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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of San Diego Gas & Electric Company (U902M) for Authority, Among Other Things, to Increase Rates and Charges for Electric and Gas Service Effective on January 1, 2012.

Application 10-12-005  
(Filed December 15, 2010)

And Related Matter.

Application 10-12-006

**ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE'S  
RULING REGARDING MOTION OF THE UTILITY WORKERS UNION OF  
AMERICA FOR A DIRECTIVE TO PROTECT EMPLOYEES**

**1. Summary**

This ruling addresses the motion of the Utility Workers Union of America (UWUA) concerning its motion in these consolidated applications for “a directive to protect employees participating directly as witnesses or indirectly as sources of information.”

Based on the reasons set forth below, including encouragement of public utility employees to inform the Commission of safety and reliability issues, UWUA’s motion is granted based on the factual situation presented in these consolidated applications. Today’s ruling does not prejudge the issue in Rulemaking (R.) 11-02-019 as to whether there should be rules preventing management retaliation, and does not rule on UWUA’s request that a

Commission liaison person be appointed to facilitate the flow of information from utility employees.<sup>1</sup>

## **2. Background**

UWUA filed its motion for a directive on September 22, 2011. A response in opposition to UWUA's motion was filed by Southern California Gas Company (SoCalGas) on October 7, 2011.

A similar motion was also filed by UWUA in R.11-02-019 concerning the safety of the natural gas systems in California.

Attached to both motions was a letter from UWUA to the Executive Director of the Commission requesting that a staff liaison from the Commission be designated "to work with UWUA and Southern California Gas Company to facilitate the flow of information from utility employees by addressing issues involving witnesses who are employees of Southern California Gas Company, to prevent any activity that may deter employees from bringing to the Commission relevant information and opinions through the UWUA or any other party." (Motion, App. A.)

As of today, no action has been taken on UWUA's motion in R.11-02-019 or on UWUA's request to the Commission's Executive Director.

## **3. Discussion of the Motion**

UWUA's motion requests that a directive or protective order be issued to prevent SoCalGas from engaging in "retaliation, intimidation, adverse job activity, discrimination or any other activity" against members of UWUA who

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<sup>1</sup> An e-mail ruling was issued on January 12, 2012 informing the service list that based on the reasons set forth in this ruling, that the September 22, 2011 motion filed by the UWUA was granted.

are employees of SoCalGas “if they bring forward to the Commission, personally or through their representatives, relevant information to assist the Commission in promoting public safety and reliable service, protecting the public from dangerous or inconvenient conditions, and assuring just and reasonable rates and adequate service.” (Motion at 2.)<sup>2</sup>

UWUA’s motion acknowledges in its motion that it “is not responding specifically to overtly offensive actions by [SoCalGas] or asserting at this time any specific adverse acts or threats with respect to any employee or representative by [SoCalGas].” (Motion at 2.) UWUA further contends that the directive or protective order it is seeking is a “prophylactic, anticipatory measure to assure a free flow of information to the Commission from utility employees.” (Motion at 3.) UWUA suggests that the protective order that was granted in these proceedings on March 2, 2011, in the scoping memo and ruling (scoping ruling), concerning the orderly flow of information through discovery is equally applicable to UWUA’s motion in that the directive seeks an assurance of an “orderly and unobstructed flow of information to the Commission from persons especially well positioned to provide it.” (Motion at 3.) UWUA also contends that the purpose of having the Executive Director designate an employee to act as a liaison will help prevent the directive from becoming a burden on the assigned Administrative Law Judge.

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<sup>2</sup> UWUA’s motion requests that the directive or protective order be in the form of the “Directive to Refrain from Adverse Action” which is attached to its motion as Appendix B.

UWUA's second argument is that its motion "constitutes a further response by UWUA to the directive issued by the Commission in the Gas Safety Rulemaking R.11-02-019 requesting comment on the issue of enhanced protection for employees bringing forward information in the gas safety subject matter area at the commission." (Motion at 4.) UWUA further contends that its planned testimony on proposals to improve utility safety and service to the public are within the list of issues contained in the March 2, 2011 scoping ruling, and also within the scope of R.11-02-019. UWUA notes that employees "may appear as witnesses offering testimony, or may be sources of information on which formal testimony, cross examination or argument is based." (Motion at 5.) UWUA further contends that the transparency in the flow of information from employees will be impossible if the utility can retaliate against the employees.

SoCalGas opposes UWUA's motion on several grounds and recommends that the motion not be granted.

SoCalGas' first argument is that the relief sought by UWUA's motion is a request for a preliminary injunction rather than a protective order, which governs the exchange of confidential information. In order for a preliminary injunction to be issued, SoCalGas contends that: (1) the moving party must be likely to prevail on the merits; (2) there must be irreparable injury to the moving party without such an order; (3) there must be no substantial harm to other interested parties; and (4) there must be no harm to the public interest. SoCalGas contends that UWUA's motion does not allege any actual or threatened unlawful conduct, and that the motion acknowledges that it is a "prophylactic, anticipatory measure." As such, UWUA's motion seeks to enjoin conduct that is entirely speculative, and since there is no actual or threatened conduct, there is no basis for finding that UWUA is likely to prevail on the merits.

Second, SoCalGas argues that UWUA's motion is misleading to employees because it "mischaracterizes the robust body of existing law that protects employees from retaliation by employers...." (SoCalGas Response at 5.) SoCalGas also notes that its collective bargaining agreement contains provisions regarding unjustified employment actions.

Third, SoCalGas argues that UWUA's motion fails to acknowledge the existing California and federal statute that protect employees from retaliation. SoCalGas contends that these statutes are found in California Labor Code § 1102.4 and related statutes, and in Labor Code § 6310, as well as in the Energy Reorganization Act of 1974 (42 U.S.C. § 5851), the National Labor Relations Act (29 U.S.C. § 158), and the Occupational Safety and Health Act (29 U.S.C. § 660(c)).

Fourth, SoCalGas argues that UWUA's motion seeks to pre-determine the issues being litigated in R.11-02-019. SoCalGas points out that one of the issues identified within that rulemaking is whether the Commission should "adopt rules to protect utility employees from management retaliation for bringing information to the Commission regarding unreported utility public safety issues." (SoCalGas Response at 12.) SoCalGas contends that all parties must be provided an opportunity in R.11-02-019 to develop a factual record before a decision on this issue is rendered, and UWUA's motion is "an inappropriate attempt to circumvent the Commission's rulemaking process." (SoCalGas Response at 13.)

SoCalGas also argues that: UWUA's motion misstates existing law concerning employees' rights and obligations; the granting of UWUA's motion would preclude SoCalGas from taking any adverse action against an employee which could result in harm to SoCalGas, its employees, and the public; and

UWUA's motion is a collateral attack on the SoCalGas motion for a protective order, which was granted in the March 2, 2011 scoping ruling, because it could create a loophole circumventing the protective order that is in place.

The various arguments of UWUA and of SoCalGas, as set forth in their pleadings, have been considered. UWUA's motion, as raised in these consolidated proceedings, should be granted for the following reasons.

First, although the September 2010 natural gas pipeline explosion involved the facilities of Pacific Gas and Electric Company, the workers of all public utility gas companies should be encouraged to come forward to provide the Commission with information regarding the gas utilities' practices and procedures as it relates to the safety and reliability of the gas utilities' transmission and distribution systems.

Five of the eight UWUA witnesses who are sponsoring testimony in these consolidated proceedings are current employees of SoCalGas. Although UWUA's motion and the testimony of these five witnesses do not allege any act by SoCalGas of retaliation, intimidation, adverse job activity, discrimination or any other activity that may place their employment status in jeopardy, the cooperation and testimony of gas utility employees in Commission proceedings should be encouraged rather than discouraged. Gas utility employees are knowledgeable about the day-to-day work activities of the gas utilities, and are invaluable sources of information regarding the safety and reliability of the gas system. If these same employees face job actions or a threat of such actions by their employer for disclosing safety and reliability issues to the agency with regulatory authority over the gas utilities, this will discourage employees from disclosing such information.

Second, although UWUA acknowledges its motion is a “prophylactic, anticipatory measure,” and that the motion is not responding to any specific overt action by SoCalGas, the need to encourage a dialogue between gas utility workers and this Commission about gas safety and reliability outweighs the possible harm that could result to these gas utility workers, and to the safety of SoCalGas’ customers and to the public, if the motion is not granted.

Third, we agree with SoCalGas that it should have “the ability to discipline its employees or take other appropriate actions to enforce employee compliance with applicable laws, regulations and internal policies.” (SoCalGas Response at 3-4.) However, such disciplinary or other actions by SoCalGas cannot be related to, and undertaken because of, the disclosure of information provided by an employee of SoCalGas to the Commission concerning safety or reliability issues.

Fourth, the issue of “Should the Commission adopt rules to protect utility employees from management retaliation for bringing information to the Commission regarding unreported utility public safety issues,” and are “such rules necessary or practical,” is clearly a pending issue in R.11-02-019. (See R.11-02-010 at 14-15.) Any ruling adopted for these proceedings should be limited to the specific facts of this proceeding, and shall not prejudge this issue in R.11-02-019. In addition, UWUA’s request that a Commission liaison person be named should be left to R.11-02-019 to decide.

Accordingly, for the reasons stated above, UWUA's motion in these consolidated proceedings should be granted as set forth below, and the issue of whether there should be rules to protect utility employees from management retaliation and whether there should be a designated Commission liaison person should be left to R.11-02-019 to decide

**IT IS RULED that:**

1. The September 22, 2011 motion of the Utility Workers Union of America for a directive is granted with respect to the factual situation presented in these consolidated proceedings.
  - a. Except for disciplinary or other appropriate actions to enforce employee compliance with applicable laws, regulations, and internal policies of Southern California Gas Company (SoCalGas), SoCalGas shall not take any adverse action with respect to an employee's status or employment with SoCalGas who appears as a witness or otherwise furnishes information to the Commission in these consolidated proceedings.
2. The issue of whether there should be rules to protect utility employees from management retaliation for bringing information to the Commission regarding unreported utility public safety issues, and whether there should be a designated Commission liaison person to facilitate the flow of information from utility employees, shall be left to Rulemaking 11-02-019 to decide.

Dated January 25, 2012, at San Francisco, California.

/s/ MARK J. FERRON  
Mark J. Ferron  
Assigned Commissioner

/s/ JOHN S. WONG  
John S. Wong  
Administrative Law Judge