

**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.

Rulemaking No. 13-11-006  
(Issued November 14, 2013)

**MUSSEY GRADE ROAD ALLIANCE REPLY REGARDING  
RISK-BASED DECISION MAKING**

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# MUSSEY GRADE ROAD ALLIANCE REPLY COMMENTS REGARDING RISK-BASED DECISION MAKING

## I. INTRODUCTION

In accordance with the instructions of President Peevey in Order Instituting Rulemaking R.13-11-006,<sup>1</sup> the Mussey Grade Road Alliance (MGRA or Alliance) files these reply comments to respond to comments of other parties,<sup>2</sup> filed January 15<sup>th</sup>, 2014, that address issues raised and questions posed in sections 4.1 through 4.6 of the Order. The Alliance filed its own comments on the issues raised in this rulemaking on January 15<sup>th</sup>, 2014.<sup>3</sup>

## II. ISSUES

The Alliance was pleased to see that all respondent parties seem to share the desire to optimize the manner in which safety is addressed in GRCs. In this section we examine specific issues raised by the parties in their comments.

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<sup>1</sup> R.13-11-006; 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; November 14, 2013. (OIR)

<sup>2</sup> There were numerous submissions by parties, and we do not reply to all here. All were submitted on January 15, 2014. Those we are responding to include:

Opening Comments of Utility Workers Union of America (UWUA) (UWUA Comments)

Comments on Utility Consumers' Action Network (UCAN) on Order to Institute 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 (UCAN Comments)

OPENING COMMENTS OF THE UTILITY REFORM NETWORK RESPONDING TO THE QUESTIONS RAISED IN SECTIONS 4.1 TO 4.6 OF THE ORDER INSTITUTING RULEMAKING (TURN Comments)

OPENING COMMENTS OF EXXONMOBIL POWER AND GAS SERVICES, INC. (ExxonMobil Comments)

OPENING COMMENTS OF THE COALITION OF CALIFORNIA UTILITY EMPLOYEES ON THE PRELIMINARY SCOPING MEMO INVITING COMMENTS (CUE Comments)

SOUTHERN CALIFORNIA EDISON COMPANY'S (U 338-E) OPENING COMMENTS ON THE ISSUES RAISED IN SECTIONS 4.1 THROUGH 4.6 OF THIS RULEMAKING (SCE Comments)

OPENING 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 (ORA Comments)

PACIFIC GAS AND ELECTRIC COMPANY'S (U 39 M) OPENING COMMENTS (PG&E Comments)

COMMENTS OF SAN DIEGO CONSUMERS' ACTION NETWORK ON 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 (SDCAN Comments)

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

<sup>3</sup> MUSSEY GRADE ROAD ALLIANCE COMMENTS ON INCORPORATING RISK-BASED DECISION MAKING INTO GENERAL RATE CASES (MGRA Comments)

## A. Responsibility for Safety and Safety Metrics

One of the key issues addressed in the party responses is the degree to which gathering of specific safety metrics should, on one hand, be left to the discretion of the utilities with the Commission playing a supervisory role, or on the other hand centralized within the Commission so that a uniform set of requirements is applied across the state. In our own comment, we noted that it was highly inefficient for ratepayers to pay for each utility to develop its own independent toolset and processes, and that common risk-assessment infrastructure be used wherever possible.<sup>4</sup> We also noted that utility-authored tools may favor their particular business model at the expense of safety.<sup>5</sup>

TURN makes the strongest presentation on this point, introducing a broad and comprehensive framework that would require the Commission to develop, staff, and support a toolset to be used for risk assessment.<sup>6</sup> These comments by TURN are highly detailed, and we reserve full comment at this time. However, the TURN proposal does address a number of issues also of concern to MGRA, especially as to quantification of benefits. A point we'd like to emphasize here though is that in safety issues the major "benefit" is avoided risk, and therefore quantification must necessarily include some estimate of the probability and impacts of the negative events that are being avoided. Uncertainties are often quite large in this sort of calculation, which means that it would be possible for utilities to adopt assumptions most favorable to their own business model if left to do these calculations on their own. We believe, along with TURN, that a uniform method of risk estimation should be applied to specific threats, and that these methods and processes should be maintained by the Commission. These would have to be regularly reviewed and updated to incorporate new data and methods.

Another suggestion that TURN makes is that each utility present its prioritized risks as part of the risk assessment process. The Office of Ratepayer Advocates (ORA) makes a similar proposal.<sup>7</sup> While we agree that this step is necessary to the extent that utility businesses and service areas differ, we also think that optimally the Commission should maintain its own list of key risks that each utility in a given sector needs to address, in addition to any ranked list provided by the

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<sup>4</sup> MGRA Comments; p. 6.

<sup>5</sup> Id. p. 8.

<sup>6</sup> TURN Comments; pp. 5-10.

<sup>7</sup> ORA Comments; p. 3.

utilities themselves. . Otherwise the customers or residents of in a particular utility service area would be at greater risk if their utility downplayed a particular risk due to error or business expediency, resulting in unequal standards within the state. The idea that the Commission should provide guidance on risk prioritization is also supported by SCE.<sup>8</sup>

SDG&E, on the other hand, appears to believe that the Commission should take a more peripheral role in risk estimation and leave the burden of risk estimation and prioritization to the utilities alone. . SDG&E states that “*In the end, the utilities are ultimately responsible for the safe and reliable operations of their systems.*”<sup>9</sup> This rankles a bit, because the Alliance just spent several years listening to SDG&E and other electric utilities argue exactly the opposite point in a separate and previous proceeding. Specifically, in A.09-08-020 SDG&E, along with other utilities, maintained that even in the event that utility negligence resulted in wildfire ignitions that the ratepayers should absorb the cost of uninsured liability the utility might accrue.<sup>10</sup> Additionally, the Alliance, along with others in San Diego County watched as the utility paid a mere \$14 million dollar settlement over that wildland fire catastrophe that resulted in some \$2 billion dollars’ worth of damages

What, exactly, then, does “responsibility” mean if the burden of industrial mishaps and loss of service falls onto the population? As we recently saw in the case of the Freedom Industries chemical spill in Charleston, West Virginia, the individuals responsible for harm to the public at last resort are protected from being held personally liable by ducking behind the shield of corporate bankruptcy. That, after all, is one of the purposes of a corporation – to provide personal legal protection to employees and operatives who are conducting business activities on its behalf.

Corporations are responsible to their shareholders. That is what they are made for. That is how capitalism works. Corporations may gain advantage by adopting pro-social, pro-environmental, or pro-safety initiatives, but this requires skillful sailing against a strong headwind in the direction of profit maximization. Ultimately, then, the regulatory agency representing the

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<sup>8</sup> SCE Comments; p. 6.

<sup>9</sup> SDG&E Comments; p. 1.

<sup>10</sup> A.09-08-020; For instance: OPENING COMMENTS OF APPLICANTS SAN DIEGO GAS & ELECTRIC COMPANY (U902M) AND SOUTHERN CALIFORNIA GAS COMPANY (U904G) ON PROPOSED DECISION OF ALJ BUSHEY AND ALTERNATE PROPOSED DECISION OF COMMISSIONER SIMON at p. 12: “the Commission fully understands that claims brought under negligence are within the ordinary scope of business and the prudent and reasonable costs dealing with such claims are likewise within the ordinary scope of business.”

public is responsible for safety of the citizens. The regulatory agency is the counter-weight to the corporation; its operation is the result of the public taking responsibility for safety by creating and enabling a regulatory body to ensure that the public will be safe. The California *Public Utilities Commission* represents the population of California as a whole and must, on behalf of the public, ensure that those regulated operate safely. It is the role of the Commission to remind utilities that the Commission's primary duty is to protect the public as well as to hold the regulated utilities accountable when unsafe operation occurs. Ultimately, it is the Commission that carries the responsibility to ensure safety on behalf of the public, not the corporations being regulated.

To the extent that SDG&E asserts that companies have deeper knowledge of their own infrastructure, processes and service areas (and the specific risks that these entail) than an external regulator they may be on more solid ground. We do not doubt that there are dedicated risk management and safety professionals on the staff of all major utilities. However, we believe it is in the public interest to provide a baseline to ensure that any forward progress is established in regulation, helping to prevent future backsliding as the painful memories of the 2007 wildfires and San Bruno fade and as economic cycles ebb and flow. As UWUA points out in its comments, there will always be pressure to increase "efficiency", and this can have negative impacts on safety.<sup>11</sup> Even if current corporate management is safety-minded, it cannot guarantee that its successors will have the same priorities in the future.

Within the regulatory context, the comparison of risk assessment methodologies currently practiced by utilities may allow the identification of best practices and processes that can be then applied more broadly with Commission sponsorship. MGRA supports the concept of risk assessment standards *under* Commission control rather than by the utilities themselves.

One question is: What leeway such a structure would leave to companies to develop safety initiatives and risk assessments that go above and beyond those required by the Commission? Is it sufficient to define "adequacy" as compliance with Commission regulations (as suggested by ORA<sup>12</sup>), or should this process be aimed at achieving the highest level of safety possible? The answer to this will be closely related to costs, which we discuss in the next section.

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<sup>11</sup> UWUA Comments; pp.4-5.

<sup>12</sup> ORA Comments; p. 5..

## B. Separation of Risk and Cost Assessments

Another question addressed in the comments was whether risk assessment should be part of the GRC process or whether it should be analyzed independently. We believe that safety and cost are interrelated and cannot be extricated without the risk of compromising one or the other. This is because there is no natural upper limit on what can be spent on safety – it is always possible to increase safety by spending more. At some point the burden on the ratepayer must exceed the benefits of added safety. For some customers, increased utility rates will force choices between paying bills and buying food, medical care, or other necessities. Balancing risk to life, property and well-being arising from utility-related risks needs to be balanced against impacts to life, property and well-being arising from economic impacts.

ORA, for instance, suggests a “Long Term Safety Plan” that would prioritize risks for a 10-20 year time scale.<sup>13</sup> This would separate out safety planning from the GRC mechanisms. To the extent that such a process would be used to specify mechanisms for developing cost/benefit analysis planning tools to be used at the time of GRCs, this could be a useful process. However, setting priorities and targets for safety in the absence of cost analysis may lead to goals that are not achievable within budget constraints. Likewise, failure to quantify the benefits of safety measures in terms of avoided risk (a step not listed in the ORA proposal) might lead to an incorrect prioritization of risks. As PG&E points out, “no utility can see the future with absolute precision and rate case decisions will always need to allow for changes in resource allocation depending on emerging needs and risks.”<sup>14</sup> This is also true for the Commission as it takes on new risk assessment duties. There will certainly need to be mechanisms in place that allow the Commission to adopt new processes, tools, and priorities as available data becomes available and as tools or technologies change. There must also be mechanisms by which stakeholders can request the Commission to review such changes for potential adoption.

CUE observes that safety considerations are given low priority in GRCs and suggests that “[t]he Commission should be affirmatively deciding its desired level of safety and reliability, and then setting the revenue requirement to achieve it.”<sup>15</sup> While we agree that safety considerations must be given high priority, setting goals in a cost vacuum might lead to requirements that will have

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<sup>13</sup> ORA Comments; pp. 3-4.

<sup>14</sup> PG&E Comments; p. 5.

<sup>15</sup> CUE Comments; p. 2.

impacts beyond what is considered affordable by ratepayers. This is a key reason that the Commission should invest in tools and processes that will effectively and rapidly help stakeholders estimate and understand the cost/benefit balance of utility safety spending, and which can be incorporated into the GRC process, either as a prerequisite or in the initial steps.

### **C. Data**

Some parties discuss what kinds of data might help in risk assessment. As co-author of the proposed fire data collection rule in R.08-11-005, MGRA has a keen interest in the use of utility data to help understand and address potential system vulnerabilities, particularly those related to wildfires.

The Alliance welcomes ExxonMobil's suggestion that audit and maintenance records be maintained by utilities and then utilized in the GRC proceedings.<sup>16</sup> We also suggested in our own comments that utility outage data could be utilized for determining system vulnerabilities – a process that some utilities currently adopt – as well as utility fire data records.<sup>17</sup> However, we note that based on our own experience in trying to gain adoption of even fire collection data – a process we initiated in 2008 and which only now has a consensus proposal awaiting adoption by the Commission – California utilities do not readily yield data that might have potential liability implications. ExxonMobil doubtless has knowledge of such considerations. Nevertheless we continue to assert that utility outage, maintenance and fire data should be used in the public interest to identify patterns and vulnerabilities that can be addressed in a full risk analysis.

SDCAN suggests that “big data” be used for reliability and safety planning, by which it apparently means smart grid data.<sup>18</sup> While this is an interesting concept, SDCAN has no explanation or examples of exactly how this type of data could be used to identify or address safety issues. We suggest that its presentation on this matter would be greatly strengthened if it were to work out both the conceptual framework and concrete examples showing how smart grid data could be applied to safety issues.

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<sup>16</sup> ExxonMobil Comments; p. 6.

<sup>17</sup> MGRA Comments; p. 4.

<sup>18</sup> SDCAN Comments; pp. 2,16.

#### **D. Wildfire Issues**

Of the parties submitting comments aside from the Alliance only one other party, UCAN, explicitly discusses wildfire safety.<sup>19</sup> We welcome their interest and concern, and look forward to working with them on this vital issue. We note that in our history of working on fire issues in Commission proceedings alongside ratepayer advocates, which we've been doing since 2006, our position usually has a greater emphasis on fire safety, while theirs has more of an emphasis on cost control. Concern about cost is evident in UCAN's comments, but so is an awareness of the impact of fire in San Diego County.

We're gratified that they mentioned the "near riotous" A.09-08-020 Public Participation Hearings in San Diego, which would not have occurred had it not been for the dogged insistence of MGRA throughout the course of the proceeding, and which required repeated requests to the ALJ and Commissioner. The Alliance also greatly facilitated public awareness of this proceeding and the PPH through outreach to newspaper, radio and television news broadcasts, which helped boost attendance that totaled more than 700 persons in two hearings held the same day. The Commission should know that there is continuing fear regarding the possibility of wildland fire ignitions by electrical equipment in San Diego County. San Diego County, once burned, is now twice shy. And the prevailing weather conditions, with less than 2 inches of rain received this winter season to date, promise to make San Diego a very dangerous place this coming fall when Santa Ana winds begin to blow in earnest. This reality has consistently informed the Alliance on positions taken across the Commission proceedings we've engaged in, namely, that the utility-ignited wildland fire issue be addressed by a cost/benefit approach that will optimize overall public well-being.

#### **III. CONCLUSION**

The Alliance is pleased to participate in this proceeding, and is impressed by the breadth and quality of party comments received. We look forward to collaboratively working with other parties in the course of what we believe to be a vitally important proceeding.

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<sup>19</sup> UCAN Comments; pp. 3-7.



Respectfully submitted this 30<sup>th</sup> day of January, 2014,

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