From: Prosper, Terrie D.
Sent: 1/9/2014 9:26:39 AM
To: Cherry, Brian K (/O=PG&E/OU=CORPORATE/CN=RECIPIENTS/CN=BKC7)
Cc:
Bcc:
Subject: RE: Jan 8 Energy Daily Op Ed - Proposed CPUC Penalty raises dangerous precedent

Thanks!

-------- Original message --------
From: "Cherry, Brian K" <BKC7@pge.com>
Date:
To: "Prosper, Terrie D." <terrie.prosper@cpuc.ca.gov>
Subject: FW: Jan 8 Energy Daily Op Ed - Proposed CPUC Penalty raises dangerous precedent

FYI

From: Cooper, Shawn
Sent: Tuesday, January 07, 2014 8:15 PM
To: Earley, Anthony; Johns, Christopher; Pruett, Greg S; Bottorff, Thomas E; Stavropoulos, Nickolas; Soto, Jesus (SVP); Park, Hyun; Hartman, Sanford (Law); Williams, Geisha; Fitzpatrick, Tim; Lavinson, Melissa A; Bedwell, Ed; Kiyota, Travis; Cherry, Brian K (Utility) (BKC7@pge.com); Garrett, Ezra; Horner, Trina
Cc: Hogle, Jessica; Foster, Christopher; Miller, Matthew; Hertzog, Brian; Key, Katie; Zigelman, Jacob; King, Mary K.; Allen, Meredith; Snapper, Greg; Stephens, Keith; Foley, Beth; Kauss, Kent; Souvall, Andrew; Cohen, Jeff; Medefesser, Rick; Abad Gresham, April; Martinez, Susie; Hurley, Lisa M.
Subject: Jan 8 Energy Daily Op Ed - Proposed CPUC Penalty raises dangerous precedent

Officers:

The following Op-ed, "*Proposed CPUC penalty on San Bruno accident raises dangerous precedent*," by former state regulators and regional leaders Jim Kerr and Paul Afonso will appear in tomorrow's print edition of Energy Daily.

A PDF copy of that edition is attached. The article can be found on page 3.

Shawn

Energy Daily

January 8, 2014

Proposed CPUC penalty on San Bruno accident raises dangerous precedent

COMMENTARY

BY JAMES Y. KERR and PAUL G. AFONSO

Eight people died in 2010 when an explosion erupted from a high-pressure 30-inch gas pipeline in the San Francisco suburb of San Bruno. Now, as our former colleagues on the California Public Utility Commission (CPUC) work to set an appropriate fine for the utility responsible for this tragedy, they are being guided by principles of modern utility regulation that trace their roots to the Progressive Era.

Regulators in California have a tradition of responding to tough circumstances and leading our nation in addressing the most difficult of regulatory challenges. In the San Bruno case, however, the CPUC appears to be on the verge of levying penalties that are so unreasonable, they could set a dangerous precedent if other states choose to follow the agency's example.

The CPUC staff has recommended the commission impose a $2.25 billion penalty on Pacific Gas & Electric Co. (PG&E) and disallow the $2.215 billion already spent by PG&E on pipe safety upgrades as an offset. As a result, credit rating agencies estimate the total financial impact on the company and its shareholders at about $4 billion. By comparison, the largest fine ever levied in a pipeline accident was $101.5 million.

America's regulatory tradition sees fines in a different light from either the civil or criminal justice systems, which are inherently backward-looking and designed either to compensate those directly harmed or to punish those who behaved improperly. Instead, regulatory fines reflect, in large part, judgments about how best to serve the public interest in the future.

Regulators thus focus on the service that utilities can deliver to customers and communities tomorrow. They work to ensure that the utilities can attract capital at a reasonable cost—a necessary condition that a utility must meet if it is to provide affordable, reliable and safe service over the long term. Such regulatory principles would lead the CPUC to endeavor to maintain or improve the investment climate in California in ways that directly benefit customers and communities served by the state's utilities.

Fines still have a place in this regulatory tradition. Regulators might assess fines to achieve two goals: 1) to get the company to focus on its problems with a sense of urgency, and 2) to get the company to improve its culture of safety. But this process of setting an appropriate regulatory fine is a process of striking the right balance.

A small fine for past actions or omissions might tempt utility managers to return to "business as usual." However, when a penalty crosses the line between "constructive" and "unreasonable," the regulators may inadvertently make a bad situation worse.

An excessive fine can lead to unintended consequences that compound past problems and ultimately harm the customers whose interests should be paramount. If a fine is large enough to be financially crippling, access to capital will tighten and capital will become more expensive, raising rates for customers and potentially forcing choices between safety on the one hand and reliable and affordable service on the other. Such a fine can create the risk that the operator of aging infrastructure lacks the resources necessary to upgrade the infrastructure and the safety practices that caused the problem in the first place.

These concerns are not mere conjecture on our part. Reacting to the proposal by the CPUC staff, two credit-rating agencies—Moody's and Standard & Poor's—stated that such a penalty, if adopted, would prompt them to reassess the risks for regulated entities across California, creating repercussions far beyond PG&E.

PG&E, for its part, has accepted responsibility for the tragedy in San Bruno. It has reached civil settlements with the victims, replaced scores of executives and managers and begun to invest heavily in safety and new infrastructure. Yet, it remains a regulated entity, and thus it remains obligated to serve effectively millions of Californians today and in the future. Any fine should recognize its prospective obligations and be a constructive influence on a safer future for all of its customers.

We are united in our hope that the century-old principles of constructive regulation will provide guidance as California's commissioners balance the need to address the problems of the past while ensuring that PG&E emerges with the focus, culture and resources necessary to provide affordable and safe energy in the future.

—James Y. Kerr II served on the North Carolina Utilities Commission and is former president of the National Association of Regulatory Utility Commissioners and the Southeastern Association of Regulatory Utility Commissioners. He is with

McGuireWoods LLP in Raleigh, N.C.

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