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

REPLY COMMENTS ON THE REFINED STRAW PROPOSAL OF COMMUNITIES FOR A BETTER ENVIRONMENT

MAYA GOLDEN-KRASNER
(Bar No. 217557)
Communities for a Better Environment
6325 Pacific Blvd., Suite 300
Huntington Park, CA 90255
(323) 826-9771 x 121 (telephone)
(323) 588-7079 (facsimile)
maya@cbecal.org (e-mail)

ROGER LIN
(Bar No. 248144)
Communities for a Better Environment
1904 Franklin Street, Suite 600
Oakland, CA 94612
(510) 302-0430 x 16 (telephone)
(510) 302-0438 (facsimile)
roger@cbecal.org (e-mail)

Dated: June 13, 2014

Attorneys for
COMMUNITIES FOR A BETTER ENVIRONMENT

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Communities for a Better Environment ("CBE") timely submits these Reply Comments in accordance with Consistent with the procedural schedule set by ALJ Wong at the Prehearing Conference, and in the Scoping Memo.[1]

I. CPUC Must Set Out a Framework of Inherently Safer Systems, as well as Specify Specific Regulations, Conditions, Standards, and Risks Prior to the S-MAP Proceeding.

A. The CPUC Must Require an Overall Framework of Inherently Safer Systems ("ISS")

Communities for a Better Environment ("CBE") submitted Opening Comments in accordance with the Ruling Regarding the Refined Straw Proposal issued by Administrative Law Judge Wong (which set an original filing date of May 12, 2014), and the Scoping Memo issued by President Peevey and Administrative Law Judge Wong (which extended the filing date for reply Comments to June 13, 2014). CBE filed these comments in order to emphasize that safety, health, and environmental harm must be the driving priorities of these proceedings.

At the outset, therefore, CBE suggested that the Commission must use the new risk-informed decision-making proceeding(s) to incorporate inherent safety into the utilities' risk

[1] Scoping Memo and Ruling of the Assigned Commissioner and Administrative Law Judge, May 15, 2014 ("Scoping Memo").

assessment *and operating* models.[2] In its Opening Comments, CBE gave multiple examples of current regulatory and administrative structures that incorporate ISS,[3] and CBE reiterates that the Commission must evaluate these regimes prior to implementing this risk-informed proceeding. In short, an ISS framework would impose a duty on the utilities to continually make decisions that would reduce risks as low as reasonably practicable.[4]

CBE recognizes that it may be beneficial for the Commission to hold one or more workshops on incorporating ISS into utilities' risk-assessment and mitigation programs prior to the Commission finalizing these new GRC-related risk proceedings. CBE further recognizes that it is possible that considerations of ISS, if adopted by the Commission, will occur during the S-Map phases of this rulemaking. However, many parties express disagreement with a recurring S-MAP proceeding.[5] These parties fail to fully grasp the benefits of such recurring proceedings, in particular, to force utilities to consistently evaluate lessons learned, potentially develop better methodologies, but overall, to continually drive risk down. A continual evaluation of systems is necessary to maintain the safest and best technology, and therefore ISS. If the Commission does not include a recurring S-MAP proceeding phase, the Commission also largely forecloses any opportunity to examine ISS.

B. The Commission Must State the Values to be Protected Prior to the S-MAP

CBE agrees with Mussey Grade Road Alliance ("MGRA"), the Energy Producers and Users Coalition ("EPUC"), and The Utility Reform Network ("TURN"), that requiring each utility to present the top ten risks is not the best method, because it is both arbitrary leaves too

[2] CBE Opening Comments, at 8.
[3] CBE Opening Comments, at 8-10, 15-16.
[4] *See e.g.,* U.S. Chemical Safety and Hazard Investigation Board Regulatory Report: Chevron Richmond Refinery Pipe Rupture and Fire,Report No. 2012-03-I-Ca (May 2014), (hereinafter "CSB, Chevron Refinery Report"), at 40-43, available at: http://www.csb.gov/assets/1/7/Chevron_Regulatory_Report_05012014.pdf .
[5] *See eg.* PG&E Opening Comments, at 2; SCE Opening Comments, at 4.

much discretion to the utilities in determining what risks to value and prioritize.[6] Like MGRA, CBE is concerned that the risk assessment models proposed by the utilities in the S-MAP will prioritize business risk over safety.[7] It is clear from the opening comments of SCE, PG&E that this is a serious concern. PG&E, for example, notes that its "risk management program has been developed to address the needs of PG&E's business operations and has evolved over time to incorporate PG&E's planning and budgeting processes."[8] Similarly, SCE suggests that "[o]nce a [risk assessment] framework is in place, the utilities could use those standards alone with their own judgment, business decisions, and risk management tools to determine appropriate risk mitigation strategies."[9]

Therefore, as CBE stated in its Opening Comments (pp. 5-6), the Commission must first set out the values to be protected (safety, health, and environment), and then suggest the risks to these values that the utilities should prioritize—for instance: use of hazardous and/or toxic materials or processes; use of less effective or safe materials in constructing and maintaining assets than feasible alternatives; lack of an adequate safety culture; lack of baseline knowledge of location and condition of assets; lack of worker training; earthquakes; wildfires; windstorms; droughts; or heat waves, among others. Note, too, that risks are posed from internal, cultural, and systemic issues, as well as from external environmental factors.

C. The Commission Must Set out Performance Standards and Conditions for All the Utilities' Risk-Reduction Programs to Meet

In order to achieve the goal of operating inherently safe utility systems, CBE urges the Commission to set out uniform conditions with which each utility's risk assessment models and

[6] CBE Opening Comments, At 5-6; MGRA Opening Comments, at 3-4; EPUC Opening Comments, at 18; TURN, Opening Comments, at 6-7.
[7] MGRA Opening Comments, at 6.
[8] PG&E Opening Comments, at 3.
[9] SCE Opening Comments, at 4.

risk reduction programs must comply in order to reach this goal. As noted by UCAN in its opening comments, creating uniform regulations prior to the S-MAP proceeding will help streamline the S-MAP-RAMP-GRC process.[10] Regulatory uniformity and certainty is also more efficient for the utilities because they set a level playing field and spur innovation.[11] Moreover, setting minimum risk-assessment and mitigation standards provides ratepayers protection so that some are not paying for service that is less safe, clean, or reliable than those in another utility's service area. Examples of performance-based standards and requirements that could required for all utility S-MAP or RAMP proposals could be (but not limited to):

- Each utility must present proactive plans and strategies for establishing and understanding the baselines of their systems—for instance, current assets, their locations, their contributions to safety (e.g., in the instance of smart meters), and also their risks to safety and capacities for failure;
- Each utility must create and maintain a publicly accessible database and map of all gas pipelines and related infrastructure;
- Clear reporting requirements on a normalized, publicly accessible database of: leaks and threatened leaks; emissions and air monitoring data; near-miss performance metrics; maintenance and safety requests made; corrective actions taken; or not taken; outcomes; and the management individual accountable;
- Each utility must create and implement protocols for conducting root cause analysis after all significant accidents or releases;

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[10] UCAN Opening Comments, at 4-5.

[11] *See e.g.,* Cox, James D., "Rethinking U.S. Securities Laws in the Shadow of International Regulatory Competition," 55 *Law & Contemp. Probs.* 157 (1992); Henrik Selin and Stacy D. VanDeveer "Political Science and Prediction: What's Next for U.S. Climate Change Policy?" 24:1 *Review of Policy Research* (Jan. 2007), pp. 1-27.

- Each utility must present proactive plans and strategies for workforce development, for instance, job skills and safety trainings;
- Each utility must submit proactive plans and strategies for improvement the safety culture of their workplace, including among management, for example by implementing clear procedures and protections for workers to report safety issues, and for management to investigate these issues;
- Each utility must conduct a safety culture assessment and submit the assessment;
- Each utility must submit emergency response plans including outreach protocols to the public in the event of an accident or release.
- Each utility must evaluate the substances, materials, and processes used in a given system (e.g., electrical grid, power plant, gas distribution, etc.), and determine whether there are safer, or less hazardous, toxic, or polluting ones that are available for the same purpose; if the utility does not change to using these substances, materials, or processes, it must document why, and present both the alternatives analysis and the justification.

Each succeeding S-MAP-RAMP-GRC proceeding should require updates to these plans and strategies, and the progress the utilities have made to implement the previous cycle's plans and strategies can be made during the verification process. Additionally, the Commission should set out guidelines for the types of measures utilities should use reduce risks. ISS, for instance, sets out a hierarchy of risk reduction methodologies--inherent safety, prevention, control, mitigation.[12]

II. The Risk Assessment Model Must Prioritize Safety, Health and the Environment, and Must Evaluate More than Asset Conditions

[12] CSB, Chevron Regulatory Report, at 42.

In addition to the standards set out above, the Commission must also set out minimum, uniform standards for utilities to meet in their risk assessment methodologies proposed for the S-MAP.

A. The Commission Must Set Guidelines for the Risk Assessment Models to Prioritize Safety

As noted above, the utilities' risk assessment programs are geared toward protecting them against business risks. It is imperative that the Commission set some clear guidelines for what constitutes appropriate risk assessment models, and that these models be geared toward reducing risks to safety, health, and the environment. Furthermore, as CBE noted in its opening comments, in order to "account the fact that the utilities' assets and operations are high-risk (highly complex, tightly coupled) systems," "[t]he utilties' models must . . . be able to identify multiple types of risks, and how they can interact with each other in various situations over varied periods of time."[13]

B. Risk Assessment Model Must Focus on More Than Asset Conditions

The Revised Straw Proposal ("RSP") states that during the RAMP, the utility will present "top top ten asset-related risks for which the utility expects to seek recovery in the GRC," though the proposal notes that over time, the proposal may "move beyond just asset conditions."[14] In addition to deemphasizing cost at the risk assessment stage, however, CBE agrees with MGRA and the Coalition of California Utility Employees ("CUE"), that the utilities cannot rely on models that look solely at assets.[15] As noted above and throughout CBE's Opening Comments, achieving inherent safety requires a systems-wide approach that addresses a wide range of

[13] CBE Opening Comments, at 10. One potential model is multi-dimensional criteria analysis (*see* CBE Opening Comments, at 13-14, fn 30), though the Commission would need to specify that safety must be prioritized over cost.
[14] RSP, at 2.
[15] MGRA Opening Comments, at 7 (proposed revisions); CUE Opening Comments, at 4.

interconnected processes, cultural factors, and safety protocols, as well as assets. Thus, for instance, the dynamic optimization methodology posed by EPUC is problematic in that it values asset condition over safety, health, and the environment; it is not focused on continually driving down risk, so that if there is a safer material or process, the utility is not required to use or at least evaluate that alternative; it does not evaluate the multiple types of risks that are presented in a highly complex, tightly coupled system, workforce, culture, processes, and materials; and it does not evaluate the interdependence of assets upon each other, which could lead to an overemphasis on "patching" up assets, rather than replacing an asset (or process or input) with a better alternative.[16]

C. The Commissions Should Not Rely Solely on Probabilistic Risk Assessment; the Commission Must Require Other Types of Inputs and Assessments as Well

At the workshop, the utilities presented probabilistic risk assessment ("PRA") models, and SDG&E/SoCal Gas include it a PRA model in its RSP redlines attached to its Opening Comments.[17] While quantitative PRA can be useful, it is imperative for the Commission to recognize its limitations and require the utilities to supplement it with other types of assessments and inputs. As EPUC notes, "[i]f a probability-times-magnitude approach is taken, it may suffice for radial systems but becomes less robust when applied to highly networked systems with a myriad of interdependencies."[18] CBE agrees.

The assumptions of probability are often misguided in a PRA, in part because it does a poor job of anticipating accidents in which a single event causes failures in multiple safety

[16] EPUC, Opening Comments, Appendix B. *See also*, PG&E, Opening Comments, Attachment 2 (the Assessment Risk Heat Map focuses on assets).
[17] SG&E, SoCal Gas, Opening Comments, Appendix A, at A-7.
[18] EPUC, Opening Comments, at 18.

systems.[19] For instance, they often underestimate the probability of a severe accident.[20] For instance, PRA may estimate the probability of a natural disaster using the time since the last similar, severe disaster; but, natural disasters, more often than not, do not follow cyclical probabilities, but could occur in clusters.[21] Furthermore, as an analysis of the Fukushima disaster noted:

> Theoretically, the probabilistic risk assessment method suffers from a number of problems. Nancy Leveson of MIT and her collaborators have argued the chain-of-event conception of accidents typically used for such risk assessments cannot account for the indirect, non-linear, and feedback relationships that characterize many accidents in complex systems. These risk assessments do a poor job of modeling human actions and their impact on known, let alone unknown, failure modes. Also, as a 1978 Risk Assessment Review Group Report to the NRC pointed out, it is "conceptually impossible to be complete in a mathematical sense in the construction of event-trees and fault-trees … This inherent limitation means that any calculation using this methodology is always subject to revision and to doubt as to its completeness."
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> Probabilistic risk assessment models do not account for unexpected failure modes during many accidents.[22]

Indeed, different risk assessment methods may be more appropriate for certain risks than others, and it is important that in the interest of the Commission's goal of participatory inclusivity, the risk assessment method should be as clear and straight forward as possible.[23]

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[19] Ramana, M. V., "Beyond Our Imagination: Fukushima and the Problem of Assessing Risk, *Bulletin of the Atomic Scientists* (April 20, 2011) (hereinafter "Ramana, 'Beyond Our Imagination'"), available at: http://thebulletin.org/beyond-our-imagination-fukushima-and-problem-assessing-risk-0 .

[20] *Id.*

[21] Lalliana Mualchin, "Seismic Hazard and Public Safety," available at: http://arxiv.org/pdf/1406.1047.pdf.

[22] Ramana, "Beyond Our Imagination," citing Karen Marais, Nicolas Dulac, and Nancy Leveson, "Beyond Normal Accidents and High Reliability Organizations: The Need for an Alternative Approach to Safety in Complex Systems," in MIT ESD Symposium, Cambridge, Massachusetts, 2004, at http://sunnyday.mit.edu/papers/hro.pdf.), and H. W Lewis et al., Risk Assessment Review Group report to the U.S. Nuclear Regulatory Commission, NUREG/CR-0400, Washington, D. C.: Nuclear Regulatory Commission, 1978, available at: http://www.osti.gov/scitech/biblio/6489792.

[23] For example, Chemical Safety Board, in its report on the Chevron Richmond refinery explosion notes the following: The "Center for Chemical Process Safety (CCPS) guidance on risk assessment implies that as the predicted consequence of potential hazard scenarios increases, the level of analytical detail should also increase. Risk assessment approaches range in order of increasing analytical detail from qualitative,

Thus, for example, there are situations in which the potential risk should be evaluated using a deterministic risk assessment method (DRA). The California Department of Transportation has used DRA in earthquake risk assessment in California since the 1970s, for instance.[24] Essentially, a DRA assumes the worst possible hazard (based on historical and scientific data), without incorporating unreliable recurrence-timeline probabilities.[25] As such, it provides a more concrete, understandable, and straightforward (and less easily manipulated, by, for instance, changing the expected time period of recurrence as an underlying assumption) risk assessment method; as such, it promotes the Commission's goal of participatory inclusivity. It also recognizes that there are likely outcomes that are so horrible (for instance, Maximum Credible Earthquake magnitude ("MCE")), that even if their probability is low (according to PRA assumptions), the utilities should plan for them.[26] What is more, even if that event does not occur, planning for it necessarily means the utilities will be protecting their assets from smaller

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to semi-quantitative, to quantitative. Qualitative risk assessment is the simplest approach where judgments about consequence, likelihood, and the tolerability of risk are made on a subjective basis using the knowledge and experience of team members and may not be consistently applied within an organization. Semi-quantitative risk assessment is the second level of analytical detail, where organizations develop and provide to team members predetermined risk matrices and guidance for establishing numerical consequence and frequency levels. This approach is of greater value to team members as based upon their collective experience; the team typically has a sense of how frequently an event might occur and how great the potential consequence may be within the predetermined ranges. Layer of protection analysis (LOPA) is a semi-quantitative form of risk assessment, using order of magnitude categories for evaluating frequency, consequence, and adequacy of safeguards. Quantitative risk assessment involves the highest level of analytical detail and typically involves specialized expertise to perform. Complex models are commonly developed to evaluate frequency, consequence, and the effectiveness of safeguards in a quantitative risk assessment. Such approaches are typically standardized to minimize result variability within an organization and even between organizations in countries where a quantitative risk assessment is mandated by regulatory authorities. Center for Chemical Process Safety (CCPS). Guidelines for Developing Quantitative Safety Risk Criteria; August 2009." CSB, Chevron Report, at 42, fn 194.

[24] Lalliana Mualchin, "History of Modern Earthquake Hazard Mapping and Assessment in California Using a Deterministic or Scenario Approach," *Pure and Applied Geophysics* (June 12, 2010).

[25] *See, e.g.,* International Seismic Safety Organization, "Position Statement of Earthquake Hazard Assessment and Design Load for Public Safety" (August 6, 2012), available at: http://www.issoquake.org/sites/default/files/Position%20Statement%20ISSO%20English.pdf.

[26] For a discussion of MCE, *see* Mualchin, "History of Modern Earthquake Hazard Mapping and Assessment in California."

events as well.

There are other examples of ways highly dangerous industries have supplemented PRA to ensure safety, as well. For example, recognizing the unreliability of PRAs, NASA requires the development of a Risk-Informed Safety Case (RISC).

> The RISC marshals evidence (tests, analysis, operating experience) and commitments to adhere to specific manufacturing and operating practices in order to assure that PRA assumptions, including the performance and reliability parameters credited in the PRA, are fulfilled. Among the commitments needed to justify confidence in the safety of the system is a commitment to analyze operating experience on an ongoing basis, including "near misses," in order to improve operations, improve the risk models, and build additional confidence in the models' completeness.[27]

Similarly, the Nuclear Regulatory Commission requires that the use of PRA should "complement[] the NRC's deterministic approach and support[] the NRC's traditional defense-in-depth philosophy," and be subjected to peer or other cross-review. The proposal must be limited in scope and adhere to requirements and performance standards, such as being subjected to a continuous "program of monitoring, feedback, and corrective action to address significant uncertainties."[28]

While CBE does not endorse any particular one of these regimes, CBE does believe the provide the Commission guidance as to the fact that a PRA cannot serve as the only way to assess to risk in order to create a system of risk-informed decision making. The Commission must require other checks, inputs, and types of assessments in order to achieve the most accurate

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[27] NASA, Probabilistic Risk Assessment Procedures Guide for NASA Managers and Practitioners (December 2011), at 3-4, available at: http://www.hq.nasa.gov/office/codeq/doctree/SP20113421.pdf.

[28] Regulatory Guide 1.174 - An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis (November 2002), available at: http://www.nrc.gov/reading-rm/doc-collections/reg-guides/power-reactors/rg/01-174/, and May 2001 update, available at: http://pbadupws.nrc.gov/docs/ML1009/ML100910008.pdf .

assessments while providing the highest protection for safety, health, and the environment. Moreover, the risk assessment model should ultimately be governed by an ISS framework.[29]

III. The Risk Assessment Model Must Inherently Prioritize Safety Above Cost and Profit

CBE reiterates its concern that several parties to this proceeding have failed to ascertain the overall priority of this Commission proceeding. This proceeding evolved from concern over the catastrophic failure of the PG&E system in San Bruno and subsequent legislation. As noted in our Opening Comments, in particular, SB 705 states that "safety of the public" and utility company workers is the "top priority."[30] Several parties have not maintained this prioritization of goals in two key respects: first, by placing too great an emphasis on asset costs; and second, by improperly accounting for how those costs, passed onto ratepayers, are "just and reasonable."

A. The IOUs Place Too Disproportionate a Focus on Costs Over Safety

The IOUs place too great an emphasis on cost at the expense of public and worker safety. For instance, as noted above, PG&E describes a risk model that is primarily focused on asset costs. PG&E notes: their "risk management program has been developed to address the needs of PG&E's business operations and has evolved over time to incorporate PG&E's planning and budgeting processes." This considers "utility-specific information on asset age and type, geography." PG&E then continues to support the proposal to only place an initial focus on a limited number of "asset-related risks."[31] Additional risks, such as emergency response and qualified personnel, are secondary considerations.[32] This prioritization on asset life, versus human life, runs wholly contrary to the legislature's intent for the series of proceedings,

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[29] The Chemical Safety Board report on the Chevron Richmond refinery explosion provides examples of how quantitative risk assessment has been combined with ISS. *See* CSB, Chevron Refinery Report, at 42-43.
[30] R.13-11-006, Order Instituting Rulemaking at 2, citing Pub. Util. Code § 963.
[31] PG&E Opening Comments at 3-4.
[32] *Id.* at 4.

including this one, to address public safety. Furthermore, the Chemical Safety Board has identified management failures to provide adequate emergency response by qualified personnel as a contributing factor to catastrophic failure.[33] These are simply not secondary concerns.

Similarly, SCE also places too much focus on costs. SCE reminds the Commission not to lose sight of the "cost of service" immediately after noting that SCE has "no greater responsibility than protecting the health and safety of the public and SCE employees." As noted further below, SCE's "passing on" of costs to customers is inappropriate and the Commission should not minimize the emphasis on public and worker health and safety based on a utility's concern to recover the costs of those safety measures – SCE implies the contrary. SCE also comments that the reporting requirements should be consistent with the cost-of-service ratemaking principle, and must not compromise the utility's ability to have flexibility to shift authorized funding to other emerging priorities.[34] If SCE truly has "no greater responsibility" than protecting worker and public health and safety, there should be no other emerging priorities.

B. The Utilities Should Internalize Costs to Improve Safety and Reliability

CBE again emphasizes the paradox of incorporating safety considerations/costs into a profit structure without disincentivizing those very safety measures. Moreover, any added costs to maintain safe and reliable service must be absorbed by the utilities themselves and not passed onto ratepayers.

For instance, SCE refers to "reasonably incurred costs" in relation to "just and reasonable rates" implying that the Commission must strike a balance costs and an increase in rates. However, this is an inappropriate shifting of responsibility onto the Commission. Again, this proceeding is a direct outgrowth of worker and community concern, coupled with legislation.

[33] *See* CBE Opening Comments, at 6, and CSB Chevron Refinery Report Draft, available at http://www.csb.gov/chevron-regulatory-report-draft-for-public-comment/ .
[34] SCE Opening Comments, at 19.

That legislation includes the Natural Gas Pipeline Safety Act of 2011.[35] A primary purpose of the Act was to establish standards to achieve a safe and reliable delivery of service.[36] Further, section 959 states, "a gas corporation shall not recover any fine or penalty in any rate approved by the commission."[37] Prior to these amendments, the Commission's regulations regarding pipeline safety were evidently insufficient. Any measures or costs incurred by utilities to bring their operations up to par lie closer to fines or penalties, rather than ordinary course of business, just and reasonable rates.[38] CBE is not seeking a hard line rule that all costs of evaluation and installation of safety mechanisms in the future should be borne by the utilities; however, at a minimum, during the initial period of this proceeding at least, those costs are certainly more akin to costs incurred to ensure compliance, practically a penalty, and should not be passed on to ratepayers.[39]

IV. The Commission Should Ensure Meaningful Worker and Community Participation at All Phases of this Proceeding.

CBE supports CUE's recommendations for much more enhanced intervenor participation in the RAMP phase in order to comply with the Commission's goal of participatory inclusivity.[40] CBE reiterates its contention in its Opening Comments that worker and community participation must be ensured throughout all phases of this proceeding.[41]

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[35] Pub. Util. Code §§ 955-970.
[36] *Id.* at § 956.
[37] *Id.* at § 959.
[38] *See id.* at § 451.
[39] One way for the Commission not to pass on these costs to customers is by implementing performance-based rate-making. *See e.g.,* Sonia Aggarwal and Eddie Burgess, "New Regulatory Models" (March 2014), available at: http://westernenergyboard.org/wp-content/uploads/2014/03/SPSC-CREPC_NewRegulatoryModels.pdf .
[40] CUE Opening Comments, at 3-4.
[41] CBE Opening Comments, at 3-5.

V. Verification Must be Independent

Several parties expressed their frustrations with the Risk Mitigation Accountability Report, noting that it will be difficult to assess.[42] CBE suggests that the utilities and the Commission hire independent experts to help with this (and any) verification, be transparent, and include an enforcement component, as stated in CBE's Opening Comments.[43] To the extent the report remains unworkable, however, CBE recommends that the Commission require the utilities to make a showing that they are working toward meeting the performance standards set out by the Commission and in the plans and strategies submitted by the utilities to reduce risks, per CBE's recommendations in Section I.C, *supra*, and follow the recommendations of CBE in its Opening Comments.[44]

VI. CONCLUSION

For the foregoing reasons, CBE respectfully requests that the Commission consider and adopt the above recommendations.

Respectfully submitted,

June 13, 2014

/s/ Maya Golden-Krasner
Maya Golden-Krasner

MAYA GOLDEN-KRASNER (Bar No. 217557)
Communities for a Better Environment
6325 Pacific Boulevard, Suite 300
Huntington Park, CA 90255
(323) 826-9771 x 121 (telephone)
(323) 588-7079 (facsimile)
maya@cbecal.org (e-mail)

[42] *See e.g.,* EPUC Opening Comments, at 19; PG&E Opening Comments, at 7; SCE Opening Comments, at 15-16.
[43] CBE Opening Comments, at 14-15.
[44] *Id.*

/s/ Roger Lin
Roger Lin

ROGER LIN (Bar No. 248144)
Communities for a Better Environment
1904 Franklin Street, Suite 600
Oakland, CA 94612
(510) 302-0430 x 16 (telephone)
(510) 302-0438 (facsimile)
roger@cbecal.org (e-mail)

Attorneys for
COMMUNITIES FOR A BETTER ENVIRONMENT