

**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)

**REPLY 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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## Table of Contents

I.	Introduction.....	4
II.	Safety Issues.....	4
III.	Customer Outreach .....	6
IV.	Cost Allocation Issues.....	9
A.	Remedial Measures Should Be Paid by the Shareholders.....	9
B.	Ratepayer Costs.....	10
C.	Need for Direct Ratepayer Input .....	12
V.	Conclusion .....	14
	APPENDIX.....	16

**Table of Authorities**

D.12-04-010.....11

## **I. Introduction**

The Black Economic Council, National Asian American Coalition and Latino Business Chamber of Greater Los Angeles (hereafter referred to as “the Joint Parties”) submit this reply brief regarding the Pipeline Safety Enhancement Plan (PSEP) of the Pacific Gas & Electric Company (PG&E). The National Asian American Coalition (NAAC) is located in San Bruno and engages in local grassroots organizing, housing counseling, and small business initiatives. These three parties have been active intervenors in this proceeding, filing testimony, briefs, and motions on behalf of minority and low-income ratepayers. The recommendation included throughout this brief are provided in the Appendix.

## **II. Safety Issues**

The Joint Parties have no doubt that safety is now the foremost concern of this Commission. However, the Joint Parties agree with Northern California Generation Coalition (NCGC) that “PG&E’s responsibility to maintain its system in a manner that ensures safety is not a new obligation.”<sup>1</sup> PG&E has always had the responsibility to operate its gas pipelines in a responsible and safe manner. The Joint Parties urge this Commission to consider PG&E’s PSEP application in light of this fundamental safety obligation.

The City of San Bruno makes numerous safety recommendations that the Joint Parties support. The Joint Parties have already indicated in numerous filings in this proceeding that they

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<sup>1</sup> Opening Brief of NCGC at 3.

were unable to hire a technical expert due to lack of up-front funding.<sup>2</sup> However, these safety recommendations are straightforward, non-technical recommendations that the average ratepayer will be able to understand and endorse. For example, the Joint Parties support the City of San Bruno's proposal to follow the recommendations of the National Transportation Safety Board's (NTSB's) Pipeline Accident Report.<sup>3</sup>

The Joint Parties particularly wish to note the City of San Bruno's recommendation that implementation of the PSEP must not be delayed due to ratemaking issues.<sup>4</sup> Although the Joint Parties believe that costs must be effectively examined,<sup>5</sup> the Joint Parties are mindful that while the Commission delays implementation of the plan, dangerous conditions may be accumulating in gas pipelines throughout California.<sup>6</sup> Although SCG and SDG&E believe that their due process rights may be affected by a swift implementation of the PSEP,<sup>7</sup> the Joint Parties disagree with this characterization and believe any further delays should be avoided, consistent with the recommendation of the City of San Bruno.

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<sup>2</sup> Opening Brief of the Joint Parties at 6.

<sup>3</sup> Opening Brief of the City of San Bruno at 3.

<sup>4</sup> *Id.* at 13.

<sup>5</sup> Again, the Joint Parties urge the Commission to consider the information presented to the Commission in light of the Public Company Accounting Oversight Board's recent investigations into faulty independent audits by Deloitte & Touche.

<sup>6</sup> *See, e.g.* "Danger Underground? PG&E Gas Lines Investigated: KCRA Investigation Exposes Thousands of Gas Leaks in NorCal" available at: <http://www.kcra.com/Danger-Underground-PG-E-Gas-Lines-Investigated/-/11798090/14076798/-/8oqo2jz/-/index.html>

<sup>7</sup> Opening Brief of SCG and SDG&E at 8.

Other recommendations the Joint Parties support include: ensuring that all interested parties have access to annual work plans,<sup>8</sup> considering effective management of the PSEP to be part of PG&E's ongoing compliance obligation<sup>9</sup>, and incorporating a comprehensive and practice approach to customer and community outreach in the PSEP.<sup>10</sup>

### **III. Customer Outreach**

The Joint Parties recommend that the Commission authorize a comprehensive outreach strategy in order to ease concerns regarding gas pipeline safety because “all the upgrades in the world are useless to the ratepayers if they have no understanding of the changes made and fail to have a restored confidence in the safety of themselves and their families.”<sup>11</sup>

Thus, the Joint Parties' support the recommendation of Northern California Indicated Producers (NCIP) that PG&E should implement protocols to ensure large noncore customers will receive notices of disruptions.<sup>12</sup> Ratepayers, especially in the San Bruno area, are often justifiably sensitive to any changes in their gas service. Providing ratepayers with the common courtesy of notice will assuage some of these fears and restore confidence that PG&E and the CPUC are making changes to ensure no further needless safety infractions.

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<sup>8</sup> Opening Brief of the City of San Bruno at 8.

<sup>9</sup> *Id.* at 14.

<sup>10</sup> *Id.* at 9.

<sup>11</sup> Testimony of Joint Parties' Experts at 10-11.

<sup>12</sup> Opening Brief of NCIP at 48.

The Joint Parties also support NCIP’s recommendation to require PG&E to provide service disruption credits when it cannot comply with minimum notice periods.<sup>13</sup> At the very least, this illustrates to ratepayers that PG&E can be held to repeated promises to change practices. These small culture changes will often be the only type of “outreach” to a ratepayer who is unable to interact with the utility on a more substantive basis.<sup>14</sup>

As such, the Joint Parties support many of the recommendations of the City of San Bruno regarding outreach. In particular, the Joint Parties support the City of San Bruno’s recommendation to incorporate a comprehensive and practical approach to customer and community outreach in the PSEP.<sup>15</sup> The questions posed in the City of San Bruno’s Opening Brief are an excellent example of the information that consumers need to receive from the utility.<sup>16</sup> Consistent with the Joint Parties’ recommendations, this information may be better received through outreach conducted by a trusted community-based organization.<sup>17</sup>

The Joint Parties have supported “clear education programs based on understanding the upgrades to the gas safety system” and efforts to make the safety upgrades more transparent.<sup>18</sup> The Joint Parties support the City of San Bruno’s recommendation that the CPUC clarifies the

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<sup>13</sup> *Id.* at 49.

<sup>14</sup> For example, a ratepayer with limited English abilities would be unable to follow daily news relating to gas pipeline safety.

<sup>15</sup> Opening Brief of the City of San Bruno at 9.

<sup>16</sup> For example, “What pipelines lie near my home, job and schools my children attend?” and “How will I know when these lines have been... ‘made safe’... for the longer term?” *Id.* at 10 – 11.

<sup>17</sup> Opening Brief of the Joint Parties at 12.

<sup>18</sup> Testimony of Joint Parties’ Experts at 11.

proper forums to address critical emergency response and community outreach issues.<sup>19</sup> As the Joint Parties testified, “comprehensive consumer education is necessary, with a specialized focus on minority communities.”<sup>20</sup> The Joint Parties have consistently raised issues regarding customer education and outreach, particularly in regards to utilizing community-based organizations to conduct outreach.<sup>21</sup>

**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.<sup>22</sup> 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.
- 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

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<sup>19</sup> Opening Brief of the City of San Bruno at 16.

<sup>20</sup> Testimony of Joint Parties’ Experts at 10.

<sup>21</sup> Opening Brief of the Joint Parties at 11-15.

<sup>22</sup> The Joint Parties are prepared to demonstrate that a disproportionately small percentage of PG&E’s media outreach is in ethnic media, even though ethnic media influences a majority of PG&E customers to a far greater degree than, for example, an ad in the Wall Street Journal. All advertising should be aimed at the ratepayers, not aimed at influencing the legislature or this Commission.



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.”

#### **IV. Cost Allocation Issues**

##### **A. Remedial Measures Should Be Paid by the Shareholders**

The Joint Parties agree with DRA’s analysis that “PG&E seeks \$5 billion in ratepayer funding to correct decades of unreasonable errors and omissions, including failure to maintain accurate and complete pipeline records, and failure to test and or replace its pipelines consistent with a functional integrity management system.”<sup>23</sup> The Joint Parties also note that PG&E had the responsibility to maintain its pipelines before the explosion in San Bruno.

Most of the non-IOU intervening parties agree: the ratepayers should not pay for utility errors. For example, the City and County of San Francisco indicates that the NTSB and Consumer Protection and Safety Division (CPSD) “reports make clear that many of the safety actions PG&E is now proposing... are necessary because of historic failings identified.”<sup>24</sup> NCIP agrees, “the Commission should require shareholders to take responsibility for those costs that are remedial in nature, meaning those costs required to bring PG&E into compliance with preexisting regulations.”<sup>25</sup> TURN centers this argument on the prudence principle, noting that the

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<sup>23</sup> Opening Brief of DRA at 7.

<sup>24</sup> Opening Brief of City and County of San Francisco at 31.

<sup>25</sup> Opening Brief of NCIP at 18.

Commission may not allow PG&E to recover in rates costs that results from PG&E's imprudence.<sup>26</sup>

This boils down to a common sense argument: the ratepayers should not be forced to pay for PG&E's incompetence any more than they already have. The parties' assertions on this issue are consistent with the Joint Parties' recommendation that "a minimum of 75% of the cost of safety upgrades [should] be borne by a combination of shareholders and/or executives."<sup>27</sup> Please note, however, that the Joint Parties recommended that 25% of the cost be borne by the ratepayers only if PG&E "is fully transparent, cooperative and effective in addressing all the underlying problems and in ensuring responsibility for full and active consumer education and preparedness."<sup>28</sup>

### **B. Ratepayer Costs**

DRA is correct that PG&E's current cost sharing proposal would permit PG&E to profit from the San Bruno explosion and is unfair to ratepayers.<sup>29</sup> Like a merchant bargaining in a street market, PG&E has unrealistically set the price (expected ratepayer contribution) too high. Through this method, even if the Commission authorizes the majority of the costs to the ratepayers, this will be viewed as a victory both for the monetary contribution required from shareholders and public relations. For example, opposition to low shareholder costs would likely

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<sup>26</sup> Opening Brief of TURN at 62.

<sup>27</sup> Testimony of Joint Parties' Experts at 9.

<sup>28</sup> *Id.* at 9 – 10.

<sup>29</sup> Opening Brief of DRA at 21.

dissipate if ratepayers view PG&E as suitably punished through higher shareholder contributions than requested in the PSEP.

The Joint Parties urge this Commission to instead use their baseline for assessing cost allocation in this proceeding: 75% of the costs covered by shareholders and executives. By reversing this paradigm, the Commission begins with a presumption for the ratepayers instead of for the utility that has not fulfilled its safety obligations. As it stands now, ratepayers could pay 80% of the PSEP implementation costs and PG&E would still argue that its cost allocation proposal was rejected in favor of the ratepayers. Any cost allocation plan wherein ratepayers pay the majority of the PSEP implementation costs should be viewed as suspect.

Another important issue to note is that NCGC raised serious concerns about cost allocation and rate distribution methodology employed by PG&E in its PSEP.<sup>30</sup> In this proceeding, the Joint Parties have also repeatedly raised concerns regarding PG&E's independent auditor, Deloitte & Touche. The Joint Parties are particularly gratified that the Commission has ordered its own financial audit of PG&E<sup>31</sup> in order to ensure ratepayer and Commission confidence in this proceeding.

**Recommendations:**

- 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

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<sup>30</sup> Opening Brief of NCGC at 4-7.

<sup>31</sup> D.12-04-010.

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.”

### **C. Need for Direct Ratepayer Input**

In their Opening Brief, the Joint Parties set forth several reasons that PG&E requires direct ratepayer input: (1) the only customer survey PG&E has created to address gas pipeline safety issues was weak and unreliable due to demographic concerns;<sup>32</sup> (2) PG&E dismissed the customer survey put forth through the Joint Parties,<sup>33</sup> even though it represented one of the only opportunities to receive ratepayer input; (3) the PG&E cost allocation witness indicated he was wholly uninterested in soliciting ratepayer views;<sup>34</sup> and (4) the fact that “PG&E is facing a colossal public relations crisis with the additional issues surrounding the San Bruno gas pipeline

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<sup>32</sup> Opening Brief of the Joint Parties at 8-10.

<sup>33</sup> PG&E Rebuttal Testimony at 17-16.

<sup>34</sup> Opening Brief of the Joint Parties at 17.

explosion, the mistrust of PG&E auditors... and general disgust with PG&E's attempt to foist these costs on the ratepayers."<sup>35</sup>

Regarding cost allocation, PG&E's arguments are remarkably tone deaf. For example, PG&E's argues that "under the intervenor proposals, investments in safety to meet a new regulatory requirement would earn a lower return than other non-safety investments."<sup>36</sup> This statement lacks the awareness that ratepayers care much more about safety than PG&E's bottom line. PG&E's continuing arguments on cost allocation ring hollow considering its proposal would set ratepayer costs at approximately \$10 billion while PG&E shareholders fund \$224 million.<sup>37</sup>

To illustrate the view of Main Street, the results of the Joint Parties' survey of 190 ratepayers in San Mateo and Santa Clara counties were as follows:

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.<sup>38</sup>

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<sup>35</sup> *Id.* at 18.

<sup>36</sup> Opening Brief of PG&E at 55.

<sup>37</sup> Opening Brief of DRA at 22.

<sup>38</sup> Exhibit 109, pg. 8-9.

If the Commission allows PG&E to continue to take a tone deaf approach to cost allocation, both PG&E and this Commission will lose credibility with the ratepayers. The Joint Parties urge this Commission to see through PG&E's blatant bargaining techniques and to focus on accountability, transparency, and cooperation.

**Recommendations:**

- PG&E should be ordered to solicit ratepayer views, either by a truly independent survey<sup>39</sup> 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 safety issue, and include their concerns about gas safety. The survey should reflect the demographics of PG&E’s ratepayer base.”

**V. Conclusion**

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<sup>39</sup> In light of PG&E’s previously faulty survey, as discussed in the Opening Brief of the Joint Parties at 8-11, the Joint Parties urge that DRA draft a survey and/or TURN, the Joint Parties, and DRA draft the survey.

The Joint Parties urge both this Commission and PG&E to change their respective cultures and to focus on safety as the first priority in this proceeding to ensure that catastrophic safety violations “never happen again.”

The Joint Parties recommend that this Commission send a clear signal to PG&E and the other regulated IOUs that business as usual will no longer be tolerated when it comes to gas pipeline safety. An option to illustrate this culture change is to conduct comprehensive customer education and outreach so customers are better informed about improvements made in their communities. The most public method to illustrate a culture change is to reject PG&E’s cost allocation proposal.

Regarding cost allocation, the Joint Parties urge both PG&E and this Commission to “put their money where their mouth is” and to illustrate a strong commitment to safety by limiting ratepayer contributions to PSEP implementation.

Date: May 31, 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  
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/s/Robert Gnaizda  
Robert Gnaizda, Of Counsel

/s/ Shalini Swaroop  
Shalini Swaroop, Senior Staff Attorney

## APPENDIX

### Customer Outreach

Recommendations:

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- 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.”

### Ratepayer Costs

Recommendations:

- 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:

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### **Need for Direct Ratepayer Input**

Recommendations:

- PG&E should be ordered to solicit ratepayer views, either by a truly independent 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:

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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.”