

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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Order Instituting Rulemaking)
On the Commission's own Motion)
To Adopt New safety and Reliability Rulemaking (Filed February 24, 2011)
Regulations for Natural Gas)
Transmission and Distribution Pipelines)
And Related Ratemaking Mechanisms)

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**REPLY COMMENTS
Of the
UTILITY WORKERS UNION OF AMERICA
On the
PROPOSED WHISTLEBLOWER RULE**

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August 24, 2012

**REPLY TO COMMENTS
Of the
UTILITY WORKERS UNION OF AMERICA
On the
PROPOSED WHISTLEBLOWER PROTECTION RULE**

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☐ The Utility Workers Union of America (UWUA) fully supports the proposed CPUC staff to adopt a whistleblower protection rule (whistleblowers) to bring information to the Commission about unsafe conditions affecting service infrastructure. The UWUA's support for these specific ongoing support and for advocacy information in the work culture in industry, also envisioned by the Commission in its initial Order Rulemaking, R.11-02-019 issued February 20, 2014 in response to the explosion.¹ The proposal affirmatively answers questions raised by the Commission originally in the Safety Rulemaking:

The Commission does not have a comprehensive program who have and wish to improve relationships with a public utility but who are also in a position regarding a threat to safety concerning that utility's operations. The Commission adopt rules that protect utility employees from management retaliation information to the Commission regarding public safety utility issues? Are such rules needed?
Res. 11-02-019 at page 12

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☐ The promulgation of these rules will be toward major, transparent, accountable and safety conscious culture in this sector of critical infrastructure.

1 "Our goal through all of these proceedings will be to accord safety of gas utility operations the highest level of significance. We must ensure that our gas utilities recognize that mere compliance is not enough. Safe pipeline operations must begin with utility management and the culture it creates in the workrooms and field crews of the utility. The pipeline operators must have a corporate ethic and workplace culture that places safety as their first responsibility." R.11-02-019 at page 8. ☐

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□ The □ safety □ culture □ transformation □ in □ the □ gas □ industry □ in three □ elements

- A □ shift □ from □ reaction □ to □ through □ hazard □ identification □ and □ elimination; □
- Greater □ transparency □ about □ the □ operating □ utilities □ accomplished □ in □ part □ through □ a □ flattening □ and □ opening □ communications □ structures □ among □ managers, □ workers □ and □ the □ Commission;
- Accountability □ for □ service □ quality □ comes (especially □ but □ not □ exclusively □ safety) □ and □ for □ ratepayer □ to □ return □ to □ accomplish □ these □ outcomes.

□ See, □ Pub. □ Util. □ Code □ sections □ 961(d) □ and □ (e) □ and □ 963(b) Ch. □ 522 □ (SB □ 705 □ (Leno)).

□ The □ proposed □ regulations □ significantly □ advance □ this □ culture □ by □ empowering □ key □ stakeholders, □ employees □ and □ their □ union □ representatives □ to □ bring □ to □ the □ Commission □ the □ information, □ experience □ uniquely □ available □ to □ them, □ and □ their □ viewpoints. □ The □ Commission □ has □ recognized □ this □ reality. □ In □ the □ ALJ □ 005/006, □ the □ Assigned □ Commissioner □ and □ ALJ □ opined:

□ ...[T]he □ cooperation □ and □ testimony □ of □ gas □ utility □ employees □ proceedings □ should □ be □ encouraged □ rather □ than □ discouraged. □ employees □ are □ knowledgeable □ about □ the □ day □ activities □ of □ the □ gas □ utilities, □ and □ are □ invaluable □ sources □ of □ information □ regarding □ reliability □ of □ the □ gas □ system. □ If □ these □ same □ employees □ of □ such □ actions □ by □ their □ employer □ for □ disclosure □ safety □ of □ agency □ with □ regulatory □ authority □ over □ the □ gas □ utilities, □ this □ employees □ from □ disclosing □ such □ information. □ □ □

□ Second, □ although □ UWUA □ acknowledges □ its □ motion □ is □ a □ anticipatory □ measure,” □ and □ that □ the □ Commission □ is □ not □ responding □ to □ any □ specific □ overt □ action □ by □ SoCalGas □ to □ encourage □ a □ dialogue □ between □ workers □ and □ this □ Commission □ about □ gas □ safety □ and □ reliability □ possible □ harm □ that □ could □ result □ to □ these □ gas □ safety □ of □ SoCalGas’ □ customers □ and □ to □ the □ public, □ if □ the □ motion □ is

RULING □ OF □ THE □ ASSIGNED □ COMMISSIONER □ AND □ ADMINISTRATIVE □ REGARDING □ MOTION □ OF □ THE □ UTILITY □ WORKERS □ UNION □ OF □

DIRECTIVE TO PROTECT EMPLOYEES January 27, 2012, at PG 5 (emphasis added)

The emphasized language in the Ruling captures precisely the Commission's original vision of this proceeding: promoting dialogue among the gas workers, their managers and the Commission on how to promote safety. The proposed whistleblower rule is a significant step for creating the conditions for truly meaningful dialogue. Power of utility unilaterally to erect barriers to and filters in communications to the Commission, through a powerful subterfuge to create an act.

However, it is important to note that the proposed step forward, an end in state, is the journey toward greater transparency, accountability and utilization of the special competencies of utility and their union representatives. The Commission has pending before it proceedings the UWUA's proposals to create an institutionalized regular dialogue among workers, managers and CPUC staff. Arturo Frias in the SoCal Gas RCJ, General Testimony Case of Carl Wood the SoCal Gas DEGR, testimony of Carl Wood in Phase 1 of Cost Allocation Proceeding⁴ (TCAP) UWUA urges the Commission to more detailed and elaborate proposals to establish the institutional framework that all parties of the leadership of the working toward.⁵

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² Exhibit 581, EXHIBIT 581 & A USV 14 PG 6

³ Exhibit 580, EXHIBIT 580 & A UWUA 7 PG 7

⁴ Exhibit 1, EXHIBIT 1 & A Q&A 7 PG 15 PG 13

⁵ The Legislature also expects outcome Newly enacted Pub. Util. Code 961(e) provides

"The commission and gas shippers provide opportunities meaningful, substantial, and ongoing participation by the gas workforce in the development and implementation of plans, with the objective of a safe and healthy industrywide safety culture that will minimize accidents, fires, and violations for the protection of the public and the gas workforce."

As UWUA has previously urged, an exclusive focus on whistleblowers may fully facilitate transparency and fruitful ongoing institutionalized safety dialogue. As the Commission has transitioned from reaction to prevention, it requires a high degree of candor among all parties. This may be accomplished by adopting a “no blame over fixing” approach and polarizing communications from anonymous sources. Recognizing that the whistleblower rule is a necessary first step that helps maintain the focus on instilling transparency and candor that the Commission has articulated.

II. General Legal and Policy Considerations

Before discussing specific issues concerning the language of regulations, UWUA address certain arguments by respondent utilizing the Commission’s regulatory authority in this area.

From the standpoint of legal theory, the Proposed Rule upholds the integrity and dignity of the Commission’s information necessary to its carrying out its mission. The Commission has consistently founded its regulatory authority on the language of Public Code section 451, which provides in pertinent part:

~~“The Commission shall have the right to require any person who is engaged in the production, transmission, or distribution of natural gas to furnish to the Commission such information as the Commission may require for the purpose of enforcing the provisions of this Code.”~~

⁶ Comments of UWUA on the Report of the Independent 5,000 R. 019 at pages 5.4.4.4 and 5.4.5. Comments of UWUA in 02-119, filed April 14, 2011 at pages 21-22.

⁷ R.11-02-001, page 12: “We expect all entities with information relevant such information conveniently available to our staff, and to identify and facts and documents that have a bearing on specific safety persons and to have an affirmative obligation to bring evidence, information, data, or may have a bearing on safe operations of natural gas transmission attention of this Commission.”

adopt this regulation, receipt of information, and eliminating thereto, without prior authorizing legislation. However, Pub. Util. Code provides the Commission with explicit statutory authority and Both PG&E and the Sempra Compensation Advocate a balkanization of the enforcement apparatus, evidently intended to effectiveness of the Commission's communication employee protection scheme. Sempra advocates whistleblower complaints of retaliatic the Attorney General, PG&E recommend state defendant to Department of Labor procedures potentially followed by Commission proceedings.

While employees may utilize these processes to obtain injuries to their employment, in addition to a remedy at Commission, or may utilize procedures through their collective agreement, the Proposed Rule and potential remedies or penalties vindicate the Commission's interest.

The Commission should remain focused on the objective for its process and promulgating the facilitating a free and unconstrained information among employees, managers and the Commission. Investigation and remediation of restrictions on by persons who in direct contact with the substantially undermines achieving the Commission's objectives. The informant/potential whistleblower victim who has communicated with the Commission being a good faith another state or federal agency in connection with that conduct profoundly discouraging the Commission and its staff already have with him/her, and are in a position to evaluate the merits

~~_____~~
10 Cal. Const. Article XII, section 16 provides: "The Commission may, if established, examine records, issue subpoenas, administer oaths, take testimony, subpoena, and prescribe a uniform copy accounts for utility all subject to its jurisdiction."
11 Sempra Whistleblower Comments, pages 12, 13, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.
12 PG&E Whistleblower Comments, pages 12, 13, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

employer action interfere with communication of important information public/employee/customer safety and service

Rather than proliferate the forums where an employee adverse action must go, and interpose the Commission between the employee informant, the Commission should retain plenary authority communication and utilize its procedural flexibility to develop mechanisms for assuring employees that their right to communicate respected by their employers.

III. Specific Comments on Recommended Modifications to Proposed Rules 301.1 and 302

A. Regulation creating sanctions for (Petition Rule 302)

~~_____~~
The litany of uncertainties propounded by Southern California Gas in of employer litigation *Sempra v. Wistler* lower Comments, pages 17-18. This attempt to focus the discussion away from facilitating communication and shift it to employer actions and the parameters within which employer coercion should not ~~ultimately~~ change which the Commission envisions in this proceeding:

We must ensure that our gas utilities recognize that mere compliance pipeline operations must begin with utility management and the culture workrooms in a field crews of the utility. The pipeline operators and workplace culture that places safety as their first responsibility.

...

What we will not tolerate is a litigation to either withhold information to public safety, or conversely, misuse of the rulemaking process as information for civil litigation. We expect all entities with information make all such information conveniently available identify our staff and pertinent facts and documents that have a bearing on safety issues. and entities have an affirmative obligation to bring evidence, information item that has or may have safety implications of natural gas transmission distribution pipelines to the attention of the Commission. 12

UWUA supports the substance and form of the proposed Rule no modifications to this rule. Proposed Rule 100B, should preserve the focus of the whistleblower Rule and its other receipt of employee information on the goal of complete. The Rule proposed asserts the full scope of the Commission preserves determined, original and distinct focus on facilitating employee communication to the Commission about safety issues customers, the public employees. Sempra's rejection of the Proposed inappropriate; PG&E's proposal to defer potential Commission enforcement to the outcomes of other agency proceedings defeats the purpose.

B. The Format and Content of the Notice Rule (100B)

UWUA supports the substance of the Proposed Notice, and modifications to wording and format to make the notice more employees.

- The proposed notice consists of three (3) elements:
 - A statement of applicable laws, legal principles and quotations from state and a commission decision.
 - A "Rights" statement informing employees of a right to report conditions to the CPUC.
 - A description of procedures for contacting the CPUC.

a. Further Notice.

UWUA recommends that the document be titled prominently to command the attention of employees who may be offered or documented at tier workplace. It should contain a Commission other indicia that it is a formal Commission document.

UWUA agrees with TURN that the objective of the notice is placing the "Rights" statement in a more prominent location to be posted. In addition, the font should be larger and

Equally important information about how to contact the Commission. It should be formatted in the same manner as the Right to Life Notice. UWUA agrees that the notice should contain a brief legal basis and philosophy supporting the Commission's information provides context for the Rights Statement, but need not be formatted. The content of the paragraph contained in the Proposed Rule 301.1 is accurate, concise and precise.

b. Content of Right to Life

The notice proposed in Proposed Rule 301.1 tells an employee may report unsafe conditions. It also tells the employee that he or she made without fear of retribution by his/her employer, either fails of its purpose. The rights statement announced include The Commission's purpose to create the conditions for a high quality forward, articulated in the initial rulemaking.

Conclusion

For the foregoing reasons, I urge that the Commission issue Rule 301.1 and 302, with the modifications to the Notice in the recommended by UWUA and contained in Appendix A.

Respectfully submitted,

/s/ [Signature] /s/ [Signature]

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¹⁴ See supra, page 5, fn. 7

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Appendix □đ

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UWUA □đ Proposed □đ Form □đđđf □

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YOUR RIGHT TO REPORT UNSAFE CONDITIONS

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Any employee of _____ [the natural or of an independent working under contract with _____ [the natural gas utility] who good faith believes that unsafe conditions, facilities of the utility threaten the health patrons, the employees or the public, ~~repeal~~ the conditions to the California Public Utilities Commission without fear of or retaliation or reprisal.

□

The employee can ~~inspect conditions or~~ any act of retaliation or ~~reprisal~~ calling the Commission Whistleblower Hotline at 1(800)70, ~~649~~ either anonymously or by giving the employee's sending ~~an~~ mail ~~ed~~ with the pertinent facts and documentation to rtwh@cpuc.ca.gov.

□

This requirement shall ~~in addition~~ to any right the employee any other State Federal agency, if the employee has reasonable that the information discloses a violation of a state or or noncompliance with ~~a federal rule or regulation.~~

Under section 451 of the California Public Utilities Code shall furnish and maintain such service, instrumentalities, equipment are necessary to promote the safety, ~~health~~ ~~and~~ ~~comfort~~, ~~and~~ ~~pat~~ employees and the public. Further, under section 963(b)(3) Utilities Code, it is the policy of this State that California Commission's regulation of natural ~~gas~~ ~~safety~~ of the public natural gas utilities' employees as the top priority consistent and reasonable ~~based~~ rates. In addition, under section 961(e) Public Utilities Code, the ~~California~~ ~~gas~~ ~~and~~ ~~utilities~~ must provide meaningful and ongoing opportunities for the utilities' workforce utilities' development of a plan for the safe and reliable facilities and to contribute ~~to industry development~~ ~~and~~ ~~culture~~ of safety.