BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking on the Commission's Own Motion to Adopt New Safety and Reliability Regulations for Natural Gas Transmission and Distribution Pipelines and Related Ratemaking Mechanisms.	Rulemaking 11-02-019 (Filed February 24, 2011)

MOTION OF THE DIVISION OF RATEPAYER ADVOCATES AND THE UTILITY REFORM NETWORK FOR A RULING CONFIRMING THE SCOPE OF THE PIPELINE SAFETY PLAN ("PSEP") UPDATE APPLICATION TO BE FILED IN THIS PROCEEDING

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I. INTRODUCTION

Pursuant to Rule 11.1 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), the Division of Ratepayer Advocates ("DRA") and The Utility Reform Network ("TURN") (collectively "Joint Parties") hereby request a ruling confirming the scope of the Pipeline Safety Plan ("PSEP") Update Application ordered in Decision No. ("D.") 12-12-030 ("PSEP Decision"). The Joint Parties request such confirmation because they are concerned that PG&E's Update Application, which is now due October 29, 2013 – a three-month extension from its prior due date – will far exceed the scope envisioned by the PSEP Decision and will propose re-litigation of cost-related issues already resolved by the PSEP Decision.[1] At the least, a PG&E Update Application that exceeds the scope envisioned by the PSEP Decision will unnecessarily absorb extensive Commission and party resources to carefully review and evaluate the revised plan and supporting information,[2] and will prevent the expedited resolution of the Update Application contemplated in the PSEP Decision.

For all of these reasons, as set forth in more detail below, a ruling should issue confirming that PG&E's Update Application must be "limited in scope"[3] to PSEP project changes resulting from updated Maximum Allowable Operating Pressure ("MAOP") validation and the related records search work, as contemplated by the PSEP Decision. The ruling should also confirm that the project cost estimates adopted in D.12-12-030 will not be revisited in the

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[1] The Commission's Executive Director, Paul Clanon, granted PG&E's July 8, 2013 request for a three-month extension by a letter dated July 22, 2013. This extension was granted over the protests of TURN and DRA set forth in a letter to Mr. Clanon dated July 12, 2013. That July 12 letter articulated many of the same concerns set forth herein and noted that PG&E should be able to prepare the Update Application consistent with the scope anticipated by the PSEP Decision within the time frame provided by that decision.

[2] *See, e.g.,* in this same proceeding, two rulings dated August 16, 2013: the Ruling of the Chief Administrative Law Judge and Assigned Administrative Law Judge Directing Pacific Gas And Electric Company To Show Cause Why It Should Not Be Sanctioned By The Commission For Violation Of Rule 1.1 Of The Commission's Rules Of Practice And Procedure *and* the Ruling of Assigned Commissioner and Assigned Administrative Law Judge Directing Pacific Gas And Electric Company To Appear And Show Cause Why All Commission Decisions Authorizing Increased Operating Pressure Should Not Be Stayed Pending Demonstration That Records Are Reliable.

Both rulings reflect that PG&E has identified errors in its current, updated, database regarding the proper MAOP for Lines 101 and 147. These types of errors continue to persist in data provided by PG&E since the issuance of the PSEP Decision that DRA has reviewed. For example, DRA has discovered errors in the "sample workpaper" attached to PG&E's July 8, 2013 extension request, discussed in Note 1 above.

[3] D.12-12-030, p. 115.

Update Application. A comprehensive filing and review of all of the changes to PG&E's database and their cost consequences, which PG&E appears to be preparing, is beyond the scope of the Update Application. Such a comprehensive review should be addressed through the Consumer Protection and Safety Division's ("CPSD") oversight of PG&E's PSEP implementation.[4] A proposed ruling consistent with these recommendations is attached hereto.

II. DISCUSSION

A. The Scope And Purpose Of The Update Application Was Expressly Limited To Addressing Changes Resulting From Completion Of The MAOP Validation And Related Records Search Work

In response to requests from the Joint Parties made during the PSEP proceeding, the PSEP Decision requires PG&E to submit an Update Application 30 days after the conclusion of its MAOP validation and related records search work.[5] TURN, DRA, and the PSEP Decision all recognized that PG&E's original PSEP, which identified the pipelines to be tested and/or replaced based on missing pressure test records, would change once the MAOP validation and related records search work was completed. The Update Application was intended to ensure that PG&E's PSEP was updated to account for changes as a result of the MAOP validation, particularly the location of missing pressure test records, making testing and/or replacement of some pipelines unnecessary, and thus reducing the scope and cost of the Phase I PSEP work. The PSEP Decision explained:

> … [W]e will not know the exact number of pipe segments PG&E lacks the test records for and their associated disallowance until its MAOP validation and records search is completed. After the MAOP validation and records search are completed, *DRA's larger disallowance, or a portion of it, may be appropriate.* Therefore, consistent with TURN's recommendation, we shall require PG&E to file an expedited application 30 days after the conclusion of its MAOP validation and records search work that includes an updated pipe segment database.[6]

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[4] CPSD was renamed the Safety and Enforcement Division ("SED") effective January 1, 2012. However, for clarity and consistency, we refer to SED as CPSD throughout this pleading.

[5] D.12-12-030, p. 129, Ordering Paragraph 11; *see also* pp. 114-115.

[6] D.12-12-030, p. 115 (*emphases added*).

The PSEP Decision contemplated that this application would be "limited in scope."[7] The PSEP Decision also authorized a Phase I PSEP budget for PG&E, and ordered that expenditures over this authorized budget not be recovered from ratepayers.[8] In other words, the PSEP Decision imposed a cost cap on ratepayer responsibility for PG&E's Phase I expenditures. In ordering PG&E to file revised revenue requirements and budgets with its Update Application, the PSEP Decision clearly contemplated possible reductions in PG&E's authorized expenditures as a result of reductions in the scope of the PSEP based upon new information obtained during the MAOP validation and the related records search work.[9]

PG&E was well aware that the scope of the Phase I PSEP work, and therefore its authorized expenditures (i.e. the cost cap), were likely to be reduced as a result of completing the MAOP validation and updating the PSEP with the new pressure test information. As TURN explained when it proposed something akin to the Update Application:

> PG&E acknowledged that its PSEP estimates were based on a snapshot from its Geographic Information System ("GIS") database as of January 2011, long before it had concluded its MAOP validation work for high consequence area ("HCA") pipe segments. It is undisputed that, since January 2011, PG&E had located complete pressure test records that would obviate the need to test or replace at least 157 miles of pipeline in its PSEP, more than 15 percent of the total miles approved in the PD.[10]

TURN further concluded:

> To remedy this error, the [Proposed Decision] should be modified to require PG&E to update its mileage estimates in an advice letter filing shortly after the decision's issuance. In this way, the cost cap can be reduced to exclude costs for ineligible segments and prevent any opportunity for cost recovery for work that is not performed.[11]

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[7] D.12-12-030, p. 115.

[8] D.12-12-030, p. 125.

[9] *See, e.g.,* D.12-12-030, p. 129, Ordering Paragraph 11.

[10] TURN Opening Comments on the Proposed Decision ("PD"), R.11-02-019, Nov. 16, 2012, p. 2 (footnotes omitted). PG&E did not dispute TURN's estimates of the number of pressure test records PG&E had located since January 2011. Id., p. 2, note 3.

[11] *Id.,* p. 3.

The PSEP Decision essentially adopted TURN's proposal, but elected the more formal application procedure, rather than TURN's proposed advice letter procedure.

B. Evidence Suggests That PG&E Will Submit An Update Application Far Exceeding The Limited Scope Envisioned In The PSEP Decision

Pursuant to the PSEP Decision, the parties, including PG&E, DRA, and TURN, attended a March 26, 2013 Workshop hosted by Energy Division, and have participated in several follow up conference calls and numerous document exchanges with PG&E to determine the contents of the Update Application.[12] Unfortunately, the March Workshop, in combination with the other communications with PG&E, reveal that PG&E seeks to use the Update Application to revisit much more than changes resulting from its MAOP validation and related records search.

Among other things, the discussions with PG&E reveal that it seeks to increase project costs by: (1) increasing the length of many PSEP projects based on a new measuring methodology, thereby increasing the costs of each project, which are computed on a per-foot basis; (2) incorporating increased costs for changes unrelated to MAOP validation, such as newly discovered permitting requirements and cultural resource issues; and (3) incorporating changes from revised engineering assessments.

The Joint Parties' concerns regarding this increased scope are also supported by the sample workpaper attached to PG&E's July 8, 2013 extension request to Mr. Paul Clanon, the Commission's Executive Director.[13]

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[12] D.12-12-030, p. 115 ("The specific showing that PG&E will be required to provide in its application will be considered in a workshop to be held no later than 90 days from the effective date of this decision.").

[13] PG&E's July 8, 2013 extension request discussed in Note 1 above reflects that PG&E has agreed to provide certain information in the Update Application to describe the changes between the original PSEP Application and the Update Application resulting from the MAOP validation work. PG&E's obligation to provide this type of information in the Update Application should be affirmed.

C. Evidence Suggests PG&E Will, At Best, Seek To Prevent Downward Adjustment Of The Cost Cap, And At Worst, Seek To Relitigate Cost Issues Already Decided In The PSEP Decision

The Joint Parties believe that PG&E seeks a second bite at the contingency apple by attempting to increase project costs approved in D.12-12-030 to take into account precisely the kind of project changes supporting PG&E's original request for a 21% contingency – a request that was deemed unreasonable and denied. For example, PG&E speaks of new project lengths based on corrections to prior estimating mistakes and revised engineering based on new information. Decision12-12-030 explicitly denied PG&E's contingency request on the basis that PG&E's proposed project costs were already "generous" and at "the high end of the range of reasonableness."[14] Thus, PG&E's Phase I PSEP cost estimates were assumed to take these types of changes and/or estimating errors into account.

Ultimately, by broadening the scope of the Update Application to include this type of new information, PG&E apparently hopes to mitigate against any cost cap reductions that would otherwise result from the new MAOP validation information. Such PG&E efforts should not be countenanced. The cost cap serves an important ratepayer and efficiency interest and it should be adjusted downward to the extent that the number of projects to be performed in Phase I is reduced based on changes resulting from new MAOP validation information.

Allowing PG&E to present data outside the scope of its MAOP validation and related records search work as part of the Update Application will open the door to PG&E arguments regarding its increased project scope and associated costs. Permitting a discussion of whether PG&E may claw back ratepayer savings that would otherwise result from completing the MAOP validation is not only inconsistent with key provisions of D.12-12-030, but would also eliminate the efficiency incentives the Commission sought to create by adopting the cost cap. The PSEP Decision expressly concluded that: "The Commission should impose strong incentives on PG&E to encourage efficient construction management and administration of the Implementation Plan."[15] The cost cap was one such incentive.

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[14] See, e.g., pp. 63 and 98-99.

[15] D.12-12-030, p. 125, Conclusion of Law 34.

PG&E's Update Application is not the appropriate forum for PG&E to seek to increase the approved costs of its projects – an issue already litigated and resolved in D.12-12-030. To prevent these issues from arising in the Update Application, a pre-emptive ruling should issue in the near future confirming that these issues will not be considered in the Update Application. The ruling should explain that only changes resulting from completing the MAOP validation and the related records search work will be considered, and that any "new" projects added as a result of completing the MAOP validation, and added scope to existing projects, may only be included to the extent PG&E demonstrates that applying the approved Decision Tree criteria to new information obtained from MAOP validation requires that they be re-prioritized to PSEP Phase I.

D. The Update Application Is Not The Appropriate Forum To Address Larger Concerns Regarding PG&E's PSEP Implementation

The Joint Parties understand that CPSD Staff have previously supported an expanded scope for the PSEP Update because they want to ensure that "new" work that PG&E has re-prioritized to Phase I to address safety concerns is pursued in Phase I and they seek a forum to review the entirety of PG&E's updated PSEP, not just those portions that have changed as a result of the MAOP validation. The Joint Parties understand that CPSD Staff is concerned that if the scope of the Update Application is limited as described above, PG&E will not disclose or pursue needed "new" work in Phase I because of the cost caps, and that CPSD will not have the opportunity to review the *full range* of changes to PG&E's PSEP resulting from its database update unless *all* of these changes are included in the Update Application.

The Joint Parties share CPSD's desire: (1) to ensure that all legitimate high priority work is performed in Phase I; and (2) to review *the full extent* of PG&E's new PSEP database and *all* of the changes to the Phase I PSEP work that PG&E proposes. In fact, the Joint Parties believe that such oversight is critical to ensuring public safety. To this end, DRA has repeatedly urged that the Commission employ an independent monitor hired at PG&E expense and managed by CPSD, with public reporting obligations.[16] One of the first jobs of the Independent Monitor could be to obtain the full PSEP database from PG&E and begin the type of review desired by CPSD, TURN, and DRA.

[16] *See,* DRA Comments on the Proposed Decision in this proceeding, filed November 16, 2012, pp. 14-16.

Thus, while the Joint Parties believe that oversight of PG&E's PSEP implementation is critical and should be actively pursued by CPSD, the Joint Parties do not believe that the Update Application is the appropriate forum for that oversight, and that the purposes of the Update Application will be lost if it becomes such a forum. As discussed in more detail below, CPSD has a number of mechanisms available to it to review PG&E's PSEP implementation and should pursue them in lieu of addressing this issue in the Update Application proceeding.

1. CPSD Has Far-Reaching Authority To Obtain All The Information It Requires From PG&E To Oversee PSEP Implementation

The Commission has made CPSD responsible for overseeing PG&E's PSEP implementation. So that it can fulfill that responsibility, CPSD has expansive investigatory authority over PG&E. It can require PG&E to produce any information it seeks. The PSEP Decision was definitive on this point, stating:

> PG&E must keep CPSD fully informed of all changes it proposes to make to the program, and must obtain CPSD's concurrence in any proposed change to the Implementation Plan. We delegate authority to CPSD to exercise oversight of *all* PG&E activities, including those conducted by contractors, pursuant to the Implementation Plan. *CPSD is authorized to inspect, inquire, review, examine and participate in all activities of any kind related to the Implementation Plan. PG&E and its contractors shall immediately produce any document, analysis, test result, or plan, of any kind, related to the Implementation Plan as requested by CPSD, and such request need not be in writing.*[17]

CPSD's far-ranging authority is derived from numerous provisions of state law. As explained in Resolution L-403, which ordered the commencement of the San Bruno Investigations:

> Even without the compulsion of a subpoena, the Commission hereby confirms that under Public Utilities Code §§ 313, 314, 314.5, 315, 581, 582, 584, 701, 702, 771, 1794, and 1795 the Commission staff may obtain information from a public utility like PG&E, and that staff is already deemed to have the general investigatory authority of the Commission.[18]

Thus, CPSD Staff have the "general investigatory authority of the Commission" and may obtain all information they need from PG&E on an *expedited basis* and *without a request in writing*. To the extent CPSD believes it requires additional authority to oversee PG&E's PSEP

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[17] D.12-12-030, p. 84 (*emphases added*).

[18] Commission Resolution L-403, p. 6.

implementation, its existing authority and any additional specific authority could be addressed in the ruling on this Motion. CPSD does not need an expanded Update Application as a vehicle to pursue a vigorous review of PG&E's PSEP Implementation.

2. The PSEP Decision Addresses Funding For Priority Work And Further Funding Will Be Addressed Imminently In PG&E's Next Gas Transmission Rate Case

The PSEP Decision recognizes that PG&E may perform "higher priority projects" in lieu of previously approved projects that are not completed.[19] Thus, to the extent that PG&E can demonstrate a *legitimate* need under the approved Decision Tree criteria to perform a project in Phase I that was not previously included in Phase I, and it displaces another project, the cost cap will not be reduced by the cost of the displaced project. However, PG&E may not simply add projects to Phase I to prevent the cost cap from being reduced by projects cancelled as a result of new MAOP validation information.[20]

Further, the costs needed to fund PSEP Phase II will be addressed in PG&E's next Gas Transmission and Storage ("GT&S") rate case, which PG&E has stated it will file in October of this year. Thus, PG&E's cost recovery for all PSEP projects not completed in Phase I will be addressed in the near future, and this proceeding need not revisit the cost determinations made in the Phase I PSEP Decision to ensure funding for these other projects.

III. CONCLUSION

For the reasons set forth above, the Commission should issue a ruling confirming the determinations in the PSEP Decision that PG&E shall file a limited and expedited Update Application. The Update Application should specifically be limited to updating the PSEP scope and costs based on new data obtained through the MAOP validation and related records search

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[19] D.12-12-030, p. 127, Ordering Paragraph 6.

[20] This issue of re-prioritizing work to avoid reduction of the cost cap is likely to arise in this proceeding, as PG&E appears to have done just that with minimal justification. For example, the sample workpaper PG&E provided to justify its Update Application extension request includes a project that has been added simply to improve the piggability of the line. While the Joint Parties, as a general rule, support the goal of upgrading PG&E's gas transmission system for in-line inspections, absent a strong showing of economic efficiencies, there is no legitimate basis under the approved Decision Trees for re-prioritizing such a project to Phase I.

work.[21] To the extent PG&E has "reprioritized" new projects to Phase I, it should explain how the approved Decision Trees support such reprioritization. In no event should PG&E be permitted to unilaterally expand the scope of its Update Application beyond the changes required to update the PSEP consistent with the findings of the MAOP validation effort and related records search work.

If PG&E wants to broaden the scope of its Update Application to address higher costs – such as those associated with its new procedures for determining the length of a line or from re-engineering projects based on new information – it should be directed to file a petition for modification of D.12-12-030 or otherwise obtain leave of the Commission to do so.

Respectfully submitted,

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[21] This Motion only focuses on the proper scope of PG&E's Update Application. The Joint Parties reserve their right to challenge the outcomes requested in such an Application, even if the Application conforms to the scope requested in this Motion.

PROPOSED RULING CONFIRMING THAT THE UPDATE APPLICATION FILED BY PACIFIC GAS AND ELECTRIC COMPANY IN THIS PROCEEDING PURSUANT TO D.12-12-030 SHOULD BE LIMITED IN SCOPE TO CHANGES RESULTING FROM THE MAXIMUM ALLOWABLE OPERATING PRESSURE ("MOAP") VALIDATION AND THE RELATED RECORDS SEARCH WORK

On August 21, 2013 the Division Of Ratepayer Advocates ("DRA") and The Utility Reform Network (collectively "Joint Parties") filed a Motion For a Ruling Confirming The Scope Of The Pipeline Safety Plan ("PSEP") Update Application ("Motion"). The Motion is granted in its entirety.

Decision ("D.") 12-12-030, approving PG&E's PSEP, ordered PG&E to "file an expedited application 30 days after the conclusion of its MAOP validation and related records search work that includes an updated pipe segment database" ("Update Application").[22] The Motion sets forth the Joint Parties' concerns, as evidenced in a variety of communications with and from PG&E, that PG&E may, among other things, seek to expand the scope of the Update Application to support higher costs for its Phase I PSEP work. The Motion seeks a ruling confirming both the limited scope of the Update Application, and that cost estimates adopted in D.12-12-030 will not be revisited in the Commission's review of the Update Application.

We agree with the Joint Parties that a ruling confirming the scope of the Update Application is appropriate. We confirm that PG&E may only file an Update Application limited in scope to PSEP project changes resulting from updated Maximum Allowable Operating Pressure ("MAOP") validation and the related records search work, as contemplated by the PSEP Decision. The filing should include the information already agreed to by the parties, including certain information regarding the changes between the original PSEP Application and the Update Application resulting from the MAOP validation work. Any "new" projects added as a result of completing the MAOP validation may only be included in the Update Application to the extent PG&E demonstrates that the Decision Tree criteria require that they be re-prioritized to PSEP Phase I.

We also confirm that the project cost estimates adopted in D.12-12-030 will not be revisited in the Update Application. Thus, PG&E should not plan to seek higher project costs as a result of project changes resulting from things such as increased project lengths resulting from

[22] D.12-12-030, mimeo, p. 115.

a new measuring methodology, or re-engineering due to new permitting requirements or cultural resource issues.

To the extent PG&E is preparing a comprehensive filing to review all of the changes to PG&E's database and their cost consequences, such a filing is beyond the scope of the Update Application. To the extent PG&E wants to broaden the scope of its Update Application to address higher costs – such as those associated with its new procedures for determining the length of a line or from re-engineering projects based on new information – it shall file a petition for modification of D.12-12-030.

IT IS RULED THAT the Motion Of The Division Of Ratepayer Advocates and The Utility Reform Network For A Ruling Confirming The Scope Of The Pipeline Safety Plan ("PSEP") Update Application is granted in its entirety.

1. PG&E shall file an Update Application limited in scope to PSEP project changes resulting from the Maximum Allowable Operating Pressure ("MAOP") validation and the related records search work.
2. The Update Application shall, consistent with representations made by PG&E in its July 8, 2013 extension request letter to Mr. Paul Clanon, describe the changes between the original PSEP Application and the Update Application resulting from the MAOP validation work.
3. Any "new" projects added to PSEP Phase I as a result of completing the MAOP validation may only be included in the Update Application to the extent PG&E conclusively demonstrates in the Update Application that the Decision Tree criteria require that such projects be re-prioritized to PSEP Phase I.
4. Cost estimates adopted in D.12-12-030 will not be revisited in the Update Application. Consequently, the Update Application filed by PG&E may not present new cost estimates based on other information, such as increased project lengths resulting from a new measuring methodology or re-engineering due to new permitting requirements or cultural resource issues.
5. To the extent PG&E wants to broaden the scope of its Update Application to address higher costs, it shall file a petition for modification of D.12-12-030.

(END)