

Recommendations:

- PG&E should be ordered to solicit ratepayer views, either by a survey or through some other means, which directly addresses the gas safety issues arising from this proceeding.
- The Joint Parties recommend that the Commission adopt the following language:
“This Commission recognizes the need for direct ratepayer input into this proceeding beyond the traditional methods normally utilized in these matters. Specifically because this proceeding relates to a fundamental safety issue that affects each and every ratepayer, this Commission directs PG&E to undertake a survey designed to directly input the views of the ratepayers into this proceeding. The topics covered in this survey should include general ratepayer satisfaction, customer outreach ratings, cost allocation issues, their confidence in the CPUC and PG&E to fix the issue, and include their concerns about gas safety. The survey should reflect the demographics of PG&E’s ratepayer base.”

II. Ratepayer Outreach

Recommendations:

- PG&E should be ordered to solicit ratepayer views, either by a survey or through some other means, which directly addresses the gas safety issues arising from this proceeding.
- The Joint Parties recommend that the Commission adopt the following language:

“This Commission recognizes the need for direct ratepayer input into this proceeding beyond the traditional methods normally utilized in these matters. Specifically because this proceeding relates to a fundamental safety issue that affects each and every ratepayer, this Commission directs PG&E to undertake a survey designed to directly input the views of the ratepayers into this proceeding. The topics covered in this survey should include general ratepayer satisfaction, customer outreach ratings, cost allocation issues, their confidence in the CPUC and PG&E to fix the issue, and include their concerns about gas safety. The survey should reflect the demographics of PG&E’s ratepayer base.”

III. Cost Allocation

Recommendations:

- PG&E should not be allowed to recover costs resulting from PG&E errors or omissions, PG&E should have the burden of proof in this matter, ratepayers should not pay a second time for work that was not initially done right, ratepayers should not pay again for work they previously funded and was not performed, and that PG&E should not be allowed to profit off work to achieve a safe system.
- A minimum of 75% of the cost of safety upgrades be borne by a combination of shareholders and/or executives . However, ratepayers should only bear this 25% burden if the Commission finds that PG&E is fully transparent, cooperative, and effective in addressing all of the underlying problems and in ensuring responsibility for full and active consumer education and input.
- The Joint Parties recommend that the Commission adopt the following language:

“The shareholders will cover any costs related to PG&E errors and omissions with prior safety protocol. The ratepayers will bear only 25% of the costs related to safety upgrades since safety requirements are fundamental in natural gas operations. Further, this percentage may be adjusted at a later time depending upon PG&E’s transparency and cooperation with this Commission and the ratepayers.”

IV. Financial Audits

Recommendations:

- Regarding the upcoming independent financial audit managed by the Commission, the Joint Parties recommend the Commission to avoid a “Big 4” CPA firm and to hire a capable alternative firm.
- The Commission should grant the Joint Parties’ Motion to Compel Testimony of PG&E’s Financial Audit Expert as it is still necessary to conduct further investigation into the data that has already been submitted to this Commission.
- The Joint Parties recommend that the Commission adopt the following language: “This Commission is skeptical of data audited by large corporate firms that have been investigated by the Public Company Accounting Oversight Board. Therefore, the Commission will utilize an independent auditing firm that has no such flaws.”