

MUSSEY GRADE ROAD ALLIANCE



*"Preserving Historic
Mussey Grade"*

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Diane Conklin, Spokesperson

August 31, 2015

Ms. April Mulqueen
Policy and Planning Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: SFI: Safety Intervenors Comments

Dear Ms. Mulqueen,

The Mussey Grade Road Alliance ("MGRA" or "Alliance") hereby takes this opportunity to respond to the comments that were received by the Commission's Solicitation for Input ("SFI"), regarding the role of "safety intervenors" in Commission proceedings.

The Alliance, a grass roots, community-based, 501(c)(4) organization, founded in 1999 and located in Ramona, CA, has worked over the years to protect historic Mussey Grade Road and environs. We became involved as intervenors at the CPUC in 2006 in response to SDG&E's proposed "Sunrise Powerlink" transmission project (A.06-08-010), and have intervened in a number of Commission proceedings since then, including SDG&E's power shutoff application (A.08-12-021), the fire safety rulemaking (R.08-11-005), the Wildfire Expense Balancing Account application (A.09-08-020), and more recently the SDG&E rate case (A.14-11-003) and S-MAP (A.15-05-002/5). Our primary focus since the Alliance began intervening at the Commission in 2006 has been safety, specifically power line fire safety in high-risk rural areas. We've submitted expert testimony and argument in these proceedings and have had many of our arguments and recommendations accepted in Commission decisions. We are, and have been, primarily "safety intervenors".

The residents of our area are also ratepayers, and we are sensitive to cost issues. In several proceedings we've recommended the adoption of a cost/benefit analysis to ensure that residents receive the maximum safety benefit for the amount spent.

In our reading of the comments submitted we note a wide variety of opinion on several themes. We will comment on these generally and provide specific replies below.

There seems to be a variety of opinion in the comments provided regarding the role of the Safety and Enforcement Division (SED) as a safety intervenor. We would like to note that

based on our own observation and experience that SED's role to date has been uneven. In some proceedings, they have not taken an active role at all, or primarily been observers. We understood these inconsistencies to have been a result of decisions by former "management". However, in other proceedings (especially R.08-11-005, the fire safety rulemaking) the previous CPSD and now SED has been an extremely active advocate, proposing and advocating for changes to existing regulations in order to improve fire safety.

So the notion of SED being an active safety advocate is nothing new. Yet, we are deeply concerned that in the turmoil at the Commission over the last few years this focus on **active advocacy** may have been lost, and even the knowledge that the Commission *has already had* an active safety intervenor in SED has apparently disappeared into the "memory hole". We call it the saga of "Whatever Happened to SED?" In other words, does the Commission truly support this Division and safety itself?

In the meantime, the Commission has created an Office of Utility Safety and Reliability, which we understand is primarily advisory. Another part of SED is tasked with enforcement and investigation. These are both important roles. However the advocacy of new rules, and for the application of safety principles within the framework of existing proceedings, needs to have a reliable advocate *within the Commission* and that advocate would naturally fall to the Safety and Enforcement Division, enhanced by adequate revenues and expertise.

Replying comments also vary widely on the question of whether there is an inherent conflict between cost considerations and safety considerations. We believe that obtaining maximum benefit for residents and ratepayers is the art of balancing these considerations. The ideal sage, with expertise in all areas, might be able to come up with an optimal outcome, but in the real world experts in costs tend not to have safety-related expertise, and vice-versa. The Commission proceedings provide a forum where this balancing can occur. The Alliance itself has a known history of successfully advocating for fire safety in a number of proceedings, while other parties have been primarily focused on cost. However we realize that often safety takes a back seat when the necessary balancing between cost and safety does not occur because there is no non-utility party actively advocating for safety improvements.

Regarding specific comments made by parties, we address these by the specific question posed in the SFI:

1. Should the Commission ensure there is an organization specifically dedicated to utility safety issues in Commission proceeding?

We concur with parties advocating for a dedicated organization within the Commission. Among these are the cities of San Bruno, Carmel, and San Carlos ("Cities"), SCE, PG&E, CCUE, and UWUA. SDG&E's proposal to have an independent division within SED tasked with an advocacy role is concurrent with the MGRA position, and as we've stated, already has precedence at the Commission.

TURN's position is that an organization dedicated to addressing safety issues without considerations regarding cost would be of limited value. TURN correctly notes that proceedings must address the "more challenging task of optimizing safety programs

and spending in light of limited ratepayer funds.” In order for this to occur, factual input must be available regarding what safety measures are appropriate, which requires expertise. We would expect that a “safety intervenor’s” role would be to provide such input. Balancing the costs of these measures against improved safety is the task of *all* intervenors, which would be necessary for the optimal outcome of the proceeding.

So in the Alliance’s view, the role of a Commission “safety intervenor” would be to evaluate safety issues within a proceeding and to propose measures that lead to enhanced safety. We do not believe it is their role to optimize these proposals or alternatives against cost, which requires a quite different skill set that other rate advocates are quite adept at providing.

Note that the addition of a safety intervenor role in the Commission in no way abrogates the utilities’ responsibility to provide safe and reliable service, or the responsibility of other Commission divisions to support and enforce this responsibility.

2. What organizations, new or existing, should intervene on utility safety issues?

Generally, the comments that suggested that SED should be intervening on safety issues in Question #1 also mention SED in their answer to this question. The Alliance concurs with this position.

ORA suggests that ORA in combination with other intervenors adequately intervenes on safety issues. The Alliance disagrees. In our experience, we have not seen ORA initiate or advocate for positions that enhance public safety. Instead we have seen that its focus has been exclusively on cost reduction as ratepayer advocates. We do not think this is a bad thing – we believe this is ORA’s primary role as safety advocacy should be the role of SED.

We find ourselves most strongly aligned with SDG&E’s suggestion of an independent SED division dedicated to advocacy. This is more than a little ironic, because a very clear example of why an independent advocate is so important very recently arose in the ongoing SDG&E/SoCal Gas rate case. In this proceeding, the SED Risk Assessment group did a thorough analysis of the SDG&E rate application with regard to safety, and made a number of recommendations.¹ SDG&E rebuttal testimony responded to some of these recommendations.² The SED report was accepted into evidence in the case. However, when SDG&E recently circulated its list of contested issues to the service list,

¹ California Public Utilities Commission; Safety and Enforcement Risk Assessment Section; Staff Report on Southern California Gas Company & San Diego Gas and Electric Company 2016-2018 Consolidated General Rate Case Applications A.14-11-003 and A.14-11-004; March 27, 2015.

² SDG&E AND SOCALGAS DIRECT TESTIMONY OF DIANA DAY; RESPONSE TO THE SAFETY & ENFORCEMENT DIVISION RISK ASSESSMENT SECTION STAFF REPORT ON SAN DIEGO GAS AND ELECTRIC COMPANY & SOUTHERN CALIFORNIA GAS COMPANY 2016-2018 CONSOLIDATED GENERAL RATE CASE APPLICATIONS A.14-11-003 AND A.14-11-004. April 24, 2015.

and which forms the basis for any potential settlement agreements, none of the SED recommendations were included except for one also raised by MGRA in support of the SED report. It is likely that this situation would have evolved differently had SED been a party in this case.

3. Should ORA or other intervenors on behalf of ratepayers be responsible for both safety and rate advocacy?

Most comments are in general agreement that ORA's primary role is to advocate for affordable rates, and the Alliance concurs with this position. However, we note that safety should be a consideration in all Commission proceedings, and all intervenors have an interest in ensuring that safety is fully addressed in the most cost-effective way. The ORA response is somewhat vague regarding the responsibility for safety, stating "the primary responsibility is borne by the utilities and the Commission." It makes no suggestions as to how "the Commission" is supposed to carry out this responsibility.

The Alliance, contrary to the opinion of TURN, does not think that ORA has the capability or mandate to represent both safety and cost issues. While often our positions on safety align with TURN's, they sometimes have not. A specific example is the Fire Safety Rulemaking R.08-11-005, in which TURN took opposing positions on safety initiatives, some of which were put forward by SED (then CPSD) and MGRA. We think that the Decision in this proceeding (D.12-01-032) provides excellent insight into how the role of safety-centric and cost-centric intervenors is different, complementary and necessary to obtaining an optimal outcome for residents and ratepayers.

4. Are there competencies the Commission must require for a safety intervenor?

The Alliance believes that the variety of responses to this question arise from vagueness of the question. It is not clear whether the Commission is asking what competencies a safety intervenor *hired by the Commission* should have, or whether they are talking about *a party to a proceeding that intervenes on safety issues*. In either case, most comments support the idea that a safety intervenor should have expertise in the area in which they are intervening, as would be true of *any* intervenor in a Commission proceeding.

Some of the utilities argue for a "high standard" for safety intervenors, including experience and knowledge of Commission precedents. If they are referring to an intervenor to be hired or assigned by the Commission, then this position makes some sense. However we would strongly oppose the idea that independent "safety intervenors" should be held to a higher standard than is required for other intervenors. Experts put forward by intervenors should be accepted as experts by the Commission, and evidence and argument should always be consistent with Commission rules and precedent in order to be accepted by the Commission.

SDG&E, however, seems to take specific aim at independent intervenors, stating that: "*The Commission should strictly evaluate the qualifications of safety intervenors, especially if a request for intervenor compensation is being made. In this respect, "significant impact" for purposes of intervenor compensation should tie back to the intervenor's competencies.*" In the event that the Commission adopts contributions from an intervenor, whether in safety or any other area, and when it determines that these contributions are significant, at that point the determination of the value of the

intervention has been made. The source of the intervention becomes irrelevant. If the utility or another party wishes to challenge the bona fides or competency of an intervenor or their expert, they have ample opportunity to do so in the course of the Commission proceeding.

With regard to TURN's comments we do not concur that economic expertise should be a prerequisite for safety intervention, since we believe that the roles and required expertise of rate and safety advocacy are distinct. One exception that would apply to a Commission-supported intervenor would be this – one key skill that has been lacking in the safety-related proceedings that the Alliance has been involved in is the ability to economically quantify the benefit of improved safety or avoided risk. This kind of cost/benefit or risk/benefit analysis has not been taken up by either the utilities or Commission up to this point, and it would be of great benefit to ratepayers if this type of analysis was regularly undertaken.

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?

The Alliance concurs with TURN that there are no conflicts, albeit for slightly different reasons. We fully concur that the goal of Commission proceedings is to provide safe and cost effective utility services to ratepayers. Enhancing either of these goals – safety or cost effectiveness – is in the interest of residents and ratepayers, and either can be a substantive contribution to a proceeding. This position also aligns with SDG&E, who do not believe that compensation for safety and cost should be split into separate “buckets”.

6. Are there barriers to safety advocate participation that the Commission must address?

The comments do not mention any barriers related to safety advocacy per se. UWUA, Ms. Morales, and the Cities mention the cost of participation in Commission proceedings, a valid concern that can apply to all interventions, not just those having to do with safety. Additionally, for grass roots intervenors worried about power-line sparked wildfires, gas line explosions or nuclear reactors malfunctioning, the mighty IOU Goliaths may pose a formidable challenge. This is, in essence, why the CPUC must itself advocate for the safety of Californians.

Regards,

/s/

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