

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)

**SECOND ROUND OPENING COMMENTS
OF COMMUNITIES FOR A BETTER ENVIRONMENT**

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Communities for a Better Environment (“CBE”) submits these Opening Comments pursuant to 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). In accordance with these rulings, the second round of comments shall only address proposals to revise the RCP to “promote more efficient and effective management of the overall rate case process.”¹

I. Safety, Environmental Protection, and Health Must be Incorporated into the RCP, for Instance, by Requiring Utilities to Submit Risk Management Plans that Emphasize Inherent Safety

First, throughout this proceeding, CBE has argued that safety, health, and environmental protection must be the driving priority in the S-MAP, RAMP, and GRC proceedings.² The most effective and efficient means to accomplish this goal is to put the utilities on a path toward internalizing safety and health as driving factors in their decision-making structures. CBE believes the best way to achieve this is to require utilities to adopt an “Inherently Safer Systems”

¹ Scoping Memo and Ruling of the Assigned Commissioner and Administrative Law Judge, R.13-11-006 (May 15, 2014), 6, *citing* Order Instituting Rulemaking, 1.

² *See, e.g.*, CBE first round Opening Comments, 2, 5-7; CBE first round Reply Comments, 1-13.

(“ISS”) framework that governs all levels of the utilities’ operations and decisions. As CBE described in its first round Opening Comments, ISS frameworks have already been adopted in many different tightly coupled, highly complex, and dangerous industries.³ The Commission would be remiss if it missed this opportunity to, at the very least, evaluate the adoption of ISS in the utility sector.

As CBE noted earlier, an ISS framework is one that “would impose a duty on the utilities to *continually* make decisions that would reduce risks as low as reasonably practicable.”⁴ This continual evaluation and reevaluation of systems is central to ensuring the prioritization of safety.⁵ Therefore, the evaluation of the utilities’ plans towards implementing an ISS framework must also be a continual process. The inclusion of the Commission’s evaluations of the utilities’ risk assessment models and mitigation plans as part of the Rate Case Plan (“RCP”), therefore, cannot be a one-time requirement, but must occur with every General Rate Case (“GRC”) cycle.⁶

If parties are concerned that requiring a safety assessment by the Commission during every GRC cycle will be too time consuming, CBE has suggested ways to make the process more efficient through a creation of uniform guidelines and requirements for risk assessment models and risk mitigation plans. CBE has suggested, for instance, that the Commission look to existing risk assessment models used by other risky or dangerous conditions and industries, such

³ CBE first round Opening Comments, 16.

⁴ CBE first round Reply Comments, 2 (emphasis added).

⁵ See CBE first round Reply Comments, 2 (“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,” *citing* 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), at 40-43, available at: http://www.csb.gov/assets/1/7/Chevron_Regulatory_Report_05012014.pdf).

⁶ This is as opposed to the suggestions of the large utilities. See first round Opening Comments of SCGC at 3, PG&E at 3; SCE at 3-4; SDG&E at 3-6.

as earthquake prediction and space exploration.⁷ Using existing models can both cut down on the initial work of creating models, as well as prioritize safety.⁸

Further, CBE has recommended that the Commission adopt a list of the types of risks that the utilities must prioritize (safety, environmental harm, and health, for instance), as well as specific performance standards with which the utilities must comply in creating their risk mitigation plans.⁹ Providing these uniform standards and guidelines will help focus and streamline the RCP process, as well as set a level playing field and spur innovation.¹⁰

To this end, the Commission should require that utilities develop plans during the RAMP as to how they will integrate and implement ISS within their decision-making structures, and submit those plans as part of the RCP. Subsequent RCPs would then provide the opportunity for the utilities to describe the steps they are taking to implement ISS, and for them to conduct periodic, but necessary, evaluations of whether their corporate culture and internal decisionmaking is, in fact, prioritizing safety. For instance, are the utilities incorporating root cause analyses into their accident and near-accident investigations? Do they have a process for conducting an alternatives analysis for decisions on products, procedures, and materials used to see if there are safer ones available? Are they instituting workforce development and trainings on safety and environmental protection at all levels of the organization, and protections and procedures to encourage workers to report safety issues, in order to create a culture of safety? In this scenario, the Commission would lay out the performance standards that would go into a risk management / safety plan—standards that encourage utilities to incorporate ISS frameworks.

The Commission should ensure that the RCP would require the utilities to submit their plans, and

⁷ CBE first round Reply Comments, 7-11.

⁸ There are, in fact, existing models that incorporate both ISS and cost. *See* CBE first round Opening Comments, 8, fn 17.

⁹ CBE first round Opening Comments, 7-11; CBE first round Reply Comments, 4-5.

¹⁰ *See* CBE first round Reply Comments, 4.

in the interest of transparency, any other documents used or relied upon to evaluate safety or risk at the S-MAP and RAMP phases, as part of the GRC.

II. The Commission Should Ensure Equal Participatory Weight to Intervenors

As noted in CBE's earlier comments, participation of community groups and organizations provides a similar benefit to that of workforce involvement in management decisionmaking.¹¹ Where "workers are potentially the most knowledgeable people with respect to the day-to-day details of operating the process and maintaining the equipment and facilities,"¹² community groups and organizations with a direct interest in the health and safety of their members, similarly bring the same emphasis and can also provide management, and the Commission, with valuable insight. Also illustrated in our earlier comments, community groups and organizations provide an opportunity for the Commission to obtain the opinion of local services and agencies.¹³

The Commission should therefore clarify the equal participatory weight, to that of the utilities and Commission staff, that the GRC will also accord intervenors.¹⁴ This includes not only availability of the above referenced data, but also an equal opportunity to propound discovery. The Refined Straw Proposal ("RSP") emphasizes that "utilities must respond to all discovery requests made by ORA and other Commission staff during the GRC process."¹⁵ Again, in the interest of full transparency, a driving consideration in not only this proceeding, but the overall analysis of safety and risk, the Commission should ensure that intervenors also have the same access to data as all other parties to the GRC process.¹⁶

¹¹ CBE first round Opening Comments, 4.

¹² See UCAN first round Opening Comments.

¹³ *Id.* at 5.

¹⁴ CBE reiterates the same concern for the S-MAP and RAMP phases of this proceeding.

¹⁵ RSP, 8.

¹⁶ Subject, of course, to the Commission's rules on confidentiality.

Overall, CBE again emphasizes the need for real and meaningful worker and community participation; they are the eyes and ears that can assist regulators to ensure effective implementation and that is no exception in this proceeding.

III. The Commission Should Include Verification and Accountability Reports as Part of the GRC Record.

As the RSP notes, intervenors can help the Commission hold utilities accountable for GRC spending with reference to each utility's Risk Mitigation Accountability Report and Risk Spending Accountability Report.¹⁷ However, the inclusion of these reports into any subsequent GRC process seems limited to the request of either the utility or Commission staff. Certainly, intervenors can seek staff's submission of these documents into the record, but in the interest of transparency and efficiency, the Commission should instead require these reports be part of the GRC record, also subject to discovery and cross-examination.

Finally, CBE reiterates the need for an ISS framework to underlie any phase of this proceeding.¹⁸ Central to any ISS framework, the Commission must ensure systems are in place to allow for continual evaluation and reevaluation of a utility's compliance with the requirements of this proceeding. This emphasizes the need for inclusion of the Risk Mitigation and Risk Spending Accountability reports, including those from prior cycles, as well as reports detailing the utilities' movement on integrating ISS into their operations, into the current GRC record. Consequently, each GRC cycle will allow intervenors to evaluate a utility's mitigation and spending, maintain this proceeding's emphasis on safety, and allow for a more long term development and evaluation of an ISS framework.

¹⁷ RSP, 9.

¹⁸ See CBE first round Opening and Reply Comments; and Chemical Safety Board Draft Regulatory Report on the Chevron Richmond Refinery Fire, available at http://www.csb.gov/assets/1/19/Chevron_Regulatory_Report_06272014.pdf.

IV. CONCLUSION

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

Respectfully submitted,

July 25, 2014

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