

**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)

JOINT PARTIES' COMMENTS ON PROPOSED DECISION OF ALJ BUSHEY

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SUMMARY OF RECOMMENDATIONS

- Create a working group that focuses on statewide outreach issues resulting from the implementation of gas pipeline safety upgrades.
- Ensure that cost allocation remains fluid, dependent upon PG&E's full compliance with the directives ordered by the Commission.
- Conduct a series of workshops ensuring that the audit process is transparent through the process, including selection, progress made, and results.

I. Introduction

The Joint Parties' praise the Commission's attempts to focus on the technical safety of gas pipelines. In particular, the Joint Parties appreciate the efforts of ALJ Bushey and the Assigned Commissioner in tackling an emotionally and technically challenging subject matter. However, the Joint Parties urge this Commission to focus on the safety information needs of California ratepayers.

The Black Economic Council, National Asian American Coalition and Latino Business Chamber of Greater Los Angeles (hereafter referred to as "the Joint Parties") were the first parties to request party status in this proceeding on March 3, 2011.¹ The National Asian American Coalition (NAAC) is located in San Bruno and engages in local grassroots organizing, housing counseling, and small business initiatives. The Joint Parties were active in informing community members of the public participation hearing in San Bruno on this matter, and were responsible for recruiting 44 of the approximately 140 persons at the public participation hearing.² The Joint Parties have also conducted a survey of 190 ratepayers and introduced this as evidence before the Commission in this matter.³

The California Public Utilities Commission, and this proceeding in general, should naturally address issues of a highly technical nature. However, this should not cause the Commission to lose sight of those who they are entrusted and appointed to serve: California ratepayers.

¹ Joint Motion Requesting Party Status, R.11-02-019 (Mar. 3, 2011).

² A list of attendees attributed to NAAC's outreach efforts is available upon request.

³ Exhibit 22.

Because they have no gas pipeline technical expertise, the Joint Parties' role was to inject the voice of the ratepayers into this proceeding. The Joint Parties accomplished this through their testimony, filings, examination of witnesses, and also importantly through the inclusion of their ratepayer survey on gas pipeline safety, cost allocation, and community outreach issues.⁴

II. This Commission Must Heed Ratepayers More Than Ever Before

The Commission has stated in numerous instances that it is committing to adopting a “culture of safety.” The Joint Parties believe that equally important is a “culture of communication.”

The Joint Parties, along with other intervenors in this proceeding,⁵ have repeatedly urged the Commission and PG&E executives to engage with ratepayers on gas safety issues. Particularly, because many ratepayers are naturally concerned about gas pipeline safety, the Joint Parties have urged the Commission and PG&E to engage in comprehensive education and outreach to diverse groups of ratepayers on gas safety.⁶

Unfortunately, the Commission has not yet heeded the will of the ratepayers in this matter despite consistent and repeated messages to do so. In this proceeding alone, the Joint Parties have indicated this need repeatedly:

⁴ *Id.*

⁵ See Opening Brief of the City of San Bruno at 9, Opening Brief of NCIP at 48-49.

⁶ Opening Brief

- Within their direct testimony, the Joint Parties’ experts indicated: “due to the technical nature of the proceeding, the Commission has lost touch with the needs of the ordinary ratepayers in this matter.”⁷
- Within their reply testimony, the same experts indicated: “we will continue to raise the failure of these proceedings to reflect the fact that the vast majority of ratepayers in San Bruno remain confused and angry about the gas pipeline explosion.”
- In their Opening Brief, the Joint Parties indicated: “What is also required is ratepayer input into the safety process beyond what is allowed for in these highly technical and specialized proceedings before the Commission.”⁸
- In their Opening Brief, the Joint Parties devoted an entire section to the need for direct ratepayer input⁹ through a PG&E customer survey.¹⁰
- In their Opening Brief, the Joint Parties recommended conducting outreach on gas safety issues with community-based organizations¹¹ and with PG&E CEO Anthony Early.¹²

⁷ Testimony of Joint Parties’ Experts Len Canty, Jorge Corralejo, and Faith Bautista at 7.

⁸ Joint Parties’ Opening Brief at 7.

⁹ *Id.*

¹⁰ *Id.* at 11.

¹¹ *Id.* at 12-13, 15.

¹² *Id.* at 13-15. The Joint Parties note that although they realize the Commission cannot order PG&E to engage in an outreach campaign headed by Mr. Early, after the recommendations were made in this matter, Mr. Early began appearing in television commercials for PG&E in a manner similar to that which the Joint Parties described in their Opening Brief.

Yet, even at this late juncture in the proceeding, the Proposed Decision (“PD”) offered by the Commission does not even mention ratepayer views, outreach, or interaction in any meaningful way as recommended by the Joint Parties. This is especially puzzling because of the 140 ratepayers that came to the public participation hearing in this matter, over 40 were solicited by the Joint Parties.¹³ The Joint Parties clearly have strong grassroots and community connections to ratepayers. Thus, their views on these matters should be given appropriate weight by this Commission.

The ratepayers’ displeasure with the Commission in this matter is evident. After the Commission attempted to settle and/or mediate this proceeding in conjunction with three others stemming from the same incident, the Commission-appointed mediator was forced to withdraw due to public pressure.¹⁴ An online petition to remove CPUC President Peevey, which the Joint Parties do not support, was begun by San Bruno residents.¹⁵ And ratepayers are again frustrated by the delays in the process of “justice.”¹⁶

On October 15, 2012, the NAAC conducted a ratepayer survey at their annual economic development conference held in South San Francisco. The survey was completed by over 130

¹³ *Id.* at 4.

¹⁴ Jaxon Van Derbeken, *Ex-senator backs out of San Bruno blast talks*, S.F. Chron. (Oct. 26, 2012). Available at: <http://www.sfgate.com/bayarea/article/Ex-senator-backs-out-of-San-Bruno-talks-3982697.php>

¹⁵ See http://www.change.org/petitions/governor-jerry-brown-appoint-a-new-president-of-cpuc-immediately-2?utm_campaign=mailto_link&utm_medium=email&utm_source=share_petition

¹⁶ Jessica Morales, the Mother of a San Bruno victim said the negotiation process employed, “... basically opens the grave to my daughter and all the eight victims who died that day.” *San Bruno victims, Assemblyman Hill call on CPUC to reopen hearings on PG&E fines*, KTVU.com (Oct. 11, 2012). Available at: <http://www.ktvu.com/news/news/local-govt-politics/san-bruno-victims-assemblyman-hill-call-cpuc-reope/nSbSN/>

participants. 84% of respondents indicated that their utility had never contacted them with any information aside from their utility bill.¹⁷ 72% of respondents indicated that they would give PG&E a grade of “C” or lower.¹⁸

At this point, the lack of any mention of ratepayer’s views, attitudes, or voice by this Commission might be construed by many as a denial of ratepayers’ informational needs.

Recommendation:

- The Joint Parties’ urge the Commission to heed ratepayers’ concerns and adopt the following language:

“The Commission recognizes the crucial need for outreach and education on issues resulting from the pipeline explosion in San Bruno, as well as the Pipeline Safety Enhancement Plan (PSEP). Therefore, the Commission mandates the creation of a working group on statewide outreach issues resulting from the implementation of gas pipeline safety upgrades. This working group will focus on issues of ratepayer outreach, ratepayer research, and the best methods for communication to all of California’s diverse ratepayer populations.”

- The Joint Parties reiterate the recommendations for outreach made in their Reply Brief:¹⁹

¹⁷ 112 of the 134 participants indicated no one from their utility had contacted them aside from their utility bill.

¹⁸ 94 of 130 respondents indicated they would give PG&E a “C,” “D,” or “F” grade.

¹⁹ Reply Brief of the Joint Parties at 8-9.

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. ²⁰ 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 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.”

III. Cost Recovery & Allocation

The Joint Parties are pleased that the Commission has limited the ratepayer cost of PGE&E’s Pipeline Safety Enhancement Plan (PSEP).²¹ Similarly, the Joint Parties agree with the

²⁰ 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.

²¹ PD at 3.

Commission's decision to limit the rate of return on equity from 11.35% to 6.05% on "all safety enhancement capital expenditures... for five years."²²

In their Reply Testimony, the Joint Parties indicated:²³

The Joint Parties emphatically support these arguments and analysis, and have recommended that a minimum of 75% of the cost of safety upgrades be borne by a combination of shareholders and/or executives.

Similarly in the Results of the Joint Parties' Ratepayer Survey"

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.²⁴

Similarly, in the October 15th survey conducted by the NAAC, 79% of respondents indicated that the utility company should solely pay for safety mistakes made by management.²⁵

Although the Commission's decision does not allocate costs strictly in accordance with the Joint Parties' recommendations, the total PSEP costs allocated to the ratepayers is 36%.²⁶ This is consistent with the Joint Parties' recommendations that PG&E should bear a substantial portion of the costs associated with the PSEP, as well as recommendations from many other

²² *Id.* at 4.

²³ Exhibit 110, pg. 6 - 7.

²⁴ Exhibit 109, pg. 8-9.

²⁵ 103 of the 132 respondents indicated that solely the company should pay for safety mistakes made by management.

²⁶ PD at 5.

parties, including TURN, DRA, the City of San Bruno, and the City and County of San Francisco.²⁷

Recommendation:

- The Joint Parties urge that the cost allocation remain fluid insofar as PG&E must fulfill its commitments in a timely and comprehensive manner. The Joint Parties recommend that the Commission retain the option of allocating more costs to PG&E shareholders as a response should PG&E fail to effectively and promptly comply with its new safety directives. This is consistent with the Joint Parties recommendation in their Opening Brief.²⁸

IV. The Need for Commission-Supervised Audits

The Joint Parties are particularly supportive of the Commission’s decision to require independent Commission-supervised financial and management audits of PG&E.²⁹ However, no further details on the financial aspect of this audit were given in the PD.³⁰

The Joint Parties urge this Commission to create a workshop process in order to facilitate the best process for opening a request for proposals for this audit and/or selecting the auditor. The

²⁷ All these parties made varying recommendations on cost allocation that excluded some PG&E projected costs.

²⁸ The Joint Parties’ Opening Brief indicated that “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.”

²⁹ D.12-04-010.

³⁰ Please note, there were several mentions of the management audit of gas safety personnel, no further information was given on the ordered financial audit.

Joint Parties have recommended on numerous occasions that the Commission avoid usage of Deloitte and Touche and the other “Big Four” CPA Firms tainted by the Public Company Accounting Oversight Board finding as to lack of independence from management.³¹

Thus, the Joint Parties recommend that the Commission hold a series of workshops on this issue. A preliminary workshop would address appropriate CPA firms and soliciting proposals in an RFP process. An intermediate workshop would update participants on the selection process utilized and the progress of the chosen firm midway throughout their audit. Finally, a third workshop on non-confidential findings would complete the series, ensuring public confidence in the ultimate results.

Recommendations:

- Regarding the upcoming independent financial audit managed by the Commission, the Joint Parties recommend the Commission hold a preliminary workshop to ensure that the financial auditing company contains no conflicts of interest and no negative history before federal financial regulators, such as the Public Company Accounting Oversight Board.
- The Commission should enact a series of workshops updating the public and the parties involved as to the financial audit process, progress, and results.

V. Conclusion

³¹ This includes the petition for rulemaking on this issue, P.12-02-016, as well as the Joint Parties’ cross examination of Mr. Bottorff, the Joint Parties’ Motion to Compel Testimony of PG&E’s Financial Audit Expert, and the Joint Parties’ Opening Brief at 19 – 23.

The Joint Parties support the Commission's 36% cost allocation to ratepayer funds. However, the Joint Parties continue to criticize the Commission's lack of interest in reaching out to ratepayers on issues of fundamental safety. The Joint Parties urge the Commission to include the informational needs of the ratepayers in the final decision, in addition to the ratepayers' safety needs. Finally, the Joint Parties believe the Commission has taken a very positive step on the issue of independent audits and looks forward to engaging in a robust process around all of these issues.

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Respectfully submitted,

/s/Robert Gnaizda

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/s/ Shalini Swaroop

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APPENDIX A

Proposed Modifications to Findings of Fact and Conclusions of Law

Findings of Fact

[insert] 8. PG&E must improve its efforts to communicate gas safety information to its ratepayers.

Conclusions of Law

[insert] 17. It is reasonable for the Commission for the Commission to revisit the cost allocation issues raised in this proceeding at a later time if PG&E has not complied with its obligations mandated in this decision.