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.	R.13-11-006 (Filed November 14, 2013)

OPENING COMMENTS OF THE COALITION OF CALIFORNIA UTILITY EMPLOYEES ON THE PRELIMINARY SCOPING MEMO INVITING COMMENTS

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Pursuant to the Preliminary Scoping Memo included in the 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 (OIR) issued November 14, 2013, the Coalition of California Utility Employees (CUE) offers this proposal and related comments.

I. INTRODUCTION

Section 451 of the Public Utilities Code mandates two separate but equally important regulatory functions for publicly owned utilities: (1) "[a]ll charges demanded or received by any public utility…for any…service rendered or to be rendered shall be just and reasonable;" and (2) "[e]very public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities…as are necessary to promote the

safety, health, comfort, and ***convenience*** of its patrons, employees, and the public."[1]

Historically, GRCs have focused on the first obligation for publicly owned utilities, with scant attention paid to the second. In the current GRC system, the level of safety and reliability provided by the utility is typically determined by the revenue requirement set by the Commission. Safety and reliability is an ***output*** of the process, not the ***input*** that drives the Commission's determination of the appropriate revenue requirement. Decisions about revenue requirements are made based on things like prior spending levels, changes in unit costs and battles over depreciation rates. Rare is the instance that the Commission says, "electric outages should be reduced by 10 percent" or "gas leaks should be repaired within 24 hours" and then uses that safety and reliability choice to drive the revenue requirement decision. This is backwards.

In practice, GRCs are dominated by testimony and briefing focused on revenue requirements, not safety and reliability. The few stakeholders primarily concerned with safety and reliability receive little airtime during evidentiary hearings, and even less page space in GRC decisions. The Commission should be affirmatively deciding its desired level of safety and reliability, and then setting the revenue requirement to achieve it. Of course, the cost to achieve a particular level of safety or reliability is relevant, and the desired level may be too expensive, but that decision should not be made until the target level is known. But currently, the Commission routinely sets revenue requirements knowing almost nothing about the

[1] Pub. Util. Code § 451.

level of safety and reliability that will result. The Commission is right to ask whether the process should be changed.

CUE has been a vigorous and vocal proponent for prioritizing safety and reliability in GRCs and appreciates that the Commission recognizes the problems in the current GRC structure. We have been thinking about how to solve this problem for many years, and welcome the opportunity to open a dialogue about how to best incorporate one of the fundamental regulatory functions into GRCs. In these comments, we present our proposal for modifying the Rate Case Plan, and then answer the Commission's specific questions.

II. CUE'S PROPOSAL

The GRC phasing system should be modified to replace the current NOI phase with a Safety and Reliability phase. The NOI process is a lengthy and unproductive use of time in GRCs. In its place, the Safety and Reliability phase of the GRC would begin when a utility files its GRC Safety and Reliability application. The initial application would address only safety and reliability. The requirement for protests should be eliminated since all GRCs require hearings. This saves the 30 days spent waiting for parties to respond to the application. Instead, the Commission would schedule a Prehearing Conference two weeks after the filing. The ALJ(s) should be immediately formally assigned, since the fact that an application would be filed is known long in advance. The parties who wish to participate in the Safety and Reliability phase of the GRC will appear at the

Prehearing Conference and the substantive work in this phase can begin as soon as possible.

The utility's application would include data on electric and/or gas safety and reliability. The metrics should be those the utilities are already required to report—including those in GO 166, GO 112-E, emergency preparedness plans and other information required by SB 705, SAIDI and SAIFI, and risk analyses developed by utilities including risk of low probability/high consequence events—plus any additional relevant metrics selected by the Commission and/or developed over time in this forum. The application would present different levels of safety and reliability for the Commission to analyze. Commission staff may utilize consultants if staff desire. All parties to the Safety and Reliability phase, not just ORA, may make independent proposals for regarding appropriate standards of safety and reliability.

The Safety and Reliability phase ultimately outlines the basis for the Revenue Requirement phase. In the Revenue Requirement phase, the utility would present its safety and reliability metrics and data, along with output of the Safety and Reliability phase, as the basis for its proposed funding for safety and reliability activity. The Revenue Requirement application would present a range of funding necessary to meet the outcomes discussed in the safety and reliability phase. For example, the utilities could propose several levels of funding for a certain activity, which correlate with a level of safety and reliability. During the Revenue Requirement phase, the Commission determines the funding needed to reach the desired level of safety and reliability based on the parties' analyses in the Safety and Reliability phase, the utility's proposal, and the parties' proposals. The Safety and Reliability phase would include comments and workshops, but not evidentiary hearings. Simply put, the Safety and Reliability phase would consider the levels of safety and reliability desired; the Revenue Requirement phase would determine the funding to achieve the levels of safety and reliability discussed in the Safety and Reliability phase.

The timing for the Safety and Reliability phase would resemble the current NOI timing, though starting sooner so that there would be time after the Safety and Reliability Phase for the utility to incorporate the output in its Revenue Requirement application:

March:	Utility files Safety and Reliability Phase application
September:	Safety and Reliability Phase ends
December:	Utility files Revenue Requirement Phase application
June:	Utility files Rate Design Phase application
December:	Revenue Requirement Decision

III. COMMENTS ON PRELIMINARY SCOPING MEMO QUESTIONS

CUE responds to the questions posed in the Preliminary Scoping Memo with the focus on its proposal.

4.1 Would Developing a Review Process Similar to the Current CEQA Review Process be Effective, Adequate, and Desirable?

The CEQA process is driven by an independent analysis of environmental impacts of a project. An independent consultant may be best equipped to understand and evaluate those impacts. In contrast, a utility's ongoing safety and reliability is better understood by the utility. The CEQA process is not analogous to an interactive, participatory review of utility safety and reliability. The model described above is superior.

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 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?

CUE's proposal links strategy and goals to resource allocation by providing a phase for the utilities, the Commission, and other parties to identify and evaluate safety and reliability goals without simultaneously discussing revenue requirement. The Safety and Reliability phase will provide the opportunity for utilities to provide safety and reliability metrics and allow parties to analyze and evaluate the benefits and risk associated with those reliability and safety issues. As stated above, the utilities should be required to report all standards they are already required to report, including those in GO 166, GO 112-E, emergency preparedness plans and other information required by SB 705, SAIDI and SAIFI, and risk analyses developed by utilities including risk of low probability/high consequence events, and any others determined to be relevant and important for this phase.

2. <u>What criteria should be used by the Commission to evaluate whether a utility has procured an adequate risk-informed GRC filing?</u>

Requiring the utilities to report certain safety and reliability metrics will provide a more uniform approach to analyzing safety and reliability goals and funding. As mentioned above, CUE recommends including required reporting, along with other metrics that may be developed in this proceeding or through a future proceeding, or in the GRCs.

3. <u>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?</u>

Developing safety, reliability, and security assessment and review tools are very desirable. However, they are ***NOT*** sufficient for investment review purposes. The exercise of determining how much to fund safety and reliability programs requires judgment and analysis. Developing the tools will ultimately aid the Commission in weighing the utilities' and parties' proposals for funding safety and reliability projects, but they are not sufficient to replace Commission judgment.

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

Section 451 of the Public Utilities Code requires that "[e]very public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities…as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public." Consistent with this statute, the utilities should be initially responsible for developing any safety assessment and review tools as they are responsible for providing safe service. As noted above, much of the data for this assessment are already gathered and some are already reported, though not as part of the current GRC process.

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?

The interval between GRCs should remain the same, with one IOU filing its GRC application each year. As discussed above, the IOU would file its application in March, which then triggers the Safety and Reliability Phase. The Revenue Requirement phase begins in December, with a decision the following December. The cycle should remain on a three year schedule. Otherwise, any proposal other than a six-year cycle will result in multiple GRCs for the large IOUs in some years. This results in a strain to both the Commission staff and intervenors participating in those GRCs.

4.4 RCP Schedule

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

The RCP should set initial deadlines for the major milestones as described above:

March:	Utility files Safety and Reliability Phase application
September:	Safety and Reliability Phase ends
December:	Utility files Revenue Requirement Phase application
June:	Utility files Rate Design Phase application

December: Revenue Requirement Decision

All other intervening deadlines should be subject to the Presiding Commissioner's and assigned Administrative Law Judge's discretion.

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

CUE's proposal to eliminate the protest period and schedule the Prehearing Conference in both the Safety and Reliability and the Revenue Requirement phases within two weeks after the utility application is filed will provide more time for parties to begin substantive work in each phase. The entire GRC litigation process should continue with only one set of evidentiary hearings in the Revenue Requirement phase.

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

Yes. The current protest period is a waste of 30 days. By eliminating the protest period for both the Safety and Reliability phase and the Revenue Requirement phase, the parties can begin discovery earlier and the Commission has more time to schedule additional hearings and meetings. Additionally, evidentiary hearings have a tendency to drift into another inefficient use of time. The Commission should make clear to parties that during evidentiary hearings, cross-examination needs to be direct, pointed, and free of speech-making. The Commission would benefit from hosting a CLE session for its practitioners and intervenor attorneys to teach effective cross-examination techniques. This CLE could raise money for the Commission while also improving efficiency and efficacy of hearings.

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

The parties should have the opportunity to suggest timing changes to accommodate for settlements or other factors within the set milestones. The ALJ and Assigned Commissioner, however, should have considerable latitude in determining and setting the schedule within the set milestones.

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

If the Commission adopts CUE's proposal, the additional safety and reliability review would not change the RCP schedule. All safety and reliability review will occur during the former NOI phase, thereby providing an addition 6-8 months of safety and reliability review before entering the Revenue Requirement phase.

4.5 Uniform Application of the Provisions of the RCP

1. Are there (customers, revenues, climate) 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?

All applications should be addressed on a case by case basis. The Rate Case Plan should have the same milestones, but the ALJ, Assigned Commissioner, and parties will have the opportunity to create a plan that works for each utility.

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

Combined gas and electric utilities require more utility preparation and intervenor work hours, but CUE's proposal provides enough time for combined utilities to prepare adequate applications and for parties to properly litigate the issues. Gas and/or electric only utilities should have ample time to complete the GRC within this time frame.

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?

Yes. CUE's proposal addresses the features of the current RCP which need updating or total discarding. Replacing the NOI phase with the Safety and Reliability phase allows for a full six to eight months in which the Commission and parties can analyze the utilities' safety and reliability data and proposals. Also eliminating the protest period in each phase of the GRC allows the parties more time to begin substantive work.

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?

A utility-hosted presentation or workshop soon after application filing would be helpful to flag issues for stakeholders and familiarize parties with the application's content. PG&E hosted a presentation after the NOI filing in its 2014

GRC which proved beneficial for general issue-spotting and introductions to the case managers in that area. A required presentation would be helpful in this context.

3. <u>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?</u>

Having a separate Safety and Reliability phase should make it easier to include the general public in the discussion. By excluding complicated revenue requirement discussions from this phase, the public will have the opportunity to look at safety and reliability metrics, weigh in on what the public deems important, and participate in this process. The utilities could host public participation hearings in their service territories to engage the public.

4. <u>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?</u>

As repeatedly discussed, the NOI phase is not effective. The Commission and the parties will be better served by replacing the NOI phase with a Safety and Reliability phase as proposed here.

5. <u>Even more fundamental, does the current division of GRCs between Phase 1 and Phase 2 need to be reconsidered or reformulated?</u>

CUE proposes renaming the GRC phases to better describe the phases, but not substantively changing currently-named Phase 1 and Phase 2. The Safety and Reliability Phase would replace the NOI period, and the Revenue Requirement phase (Phase 1) and Rate Design phase (Phase 2) would remain substantively the same. In all, the GRC would be three phases.

IV. CONCLUSION

CUE appreciates that the Commission is using this OIR as an opportunity to better incorporate and prioritize safety and reliability in the GRCs, and respectfully requests that the Commission consider the proposal as described in these comments.

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Respectfully submitted,

/s/

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