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)

**REPLY COMMENTS
OF THE OFFICE OF RATEPAYER ADVOCATES
REGARDING A RISK-BASED DECISION-MAKING FRAMEWORK
TO EVALUATE SAFETY AND RELIABILITY IMPROVEMENTS AND REVISE
THE GENERAL RATE CASE PLAN FOR ENERGY UTILITIES**

I. INTRODUCTION & SUMMARY OF RECOMMENDATIONS

Pursuant to the Preliminary Scoping Memo issued November 14, 2013, the Office of Ratepayer Advocates (ORA) submits these Reply Comments to respond to Comments of some parties to this Order Instituting Rulemaking (OIR or Rulemaking). Silence on any argument should not be interpreted as agreement or disagreement.

II. DISCUSSION

The Commission initiated this Rulemaking "… to determine whether and how [it] should formalize rules to ensure the effective use of a risk-based decision-making framework to evaluate safety and reliability improvements presented in General Rate Case (GRC) applications, develop necessary performance metrics and evaluation tools, and modify the Rate Case Plan (RCP) documentation requirements for the investor owned energy utilities."[1]

The Opening Comments of several parties address the closely related, but

[1] OIR, p. 1.

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potentially separate issues of safety and reliability.[2] While reliability certainly has safety impacts, ORA recommends that reliability impacts be considered separately from safety impacts in this OIR.

"Reliability impacts" can be the result of many things including facility outages outside of California, weather, or accidents. "Safety impacts" may result from a reliability outage, but the risk-based decision making process is not necessarily the same. For example, at the electric transmission level, reliability is viewed differently by the California Independent System Operator (CAISO), the North American Electric Reliability Corporation (NERC), and the Western Electric Coordinating Council (WECC), depending on features such as the local area being served. These reliability levels are, in turn, different from resource adequacy standards set in place by this Commission, or standards on transmission design and construction established through requirements such as General Order (GO) 95. The former establish reliability levels to balance the risk of outage versus costs, while the latter help prevent risks associated with events such as lightning and fire.

ORA recommends that the rules the Commission adopts in this OIR treat "safety" and "reliability" as separate, but linked, issues.

A. Process To Provide Appropriate Analysis And Testimony On Safety And Risk Management

The OIR references the processes the Commission uses for consideration of permit applications that investor owned utilities are required to file in connection with the California Environmental Quality Act (CEQA). From ORA's review of the Comments, it appears that most of the investor-owned utilities (IOUs)[3], the Utility Workers Union of America (UWUA)[4], and the Coalition of California Utility Employees (CUE) oppose or

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[2] See, e.g., Comments of the Energy Producers and Users Coalition (EPUC), pp. 2-3, and of ExxonMobil Power and Gas Services, Inc. (ExxonMobil), p. 5.

[3] PG&E Comments, p. 4; SCE Comments, p. 3; SDG&E and SoCalGas Comments, p. 3; Liberty Utilities Comments, p. 5; PacifiCorp and Bear Valley Electric Service Comments, p. 3.

[4] UWUA Comments, p. 12.

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disfavor[5] a CEQA-type process to review utility safety and reliability. The IOUs appear to prefer a process akin to the selection of an Independent Evaluator for electric procurement in which the "… utility would contract directly for the technical review after consultation with Commission staff regarding an appropriate entity to conduct the technical review."[6]

ORA took no position on the CEQA proposal in its Opening Comments, and only notes here that the selection of an "independent" evaluator for safety may be difficult. As TURN noted in its Comments:

> …TURN could support the use of a process similar to the Commission's approach to CEQA review, wherein Commission staff would prepare an independent analysis, relying on in-house technical expertise, supplemented by consultants, to the extent necessary, which would then be subject to public review and comment. TURN's enthusiasm for this approach is highly dependent on whether Commission staff has sufficient resources to conduct a rigorous analysis that is truly independent of the applicant utility. Sufficient resources include adequate in-house staffing and expertise, complemented by unbiased consultants (those who do not also have IOUs as regular clients.)[7].

ORA shares TURN's concerns. ORA is also concerned that having the utility, rather than the Commission, select the consultants, or having the utility involved in the selection of the consultants, could lead to a conflict of interest that compromises the credibility of the consultants' review and, ultimately, the Commission's decision. Ultimately, the role of the Independent Evaluators, which provide insight into issues such as requests for offers and market design conducted by the IOUs, is vastly different than the role necessary to ensure the safety of Californians.

In its Comments, the San Diego Gas & Electric Company and Southern California Gas Company (SDG&E and SoCalGas) say that "…the Commission should avoid setting

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[5] CUE Comments, p. 6.

[6] PG&E Comments, p. 4.

[7] TURN Comments, p. 12.

up a framework in which consultants are hired in every GRC proceeding for the rest of time.[8]" As SDG&E and SoCalGas put it, "[i]f the Commission chooses to use consultants, it should also provide for means to bring the expertise in-house at the Commission staff through education and experience."[9] ORA agrees.

In its Comments, Pacific Gas and Electric Company (PG&E) says that "…technical review is necessary and desirable, as long as an opportunity to address any technical recommendations is given to the utility in order to obtain maximum benefits from the technical review."[10] ORA agrees that enough time should be allowed between the safety and risk management process and the processing of the GRC application to allow, not just the utility, but all parties, an opportunity to evaluate the technical review and provide formal, public input. ORA also agrees with TURN that parties should have the opportunity, through discovery, comments, exhibits, and/ or cross examination, to inquire into the "assumptions and factual underpinnings" of any staff analysis.[11]

B. Comments on Safety Elements in General Rate Case Proceedings

As the OIR notes, the current Rate Case Plan for energy utilities does not explicitly require the utilities to consider whether safety and reliability-related expenditures and improvements are in proportion to the identified risks.[12] To expand the current Rate Case Plan to include guidelines to evaluate safety and reliability proposals and assess risk within the GRC, the OIR poses a number of questions. Below, ORA addresses Comments made by some parties in answer to these questions in the order in which the OIR raises them.

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[8] SDG&E and SoCalGas Comments, p. 4.

[9] SDG&E and SoCalGas Comments, p. 4.

[10] PG&E Comments, p. 4.

[11] TURN Comments, pp. 10-11.

[12] OIR, p. 11.

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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?

CUE proposes that the Commission replace the current Rate Case Plan for energy utilities with a 3-phase proceeding. Phase 1 would address Safety and Reliability, Phase 2 would set the Revenue Requirement, and Phase 3 would establish the Rate Design.[13] UWUA offers a similar proposal, but UWUA calls Phase 1 "Service Adequacy."[14]

CUE offers a schedule for its three-Phase approach that would have the utility file its Safety and Reliability Phase application in March to be followed by workshops (not evidentiary hearings) in September. In its Safety and Reliability application, the utility would include data on electric and/ or gas safety using metrics the utilities are already required to report,[15] such as those in GOs 166, and 112-E, and other information required by Senate Bill (SB) 705, and SAIDI and SAIFI.[16] In December, the utility would file its Revenue Requirement application which would include its proposed funding for safety and reliability activity. In June, the utility would file its Rate Design Phase application, and in the following December, the Commission would issue its Revenue Requirement Decision.

ORA generally agrees with CUE and UWUA that there should be a separate forum for safety considerations, but believes that a process that feeds into or is initiated before the GRCs is more appropriate, rather than creating a formal, separate phase in GRC proceedings. Having a separate process will allow better resource allocation amongst the Commission and stakeholders, can help in the assessment of best practices

[13] CUE Comments, pp. 4-5.

[14] UWUA Comments, pp. 10-13.

[15] CUE Comments, p. 4.

[16] SAIDI is the System Average Interruption Duration Index; SAIFI is the System Average Interruption Frequency Index.

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across utilities, rather than solely within a utility as would happen under another phase of a GRC, and can allow the streamlining of the GRC process that the Commission has indicated it desires. Allowing safety considerations in their own proceeding would help ensure the "right" intervenors showed up, whereas having safety considerations outside of the GRC could allow gold-plating.[17]

The Commission must balance these two tensions. However, the increasing scope of safety issues, as demonstrated by the drastic increase in funds requested by PG&E in its 2015 Gas Transmission and Storage application, necessitates a greater level of scrutiny than can properly occur while also trying to assess if the expenditures needed to meet a desired safety level are appropriate. It is for these reasons that ORA believes a separate process is necessary for safety considerations outside of the GRC process itself.

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

In its Comments, ExxonMobil notes that:

> … high level and comprehensive risk assessment contemplated in the OIR is contingent on having access to detailed and auditable data regarding utility maintenance and inspection activities, as well as the condition of the utility facilities…."[18] These reports of inspection and maintenance should be submitted as the utility's basic workpapers.[19]

ORA agrees. While it seems self-evident that, in order to meet their obligation under Public Utilities Code Section 451, all utilities should have records of maintenance

[17] See Senator Hill's Notification of the Introduction of Legislation Pertaining to Safety Treatment in Rate Case Proceedings, p. 6: "In the windstorm hearing, [Energy Division director Edward] Randolph summarized the results of the workshop, noting two of the prominent positions: (1) that pulling safety consideration outside the rate case to give safety the attention it would not otherwise receive due to the absence of 'safety 'intervenors (2) that pre-approving safety plans in a separate proceeding would give utilities a blank check to 'gold plate' their systems and guarantee large rate increases."

[18] ExxonMobil Comments, p. 3.

[19] ExxonMobil Comments, pp. 3-4.

and inspection activities for their facilities, too often it appears they do not.[20]

The Energy Producers and Users Coalition (EPUC) says in its Comments that "…ratepayer responsibility should be limited if the costs incurred by the utility result from a failure to properly implement safety standards."[21] Again, this should be self-evident, but in case it is not, then this rule should be plainly spelled out.

Exxon Mobil also comments that "[i]f a utility does not implement the reliability and safety projects authorized in previous GRCs, the utility should not recover additional revenue in rates to perform the projects."[22] ORA generally agrees with this concept, but suggests as a starting point that the Commission adopt rules requiring utilities to include in their GRC showings all "safety" projects for which they requested, and were authorized (either implicitly or explicitly) funding in the last GRC, but did not carry out, and which they are including in their current GRC application.

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?

ORA has no additional comments on this question at this time.

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

ORA has no additional comments on this question at this time.

C. COMMENTS ON TIMING OF THE GRC APPLICATIONS

Section 4.3 of the OIR asks various questions about the timing of GRC applications. ORA will address Comments on those questions in order below.

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[20] *See*, e.g., D.12-11-051, mimeo, p. 15: "When the Commission considers safe and reliable service, our commitment is to ensure that the utility has accurate records about all of its facilities……"

[21] EPUC Comments, p. 6.

[22] ExxonMobil Comments, p. 9.

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?

While it appears from the Comments of PG&E[23], SDG&E and SoCalGas[24] that they are open to considering intervals of more than 3 years between their GRCs, the Southern California Generation Coalition (SCGC)[25], and EPUC[26] recommend that the interval for large energy utilities GRCs remain at three years.

In its Comments, ORA recommended intervals of 4 years for the large energy utilities. ORA's recommended 4-year interval takes into account the fact that, with PG&E's Gas Transmission and Storage application, the Commission actually has four, not three, large energy utility GRCs to process.[27] ORA and other parties have noted here and elsewhere how the Commission, the parties, and the process suffer when staff and resources are stretched too thin. SCGC's concern that allowing a 4-year interval means reliance on outdated forecasts may or may not be borne out by actual experience, but with no evidence to show that reasonable attrition year allowances give utilities more than they ask for in GRC applications, ORA continues to recommend that the GRCs of large energy utilities be spaced at 4 year intervals.

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?

ORA has no additional comments on this question at this time.

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[23] PG&E Comments, p. 6.

[24] SDG&E and SoCalGas Comments, p. 6.

[25] SCGC Comments, p. 2.

[26] EPUC Comments, p. 2.

[27] UWUA recommends that the Sempra utilities, SDG&E and SoCalGas have separate GRC proceedings. (UWUA Comments, p. 15.) If this recommendation is adopted, then the Commission has the timing of five large energy utility GRCs to consider.

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

ORA has no additional comments on this question at this time.

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

ORA has no additional comments on this question at this time.

D. COMMENTS ON RCP SCHEDULE

Section 4.4 of the OIR asks various questions about the Rate Case Plan schedule. ORA presented its Comments on those questions assuming the Commission maintained the general format of the Rate Case Plan. If the Commission opts for a different format, such as that suggested by CUE, ORA may seek to submit additional comments.

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

ORA has no additional comments on this question at this time.

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?

In its Comments, Southern California Edison Company (SCE) says that "the current RCP schedule already provides ample opportunity for participation by a wide range of parties."[28] ORA is not sure what SCE means by "current" RCP schedule, since, as TURN points out, the schedule the Commission has adopted for GRC applications for every major energy utility within the past decade has afforded ORA far longer than the 77 days contemplated in D.89-01-040.[29] The actual schedules for the submission of testimony and the evidentiary hearings have evolved dramatically since 1989.

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[28] SCE Comments, p. 12.

[29] TURN's Comments, p. 19.

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With SCE's Test Year 2012 GRC application, SCE submitted approximately 6,300 pages of direct testimony[30] to support a cumulative total increase of about $4.2 billion over the then-currently authorized revenues for the 3-year GRC period.[31] This is a far cry from the volume of testimony or the magnitude of the rate increases that the major energy utilities were seeking in 1989.

To complicate matters, corporate reorganizations and continual accounting changes (e.g., the use of Major Work Categories in contrast to the Federal Energy Regulatory Commission (FERC) Uniform System of Account) make tracking costs and expenditures more difficult for non-utility parties.[32] The schedule the Commission adopted in 1989 for GRCs does not provide non-utility parties adequate time for meaningful participation.

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

In its Comments, PG&E says that the "NOI process currently includes an unnecessary and lengthy 60-day delay between the clearance of deficiencies and the filing of the application."[33] As ORA proposed in its Opening Comments, the interval between the tendering of the NOI and the filing of the Application could be reduced from the current 60 days to 30 days.

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

ORA has no additional comments on this question at this time.

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

In their Comments, SDG&E and SoCalGas say that "[a]ny in-depth safety review such as for system safety or integrity are more appropriately handled through separate

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[30] *See* A.13-11-003, Ex. SCE-01, p.40.

[31] A.10-11-015, Ex. SCE-15, Figure II-1.

[32] San Diego Consumer Action Network Comments, p. 16.

[33] PG&E Comments, p. 8.

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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."[34] ORA agrees, and recommends that the results of that separate system safety review should flow into the GRC.

E. Comments on Uniform Application of the Provisions of the Rate Case Plan

ORA has no additional comments on the questions posed in Section 4.5 of the OIR at this time.

F. Comments on Reducing Complexity

Section 4.6 of the OIR asks various questions about reducing the complexity of GRCs. Below, ORA addresses some of the Comments made by some of the parties on particular questions.

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?

In its Comments, PG&E says that "[t]he Commission should consider setting expectations (and possibly limits) on intervenors' escalating evidentiary demands."[35] In its Comments, SCE says that "[o]ne potential enhancement to the RCP that would be beneficial is limiting discovery to information used to develop the GRC request."[36]

ORA is not sure what PG&E means by "intervenors' escalating evidentiary demands." If this is a reference to discovery requests, ORA has statutory rights, pursuant to Public Utilities Code Sections 309.5 and 314, to conduct discovery on matters within the Commission's jurisdiction. As to discovery by other parties, if the Commission is seeking a more transparent process for GRCs, limiting discovery to areas the *utility* used to develop its GRC request, as SCE appears to propose, does nothing to further that goal.

[34] SDG&E/ SoCalGas Comments, p. 9.

[35] PG&E Comments, p. 9.

[36] SCE Comments, p. 17.

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In fact, the Commission often opens a "companion Order Instituting Investigation" as part of the GRC to allow parties to explore issues that the utility did *not* include in its Application. Since these issues can go to the credibility of the utility's witnesses and forecasts, they are relevant and can lead to a more comprehensive, and transparent, record.

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?**

ORA has no comment on these questions at this time.

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?**

ORA has no additional comment on this question at this time.

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

ORA has no additional comment on this question at this time.

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?**

ORA has no additional comment on this question at this time.

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?**

ORA has no additional comment on this question at this time.

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Respectfully submitted,

/s/ LAURA TUDISCO
Laura Tudisco

Attorney for the Office of Ratepayer Advocates

California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703-2164
Email: ljt@cpuc.ca.gov

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