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**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)

**COMMENTS OF THE CITY OF SAN BRUNO ON THE PROPOSED DECISION
MANDATING PIPELINE SAFETY IMPLEMENTATION PLAN, DISALLOWING
COSTS, IMPOSING EARNINGS LIMITATIONS, ALLOCATING RISK OF
INEFFICIENT CONSTRUCTION MANAGEMENT TO SHAREHOLDERS, AND
REQUIRING ON-GOING IMPROVEMENT IN SAFETY ENGINEERING**

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1 **BEFORE THE PUBLIC UTILITIES COMMISSION**
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4 Commission's Own Motion to Adopt
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10 **COMMENTS OF THE CITY OF SAN BRUNO ON THE PROPOSED DECISION**
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12 **COSTS, IMPOSING EARNINGS LIMITATIONS, ALLOCATING RISK OF**
13 **INEFFICIENT CONSTRUCTION MANAGEMENT TO SHAREHOLDERS, AND**
14 **REQUIRING ON-GOING IMPROVEMENT IN SAFETY ENGINEERING**

15 **I. INTRODUCTION**

16 Pursuant to Rule 14.3 of the California Public Utilities Commission's ("Commission")
17 Rules of Practice and Procedure, the City of San Bruno ("San Bruno") respectfully submits these
18 comments on the proposed "Decision Mandating Pipeline Safety Implementation Plan,
19 Disallowing Costs, Imposing Earnings Limitations, Allocating Risk of Inefficient Construction
20 Management to Shareholders, and Requiring On-Going Improvement in Safety Engineering" (the
21 "Proposed Decision"), issued by Administrative Law Judge ("ALJ") Bushey on October 12,
22 2012.

23 Pacific Gas and Electric Company's ("PG&E's") Gas Safety Plan¹ (the "Implementation
24 Plan"), while not perfect, is a necessary step towards rebuilding public trust in PG&E's ability to
25 operate and the Commission's commitment to oversight of a safe system. In the wake of the
26 devastating explosion of September 9, 2010, PG&E and the Commission have an absolute
27 obligation to ensure that all of the communities in PG&E's service territory, including San Bruno,
28 no longer remain vulnerable to the real life consequences of PG&E's systematic practice of

¹ Pursuant to Decision Determining MAOP Methodology (D.11-06-017), PG&E filed its
Implementation Plan on August 26, 2012.

1 deferred maintenance, defective integrity management programs,² and disorganized collection of
2 untraceable, unverifiable and incomplete records.³

3 According to the Proposed Decision, PG&E's authorized revenue requirement increase is
4 two hundred and seventy-seven million dollars (\$277,805,000), which represents thirty-six percent
5 (36%) of the seven hundred and sixty-seven million dollar (\$768,753,000) revenue requirement
6 increase that PG&E requested.⁴ As well, according to the Proposed Decision, PG&E's cost
7 recovery is subject to the following limitations: (a) PG&E's request to include the costs for
8 pressure testing post-1955 pipelines in revenue requirements is denied; (b) PG&E's request to
9 include the costs for the gas system records integration program in revenue requirements is denied,
10 (c) The Proposed Decision rejects PG&E requests for contingencies, such that the risk of cost
11 overruns is assigned to shareholders; and (d) PG&E's return on equity is reduced to the cost of
12 debt for capital costs incurred as part of the Implementation Plan for five (5) years.⁵

13 San Bruno supports those aspects of the Proposed Decision that emphasize the need for
14 safety improvements and limit PG&E's recovery of Implementation Program costs from
15 customers.⁶ The Proposed Decision properly recognizes the urgent need for PG&E to adopt and
16 for the Commission to verify long overdue safety upgrades to PG&E's natural gas pipeline
17 transmission system.⁷ These updates, which should also include fully automated shut-off valves

18 ² See, e.g. National Transportation Safety Board, Pacific Gas and Electric Company Natural Gas
19 Transmission Pipeline Rupture and Fire, San Bruno, California, September 9, 2010, Pipeline
20 Accident Report NTSB/PAR-11/01. Washington, D.C. at xi (August 30, 2011) (the "NTSB
21 Report") (finding PG&E Integrity Management Program "deficient," "ineffective.")

22 ³ See, e.g. NTSB Report at 75 (describing "urgent" recordkeeping recommendations issued by the
23 NTSB to PG&E to address discovery of inaccuracies in PG&E records for the accident pipe.)

24 ⁴ Proposed Decision at 3.

25 ⁵ Proposed Decision at 57.

26 ⁶ See, e.g., Proposed Decision at 123, Ordering Par. 1 ("PG&E must expeditiously and efficiently
27 pursue the natural gas system safety improvements as described in the Implementation Plan.");
28 Proposed Decision at 123, Ordering Par. 2 (authorizing only a \$277 million to be recovered from
ratepayers to support requested increase in natural gas system regulated revenue requirement.)

⁷ Proposed Decision at See, e.g., Proposed Decision at 123, Ordering Par. 1 ("PG&E must
expeditiously and efficiently pursue the natural gas system safety improvements as described in
the Implementation Plan."); Proposed Decision at 125, Ordering Par. 8 (delegating authority to the
Consumer Protection and Safety Division ("CPSD") to oversee execution of the Implementation
(footnote continued)

1 (“ASVs”) in San Bruno,⁸ cannot wait. In addition, the Proposed Decision takes meaningful steps
2 to insulate customers from a substantial portion of the financial burden of PG&E’s past
3 mismanagement by restricting PG&E’s recovery of certain costs associated with the
4 Implementation Program.⁹ In this regard, the Proposed Decision helps to make clear that PG&E
5 cannot engage in moral hazard and expect PG&E customers to cover financially for its poor
6 decision-making.

7 At the same time, San Bruno respectfully recommends several modifications to enhance
8 the transparency, precedential value and efficacy of the Proposed Decision. As currently drafted,
9 the Proposed Decision does not guard against PG&E making the same reckless judgments related
10 to natural gas transmission system investment and safety that it has made in the past. To prevent
11 PG&E from repeating the mistakes that led to the San Bruno explosion, the Proposed Decision
12 must expressly recognize that PG&E made an affirmative choice to shift from proactive
13 investment in natural gas infrastructure to nominal compliance that facilitated management to the
14 rate case in a manner that jeopardized public safety. In the interest of transparency, alignment of
15 ratemaking with the proper incentives, and for the sake of precedential value of the Commission’s
16 ultimate decision, this Proposed Decision must also adopt clear, rigorous explanations for each
17 aspect of PG&E cost recovery adopted or rejected in the Proposed Decision. Finally, the Proposed
18 Decision must independently evaluate and validate PG&E’s proposals under the Implementation
19 Plan. It is essential that the Proposed Decision not defer to PG&E preferences by default and
20 avoid reliance on PG&E self-reporting to validate Implementation Plan execution. In Decision 11-
21 06-017, the Commission found that “to perform [its] Constitutional and statutory duties, [it] must
22 have forthright and timely explanations of the issues, as well as comprehensive analysis of the
23 advantages and disadvantages of potential actions.”¹⁰ San Bruno believes this Proposed Decision

24 Plan).

25 ⁸ As discussed more extensively in Section II.C.2, , *infra.*, San Bruno strongly objects to the
26 Proposed Decision’s deferral of developing a plan, and ultimately deployment of urgently needed
ASVs and RCVs to PG&E’s next rate case. *See* Proposed Decision at 79.

27 ⁹ *See, e.g.*, Proposed Decision at 107-108 (reducing ROE for five years).

28 ¹⁰ D.11-06-017 at 17.

1 should do the same.

2 **II. DISCUSSION**

3 **A. PG&E Natural Gas Pipeline System Safety Measures Cannot Wait**

4 On September 9, 2010, the explosion and fire that erupted from PG&E’s defective natural
5 gas pipeline Main 132 caused eight (8) San Bruno residents to lose their lives.¹¹ Sixty-six (66)
6 San Bruno residents were injured and burned.¹² Thirty-eight (38) homes were destroyed,
7 seventeen (17) homes were deemed uninhabitable and another fifty-three (53) homes suffered
8 damage.¹³ The quiet Crestmoor neighborhood in San Bruno will never be the same.

9 The PG&E natural gas transmission system was not safe on September 9, 2010. It is not
10 safe now. The urgent need to inspect, test, repair, upgrade and modernize PG&E’s natural gas
11 transmission system cannot be overstated. Rigorous inspection and testing of high pressure gas
12 transmission lines is critical. Where necessary, replacement of high pressure gas transmission
13 lines, especially those installed prior to 1970 and which traverse heavily populated high
14 consequence areas is essential. Installation of ASVs and remote controlled shut off valves
15 (“RCVs”) for gas transmission lines in high consequence areas should be expedited. PG&E’s gas
16 control operations and gas dispatch operations must be coordinated. Local first responders cannot
17 remain in a position of guessing when it comes to the location and nature of emergencies in their
18 communities. This work cannot wait. Until all necessary safety measures are implemented, every
19 community in PG&E’s service territory remains just as vulnerable as San Bruno was on
20 September 9, 2010.

21 **B. The Transparency and Precedential Value of the Proposed Decision Must
22 be Enhanced.**

23 1. The Proposed Decision Must Directly Confront PG&E’s Affirmative Shift
24 in Priorities Away from Proactive Investment Towards Financial Performance

25 The Proposed Decision describes two instances in which PG&E’s natural gas
26 pipeline initiatives went beyond “nominal regulatory compliance,” and displayed “corporate

26 ¹¹ NTSB Report at 18.

27 ¹² NTSB Report at 18.

28 ¹³ NTSB Report at 19.

1 initiative” to strengthen public safety.¹⁴ PG&E’s 1985 Gas Pipeline Replacement Program
2 (“GPRP”), approved by the Commission in 1986, was a 30-year plan designed to replace 2,467
3 miles of aging distribution and transmission pipes.¹⁵ PG&E and the Commission revisited the
4 GPRP in 1992 with a greater sense of urgency, given the 1989 Loma Prieta earthquake.¹⁶ At that
5 time, PG&E and the Commission appeared to view the GPRP as not only an infrastructure
6 investment, but also as a safety imperative. The Proposed Decision describes the benefit of the
7 GPRP as follows:

8 The 1985 plan showed PG&E thinking ahead, coordinating with local authorities planning
9 similar trenching work, updating meters and associated system components as part of a
10 comprehensively planned, orderly approach to making economically sound upgrades as
11 part of an overall system improvement plan. PG&E included “manpower and training”
among its considerations, showing that it was planning to use its own employees and not
outside consultants. In this way, PG&E staff would study its system and actually perform
pipeline tests and replacements, thus retaining the knowledge within the organization for
long-term operations and planning.¹⁷

12 According to the Proposed Decision, “the decision-making and priorities driving PG&E’s
13 pipeline safety actions in 1985 and 1992 show a different PG&E than the PG&E of the early
14 2000’s.”¹⁸ San Bruno is concerned, however, that the Proposed Decision fails to confront in any
15 meaningful way, the reasons, scope or consequences of PG&E’s dramatic shift in priorities. A
16 cursory reference to the Independent Review Panel Report’s finding that “...more recently
17 PG&E’s field operations and integrity management efforts were not coordinated” is the extent of
18 the discussion in the Proposed Decision.¹⁹ The Proposed Decision never mentions the fate of the
19 GPRP again.

20 PG&E’s transition from an entity concerned with proactive infrastructure and public safety
21 investment in 1985 and 1992 to one with heightened focus on financial performance has carried

22 ¹⁴ Proposed Decision at 45.

23 ¹⁵ Report and Testimony of Margaret Felts, I.11-02-016, San Francisco, California at 18
24 (March 12, 2012) (the “Felts Report”).

25 ¹⁶ Proposed Decision at 46.

26 ¹⁷ Proposed Decision at 45-46 (citing *Re Pacific Gas and Electric Company*, 23 CPUC2d 149,
198-9 (D.86-12-095)).

27 ¹⁸ Proposed Decision at 47.

28 ¹⁹ Proposed Decision at 48.

1 through to PG&E’s current operations.²⁰ This transition deserves more extensive treatment in the
2 Proposed Decision. If the evidentiary record reflects that PG&E completed the GPRP, the
3 Proposed Decision should state that fact. If the evidentiary record demonstrates that PG&E did
4 not complete the GPRP, the Proposed Decision should explain in detail why PG&E stopped
5 pursuing the GPRP. If the record is unclear as to what happened to the GPRP, the Proposed
6 Decision should state that fact.

7 The Proposed Decision should explain what the evidentiary record reflects about why
8 PG&E’s priorities shifted. It should also describe the investments that were proposed to be made
9 under the GPRP, and the investments that were actually made. It should disclose whether PG&E’s
10 authorized rates starting in 1985, and as in effect thereafter, would have been sufficient for PG&E
11 to make the investments called for in the GPRP and earn the utility’s authorized rate of return.
12 Had PG&E made those investments, the Proposed Decision should state whether a rate increase,
13 and of what magnitude, would be needed today.

14 The Proposed Decision should also disclose what drove PG&E to change its priorities,
15 what parties benefited from the shift and which parties suffered from the change. It should
16 confront what took place in the years following PG&E’s abrupt and apparently premature
17 abandonment of the GPRP. The Proposed Decision briefly cites Overland Report findings²¹ that
18 deserve more pointed treatment in connection with PG&E’s post-GPRP operations. According to
19 the Overland Report, between 1999 and 2010, as set forth in the Proposed Decision, PG&E
20 consistently underspent Commission-authorized amounts, resulting in \$430 million in excess
21 earnings for shareholders during that period.²² In the “learning from the past” section of the
22 Proposed Decision,²³ there is no discussion of why PG&E never reinvested any of these surplus
23 earnings in pipelines or in safety improvements.²⁴

24 ²⁰ Report of the Independent Review Panel, San Bruno Explosion, Prepared for the California
25 Public Utilities Commission at 16-17, 48, 52-53 (June 24, 2011).

26 ²¹ Proposed Decision at 84.

27 ²² Proposed Decision at 84.

28 ²³ Proposed Decision at 44.

²⁴ Proposed Decision at 44-48.

1 Discrete analysis of PG&E’s failure to invest in the safety of its system when it had the
2 resources to do so is important to San Bruno. It is possible that had PG&E pursued the 1985
3 GPRP as planned, San Bruno residents and the Crestmoor neighborhood in particular, may not
4 have faced the tragedy of the September 2010 explosion and its aftermath. The Proposed Decision
5 should squarely address whether this Rulemaking would have been necessary had PG&E
6 remained a utility that demonstrated “corporate initiative” with respect to necessary safety
7 improvements. To that end, the Proposed Decision should also identify, with specificity, any
8 investments PG&E proposes to make now that were already paid for by PG&E customers in
9 connection with the GPRP. The Proposed Decision must make the connection between the
10 affirmative choice that PG&E made to transition from long term investments in infrastructure and
11 customer safety to short term gain. PG&E mismanagement should be confronted directly in the
12 Proposed Decision, to help prevent another PG&E natural gas system improvement plan, this time
13 the Implementation Plan, from suffering the same fate as the GPRP. Learning from the past means
14 capturing it accurately.

15 2. The Proposed Decision Must Adopt Rigorous Explanations for Each
16 Element of PG&E Cost Recovery In Order to Align Ratemaking with the Proper
17 Incentives

18 The Proposed Decision makes important compromises and tries to ensure that PG&E
19 customers do not bear the full brunt of PG&E’s past mismanagement. However, the Proposed
20 Decision’s approach to disallowance, return on equity and other aspects of PG&E cost recovery
21 appears to be more focused on a compromise outcome that carves out a middle ground for the
22 stakeholders involved in this proceeding rather than serving as an approach to realign ratemaking
23 policies, practices and incentives to account for past mismanagement and prevent PG&E abuses in
24 the future.

25 The Order Instituting Rulemaking clearly states that one of the primary objectives of this
26 Rulemaking is to “consider available options for the Commission to better align ratemaking
27 policies, practices, and incentives to elevate safety considerations, and maintain utility
28 management focus on the “nuts and bolts” details of prudent utility operations.”²⁵ Effectively

²⁵ Order Instituting Ratemaking 11-02-019 at 4. (February 25, 2011); Scoping Memo and Ruling
(footnote continued)

1 achieving this objective requires that the Proposed Decision directly connect PG&E’s cost
2 recovery for this Implementation Plan, or lack thereof when warranted, with PG&E’s past failures
3 and mismanagement. It is essential that the Proposed Decision clearly articulate the reasoning and
4 Commission precedent behind each value judgment set forth in the Proposed Decision. Without
5 rigorous analysis and clear reasoning, the Proposed Decision will not guide PG&E towards
6 prudent infrastructure investment going forward or serve as a deterrent against another PG&E shift
7 in priorities towards financial performance and away from the essential work in the
8 Implementation Plan

9 San Bruno does not object to the Proposed Decision’s approach to PG&E’s cost recovery
10 per se; however, San Bruno firmly believes that the Proposed Decision should be modified to
11 better explain the reasoning and Commission precedent behind each of its approaches to PG&E
12 cost recovery, and expressly state why the Proposed Decision selects the route it does, rather than
13 relying on broad generalities to support many of its conclusions.

14 (a) The Proposed Decision Does Not Define the “Scope and
15 Magnitude” Justification for Rejecting Full Disallowance

16 In reaching its compromise position, the Proposed Decision rejects requests from the
17 Division of Ratepayer Advocates (“DRA”) for disallowance of all PG&E costs in connection with
18 the Implementation Plan.²⁶ DRA’s argument in favor of disallowance of all PG&E costs was
19 based on the theory of test year ratemaking.²⁷

20 DRA’s theory of test year ratemaking argument is premised on the general rule that PG&E
21 is at risk for expenses between general rate cases.²⁸ The Proposed Decision rejects DRA’s
22 argument on the grounds that “the scope and magnitude of the costs at issue here sufficiently
23 justify deviation from the general rule”²⁹ (emphasis added). There is no further discussion
24 regarding the “scope and magnitude” concept in the Proposed Decision beyond that statement.

25 of the Assigned Commissioner at 2. (June 16, 2011)

26 ²⁶ Proposed Decision at 54.

27 ²⁷ Proposed Decision at 52.

28 ²⁸ Proposed Decision at 52.

²⁹ Proposed Decision at 54.

1 The Proposed Decision fails to identify any Commission precedent to support the principle
2 that “scope and magnitude” is an acceptable justification for departure from the general theory of
3 test year ratemaking. Nor does it identify similar instances in which the “scope and magnitude” of
4 events justified departure from the general theory of test year ratemaking. The Proposed Decision
5 must define the term “scope and magnitude” with precision, by reference to Commission
6 precedent and the specific facts at issue here if that forms even part of the basis for the decision to
7 reject DRA’s request for complete disallowance of PG&E’s costs.

8 Foremost, the Proposed Decision should clarify whether its “scope and magnitude”
9 exception serves as a proxy for some other applicable legal standard that justifies a departure from
10 test year ratemaking. The Proposed Decision declines to expressly adopt PG&E’s “extraordinary
11 circumstances” argument, which is based in part on the premise that Implementation Plan costs
12 could not have been forecast.³⁰ Indeed, the Proposed Decision fails to explain how any of
13 PG&E’s Implementation Plan costs could be considered unforeseen expenses at all. PG&E has a
14 statutory obligation to operate a safe system.³¹ PG&E itself predicted the need to invest in the
15 integrity and safety of its natural gas pipeline with the 1985 GPRP. Rather than stay the course
16 and follow through with the necessary investments it identified, PG&E deliberately engaged in
17 systematic neglect of its natural gas pipeline system for roughly 20 years. For the Proposed
18 Decision to suggest that the need to invest in the safety of natural gas pipelines or that the San
19 Bruno explosion and the subsequent costs associated with such a disaster were not a foreseeable
20 consequence of PG&E’s years of neglect and deferred maintenance would be fundamentally at
21 odds with common sense. It would also conflict with San Bruno’s own experience with investing
22 in and maintaining the City’s streets, water and sewer infrastructure to operate efficiently and
23 safely, none of which involves the ultra-hazardous natural gas transported by PG&E’s system.

24 If the Proposed Decision is indeed advancing a novel “scope and magnitude” exception
25 and there is no supporting Commission precedent therefor, the Commission should expressly
26 define the new exception here. Such definition will allow it to serve as precedent in the event that

26 _____
27 ³⁰ See Pacific Gas and Electric Company’s Opening Brief at 67-68 (May 14, 2012) .

28 ³¹ Cal. Pub. Util. Code Section 451.

1 PG&E fails to follow through with this pipeline investment plan in the future, and again seeks cost
2 recovery for improvements that should have already been made. As drafted, the Proposed
3 Decision’s discussion of “scope and magnitude” does not identify whether:

- 4 • There are causal factors that justify use of the “scope and magnitude” exception.
- 5 • A dollar amount or percentage of utility value threshold triggers the “scope and
6 magnitude” exception.
- 7 • The “scope and magnitude” exception incorporates a “but for the relief provided”
8 the utility has the potential to go bankrupt type concept.
- 9 • Access to capital markets is a factor to be considered when evaluating whether the
“scope and magnitude” exception applies.

10 Perhaps most importantly, the “scope and magnitude” exception should account for the
11 scope and magnitude of PG&E mismanagement. As drafted, the Proposed Decision’s application
12 of the “scope and magnitude” exception appears to only account for the scope and magnitude of
13 PG&E’s potential financial burden. The gravity of the consequences of PG&E’s behavior should
14 not be ignored as part of this analysis.

15 Furthermore, if there is no Commission precedent to support the concept that “scope and
16 magnitude” justifies departure from the general theory of test year ratemaking, the Proposed
17 Decision should articulate what material adverse consequences, if any, a full disallowance of
18 PG&E Implementation Program costs would inflict on PG&E *customers*, and make clear that this,
19 and not a “scope and magnitude” exception is the basis on which it is allowing PG&E to recover
20 some of its costs.

21 (b) The Proposed Decision’s Rejection of Full Disallowance Based on “Belated
Timing” Sets a Dangerous Precedent

22 The Proposed Decision rejects a request from the Utility Reform Network (“TURN”) for
23 disallowance of all PG&E costs in connection with the Implementation Plan.³² TURN advocated
24 for full disallowance based on the imprudent nature of PG&E’s expenses.³³ In rejecting TURN’s
25 request for full disallowance based on the imprudent nature of expenses, the Proposed Decision

26 _____
³² Proposed Decision at 57.

27 ³³ Proposed Decision at 55.

28

1 finds:

2 We do not agree that the Public Utilities Code or Commission precedent support the
3 proposition that due to belated timing, the cost of safety improvements by a public utility
4 become unreasonable and subject to ratemaking disallowance.³⁴ (emphasis added)

5 Finding that a delay in implementing urgently needed safety expenditures does not render
6 current expenditures imprudent and thus subject to disallowance has troubling implications.

7 Delays have real life safety consequences. Delays can also increase costs for PG&E ratepayers.

8 The Proposed Decision does not acknowledge either of these fundamental principles.

9 Furthermore, the Proposed Decision allows PG&E to benefit from its delays. Under the Proposed
10 Decision, PG&E retains the \$430 million in excess earnings over the 1996 through 2010 period.³⁵

11 PG&E also recovers another \$277 million dollars under the Proposed Decision to complete work
12 that arguably should have already been contemplated and possibly even completed under a fully
13 realized GPRP.³⁶ For these reasons, the Proposed Decision discourages proactive, and even

14 necessary investment in safety in a timely manner. At best, the Proposed Decision's "belated
15 timing" argument excuses a utility that resists making necessary improvements. At worst, the
16 Proposed Decision rewards these irresponsible practices.

17 Beyond the dangerous precedent set by excusing delays, the Proposed Decision's
18 characterization of the need for the safety improvements set forth in the Implementation Plan as
19 merely a matter of "belated timing" is incomplete. The Proposed Decision's "belated timing"
20 characterization is far too narrow and fails to account for the imprudence and managerial failure at
21 issue here. PG&E's failure to follow through with the GPRP is not simply a matter of a "...

22 ³⁴ Proposed Decision at 55.

23 ³⁵ See Proposed Decision at 84 (citing Overland Report finding that ...from 1996 to 2010, PG&E
24 consistently underspent Commission-authorized amounts, resulting in approximately \$430 million
25 in excess earnings for shareholders.) The Proposed Decision does not, but perhaps should,
26 evaluate whether Commission precedent demands that PG&E return all or some portion of the
27 substantial over collections over this period to ratepayers.

28 ³⁶ See Opening Brief of the Utility Reform Network on the Proposed Phase I Pipeline Safety
Enhancement Plan of Pacific Gas and Electric Company at 92, fn. 238 (citing Ex. 45, p. 18:4-14,
Felts Report in I.11-02-016).

1 decision not to make the needed safety improvements at an earlier date.”³⁷ As discussed in more
2 detail in Section II.B.1, *supra*, PG&E did not merely make a decision regarding scheduling delays
3 based on sound engineering judgment or prudent utility practice. The delay was the result of a
4 deliberate shift in PG&E priorities from proactive infrastructure and public safety investment in
5 1985 and 1992 towards heightened focus on financial performance.³⁸ Indeed, the Proposed
6 Decision acknowledges “management ineptitude” as part of its “belated timing” discussion³⁹;
7 however, the Proposed Decision does not explain why such “management ineptitude” is sufficient
8 to justify a reduction in return on equity, but not disallowance associated with all the costs of the
9 delayed improvements.

10 San Bruno has difficulty understanding how rate recovery for costs is “just and reasonable”
11 when the Proposed Decision acknowledges that such costs are due in significant part to
12 management ineptitude. The Proposed Decision’s attempt to justify its distinction by reference to
13 PG&E ratepayers’ experience is equally baffling:

14 From a ratemaking perspective, PG&E’s ratepayers have not been subject to unreasonable
15 costs, rather, as a result of needed but not performed safety improvement projects,
ratepayers ended up paying rates lower than may have been reasonable due to the absence
of the needed projects.⁴⁰

16 At best, this assertion is unsupported by the evidentiary record. At worst, it suggests that
17 PG&E ratepayers have somehow benefited from longstanding PG&E neglect of the system, which
18 ultimately led to the San Bruno explosion. Although the Proposed Decision recognizes PG&E’s
19 deliberate shift in priorities towards financial performance, it inexplicably fails to make the causal
20 connection between that corporate transition and the delays in necessary improvements. That
21 causal connection must be made. PG&E’s urgent need to complete safety improvements now is
22 not simply a matter of delay.

23 ³⁷ See Proposed Decision at 55 (Proposed Decision’s characterization of TURN argument).

24 ³⁸ See, e.g., California Public Utilities Commission, Consumer Protection and Safety Division,
25 Incident Investigation Report, September 9, 2010 PG&E Pipeline Rupture in San Bruno,
California, released January 12, 2012 (CPSD San Bruno Report), pp. 126-161. (finding PG&E
26 Management emphasized “culture of profits over safety.”)

27 ³⁹ Proposed Decision at 55.

28 ⁴⁰ Proposed Decision at 55.

1 (c) The Proposed Decision Should Explain Why ROE Reduction Tolerance
2 is Limited to Five Years

3 San Bruno supports the position in the Proposed Decision that for investments pursuant to
4 the Implementation Plan, PG&E's return on equity ("ROE") should be reduced to the cost of debt
5 (6.05%) based on PG&E's "poor management of its natural gas transmission system."⁴¹ PG&E
6 should only be allowed to recover its costs, and not be able to profit from its malfeasance and
7 gross negligence.

8 However, San Bruno is not persuaded by the Proposed Decision's case for limiting the
9 ROE reduction to five (5) years.⁴² Presumably, the Proposed Decision established the five (5)
10 year ROE reduction limit because of PG&E's "equally compelling"⁴³ argument that "drastically
11 reducing the [ROE] harms the ratepayers in the long run by increasing borrowing costs and
12 potentially diminishing the financial health of the utility."⁴⁴ At a minimum, the Proposed Decision
13 needs to establish more clearly why ROE reduction tolerance is limited to five (5) years. In doing
14 so, the Proposed Decision should quantify and clarify (i) how an increase in borrowing costs is
15 translated into impacts on ratepayers, and at what levels; (ii) why an increase in "borrowing costs"
16 for the utility is acceptable for five (5) years, and not for ten (10) years or twenty (20) years; (iii)
17 how "potentially diminishing the financial health of the utility" specifically affects ratepayers; and
18 (iv) why five (5) years, results in a tolerable level of diminished health of the utility, and a longer
19 term reduction in ROE would not.

20 It is difficult for San Bruno to understand why PG&E shareholders should ever profit from
21 the utility's failure to invest in necessary safety-related upgrades before that long neglected
22 infrastructure contributed to one of the most deadly gas explosions in history. As a result, it is
23 important to San Bruno that the Proposed Decision clearly articulate what it considers to be

23 ⁴¹ Proposed Decision at 108.

24 ⁴² Proposed Decision at 108. (Describing five year limit, in part as effort to provide an incentive to
25 improve management efforts; however, the incentive established here is not performance based.
26 Regardless of management performance, the Proposed Decision allows for an ROE increase in
27 year 6).

27 ⁴³ Proposed Decision at 107.

28 ⁴⁴ Proposed Decision at 107.

1 mitigating factors that warrant any ROE in excess of the cost of debt on investments made through
2 the Implementation Plan.

3 **C. The Proposed Decision Must Independently Evaluate and Validate the**
4 **Proposed Implementation Plan Improvements and Execution**

5 1. The Proposed Decision Fails to Independently Analyze PG&E’s “Decision
6 Tree” Risk Analysis Approach

7 The Proposed Decision does not independently analyze the threshold screening tool that
8 will be used to assess risk on PG&E’s system.⁴⁵ The Proposed Decision does not consider, in any
9 detail, whether PG&E has proposed to use its threshold screening tool appropriately. Rather than
10 independently evaluate PG&E’s “Decision Tree” Risk Analysis Approach to Threat Assessment,
11 (the “Decision Tree”), the Proposed Decision simply accepts PG&E’s proposal.⁴⁶ The Proposed
12 Decision does not address the significant criticism raised by San Bruno, or the other parties to this
13 proceeding. The Proposed Decision does not conduct any independent analysis of the adequacy of
14 PG&E assumptions. Instead, the Proposed Decision’s discussion of this important threshold
15 screening tool is limited to the statement that the Decision Tree analysis “is a promising beginning
16 of a comprehensive decision-making process based on safety concerns related to historical
17 pipeline manufacturing, fabrication, and testing practices.”⁴⁷

18 In its opening brief, San Bruno specifically criticized PG&E’s Decision Tree.⁴⁸ San Bruno
19 noted that the Decision Tree includes many decisions for which no criteria are stipulated.⁴⁹ San

20 ⁴⁵ Proposed Decision at 51. The Decision Tree is not the only instance in which the Proposed
21 Decision accepts a PG&E proposal without thorough independent analysis of the critiques raised
22 by the Parties, *See, also*, Proposed Decision at 72 (Proposed Decision likewise “agree[s] that
23 “DRA’s analysis [of PG&E pipeline replacement costs] is insufficient to overcome PG&E’s
24 experience with the cost of natural gas pipeline construction.” The Proposed Decision describes
25 the Parties’ arguments, but does not analyze what guided its selection of the PG&E estimate,
26 beyond reference to PG&E “experience.”).

27 ⁴⁶ Proposed Decision at 113, Finding of Fact 6.

28 ⁴⁷ Proposed Decision at 51.

⁴⁸ Opening Brief of the City of San Bruno (May 14, 2012) (the “Opening Brief”)

⁴⁹ *See* Opening Brief at 7-8 (identifying Decision box M3 - reduce pressure and/or remaining
fatigue life analysis; Decision box F1 - replace Phase 1 & 2).

1 Bruno also noted flawed assumptions embedded in the Decision Tree.⁵⁰ Rather than address the
2 issues raised by San Bruno and others, the Proposed Decision simply defers to PG&E. San Bruno
3 is not satisfied by the Proposed Decision’s conclusory statement approving PG&E’s approach.
4 The Proposed Decision, and the Decision Tree itself, should be modified to specifically address
5 the concerns San Bruno identified.

6 2. The Proposed Decision Does Not Independently Analyze the Need for
7 ASVs

8 The Proposed Decision allegedly “share[s] the parties’ objective of reliable and automatic
9 shut-off valves,” but demonstrates its commitment to that objective by simply directing “PG&E to
10 continue its review of new designs and operational options to allow for expanded use of automated
11 valves.”⁵¹ Under the Proposed Decision, PG&E will not have to develop a meaningful strategy for
12 deployment of ASVs and RCVs until its next rate case.⁵² Only at that point, will PG&E be
13 required to “submit an updated showing of then-current best practices within the natural gas
14 pipeline industry for automated shut-off valves.”⁵³ By deferring meaningful consideration of the
15 ASV/RCV issue to the next general rate case, the Proposed Decision avoids independently
16 evaluating whether: (a) PG&E has properly prioritized the installation of the small number of
17 ASVs and RCVs it will undertake in the short term; and (b) whether PG&E’s decision between
18 installation of ASVs or RCVs at a given location is appropriate.

19 San Bruno views the need for installation of ASVs more urgently. San Bruno insists that
20 ASVs be placed on the pipelines that run within its city limits. San Bruno experienced a delay of
21 ninety-three (93) minutes before PG&E stopped the flow of gas and isolated the rupture. The
22 NTSB’s final accident report found that the “use of either automatic shutoff valves or remote
23 control valves would have reduced the amount of time taken to stop the flow of gas.” The NTSB

24 ⁵⁰ See e.g., Opening Brief at 7-8 (questioning the “pre-1970 vintage” decision point’s assumptions,
25 since some low frequency ERW pipe was manufactured as late as 1978); Opening Brief at 7-8
26 (questioning the “pre-1960 vintage” assumption, since it is not necessarily a good assumption that
27 all of the practices evaluated in the decision tree, such as wrinkle bends, entirely disappeared by
28 the end of 1959).

⁵¹ Proposed Decision at 79.

⁵² Proposed Decision at 79.

⁵³ Proposed Decision at 79.

1 final accident report recommended that PG&E “[e]xpeditate the installation of automatic shutoff
2 valves and remote control valves on transmission lines in high consequence areas.” In spite of this
3 unequivocal NTSB recommendation, the Proposed Decision defers the development of any
4 meaningful strategy for deployment of these essential rapid response devices to PG&E’s next rate
5 case. Actual deployment of necessary ASVs and RCVs will take even longer.

6 While the technical details associated with ASVs and RCVs are caught up in a massive
7 rate case proceeding along with a myriad of other issues not even related to natural gas pipeline
8 safety, first responders and the communities they serve will remain in defensive mode and at risk
9 in the event there is another pipeline explosion, and even on more routine fire response calls where
10 natural gas leaks are involved. On September 2, 2011, it took PG&E ninety (90) minutes to cut the
11 flow of gas following a condominium fire and explosion in Cupertino, California.⁵⁴ On June 12,
12 2012, it took PG&E two (2) hours to turn off the gas at a fire on San Bruno Avenue in San
13 Francisco, California.⁵⁵ For PG&E over two years after the San Bruno explosion, ninety (90)
14 minutes or more remains the standard response time for manually cutting the flow of gas. For San
15 Bruno, its first responders and for all the communities in PG&E’s territory, this magnitude of
16 delay and risk to human life is unacceptable.

17 3. The Proposed Decision Must Establish a Meaningful Framework for
18 Implementation Program Oversight

19 The Proposed Decision requires PG&E to file and serve compliance reports. consistent
20 with the Specifications for PG&E Implementation Plan Compliance Reports set forth in
21 Attachment D of the Proposed Decision.⁵⁶ PG&E is required to file its compliance reports no later
22 than 30 days after the conclusion of each calendar quarter, and serve it upon Parties.⁵⁷ According
23 to the Proposed Decision, Parties “may review this information and may request such Commission

24 ⁵⁴ Jaxon Van Derbeken, *Another PG&E blast draws feds’ attention*, San Francisco Chronicle,
25 September 1, 2011, available at: <http://www.sfgate.com/bayarea/article/Another-PG-E-blast-draws-feds-attention-2311751.php>.

26 ⁵⁵ Heather Ishimaru, *PG&E defends their response to SF fire*, ABC Local, June 13, 2012,
27 available at: http://abclocal.go.com/kgo/story?section=news/local/san_francisco&id=8700326

28 ⁵⁶ Proposed Decision at 88.

⁵⁷ Proposed Decision at Exhibit D, page 1.

1 action by motion as needed.”⁵⁸ The Proposed Decision also affords CPSD with considerable
2 authority to review, monitor and oversee execution of the Implementation Plan.⁵⁹ CPSD also has
3 the authority to order PG&E to reimburse the Commission for expenses up to \$15 million for any
4 contract necessary to carry out its oversight mandate under the Proposed Decision.⁶⁰

5 San Bruno supports the compliance report requirement set forth in the Proposed Decision,
6 including the detailed suite of information regarding Implementation Program progress PG&E
7 must provide in connection with the reports. San Bruno also supports extensive Commission
8 oversight of PG&E activities under the Implementation Plan, as proposed through CPSD. At the
9 same time, San Bruno remains concerned that the compliance report oversight model is
10 insufficient to ensure PG&E’s compliance with its long term Implementation Program obligations.

11 The Proposed Decision requires that compliance reports be filed each calendar quarter.
12 The majority of information PG&E is required to provide is backward looking. For these items,
13 the Compliance Report is already three months behind. There is no meaningful mechanism in the
14 Proposed Decision for monitoring PG&E’s activities in real-time, or closer thereto. Also, the
15 Proposed Decision should independently evaluate whether the Specifications for PG&E
16 Implementation Plan Compliance Reports provide sufficient information to allow CPSD to
17 independently review and understand the corporate financial impact of the Implementation Plan on
18 an ongoing basis. As part of that evaluation, CPSD should have sufficient information to consider
19 whether Implementation Plan costs are ultimately borne by stockholders, and not indirectly by
20 consumers in the form of inappropriate reductions in capital and operating expenses in other areas
of PG&E activities to compensate for the earnings impact of the Implementation Plan.

21 In an August 2011 hearing before the Assembly Committee on Accountability and
22 Administrative Review, Commission Executive Director Paul Clanon admitted:

23 We complacently fell into a ‘check the box’ style of regulation where we were going out
24 on our lines and making sure that operators complied with specific, particular rules.

25 _____
26 ⁵⁸ Proposed Decision at 88.

27 ⁵⁹ Proposed Decision at 125, Ordering Par. 8.

28 ⁶⁰ Proposed Decision at 125, Ordering Par. 9.

1 (emphasis added)⁶¹

2 Although San Bruno recognizes the value and best of intentions associated with the
3 Specifications for PG&E Implementation Plan Compliance Reports set forth in Attachment D, San
4 Bruno remains concerned that the exhaustive list of questions will end up merely serving as a
5 more complex set of boxes for the Commission to check. Under the Proposed Decision, the
6 Compliance Reports are the primary means for ensuring PG&E's compliance with Implementation
7 Plan requirements, but CPSD has express authority to order PG&E to reimburse the Commission
8 for any contract necessary to carry out the Proposed Decision's mandate.. San Bruno is concerned
9 that the Commission lacks the resources, expertise and capacity to independently analyze PG&E's
10 execution of its Implementation Plan without outside assistance. For that reason, San Bruno
11 considers Ordering Paragraph 9 of the Proposed Decision to be critical, provided that CPSD
12 engages outside consultants to assist with review, or to serve as a wholly independent auditor in a
13 timely manner.⁶²

14 While the Proposed Decision provides for extensive CPSD oversight and involvement as
15 PG&E execution of the Implementation Plan unfolds, the path for participation and monitoring is
16 less certain for the other Parties to this proceeding. The Proposed Decision simply notes that
17 Parties "may review [PG&E's Compliance Report] and may request such Commission action by
18 motion as needed"⁶³ and orders that Parties be offered "such procedural opportunities as may be
19 feasible under the specific circumstances of any instance in which CPSD is required to exercise its
20 delegated authority."⁶⁴ This does not establish any meaningful feedback loop between PG&E, the

21 ⁶¹ Wyatt Buchanan, PUC Chief promises stricter oversight of pipelines, San Francisco Chronicle,
22 August 18, 2011, available at: <http://www.sfgate.com/bayarea/article/PUC-chief-promises-stricter-oversight-of-pipelines-2334904.php>

23 ⁶² The Commission has experienced significant delays in engaging a firm to perform an audit of its
24 oversight capabilities, per NTSB recommendations. *See*, Jaxon Van Derbeken, *Post San Bruno*
25 *blast audit back on hold*, San Francisco Chronicle, October 31, 2012, available at:
26 <http://www.sfgate.com/bayarea/article/Post-San-Bruno-blast-audit-back-on-hold-3998423.php#ixzz2CNSTvcy6>. San Bruno sincerely hopes that such delays would not impede
27 CPSD engagement of consultants or outside auditors to assist CPSD with its essential task of
28 evaluating PG&E Implementation Plan progress.

27 ⁶³ Proposed Decision at 88.

28 ⁶⁴ Proposed Decision at 125, Ordering Par. 8.

1 Commission and the Parties to this proceeding. There is no guarantee that San Bruno's concerns
2 with Implementation Program execution will ever be addressed if San Bruno is forced to rely on
3 the vague channels for providing input delineated in the Proposed Decision.

4 **III. CONCLUSION**

5 For the foregoing reasons, the Commission should adopt the Proposed Decision with the
6 modifications that San Bruno has identified herein.

7 Respectfully submitted,

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12 November 16, 2012

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