

**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 COMMENTS OF THE CITY OF SAN BRUNO IN RESPONSE TO COMMENTS
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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I. INTRODUCTION

Pursuant to Rule 14.3 of the California Public Utilities Commission ("Commission") Rules of Practice and Procedure, the City of San Bruno ("San Bruno") submits the following comments in response to the opening comments filed on November 16, 2012 concerning 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*.

As set forth in San Bruno's opening comments, San Bruno supports those aspects of the Proposed Decision that underscore the urgent need for safety improvements and limit Pacific Gas and Electric Company's ("PG&E") recovery of Pipeline Safety Enhancement Plan (the

“PSEP”) costs from customers.¹ PG&E customers should not shoulder the financial burden of PG&E’s past mismanagement.

San Bruno’s opening comments also recommend modifying the Proposed Decision to enhance its precedential value so that it will serve as a deterrent against PG&E making the same reckless judgments related to natural gas transmission system investment and safety that it has made in the past.² The facts set forth in the Proposed Decision should be accurate and complete, and therefore must include a more extensive discussion of PG&E’s shift away from proactive investment in its natural gas system towards emphasis on financial performance.³ In addition, the Proposed Decision should adopt rigorous explanations for each aspect of PG&E cost recovery that is either adopted or rejected.⁴ The Proposed Decision does not define its “scope and magnitude” justification for rejecting full disallowance. Its rejection of full disallowance based on PG&E’s “belated timing” in performing safety improvements also establishes a dangerous precedent.⁵ The Proposed Decision should also be modified to explain why PG&E’s Return on Equity (“ROE”) reduction should be limited to five (5) years.⁶ In addition, the Proposed Decision should engage in an independent evaluation of the PSEP, including PG&E’s “decision tree” and automated valve proposals.⁷ Finally, the Proposed Decision should establish a robust oversight mechanism to ensure that PG&E properly executes the PSEP.⁸

In these reply comments, San Bruno respectfully requests that the Commission: (1) expedite installation of fully automated valves now, rather than defer consideration of these essential safety tools until the next Rate Case;⁹ (2) recognize the need for robust oversight of PG&E’s PSEP and reject PG&E’s “alternative reporting proposal” and recommended changes to Attachment D’s compliance reporting requirements; (3) expressly reject PG&E cost recovery

¹ Comments of the City of San Bruno on the Proposed Decision (“San Bruno Opening Comments”) at 2.

² See, e.g. San Bruno Opening Comments at 2-3.

³ See, e.g. San Bruno Opening Comments at 3.

⁴ See, e.g. San Bruno Opening Comments at 4-13.

⁵ See San Bruno Opening Comments at 8-12.

⁶ San Bruno Opening Comments at 13.

⁷ San Bruno Opening Comments at 14-15.

⁸ San Bruno Opening Comments at 16-18.

⁹ Use of the capitalized term “Rate Case” is intended to refer to PG&E’s GT&S Rate Case, unless otherwise noted.

arguments related to 2012 costs, reduced ROE, and the Gas Transmission Asset Management Program (“GTAM”); and (4) require that the pipeline depreciation extension from forty-five (45) to sixty-five (65) years be studied further.

II. DISCUSSION

A. Expedite Fully Automated Valve Installation Now, Rather than Defer Consideration to the Next Rate Case.

The time to address PG&E’s wholly inadequate response time to natural gas leaks and explosions is now, not the next Rate Case. The Proposed Decision’s vague deferral of the ASV issue until the next Rate Case¹⁰ essentially allows parties that oppose ASV installation to rely on lengthy policy and technical deliberations to delay necessary action to improve PG&E’s response time indefinitely. In the meantime, people who must continue to reside and work on, or in close proximity to natural gas pipelines remain at risk.¹¹

San Bruno insists that automated shut-off valves (“ASVs”) be installed on pipelines in all high consequence areas (“HCAs”), including San Bruno, and that the Commission order PG&E to vet and undertake an ASV pilot program¹² within six (6) months of the issuance of the Commission’s decision. The ASV pilot program mandated by the Commission must be specifically calculated to fully resolve any remaining policy and technological issues associated with the deployment of ASV devices and pave the way for ASVs, or their true equivalent in terms of response time capability, to be deployed by PG&E and operational in all HCAs in the utility’s service territory on an expedited basis in accordance with a specific timeline approved by the Commission.

Remote control valves (“RCVs”) are not ASV equivalents. Unlike ASVs that close automatically, RCVs have the potential to introduce elements of operator error and delay

¹⁰ See Proposed Decision at 79.

¹¹ See San Bruno Opening Comments at 16 (citing two recent fires in the Bay Area where PG&E took upwards of ninety (90) minutes to cut the flow of gas); NTSB Report at 57 (citing reports that “have indicated that a prolonged gas-fed fire leads to increased property damage.”); and NTSB Report at 80 (citing 1970 NTSB report that “concluded that a large proportion of the damage from several recent pipeline accidents could have been minimized or eliminated if the time between failure and shutdown had been reduced.”).

¹² See TURN Opening Brief in R.11-02-019 at 53-58 (recommending options for facilitating testing and deployment of ASVs); TURN Opening Comments at 18.

concerning whether a rupture occurred, where it occurred and initiation of valve closure.¹³ Given these critical differences, San Bruno takes this opportunity to amplify the view set forth in opening comments filed by the Utility Reform Network (“TURN”), that PG&E’s valve program “relies excessively on [RCVs] that PG&E has admitted cannot be activated quickly enough to prevent death and significant destruction in the event of a rupture.”¹⁴ TURN’s opening comments properly cite key admissions elicited by San Bruno from PG&E witness Slibsager in this regard.¹⁵ PG&E Witness Slibsager acknowledged that cutting the flow of gas using an RCV had wide variability that could range from “as short as 25 or 30 minutes and...as long as maybe an hour and a half.”¹⁶ This does not represent a marked improvement over the ninety-three (93) minute delay to stop the flow of gas and isolate the rupture following the PG&E Line 132 explosion in San Bruno on September 9, 2010.

B. Robust Oversight of PG&E’s PSEP is Essential

The National Transportation Safety Board (“NTSB”) Report issued in the wake of the San Bruno explosion expressly stated that the “ineffective enforcement posture of the [Commission] permitted PG&E’s organizational failures to continue over many years.”¹⁷ The Independent Review Panel (“IRP”) engaged by the Commission in this proceeding similarly acknowledged that “[the Commission] must summon up the courage and resources to monitor the prudence of the operator’s program, its effectiveness and analysis of the program results to manage the system risks.”¹⁸ The IRP Report also recommended that the Commission make the “the commitment to move to more performance-based regulatory oversight of utility pipeline safety.”¹⁹

The detailed compliance report that PG&E must file pursuant to Attachment D to the Proposed Decision is an important first step towards remedying the anemic Commission oversight identified in both the NTSB and IRP Reports. Beyond compliance reports, San Bruno’s opening comments urged the Commission to clarify stakeholder roles and formalize the

¹³ See, e.g. discussion in TURN Opening Brief in R.11-02-019 at 46-52.

¹⁴ See Opening Comments of TURN at 16.

¹⁵ See Opening Comments of TURN at 16.

¹⁶ See Opening Comments of TURN at 16.

¹⁷ NTSB Report at 123.

¹⁸ IRP Report at 98-99.

¹⁹ IRP Report at 99.

mechanisms by which parties and the public can engage in timely oversight of the PSEP's progress.²⁰ The Proposed Decision only offers "parties to this proceeding, and the public such procedural opportunities as may be feasible under the specific circumstances of any instance in which CPSD is required to exercise its delegated authority."²¹ This is not enough. Ongoing stakeholder participation must be included as an integral part of the oversight process. The Commission has formalized stakeholder participation before, most notably with establishment of a procurement review group ("PRG") structure to help oversee and provide feedback in connection with the return of investor owned utilities to the energy procurement business following the energy crisis.²² Considering the enormous safety implications of the PSEP as compared to electric procurement decision-making, it seems inappropriate that the former has no meaningful format for real-time stakeholder input, while the latter has had a PRG structure in place for full vetting of utility decision making on an ongoing basis for roughly a decade.

San Bruno also takes this opportunity to support the opening comments from the Division of Ratepayer Advocates ("DRA") and the City and County of San Francisco ("CCSF") recommending that the Commission consider engagement of an independent monitor;²³ provided however, that the appointment of any such independent monitor should not be so process laden as to delay or impede the monitor's appointment or capacity to function in an oversight role throughout the first phase of the PSEP.

Rather than embrace the preliminary steps towards positive changes in regulatory culture set forth in the Proposed Decision, PG&E resists them. San Bruno is deeply troubled by PG&E's characterization of the oversight process in its opening comments, which betrays a shocking lack of awareness concerning the need for PG&E, the Commission and the Consumer Protection and Safety Division ("CPSD") to fundamentally reconfigure a historically ineffective regulatory relationship. PG&E's opening comments are replete with examples of the utility's tone deaf response to the Commission's relatively minor attempt to exert some modicum of oversight authority in the form of compliance reporting. PG&E pledges to work with CPSD

²⁰ San Bruno Opening Comments at 18-19.

²¹ See Proposed Decision at 125, ordering par. 8(E).

²² See Decision 02-10-062 at Appendix B (requiring consultation with the PRG for monthly advice letters that cover transactions conforming to the "approved procurement plan.").

²³ See Opening Comments of DRA at 14-15; Opening Comments of CCSF at 10.

“regarding the *appropriate* level of oversight”²⁴ and refers to the Proposed Decision’s compliance reports as “a costly and burdensome distraction.”²⁵ PG&E’s disdainful comments concerning the Proposed Decision’s compliance report requirement are further reinforced by the utility’s “alternative reporting proposal” and recommended changes to Attachment D.²⁶

Under no circumstances should PG&E’s “alternative reporting proposal” be given serious consideration. It reduces the utility’s reporting requirement to providing the Energy Division and CPSD with copies of second hand reports of unknown content prepared for utility executives, rather than for regulators actually charged with the oversight obligation. Furthermore, the report content “continue[s] to evolve,”²⁷ based in part on PG&E executive, not Commission input. The fact that the reports PG&E proposes to recycle here may be “consistent with common industry practices”²⁸ is of no consequence, since that has no bearing on whether the information provided serves to equip the Commission, CPSD, the parties, and ideally an independent monitor, with the requisite facts they need to monitor PG&E’s execution of the PSEP. Should PG&E wish to supplement its Attachment D compliance reporting by leveraging these preexisting reports, San Bruno has no objection; however, these reprocessed reports originally drafted for an executive audience are no substitute for the detailed, mandatory compliance reporting obligation established by the Proposed Decision. Not only that, but such an approach would only serve to confuse whether PG&E answers to its executives and shareholders or the Commission when it comes to execution of the PSEP.

PG&E’s proposed modifications to Attachment D are similarly troubling. Not disclosing the identity of outside contractors that perform PSEP work²⁹ undermines the transparency and accountability that the Proposed Decision attempted to embed in the utility’s compliance reports. Given the flexibility PG&E has to engage outside contractors, elimination of the identification requirement could leave a significant portion of PSEP activities shielded from stakeholder scrutiny. PG&E’s proposal to delay reporting on incomplete and substituted projects to the final

²⁴ PG&E Opening Comments at 23.

²⁵ PG&E Opening Comments at 22.

²⁶ PG&E Opening Comments at 22-23.

²⁷ PG&E Opening Comments at 22.

²⁸ PG&E Opening Comments at 22-23.

²⁹ PG&E Opening Comments at Appendix B, no. 11.

quarterly report³⁰ is also problematic. PG&E should be required to report such changes in real time to constrain the utility's ability to play "shell games" with PSEP funds and projects, and to avoid the kinds of resource shuffling PG&E engaged in under its Gas Pipeline Replacement Plan. Finally, San Bruno is concerned about extending the time for compliance reporting from thirty (30) to ninety (90) days,³¹ since the parties already start three (3) months behind in monitoring the real-time progress of the PSEP under the timeline set forth in the Proposed Decision.

C. The Commission Should Reject PG&E Cost Recovery Arguments

1. A Reduction in PG&E's ROE is not Contrary to the Public Interest.

PG&E claims the Proposed Decision's reduction in ROE is a "punitive action" that is "contrary to the public interest."³² PG&E's support for both contentions is sparse. PG&E claims "punishment using ROE is not appropriate in this case where future safety and reliability investments are the focus,"³³ yet PG&E leaves this assertion unsupported by precedent, and fails to acknowledge similar instances where the Commission has used an ROE reduction in instances involving misconduct.³⁴

PG&E's "contrary to the public interest" contention, which presumably refers to the claim that a ROE reduction would "make it more difficult and costly for PG&E to raise capital,"³⁵ rests on similarly unsound footing. In an abstract sense, reducing ROE may cause equity investors to insist on a higher return; however, PG&E cites to no evidence that in practice, in this instance, a ROE reduction for this program alone, for the specified period of time, or longer, would have a materially adverse effect on PG&E's overall financial health, and on customers in particular. As

³⁰ PG&E Opening Comments at Appendix B, no. 26.

³¹ PG&E Opening Comments at 23.

³² PG&E Opening Comments at 3.

³³ PG&E Opening Comments at 15.

³⁴ PG&E Opening Comments at 15; Cf. TURN Reply Brief in R.11-02-019 at 7 (citing *Re California Water Service Co.*, D.04-07-033, 2004 Cal PUC Lexis 329, in which a "fine and ROE reduction was imposed for failure to obtain required CPUC authorization for acquisition of water systems."); Northern California Indicated Producers ("NCIP") (Amended) Opening Brief at 27 (citing D.82-12-055, in which "the Commission decreased SCE's ROE for its entire rate base by 10 basis points for two years for failure to pay qualifying facility (QF) prices based on full avoided costs.").

³⁵ PG&E Opening Comments at 15.

presented by PG&E, negative impacts on PG&E's financial health, and any quantum leap by the utility to characterize vague fears of financial impact as somehow contrary to the public interest, represents nothing more than speculation. If PG&E has quantified the increased "difficulty" and "costs" and the impact of that on the public interest, it should identify them with sufficient specificity for the parties to this proceeding to debate.

Furthermore, PG&E neglects essential reasoning set forth in the *Hope* decision.³⁶ The *Hope* Decision and its progeny essentially require that "the return to the equity owner [is] commensurate with returns on investments in other enterprises having corresponding risks," and that the return be "sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital."³⁷ As noted above, PG&E has presented nothing beyond mere speculation to suggest that the ROE reduction in the Proposed Decision would run afoul of the *Hope* standard. In addition, PG&E fails to acknowledge that the *Hope* Decision also finds that it is the result reached, not the method used that should be the measure of an adequate return.³⁸

2. Disallowance of 2012 Costs is Appropriate

Disallowance of 2012 costs is appropriate pursuant to the Commission's core ratemaking principles. The revenues authorized in a utility's rate case are designed to satisfy the cost of providing service and utility operations over the time period covered by the rate case.³⁹ Without a memorandum account, which "is a recognized exception to the rule against retroactive ratemaking,"⁴⁰ PG&E is at risk of not recovering costs when it makes such a request in between rate cases. PG&E made its request for recovery of 2012 costs in between general Rate Cases. PG&E erroneously assumes it is entitled to a memorandum account, because of "the game changing nature of the new regulatory requirements established in D.11-06-017."⁴¹ In San Bruno's view, the regulatory requirements imposed on PG&E in this proceeding are neither

³⁶ *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).

³⁷ *Hope Natural Gas Co.* at 603.

³⁸ See *Hope Natural Gas Co.* at 602 ("[I]t is not theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unreasonable, judicial inquiry . . . is at an end.").

³⁹ See Proposed Decision at 84.

⁴⁰ See Proposed Decision at 83.

⁴¹ PG&E Opening Comments at 11.

“game-changing,” nor “new” in light of PG&E’s ongoing obligations to operate a safe system pursuant to Section 451 of the Public Utilities Code. Instead, the work PG&E completed in 2012 is work PG&E should have been conducting all along.

In addition, San Bruno shares TURN’s concerns regarding certain PG&E miscalculations of PSEP costs and urges the Commission to remedy the mistakes identified.⁴²

3. PG&E Should Distinguish Between Upgrades and Remedial Efforts Within the GTAM

PG&E argues that the GTAM is “not a remedial effort to ameliorate any past record keeping deficiencies, but instead is a significant technology upgrade that will benefit ratepayers far into the future.”⁴³ Consumers should not be left to shoulder increased costs associated with more complex or expensive technology necessitated by PG&E’s past mismanagement. The Commission should insist that PG&E demonstrate which aspects of the GTAM are in fact a “new” and “incremental” expense above and beyond the basic tasks associated of managing records, which PG&E already had the obligation to maintain.

4. A Full Disallowance of PG&E Costs Should be Placed in Proper Context

Should the Commission elect to impose a full disallowance on PG&E, the utility’s revenue requirement would be \$277.8 million less than authorized in the Proposed Decision.⁴⁴ This amounts to \$14.0 million in 2012, \$103.8 million in 2013, and \$160.0 million in 2015. PG&E’s Annual Report discloses gas and electric revenues of \$14,951 million for 2011, which includes annual gas revenue of \$3,350 million.⁴⁵ Total non-depreciated gas and electric assets were \$49,567 million, and the depreciated assets were valued at \$33,655 million.⁴⁶ PG&E’s annual report also discloses multiple risk exposures, including costs related to the San Bruno

⁴² See TURN Opening Comments at 2-3 (describing PG&E’s “location of pressure test records for more than fifteen (15%) of the total miles approved in the [Proposed Decision].”); and TURN Opening Comments at 4-5 (discussing erroneous inclusion of “90% of Class 2 miles” in the PSEP, costing \$233 million).

⁴³ PG&E Opening Comments at 17.

⁴⁴ See Proposed Decision at 3.

⁴⁵ See PG&E Corporation and Pacific Gas and Electric Company 2011 Annual Report (“PG&E 2011 Annual Report”) at 10.

⁴⁶ See PG&E 2011 Annual Report at 51.

explosion.⁴⁷ Qualitatively, and in the context of these other exposures, it appears as though an additional \$277.8 million in unrecovered revenue requirement over the 2012-2014 period, while significant, is certainly not disproportionate relative to PG&E's other exposures.⁴⁸

D. The Commission Should Revisit the Pipeline Depreciation Extension (45 to 65 years)

The Proposed Decision recommends extending the depreciable life for gas transmission mains from forty-five (45) years to sixty-five (65) years.⁴⁹ San Bruno is concerned that extension of the financial life of the pipeline will create an incentive for PG&E to lengthen the service life of the pipeline beyond a safe term. San Bruno supports deferring consideration of this issue to PG&E's next Rate Case, where all the potential factors that could influence the proper service lifetime of the pipeline (e.g. pipeline material, climate, soil conditions) can be considered in adequate detail.

III. CONCLUSION

For the foregoing reasons, the Commission should adopt the Proposed Decision with the modifications that San Bruno has identified in its opening and reply comments.

Respectfully submitted,

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⁴⁷ See PG&E 2011 Annual Report at 38-49.

⁴⁸ See also, NCIP opening brief at 27-29.

⁴⁹ Proposed Decision at 81.