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" REPLY COMMENTS OF THE UTILITY REFORM NETWORK ADDRESSING REVISIONS TO THE RATE CASE PLAN TO PROMOTE A MORE EFFICIENT AND MANAGEABLE RATE CASE PROCESS

Hayley Goodson, Staff Attorney

The Utility Reform Network
785 Market Street, Suite 1400
San Francisco, CA 94103
Phone: (415) 929-8876
Fax: (415) 929-1132
E-mail: hayley@turn.org

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I. INTRODUCTION

On May 15, 2014, the Commission issued the *Scoping Memo and Ruling of the Assigned Commissioner and Administrative Law Judge* (*Scoping Memo*), which scheduled two rounds of comments and reply comments, the first addressing staff's Refined Straw Proposal for incorporating a risk-based decision-making framework into the Commission's Rate Case Plan (RCP) process, and the second proposing revisions to the RCP "to promote more efficient and effective management of the overall rate case process."[1] Pursuant to the *Scoping Memo*, The Utility Reform Network (TURN) submits these reply comments addressing the recommendations of other parties for making the rate case process more efficient and manageable. TURN responds to the opening comments of the Energy Producers and Users Coalition (EPUC), the Office of Ratepayer Advocates (ORA), Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company and Southern California Gas Company (SDG&E/SoCalGas), Southern California Edison Company (SCE), and the Utility Consumers' Action Network (UCAN).

II. SCHEDULE

A. The NOI Phase

SCE, SDG&E/SoCalGas, and EPUC argue that the Notice of Intent (NOI) phase should be eliminated from the RCP.[2] ORA advocates a continuation of the NOI phase, though recommends that the current 60-day waiting period for filing the application following the

[1] *Scoping Memo and Ruling of the Assigned Commissioner and Administrative Law Judge*, pp. 5-6.

[2] EPUC Comments, p. 9; SCE Comments, p. 5; SDG&E/SoCalGas Comments, p. 2.

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acceptance of the NOI be shortened to "30 days or fewer if [the] utility is ready to file."[3] SCE and SDG&E/SoCalGas similarly recommend that the utilities be permitted to file their applications as soon as possible after the acceptance of the NOI, if the NOI is to be retained.[4]

As previously indicated, TURN supports ORA's view that the NOI phase adds value. TURN also agrees with SCE and SDG&E/SoCalGas that the RCP should be modified to eliminate any prescribed "waiting period" if the Commission determines that the NOI phase should continue to be part of GRCs. However, as a practical matter, it may be preferable for the RCP to include a fixed due date for the GRC application so that subsequent dates in the schedule can flow from that date.

B. Protests

PG&E recommends that the RCP be modified to eliminate the need for protests, which add time to the schedule, without adding much value. Instead, PG&E envisions "a statement of interest of the party that is either provided in a PHC statement or in that party's motion for party status."[5] TURN would not object to this change, as long as the Commission modifies not only the RCP but also the Commission's Rules of Practice and Procedure to ensure that eliminating protests will not in any way limit the due process rights afforded to parties in a GRC.[6]

C. The Meaning of RCP Deadlines

PG&E suggests that the new RCP schedule use calendar dates, instead of number of days after tender, and "be binding on all parties." By "binding," PG&E envisions that a party wishing to modify the new RCP schedule would "have to seek leave to do so from the Executive

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[3] ORA Comments, p. 2.

[4] SCE Comments, p. 5; SDG&E/SoCalGas Comments, p. 2.

[5] PG&E Comments, p. 3.

[6] *See, e.g.,* Rules 7.2(b), 7.3(b), and 8.3(d) in the Commission's Rules of Practice and Procedure.

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Director, accompanied by a showing as to why the recommended change (i) should not materially impact the remainder of the schedule and (ii) was unavoidable."[7]

TURN agrees with PG&E that having a realistic new RCP schedule, presumed to govern the proceeding unless modified, could confer benefits, such as simplifying the issues in dispute before and during the PHC and potentially expediting the scoping memo. However, TURN's position is that the Assigned Administrative Law Judge(s) should have the discretion to modify the schedule on a showing of reasonableness by the party seeking the change. The ALJ(s) will be in the best position to assess the reasonableness of any request for a deviation from the new RCP schedule, having more familiarity with the workload associated with a GRC, as well as the potential impact, if any, on the remainder of the schedule.

SDG&E/SoCalGas take a different approach than PG&E. They recommend that the Commission allow "inefficiency" adjustments to intervenor compensation so as to provide "financial incentives to motivate parties" to adhere to the RCP schedule (as well as the "rules of practice, and scoping limitations").[8] Such adjustments could, in SDG&E/SoCalGas' view, occur at the urging of a party filing a motion or *sua sponte* by the ALJ.[9]

The Commission should dismiss this suggestion as completely unnecessary. The Commission already has tools to motivate parties to participate efficiently and consistent with the scope and schedule adopted for a proceeding. For instance, Public Utilities Code Section 1808 directs the Commission to deny any award of intervenor compensation to any party "who attempts to delay or obstruct the orderly and timely fulfillment of the commission's responsibilities." Moreover, if at any time during the course of a GRC the applicant or another

[7] PG&E Comments, p. 3.

[8] SDG&E/SoCalGas Comments, pp. 3-4.

[9] SDG&E/SoCalGas Comments, pp. 3-4.

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party submits testimony or files a document that addresses issues arguably beyond the scope, any party may file a motion to strike the offending portion of that document. A timely ruling by an ALJ can prevent the expenditure of time and resources on litigating such issues that are found to be beyond the scope.

D. Proposals to Address Final Decisions Delayed Beyond January 1 of the Test Year

SDG&E/SoCalGas recommends that the RCP be modified to specify that for each GRC proceeding, the effective date of the adopted revenue requirement will be January 1 of the Test Year, and to authorize the establishment of a memorandum account, upon the filing of the GRC Application, to achieve the same effective result in the event that a final decision does not issue by that date.[10] TURN supports this proposal. We agree with SDG&E/SoCalGas that there is no practical benefit to the current approach, where the utility, or TURN, as is often the case, must file a motion seeking the same relief, and the Commission must expend resources considering the motion and responsive pleadings.

On the other hand, TURN recommends that the Commission reject the approach suggested by SCE. SCE proposes that the RCP specify that the applicant's GRC *request* will be effective on January 1 of the Test Year, unless a final decision issues before then. As explained by SCE,

> Upon issuance of a GRC final decision, the utility would calculate the revenue requirement difference between the requested and authorized levels. Any refund, or increase, could then be amortized over the succeeding 24 months in customer rate levels. Under this method, the utility would have 24 months to conform its O&M spending and capital investment to changes contained in the final decision.[11]

[10] SDG&E/SoCalGas, p 3.

[11] SCE, p. 16.

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SCE's approach is fundamentally inconsistent with the Commission's GRC construct in that it would render the Test Year meaningless as a Base Year for the next GRC.

III. CONTENT OF UTILITY GRC APPLICATIONS

A. Master Data Request (MDR) and RCP Standard Requirements List

PG&E recommends that the Commission eliminate or reform the Master Data Request (MDR) to reduce "the amount of needless information provided by the utilities" and "ensure the information is useful to its recipients."[12] SCE asks that the utilities be allowed to combine their MDR responses with the RCP standard requirement list and submit this information together as part of their GRC applications (consistent with its position that the NOI phase should be eliminated).[13] SCE also suggests a workshop to address updating the MDR and standard requirement list.[14] EPUC, too, recommends a workshop to address the MDR, among other topics.[15]

TURN agrees with SCE that it would make sense to integrate an updated version of the MDR and RCP standard requirement list and include these with the GRC filing as a matter of course. TURN has previously suggested that the MDR should be updated to incorporate questions commonly asked by intervenors, thus reducing the need for separate – and potentially duplicative – discovery. We agree with SCE and EPUC that a workshop is an appropriate forum for discussing changes to the MDR to better meet the contemporary data needs of the Commission, ORA, and regular GRC intervenors.

PG&E also proposes to increase the threshold for detailed project spending on capital

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[12] PG&E Comments, pp. 7-8.

[13] SCE Comments, pp. 6-7.

[14] *Id.*

[15] EPUC, p. 7.

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projects from $1 million to $5 million.[16] While TURN might be able to agree to a more modest increase, going to $5 million obscures too many projects.

B. Results of Operations (RO) Model

SCE points to the RO Model itself as a source of complexity in GRCs that "undoubtedly [has] contributed to the delays in final decisions."[17] SCE recommends that "the modeling experts from the utilities and the Commission consult with each other and explore ways to simplify the model and make a recommendation to the Commission."[18] SCE also notes that simplifying the RO Model will make the model "somewhat less precise."[19]

TURN can see some potential benefit to simplifying the RO Model, but the devil is in the details, as always. How to strike the right balance between precision and simplicity requires careful and informed consideration. TURN recommends that if the Commission is inclined to adopt SCE's suggestion, then the Commission should open the discussions to intervenors with appropriate expertise, as well as to the utilities and Commission staff.

C. Rate and Bill Impacts

EPUC recommends that the utilities include in their GRC filings a transparent accounting of all pending rate increase requests (including the GRC request) and their cumulative impact on rates, as well as rate components.[20] EPUC notes that approximately 50% of utility costs are reviewed in the GRC, while the remaining costs are reviewed across many other proceedings.[21]

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[16] PG&E Comments, pp. 6-7.

[17] SCE Comments, p. 16.

[18] SCE Comments, p. 16.

[19] SCE Comments, p. 16.

[20] EPUC Comments, pp. 5-6.

[21] EPUC Comments, p. 4.

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EPUC likewise suggests that this information be readily available in a simple format on each utility's website.[22] TURN supports EPUC's proposal, for the reasons provided by EPUC. TURN additionally suggests that this showing include bill impacts, as well as rate impacts.

IV. DISCOVERY AND EVIDENTIARY HEARINGS

A. Discovery Cut-Off Dates

The utilities all complain about the increasing volume of discovery in GRCs. PG&E recommends that the Commission consider adopting discovery cut-off dates.[23] SCE and SDG&E/SoCalGas go farther, recommending the adoption of pre-determined cut-off dates for discovery, plus the assignment of a Law and Motion ALJ to each GRC to oversee discovery coordination and management in the case.[24]

These proposals are misguided for several reasons. First, the problem is not that intervenors have too much time on their hands. Rather, the culprit behind the increase in discovery is the utilities' showings, the size of their GRC requests, and in some cases, their own responses to data requests, as well as the Commission's use of a future Test Year, and a growing number of intervenors in GRCs. While TURN shares the utilities' view that the Commission should seek to reduce the amount of GRC discovery in this proceeding, we have proposed policy changes intended to reduce *the need for discovery* (e.g., by reducing controversy and increasing transparency), as opposed to simply reducing the amount of discovery. The Commission should deal with the real issues at hand by changing the way that GRCs are actually structured and processed, rather than constraining the ability of intervenors to digest the utilities' showings and make well-developed and supported recommendations to the Commission.

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[22] EPUC Comments, pp. 5-6.

[23] PG&E Comments, p. 5.

[24] SCE Comments, pp. 9-10; SDG&E/SoCalGas Comments, p. 3.

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Second, PG&E, SCE, and SDG&E/SoCalGas seem to mistakenly believe that intervenors are in the same position as a utility, with a full GRC team ready to dive into the case as soon as the testimony arrives. This is simply not the case for TURN, and certainly not for even smaller intervenors. TURN's witnesses tend to cover multiple subject matters in GRCs, as opposed to most utility witnesses. For instance, in the current SCE TY 2015 GRC, TURN's witness William B. Marcus submitted testimony addressing policy issues, generation O&M and capital (covering all resource types), certain distribution expenses and other operating revenues, the meter set forecast and related capital spending, financial and audit services, external relations, income taxes, various accounting and ratemaking issues, and cash working capital and other rate base issues. Moreover, all of TURN's witnesses are juggling multiple projects, often for multiple clients, some of which may be in other jurisdictions. The utility GRC witnesses do not face these same competing demands on their time and attention (with the possible exception of outside consultants brought in to sponsor testimony). As a result of this reality, it is simply unreasonable to expect that all intervenor witnesses can and will dive into discovery on every topic they are covering on day 1, as a firm discovery cut-off rule would implicitly presume.

For all of these reasons, TURN urges the Commission not to take a heavy-handed approach to discovery management in the RCP, as the utilities advocate. TURN suggests instead that the appropriateness and feasibility of adopting discovery cut-offs could be considered on a case-by-case basis, such as at the Prehearing Conference held in each GRC, if at all.

B. Limiting the Scope of Discovery

SCE recommends that the that the Commission limit the scope of discovery to "issues that are properly within the scope of the utility's GRC, such as: (a) issues presented in the RAMP, (b) information used to form the basis of the utility's forecast, and (c) the utility's

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demonstration of compliance with legal or regulatory requirements."[25] SCE's approach is too narrow.

For one thing, a party may seek to test the reasonableness of "the information used to form the basis of the utility's forecast" by obtaining and considering other information uniquely within the utility's possession. The information asymmetry between utilities' and intervenors is such that intervenors may by necessity need to conduct discovery that exceeds the narrow parameters suggested by SCE. As the Commission previously explained in PG&E's Test Year 1999 GRC decision, D.00-02-046, the utility

> has exclusive control over the costs and conditions of such service [the provision of electric and gas distribution service] and, importantly, control over the information about costs and conditions. In order to prevent abuse of this monopoly and its incidents, the Legislature has given the Commission broad powers of investigation intended to make the real costs and conditions of monopoly service transparent. We exercise those powers to assure the public that the prices they pay for monopoly service are in fact just and reasonable, that they are in fact reasonably related to costs prudently incurred by efficient, conscientious managers to provide the quality of service we expect. This is at the core of our responsibilities.[26]

Placing overly restrictive limits on intervenor discovery would undermine the Commission's ability to carry out this purpose.

Related, it is customary for the Commission to issue an Order Instituting Investigation (OII) and open a companion docket to the utility's general rate case application. As the Commission explained when it opened I.06-03-003, the companion investigation to A.05-12-002, PG&E's 2007 General Rate Case:

> The purpose of this investigation is to allow the Commission to consider proposals other than PG&E's, and to enable the Commission to enter orders on matters for which the utility may not be the proponent. This companion investigation will also afford parties an opportunity and forum to provide

[25] SCE Comments, p. 10.

[26] D.00-02-046, *mimeo*, at pp. 26-27.

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> evidence on issues of interest to the Commission. These issues may result in directives to PG&E that serve the public interest and that result in just and reasonable rates, services, and facilities.[27]

Parties must be afforded an opportunity to conduct discovery consistent with this broader construction of a GRC's proper purpose and scope.

The Commission should decline to limit the scope of discovery as proposed by SCE. Despite SCE's complaints about the existing process for dealing with discovery of questionable relevance to a GRC, this is the most equitable process for ensuring that intervenors have a fair opportunity to develop a full range of recommendations (that fall within the scope of a GRC and its companion investigation), to inform the Commission's deliberations over how to best serve the public interest.

C. Minimizing Duplication in Discovery

SCE complains of "duplicative discovery," both among intervenors and within a single organization.[28] SCE cites to specific examples of duplication but does not indicate what percentage of data requests duplicate prior discovery.

The Commission should recognize that tolerating some degree of duplication is more efficient than trying to eliminate it entirely. TURN strives to minimize duplication with ORA and other parties who tend to address similar issues, but we do not assume that we avoid duplication 100% of the time. The fact is that it takes far more time for intervenors to read the discovery of all other parties than it takes for a utility to respond to a duplicative data request by referring the propounding party to the prior response. Also, claims of duplication may be exaggerated. TURN has had the experience in the current SCE GRC of being referred by SCE to

[27] Order Instituting Investigation 06-03-003, issued March 7, 2006, p. 1.

[28] SCE Comments, pp. 8-9.

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a prior ORA data request response that was not actually responsive to TURN's request.

Even so, TURN appreciates the desire to reduce duplication to the extent reasonably feasible. One way to reduce duplication among intervenors is to update the MDR to reflect the current data needs of parties, as discussed above. If all parties receive this data (subject to appropriate non-disclosure agreements, where applicable), then all parties will review it and hopefully avoid propounding duplicative discovery. TURN has also found SCE's discovery tracking spreadsheet in the current GRC to be useful. Finally, while SCE suggests that a pre-discovery workshop could be held to reduce subsequent discovery[29], TURN tends to think that open, informal channels of discovery during the intervenor testimony preparation phase would be more useful, as that is when witnesses may be more likely to have greater familiarity with the utility's specific proposals.

C. Minimizing Duplication in and Limiting the Scope of Cross-Examination

SCE proposes changes to the management of evidentiary hearings, such as "limiting the scope of the questions that an intervenor may pose to witnesses during the evidentiary hearings to those issues that are within the scope of their testimony," encouraging intervenors to coordinate to avoid duplicative questions for witnesses, and permitting utility witnesses appearing less than a day to appear via webcast.[30] TURN opposes all of these suggestions.

First, there is no reasonable basis for limiting the scope of intervenor participation during hearings to those issues raised in an intervenor's own testimony. A party may address any issue within the scope of a proceeding in briefs, so long as the argument is based on record evidence, including raising a new issue (not in the party's testimony) or revising a position taken in

[29] SCE Comments, p. 9.

[30] SCE Comments, p. 11.

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testimony so that it reflects the fuller record that exists at the end of hearings. Moreover, there could be a number of perfectly legitimate reasons for a party to cross-examine another party's witness, even if the cross-examining party sponsored no direct or rebuttal testimony on point. For instance, the intervenor could have missed the issue in the utility's massive GRC showing until after testimony has been served. That should not result in a waiver of any opportunity to help develop the record on that issue. Or the cross-examining party may be seeking to clarify the record after a confusing exchange between a witness and another party conducting cross-examination, to the benefit of the Commission's decision-making process.

There is also no reason to require coordination between intervenors. SCE can object to duplicative questions as already asked and answered. This "back-end" fix to the problem SCE cites is far less complex than expecting parties, who may plan to cross-examine the same witness but who may have dissimilar interests, to preview their specific questions with one another.

Finally, the Commission should continue to require witnesses to appear in person for cross-examination because it is harder to assess witness credibility when a witness does not appear in person.

V. FURTHER PROCESS IN THIS PROCEEDING

UCAN recommends that the Commission expand the schedule in Round 2 to include a workshop, a staff report on the issues raised at the workshop, and comments and reply comments from parties on the staff report, similar to the process used for Round 1 issues.[31] TURN agrees that some of the Round 2 proposals presented by parties warrant further vetting, such as updates to the MDR, and supports UCAN's proposal.

[31] UCAN Comments, pp. 2, 5.

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VI. CONCLUSION

For the reasons provided by TURN herein and in our prior comments, the Commission should act now to reduce the complexity of GRCs and increase their manageability. To this end, the Commission should adopt the recommendations provided by TURN, as well as those of other parties that TURN supports herein.

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Respectfully submitted,

By: _____/s/_____
Hayley Goodson
Staff Attorney

The Utility Reform Network
785 Market Street, Suite 1400
San Francisco, CA 94103
Phone: (415) 929-8876
Fax: (415) 929-1132
Email: hayley@turn.org

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