

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  
(February 24, 2011)

**REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES  
ON PROPOSED REGULATIONS ON WHISTLEBLOWER PROTECTION**

In accordance with the March 14, 2012, Assigned Commissioner's Ruling (ACR),<sup>1</sup> the Division of Ratepayer Advocates (DRA) submits these reply comments on the Workshop Report and Proposed Regulations Regarding Whistleblower Protections, filed in this docket on July 23, 2012.

Opening comments on the report and proposed regulations were filed by The Utility Reform Network (TURN), Pacific Gas and Electric Company (PG&E), and jointly by Southern California Gas Company and San Diego Gas & Electric Company (jointly, the Sempra Utilities). TURN supports the proposed regulations, but PG&E and the Sempra Utilities propose significant changes that in DRA's view would make the regulations ineffective at best. DRA supports the proposed regulations and urges the Commission to adopt them without the changes proposed by PG&E and the Sempra Utilities.

The reasons for these recommendations are explained in the responsive comments that follow.

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<sup>1</sup> Rulemaking (R.) 11-02-019, Ruling of the Assigned Commissioner Granting, on an Interim Basis, the Motion of the Utility Workers Union of America, and Adopting Procedures for a Proposed Regulation Regarding Whistleblower Protections (ACR), Mar. 14, 2012.

### **TURN's Comments**

TURN agrees with the ACR that it is in the public interest for gas utility employees to be able to provide the Commission with information about unsafe conditions without fear of retaliation from the utility, and that the Commission has authority to adopt whistleblower protection regulations to protect utility workers from such retaliations.<sup>2</sup> DRA agrees with these comments.

TURN recommends some clarifying changes to the notice to employees required by proposed regulation 301.1. TURN's proposed changes would make the notice more effective; DRA supports their adoption.

### **PG&E's Comments**

PG&E supports the first proposed regulation, 301.1 (requiring utilities to post notice of their right to report information to the Commission). Although PG&E observes that the second regulation, 302 (prohibiting retaliation and specifying that the Commission may impose penalties for violation of this regulation) "duplicates other existing law and PG&E's policies," PG&E does not object to including the prohibition in a Commission General Order.<sup>3</sup>

PG&E proposes that the regulation be significantly changed, however, to provide that the Commission will defer to other federal and state agencies and courts authorized to hear retaliation complaints, and will take action, if at all, only after a utility "is found to have retaliated against an employee or by a non-appealable decision of a state or federal court or agency."<sup>4</sup> This is a very bad idea for a number of reasons.

First, the Commission, in order to meet its responsibilities for public safety, should keep its door open, not shut, to utility workers bringing safety-related information. Would it promote safety to tell utility workers who come to the Commission for protection against retaliation for having reported safety-related information that they have come to

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<sup>2</sup> See TURN's Comments, pp. 1-2.

<sup>3</sup> PG&E Comments, p. 2.

<sup>4</sup> PG&E Comments, p. 5.

the wrong agency? Would it promote safety to send them off to some other agency not responsible for regulating public utilities?

Second, what message would that approach send to utility workers and to utilities? It would signal that the Commission can't be bothered with such complaints. Indeed, that message is implicit in PG&E's statement that the Commission can "achieve its goal of improving system safety by prohibit retaliation without devoting its valuable resources to retaliation claims."<sup>5</sup> Trivializing, discouraging, or ignoring safety-related retaliation claims by utility workers is *not* consistent with the "culture of safety" the Commission seeks to promote. And if safety is truly important, lack of resources at the Commission is not a valid basis for diverting safety-related retaliation complaints to other agencies, as PG&E appears to suggest.

Third, whistleblower protection can only be effective if appropriate action is taken *promptly* when retaliation occurs (or is threatened). Requiring workers to make a long detour via other resource-strapped agencies before the Commission will even consider taking any action virtually ensures that whatever action the Commission might take would come too late to be meaningful.

For all of these reasons, the Commission should reject PG&E's proposal to defer retaliation complaints to other agencies.

### **The Sempra Utilities' Comments**

The Sempra Utilities argue that proposed regulation 302 is unnecessary and duplicative and "should be rejected in its entirety."<sup>6</sup> The Commission is ill-equipped to investigate retaliation claims, they claim, and should instead refer retaliation issues to the California Attorney General.<sup>7</sup>

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<sup>5</sup> PG&E Comments, p. 5.

<sup>6</sup> See Comments of Southern California Gas Company (U 904 G) and San Diego Gas & Electric Company (U 902 M) to the Workshop Report and Proposed Regulations Regarding Whistleblower Protections (Sempra Comments), Aug. 10, 2012, p. 19, emphasis in original.

<sup>7</sup> Id., pp. 10-12.

It is true that there are other laws prohibiting retaliation. There may be instances in which it makes sense for the Commission to refer a case involving retaliation to the Attorney General; the Commission has the discretion to do so. But for reasons that are well explained in the ACR, the proposed whistleblower regulations would help to develop a culture of safety within the utilities regulated by the Commission – and within the Commission, as well. Commission staff and utility employees regularly share information and develop professional relationships; a practice of regularly referring utility worker whistleblower retaliation complaints to a different agency would erect roadblocks to communication about safety issues between these two groups.

The Sempra Utilities criticize the workshop report’s purportedly “flawed assumptions” regarding the low number of employee complaints made internally relative to those made externally (by calling the Commission’s hotline) and the significance of anonymous reports.<sup>8</sup> Curiously, they conclude that, rather than fear of retaliation having anything to do with employees’ hesitation to report unsafe conditions, “the *only* logical assumption on low internal formal reports would be that most employee concerns regarding safety are addressed through less formal means.”<sup>2</sup> It is not apparent what this assumption is based on, or what makes it “logical.” Evidence discussed at the workshop suggests otherwise. As the workshop report notes:

[E]ven with existing protections, the number of calls by whistleblowers to the Commission has been relatively small ... [A]ccording to CPSD staff, it is out of fear of retaliation that employees are reluctant to give their names to the CPSD. . . .<sup>10</sup>

Moreover, the utilities “did not dispute the CPSD staff’s point that since the Commission has safety jurisdiction over the utilities, the employees of the utilities could

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<sup>8</sup> See Sempra Comments at 5-10.

<sup>2</sup> Sempra Comments at 6, emphasis added.

<sup>10</sup> R.11-02-019, Workshop Report and Proposed Regulations Regarding Whistleblower Protections (Workshop Report), July 23, 2012, p. 6.

provide critical information to the CPSD, which otherwise CPSD may never realize.”<sup>11</sup>  
As the ACR notes: “It will serve the public interest for all California natural gas public utility employees to be able to provide the Commission or its staff with information concerning unsafe conditions without fearing employment retaliation from the utility.”<sup>12</sup>

The proposed regulation facilitates such communication and should be adopted. The changes proposed by the Sempra Utilities and PG&E would defeat the purpose of the regulations and should be rejected.

Respectfully submitted

/s/ KAREN PAULL

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August 24, 2012

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<sup>11</sup> Workshop Report at 5.

<sup>12</sup> ACR at 5; *see also* ACR at 6: “[T]he need to encourage a dialogue between gas utility workers and this Commission or its staff about gas safety and reliability problems which threaten the general public, as well as the workers, outweighs the possible harm that could result if the motion [for a directive to protect whistleblowers] is not granted.”