

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

Order Instituting Rulemaking to Develop a Risk-Based Decision-Making Framework to Evaluate Safety and Reliability Improvements and Revise the General Rate Case Plan for Energy Utilities.

FILED
PUBLIC UTILITIES COMMISSION
NOVEMBER 14, 2013
SAN FRANCISCO, CALIFORNIA
RULEMAKING 13-11-006

**OPENING COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY (U902M)
AND SOUTHERN CALIFORNIA GAS COMPANY (U 904G)**

KEITH W. MELVILLE

Attorney for:
SAN DIEGO GAS & ELECTRIC COMPANY and
SOUTHERN CALIFORNIA GAS COMPANY
101 Ash Street, 12th Floor
San Diego, California 92101
(619) 699-5039 telephone
(619) 699-5027 facsimile
kmelville@semprautilities.com

January 15, 2014

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

Order Instituting Rulemaking to Develop a Risk-Based Decision-Making Framework to Evaluate Safety and Reliability Improvements and Revise the General Rate Case Plan for Energy Utilities.

FILED
PUBLIC UTILITIES COMMISSION
NOVEMBER 14, 2013
SAN FRANCISCO, CALIFORNIA
RULEMAKING 13-11-006

**OPENING COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY (U902M)
AND SOUTHERN CALIFORNIA GAS COMPANY (U 904G)**

Pursuant to the direction and schedule set forth in Order Instituting Rulemaking (“OIR” or “Rulemaking”) 13-11-006, San Diego Gas & Electric Company (“SDG&E”) and Southern California Gas Company (“SoCalGas”) provide their opening comments on the issues discussed in Sections 4.1 through 4.6 of the Rulemaking. Each group of issues is organized as a separate sub-heading of these comments.

Introduction

SDG&E and SoCalGas¹ believe that the focus of the Commission in this proceeding should be to undertake a process that will over time result in a better understanding of risk, risk mitigation, and how those should be reflected in ratemaking in a manner that is consistent with other important goals such as safety, reliability, environmental stewardship, and reasonable rates. In the end, the utilities are ultimately responsible for the safe and reliable operations of their systems. Changes to the cyclical ratemaking process that may affect the operations of the utilities must not constrain or prohibit the utilities from reallocating expenses to activities and projects that the utility, in its best judgment, determines are necessary for public and worker safety and for system reliability.

¹ SDG&E and SoCalGas reserve the right as separate utilities to submit future comments or otherwise participate in this Rulemaking as separate entities.

The Rulemaking at this point addresses several “tracks” which could be loosely categorized as substance (better identifying and incorporating risk analysis into the General Rate Case (“GRC”) process) and process (Rate Case Plan (“RCP”)-related). While not diminishing the procedural issues, the Commission should consider separating these in order to expedite and focus the more important substantive issues. Indeed, by focusing on the substantive issues first, parties and the Commission may avoid expending unnecessary resources on process issues that may need to be revisited after the substantive issues are better understood; and with the parties’ input, the Commission has determined how to better incorporate risk identification and mitigation into the GRC process.

The groundwork necessary for this Rulemaking (including a reformation of the RCP) will be best served through a series of workshops to establish the definitions, scope and limitations of the risk management concepts, as well as the requirements of a new RCP. There will likely be widely divergent perspectives on these items, and reaching consensus among the utility, regulatory, and consumer advocate interests will require much participation.

As for the process itself: SDG&E and SoCalGas believe that the primary problem with the Commission’s RCP is that it is not enforced and (accordingly) the primary problem with GRCs is that they are not processed on a timely basis. As requested, SDG&E and SoCalGas herein provide responses to the questions asked in the OIR that primarily focus on process issues. But we urge the Commission to take the necessary time to focus on the substantive issues raised in the OIR.

We believe that the following additional points should be considered in this Rulemaking:

- The utilities, in the Commission ratemaking process, do not have a common or generally-accepted methodology for the presentation and analysis of risk-aware funding requests. The adoption of the lexicon, practices and procedures of risk-aware analyses into the ratemaking arena will be an evolutionary process, not a quick fix.

- The Commission should develop or adopt a common set of definitions for terms such as risk, safety, prioritization, optimization, acceptable level, or other terms of art as may be used in the discipline of risk mitigation.
- The future role of the Commission’s Safety and Enforcement Division (“SED”) in general rate case proceedings (whether as advisor, party, etc.) has been an active topic of discussion post-San Bruno (without resolution). This proceeding would be a good venue to finally address it.
- For any criteria that may be considered for adoption, SDG&E and SoCalGas strongly support criteria that are objective rather than subjective, that is, measurable by pre-defined values.

Responses

4.1. Process to Provide Appropriate Analysis and Testimony on Safety and Risk Management

- 1. Would developing a review process similar to the current CEQA² review process, where internal review by the Commission staff is supplemented by technical review conducted by consultants, be effective, adequate, and desirable?*

RESPONSE: A CEQA-type supplemental technical review by consultants is not practical in GRC proceedings. In a CEQA review process, employing outside experts to assess environmental impacts of a construction project may have some merit because comprehensive expertise over technical areas (e.g., noise mitigation, traffic studies) may not reside either at the Commission staff or the utility. But even there, a good idea in concept can be less successful in practice. For example, the “PEA³ Checklist” -- which requires the utilities to provide detailed environmental information in connection with an application and was designed to expedite the process -- has ratcheted up over time to the point that utilities are now required to provide the equivalent of an Environmental Impact Report (“EIR”). This has resulted in extending significantly the time frames for project planning and implementation. Likewise, having the utilities and Energy Division

² CEQA stands for California Environmental Quality Act.

³ PEA stands for Proponent’s Environmental Assessment.

separately hire third party professionals to prepare PEAs, EIRs, and other documents in support of CEQA has resulted in additional delay and duplication.

To the extent consultants would be helpful in educating the Commission and its staff about risk mitigation, or the technical aspects of risk analysis, SDG&E and SoCalGas support their use in this OIR, and potentially in GRCs in the near future. But the consultant participation should be directed at addressing methodologies, and analysis of the utilities' adoption and utilization of risk-aware methods, and not directed toward a re-ordering of project prioritization that may be proposed by the utilities. As stated above, the utilities are ultimately responsible for the safe and reliable operations of their systems. Consultant recommendations should not constrain or prohibit the utilities from reallocating expenses to activities that the utility, in its best judgment, determines are required.

Moreover, the Commission should avoid setting up a framework in which consultants are hired in every GRC proceeding for the rest of time. If the Commission chooses to utilize consultants in this OIR process, it should also provide for means to bring the expertise in-house at the Commission staff through education and experience.

4.2 Comprehensive Review of Safety, Reliability, Security, and Risk Management in the Utilities' GRC Applications

- 1. How should the Commission develop a new RCP for energy utilities in a way that will link strategy and goals to resource allocation? What kind of reporting requirements are needed in order to identify the framework, method, practices and activities used in assessing risk of safety, security, and/or reliability deficiencies and linking it to the requested funding in a GRC?*

RESPONSE: The RCP itself is a map, a schedule, and a set of content requirements; as such it is not likely to directly link strategy, goals, and resource allocation – that is a larger task that must be constantly be a focus of the Commission when it considers proposed decisions and adopts final decisions that were developed using the RCP as a framework. Reporting requirements are also only one tool in the Commission's arsenal when it comes to adequately funding safe and reliable utility service. The kind of reports ordered and the amount of data they contain are not as important as how that information is used. Indeed, the Commission is already looking at how SED can more effectively oversee utility compliance to General Orders that pertain to provision of safe and reliable

service, including through additional reporting requirements. Those efforts should not be duplicated here. Rather, the Commission might want to examine whether any of the reports already being generated could be used in the GRC process. But even there, any requirements or review of whether moneys were spent in accordance with these goals should be conducted after-the-fact, and not during the GRC. In other words, any such review deemed necessary should occur outside the RCP, as the Commission is already doing with the Gas Safety Reports.

2. *What criteria should be used by the Commission to evaluate whether a utility has produced an adequate risk-informed GRC filing?*

RESPONSE: See Responses of SDG&E and SoCalGas to Q.21 (as filed Dec. 20, 2013)

3. *Is the development of safety, reliability, and security assessment and review tools that could be used internally or externally desirable and sufficient for investment review purposes?*

RESPONSE: Almost by definition, tools that can be used to more safely and reliably construct and operate the utility systems are desirable. However, until such tools have been developed it is not possible to say whether or not they are “sufficient” on a stand-alone basis. Any tools that are adopted need to make sense and be workable from an operations perspective and that there be sufficient time to develop them internally before they are required to be reported. The development and use of such tools is a good topic for workshops.

4. *Who should bear the cost of developing safety assessment and review tools that the Commission might be using?*

RESPONSE: Ratepayers should pay these costs as reasonable and prudent expenses associated with operating the utility systems.

4.3 Timing of the GRC Applications

1. *What should be the interval between GRCs for energy utilities? Should all energy utilities be treated uniformly? What should the schedule look like in the coming years?*

RESPONSE: While SoCalGas and SDG&E are open to exploring whether the current three-year cycle should be modified, they generally believe that this interval has proved over time to be the most workable, given the number of large energy utilities in California, emergent regulatory requirements, and the variability of economic environments. All the large energy utilities should be treated uniformly to the extent possible. Small energy utilities may be addressed differently. It must be recognized, too, that protracted rate case decisions inevitably overlap the utilities' planning and forecasting stages for the next rate case; a combination of three-year GRC cycles and expedited decisions would seem to be optimal. As the Commission has done on a case-by-case basis, if a utility can justify a deviation from a three-year GRC cycle, it should be allowed to request a different cycle. However, to avoid conflict with another utility's regularly-scheduled GRC, the utility requesting a deviation must concurrently propose a deviation that does not negatively impact other utilities' GRC cycles.

2. *How can we determine the timing of the incoming NOIs as well as the attrition years in order to reduce pressure on workload and allow adequate time for careful analysis?*

RESPONSE: Workload is best managed by a much more rigorous adherence to schedules. There is very little point in having a RCP schedule if it is ignored in most GRC proceedings, as has been the case. For example, the current RCP calls for a period between the filing of the Application and the rendering of a Final Decision to be 384 calendar days. In the most recent SoCalGas/SDG&E GRC this was 876 days. Other recent GRCs have also not met the RCP milestones and deadlines (for example evidentiary hearings typically occur at least 100 days later than called for in the RCP). The Notice of Intent ("NOI") essentially serves to give Office of Ratepayer Advocates ("ORA") additional time to review the case-in-chief and perform pre-filing discovery. As such, ORA produces its report in advance of other intervenors; typically by a month. However, it is not known when ORA give the bulk of its review, in the NOI or the

Application. Any workload pressures on ORA are therefore compounded if the NOI period is not spent by ORA as its primary review period. It would be helpful if the Commission could shorten the time between the NOI and the Application by several months, and if necessary extend the review period of the Application by a month. That results in a net savings of time and provides more time for review for all intervenors of the actual application.

3. *Under any of these scenarios, what consequence(s) should follow from utility's failure to meet its filing deadline under the plan?*

RESPONSE: Typically it is not the utility who fails to meet filing deadlines under the RCP. If the utility is late, the consequence is that it is less likely to have its rates set to a reasonable level on a timely basis, and will be forced to wait for rates to be set. Rather than failures (by any party) to meet filing deadlines, protracted rate case proceedings would seem to originate from Scoping Memo schedules that stretch the RCP schedules.

4. *Under any of these scenarios, what review of utility spending should occur in the intervening years?*

RESPONSE: If the Commission decided to adopt longer GRC cycles, and to the extent it wishes to review spending, it should also review whether or not funding is adequate for safe and reliable service. The adequacy of post-test-year attrition mechanisms must be addressed, and the use of the many annual and semi-annual reports already produced by the utilities to the Commission should be reviewed and utilized across the divisions (ORA and Energy Division).

4.4 RCP Schedule

As the OIR notes “The current RCP for energy utilities provides considerable detail regarding the timing of events over the course of a rate case. Actual practice seems often to depart from the schedule under the plan.”

1. *Aside from the interval between cases, how prescriptive should the RCP be regarding the schedule for the case itself?*

RESPONSE: The RCP should contain a default prescriptive schedule.

2. *In what ways can the Commission improve the schedule such that all parties are provided with adequate time for meaningful contributions to the case?*

RESPONSE: GRCs are lengthy enough that all parties have adequate time to meaningfully participate and contribute. Intervenor compensation would not be granted otherwise, and such compensation is granted in every GRC proceeding.

Furthermore, all parties should be required to focus on the critical issues identified in the scoping memo and ruling. Parties have repeatedly sought to address issues clearly outside the scope of a GRC (e.g., philanthropy) and yet have been allowed to sponsor testimony, subject utilities to discovery, and use valuable evidentiary hearing time to litigate issues that were not relevant to the GRC process and ultimately given no weight in the Commission’s final decision. Aside from the RCP schedule, the efficiency of a GRC depends on the manner in which the assigned Administrative Law Judge (“ALJ”) and Commissioner keep parties focused on the relevant issues so that valuable time and resources are not expended sponsoring or defending out-of-scope issues.

3. *Are there any stress points where all parties need extra time or any interval which is not spent efficiently?*

RESPONSE: The discovery period in recent GRCs has been extremely long; while discovery is important it should not result in untimely decision-making or failure to conform to the adopted RCP schedule. Although ALJs often recommend, during prehearing conferences, that parties cooperate and share in discovery, this is not managed in any meaningful way.

4. *How much latitude should parties have to adjust the timing in particular rate cases, for example, to build in time for settlement efforts?*

RESPONSE: This has rarely been a problem in prior GRCs. SDG&E and SoCalGas have typically been able to settle many, if not all issues in prior GRCs, without substantial deviation from the RCP schedule. Where schedule modifications have been needed they have typically been addressed by motion. To the extent there is a partial settlement, the Commission might consider finding ways to move forward on the agreed upon issues so they don't have to be held up by those items still in dispute.

5. *How may additional safety review by the Commission and by other parties affect the RCP schedule?*

RESPONSE: There should already be adequate time in the RCP schedule for additional safety review if that review is conducted in the context of the cost of service evaluation of just and reasonable rates. Any in-depth safety review such as for system safety or integrity are more appropriately handled through separate and targeted regulatory proceedings where the focus is on the safety issues and a robust and relevant evidentiary record addressing those issues can be created. The GRC is not the optimal procedural context to incorporate this type of review. This is why it may make sense to bifurcate the process issues from the substantive issues. If there are things adopted with respect to risk and risk mitigation that are incorporated into the GRC process, we may need to revisit the impact this may have on the GRC, but in general, the RCP schedule is sufficiently lengthy that it should be able to accommodate such additional review.

4.5 Uniform Application of the Provisions of the RCP

1. *Are these or other differences relevant for purposes of the RCP? If there are material differences, should they be reflected in the plan itself or addressed case-by-case?*

RESPONSE: No, other than perhaps overall size of the utility; the much smaller and multi-jurisdictional utilities need not be treated the same as the largest energy utilities for purposes of the RCP.

2. *How much variation (if any) should be allowed between different utilities, between the gas and electric industries, or on any other basis?*

RESPONSE: See response to Q.1, above.

4.6 Reducing Complexity

1. *Should particular features of the current RCP for energy utilities be updated, or even discarded? How could the Commission reduce complexity of the filings?*

RESPONSE: A stakeholder workshop would be helpful to identify which features of the current RCP should be updated, and which might be discarded. The RCP has not been recently updated to reflect the Commission's current practices, for example where resource plans are reviewed, and the use of costly reports such as the required productivity and total-compensation studies are seldom utilized in the GRC.

2. *What kind of process changes might be helpful for stakeholders to enable them to review the application in an expedited manner? For example, would a presentation by the utility filing the application right after the submittal be helpful to familiarize the stakeholders with the application early in the process?*

RESPONSE: Presentations after the Application is submitted would be a reasonable process to aid stakeholders in expediting their review of the GRC filing.

3. *What kind of process changes would be helpful for the general public to better understand the impact of rate case and participate in the proceeding?*

RESPONSE: The current process of public participation hearings might benefit from some form of public education, including a greatly shortened version of the presentation for stakeholders discussed above.

4. *How effective is the NOI? Would the Commission and the parties be better served by simply having the utility file its application earlier than it does now?*

RESPONSE: SDG&E and SoCalGas do not see the NOI as being particularly effective. The NOI is primarily a review opportunity for ORA. Typically there are a limited number of “deficiencies” identified during the NOI period, but the application filed months after the NOI does not vary substantially from the NOI itself. Under the Cost-of-Service mechanism used from the 1990s until the mid 2000’s, the NOI was not required in an attempt to streamline the rate case process. However SDG&E/SoCalGas were ordered to return to the GRC process (requiring an NOI) in the decision to its 2004 rate case.

5. *Whether or not the NOI is retained, should the “master data request” be reviewed and possibly updated? How can we modify the “master data request” in order to streamline the data requests and reduce the amount of unused data?*

RESPONSE: The Master Data Request (“MDR”) is a reasonably efficient process, in that it essentially causes the utility to gather and organize information that will be asked for in any event. If there were no MDRs, the same work would most likely be done, in response to ORA and intervenor discovery later in the proceeding. That being said, the utilities, ORA, and intervenors could work together in a stakeholder workshop to streamline the MDR and eliminate areas that are less useful. It may make sense to discuss the substantive issues first to allow questions that might be included in the master data request that reflect risk mitigation and risk issues identified during this OIR.

6. *Even more fundamental, does the current division of GRCs between a “Phase 1” (results of operations/revenue requirement) and a “Phase 2” (rate design) [or Cost Allocation Proceeding for major gas utilities] need to be reconsidered and reformulated?*

RESPONSE: The basic concept of phasing GRCs is valid. Cost allocation between classes, marginal costing, and rate design need not (and should not) be litigated simultaneously with Results of Operations/revenue requirements. Similar separation is used for cost allocation in the Biennial/Triennial Cost Allocation Proceeding (“BCAP/TCAP”) process to good effect.

Summary and Conclusion

When considering reformation of the RCP regarding schedule, timing and risk-awareness, the Commission should use this opportunity to consider other important updates. This is the appropriate time and venue. Some issues in the RCP that may be candidates for change are the use of the NOI and MDRs. However, the most important issue with regard to the RCP is actually sticking to the adopted schedule, so that ratemaking is timely. GRCs establish revenues and corresponding rates periodically so that utilities can run their core operations and implement rate changes in a nondisruptive and timely manner. Timely GRC decisions avoid many of the problems that are associated with delay, such as potential rate shock, and uncertainties in project/budgetary planning at the utilities. The Commission, through this OIR, should re-emphasize the critical importance of adhering to the RCP schedule for the reasons discussed in these comments.

When considering modifications to the RCP for risk-awareness and scheduling, the Commission should also consider if its objectives might be best served through a bifurcation of these issues; although linked in this rulemaking they are really two separate considerations. Content (reports, risk assessment) should take priority over procedural issues (schedule and timing). That bifurcation might take shape as:

- Risk Assessment (as a separate requirement for presentation of any revenue-requirement funding request, e.g., in the nature of an EIR). This includes Content (establishing minimum requirements for a sufficient showing) and Compliance (meeting those requirements).
- RCP issues (schedule and timing) are best addressed when the substantive issues are firmed up.

When looking for other models for changes to the RCP such as CEQA, the Commission should first assess that the qualities it expects to mimic from those processes will indeed produce the results it expects.

Whatever the outcomes of this OIR, they should not be retroactive, nor should they be imposed on rate cases already in process. Sufficient lead time needs to be allowed for the utilities to incorporate any new RCP requirements. SoCalGas and SDG&E recommend a minimum of 24 months prior to the anticipated filing date of the next GRC Application as a reasonable period to

permit the development and incorporation of new RCP requirements into the planning process for the GRC.

Finally, SoCalGas and SDG&E recommend that the Commission direct its staff to survey the Commissions or Boards of other states for similar efforts having been adopted, or now being undertaken, so that it may be informed of the relative success of those efforts, and the lessons learned by any of those other bodies.

Respectfully submitted,

By: /s/ KEITH W. MELVILLE
 KEITH W. MELVILLE
 KEITH W. MELVILLE
 Attorney for
 San Diego Gas & Electric Company and
 Southern California Gas Company
 101 Ash Street, 12th Floor
 San Diego, California 92101
 (619) 699-5039 telephone
 (619) 699-5027 facsimile
 kmelville@semprautilities.com

January 15, 2014