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SUBJECT:

California Public Utilities Commission (Commission) Policy & Planning Division staff (staff) invites input via this Solicitation for Input (SFI) to help identify how and whether the Commission can expand the role of safety intervenors in relevant Commission proceedings

Dear April Mulqueen,

Your office's request, for solicitations of proposals (Solicitation for Input - SFI) on the issue of safety oversight of the power utilities is, at this time, of the greatest importance. The disastrous explosion in the City of San Bruno, on September 9th 2010, and the myriad of violations that preceded this, illustrate a systematic fault in how the California Public Utilities Commission now attempts to enforce regulation.

I have recently proposed a reform measure, to the Office of State Senator Jerry Hill, (13th district) of San Mateo County. His district is the site of the 2010 disaster. Over the period of 20 years prior to the explosion PG&E was not given clear and unambiguous instructions by the CPUC to remedy faults in 'line 132' that had become clear to the company, as we now know from internal documents. Instead, PG&E was allowed by the CPUC, to "Self regulate". PG&E's corporate leadership, chose which regulations it "wanted" to follow, based solely on its own profit motives. Following the explosion, the President of the CPUC then was able to hide evidence, grant rate increases to the company, and assign judges that the company requested, when the case was considered at the CPUC.

The Office of Rate Payer Advocates, must be supported by a similarly independent set of Technical Departments in the CPUC. Safety is not distinct from engineering oversight. Throughout the last 20 or 30 years, the CPUC has granted innumerable rate increases to the private utilities, for work they "promise" to perform, or claim have performed.

And yet, in the structure of the CPUC there are no records kept of the companies' real status. When the Office of Rate Payer Advocates goes to challenge the utilities' practices, they must "politely" ask them for data, and technical information. The ORA is in fact dependent on the utilities, for all the facts. What the CPUC debates in proceedings is not the reality of the power grid, and the gas system. It is the version of reality, which is presented by the utilities to the CPUC, as "they see it".

On August 18th, two weeks ago, Michael Picker moved to create a one time only, 2 million dollar fund to investigate in detail PG&E's engineering practices:

Michael Picker, August 18th, 2015 - AT:

http://www.mercurynews.com/opinion/ci_28668632/mercury-news-editorial-puc-pg-e-ineptitude-continues

He has done this for very same reason, that I have suggested a broad increase in the authority of new engineering departments at the CPUC. New departments, that will oversee and record the compliance of the utilities' with safety regulations, and determine what the real costs of running their businesses actually are.

No one can fix PG&E problems unless the State addresses the fundamental problem of accountability in Engineering. Without that change, it is an impossible task. With the change, you will clean up PG&E in a few years and straighten out the extreme level of graft now practiced by the company upon the ratepayers. There must be the threat of personal loss for accountable persons, or nothing will change. The CPUC must hire permanent staffs of qualified engineers, who will work for the benefit of the People of California. What is true of PG&E, is similarly the case with the other private utilities in the State of California.

I propose that the concept of "safety intervenors" be expanded into creating the process, where, the CPUC will begin to actually do the job, which it is tasked to perform.

The following is the proposal I have made to State Senator Hill's office. His office has, in turn, recommended that I place this proposal on record now, in response to your solicitation for input (SFI).

This, is in response your SFI, i.e. :

1. Should the Commission ensure there is an organization specifically dedicated to utility safety issues in Commission proceedings? [YES](#)
2. What organizations, new or existing, should intervene on utility safety issues? [SEE Below](#)
3. Should ORA or other intervenors on behalf of ratepayers be responsible for both safety and rate advocacy? [NO](#)
4. Are there competencies the Commission must require for a safety intervenor? [YES](#)
5. Are there conflicts that should be addressed in intervenor safety participation; for example, a ratepayer advocate who also seeks compensation as an advocate for a safety action or expenditure? [SEE below](#)
6. Are there barriers to safety advocate participation that the Commission must address? [YES](#)

Proposed Reform to the CPUC

Creating Separate Technical Departments

I now propose legislation on a matter which may be the most critical one, in our state.

Creating Independent Technical Departments within the CPUC

Recently there has been a highly positive change at the CPUC, with the good and well considered new commissioners, which the Governor has chosen.

The new President of the CPUC, Mr. Michael Picker, has already realized that for the last 12 years, the CPUC has been only 'going through the motions' of actually regulating PG&E, and the other utilities. Mr. Picker, in fact made this the subject of his first announcement, on December 23rd, 2014 :

”The PUC's priority going forward would be safety, Picker declared. He said he would move quickly to create a full PUC field investigative team and to designate an internal safety advocate as well as external advisors, possibly from the University of California. “

[AT: <http://www.latimes.com/business/la-fi-puc-appointments-20141224-story.html>]

However – the full extent of the problem has not yet been addressed, while our Governor has announced the most far reaching initiative in the history of California, to totally reform the nature and practice of power generation. Governor Brown has signed a mandate, creating a goal of 33% of electric power generation from renewable sources, in 2020.

Meanwhile, the nature and practice of CPUC has not been under consideration. Over its history, the CPUC, it has been in a relationship of “Captured Regulation” with respect to the utilities.

The nature and practice of the CPUC has been to rely on the industry itself, to supply technical opinions to the State.

A SUMMARY OF THE WORKING OF THE CPUC:

The CPUC is specifically, a court system. It is largely self-referencing, and operates in total isolation from the greater trend of civil law. It is now the case, that, the court system, which is the CPUC, is proverbially, “Its Own Judge, Jury and Executioner”.

All decisions which are made at the CPUC, even when such decisions are voted on by the 5 commissioners, in-fact, only become law by the order of the Administrative Law Judges who are on staff at the CPUC.

The CPUC thus acts in a manner which is analogous to the U.S. Supreme Court. Where, there is an addition, of a 5 commissioner panel which can suggest new law to bring to the court. This court, is then tasked to rule only on a very specific set of issues, which involve utilities, and the myriad of laws, cases and rules that are imposed on them.

As a legal institution, the Administrative Law judges are preoccupied with the decisions they, themselves have made previously. And, they do not incline to radically change the prior rulings of the CPUC, based solely on technical truth, and scientific facts.

The CPUC, as it is currently organized, as a rule making body, is not primarily, or even incidentally, concerned with finding out if the utilities actually perform work that is authorized, and funded through rate increases.

However, regulating utilities is not primarily a legal issue. In fact, regulating utilities is primarily a technical matter. Where, knowledge of materials science, engineering, utility scale power generation, and other specific fields is required.

Over the course of the history of the CPUC, it has actually come to depend on the utilities, which the CPUC is supposed to regulate.

The CPUC depends on the utilities to supply the technical knowledge of the issues under discussion, which means that it is the utilities themselves, which then control the very basis of the discussion.

This situation, is termed one of "Captive Regulation". Where, the CPUC is in fact only secondary, to the businesses that really make all of the key decisions.

Thus, there was no independent discussion at the CPUC of the need to replace 'line 132', which then exploded in 2010. And, no expert at the CPUC, insisted, or had the power to insist, or require, that PG&E fully test all of its high pressure lines as proscribed by Federal Law. In fact, PG&E did not test any of its high pressure lines, as was required by Federal Law.

Instead, PG&E "chose the method of inspection", and, PG&E told the CPUC what it was intending to do, all on the basis of its corporate "bottom line".

This state of "Captured Regulation", where information is controlled by the very utilities which the CPUC is tasked to regulate, has been the case since the inception of the CPUC, in 1911.

However, particularly since 'energy deregulation' occurred in California 1996 – this state of "Captured Regulation" at the CPUC has led to a total failure to actually govern the State's private utilities. This is the direct cause of the explosion in San Bruno. Without a separate and independent technical staff at the CPUC, there was no oversight into what PG&E actually does.

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HOW THE NEW TECHNICAL DEPARTMENTS WILL FUNCTION, AND WHY THEY ARE NECESSARY

The new CPUC President, Mr. Picker, does recognize the problem. He has already moved to increase the staff at the CPUC, who oversee pipeline safety. However, the entire history of the nature and functioning of the CPUC is to interpret law, and then to rely on the utilities themselves for technical advice.

Firstly, the staff Mr. Picker is now hiring, are still not directly responsible for issuing opinions that are then read by the Administrative Law judges. Who are, in fact, the real authority of the CPUC. Engineers and their staff, work only at low levels inside the CPUC.

They are not asked to give initial opinions, when new law is under discussion or consideration, or, to initiate new law.

Matters of new law, are initiated by the 5 commissioners or, in the State Legislature.

To remedy this overarching failure of the CPUC to obtain its facts independently, and to propose new law which is based upon a firm technical basis, I propose that new protocols be enacted at the CPUC that require expert opinions to be made matters which are considered by the commissioners. And, I propose that qualified engineers on staff, must attend the proceedings on a daily basis, as determined by the specialty under consideration, and that these staff engineers record their opinions in an official log.

The staff engineers of these new Technical Departments must have independent authority to perform their function, such that, they are not hired, nor can they be removed by the commissioners. The hiring process must be independent of the

commissioner's authority, which is over the legal issues and precedents, that are addressed at the CPUC.

The commissioners should not have the power to, in effect, "hire and fire" the witnesses that will give factual testimony on behalf of the People of California.

The commissioners themselves are political appointees, and thus, the 5 member Commission is entirely controlled by the political system in place at any given moment. Record keeping at CPUC and the issues of compliance with safety regulations should not thus, be subject to the personal opinions of the 5 commissioners.

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Secondly, there are now competing technical considerations in play. Under the Governor's vast new proposal to move the State to a renewable energy basis, there will be conflicting technical opinions. For example, what is 'good' for the existing owners of the power grid, may conflict with what is actually good, in-order to achieve the goal of solar power.

I propose separate technical departments, where, each is dedicated to finding the best options, in the specific area that each is assigned to. Thus, the competing technical issues can be viewed individually as discrete subjects, and only after each is well understood separately, can a productive debate occur.

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I propose that, the following separate technical departments must be created, and each charged to maintain detailed records, of the issues they are responsible for.

- 1: A Grid Power Department
- 2: A Gas System Department
- 3: A Solar and Renewable Energy Department
- 4: A Water Utility and Water Reclamation Department

As we have entered into a catastrophic drought and we will soon require entirely new sources of water supply,

such as desalination and gray water recovery we must design new projects with consideration of all the energy factors.

Large scale pumping from other states, is potentially an energy intensive issue.

In addition, shifting to solar power during the day, allows more water to held impounded behind the West's dams.

Thirdly, in order for the Governor's new initiative to succeed, it is vital for the Public to be represented at the CPUC.

Currently, when a citizen opposes his or her local utility and becomes a plaintiff in the CPUC's court, he or she, has no power to introduce relevant evidence of a technical nature. This is due to the CPUC's Administrative Law system, and the fact the CPUC, is, " Its Own Judge, Jury and, Executioner ".

A citizen, as plaintiff under the current rules, thus enters into litigation at the CPUC without effective 'council'.

A plaintiff before the CPUC instead, should be able to ask for and receive a technical expert as 'council'. The new Technical Departments will thus be tasked to provide a 'duty expert', that is available upon request to attend a proceeding.

By instituting this 'duty expert' system for the engineers on staff at the CPUC, they will gain valuable experience when they are tasked to work directly with the Public.

The Public will gain a valuable asset, as plaintiffs who bring a case against their utility will be supplied with 'council' by the state, in a manner which is analogous to receiving a public defender.

Forth. Currently, Law regarding the highly technical matter of utility regulation, is proposed in the Legislature, debated, voted on, and, then signed into law without any statutory requirement that real and factual technical advice is considered.

An example, is the new rate increase, and “rate leveling”, which has resulted from the passage of AB 327. Any expert on solar power, which the law was intended to create, will say that “rate leveling” is directly contrary to this goal. PG&E has now been granted well over a billion dollars per year in excess profit in the last 12 months, while the implementation of the solar provisions do not even begin until December of this year, 2015.

Thus, PG&E will receive upward of 2 billion dollars in excess revenue, by the time the solar provisions are even discussed. The company is getting this unearned and unjustified money, with no benefit at all accruing to the Public.

And, when, in-fact, this money is being taken from any future solar financing.

Thus, I propose that the respective department heads, of the newly created technical departments, will be granted authority to testify in the Legislature.

Just as staff experts and engineers in the new technical departments will rotate, and be ‘on call’, to advise in cases before the CPUC, the heads of the newly created department and their staff will be ‘on call’ to come to the Legislature to observe, and to inform “The Process”.

And, in a like manner to advising individual plaintiffs, this role as advisors to the California Legislature, will greatly broaden the expertise of the engineering staff.

And, the engineering staff of the newly created technical departments advising on proposed, as well as on enacted law, will offer a great benefit the political debate.

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I hope that will have a moment to consider how truly revolutionary the Governor's proposals are. And, I hope you will find a way to enact this idea and, that you value the need to create a qualified technical base at the CPUC, which is vital to the future of the State.

This is the most critical problem in legislation, facing California.

To: Reform power generation, cope with the radical effect of Climate Change and drought, and to fund renewable power, we must turn the CPUC from it's role purely as a court system, into a branch of the Government of California, which is qualified to asses and decide on those technical issues, we now must consider, for our survival.

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Your's

Respectfully,

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