

**COMMENTS OF THE UTILITY REFORM NETWORK
REGARDING ‘SAFETY INTERVENORS’**

Introduction and Summary of TURN’s Views

The Utility Reform Network (“TURN”) submits these comments in response to the Solicitation for Input (“SFI”) regarding how and whether to expand the role of “safety intervenors” in relevant Commission proceedings. TURN believes the SFI raises important questions and welcomes this opportunity to offer its views. Before providing answers to the specific questions, TURN wishes to share three general points on the topic.

Point #1: Safety and cost issues are inextricably intertwined. Safety is and should be the Commission’s top priority. However, safety risks can never be fully eliminated, and cost to ratepayers of rate-regulated utilities is a key trade-off that the Commission is obliged to consider when carrying out its safety-first mandate. Indeed, it is the Commission’s statutory duty to make this trade-off, as recognized in Public Utilities Code Sections 451 and 963(b)(3), which require the Commission to make safety its top priority consistent with the requirement of just and reasonable rates. Furthermore, when essential utility services become unaffordable for an increasing number of customers, the resulting disconnections pose direct and immediate threats to the health and safety of households who no longer have access to the energy necessary to heat or cool their homes, cook their food, and operate water heaters.

The trade-off between safety and cost is a familiar one that individuals regularly confront in choices such as how safe a car to purchase, and that governments routinely face in decisions such as how many police and firefighters to hire. If the notion of “safety intervenor” motivating the SFI is an entity that focuses on safety while paying little or no attention to cost considerations, such an intervenor would probably be of limited use to the Commission’s decision-making. Such an organization could potentially help to identify and prioritize safety risks, but ranking risks is usually not the hard part of the decisions the Commission must make. The real challenge is how to optimize the utilities’ spending within the constrained ratepayer budget, *i.e.*, how to target safety spending so it is as cost-effective as possible.

Safety spending can be optimized, for example, by finding a less expensive approach than proposed by the utility to reduce a particular risk, or by focusing on risks for which the most cost-effective risk reduction can be achieved. Put another way, when a utility proposes a massive capital spending program in the name of safety, the Commission needs to know whether such a program is the best use of ratepayer money or whether funding that program would squeeze out other less expensive efforts that would provide more risk reduction. An intervenor that did not consider cost issues would not be able to help the Commission with such challenging decisions.

Point #2: There is no conflict of interest in balancing safety and cost. As shown in the previous discussion, there is an inevitable trade-off between safety risk reduction and cost. Indeed, trade-offs with cost are required in all kinds of Commission decisions, such as renewable procurement and other environmental goals, and electric system reliability at both the

transmission and distribution levels. Yet the SFI appears to be based on a notion that safety and cost reduction are two separate, almost incompatible, perspectives to bring to a utility rate case and that an intervenor who makes recommendations that balance safety and cost may have a “conflict.”¹ TURN believes this notion is misguided. The Commission must balance the competing objectives of safety and reasonable rates all the time; no one accuses the Commission of having a conflict of interest. Similarly, TURN is able to simultaneously consider safety and cost in its analyses in an effort to recommend an optimal balance. Intervenor whose analysis balances the same considerations the Commission must weigh should be welcomed, not viewed as inherently suspect. The fact that TURN usually recommends reductions to utility rate proposals results from the utilities’ exaggerated funding requests that act on their profit-maximizing goals,² not because TURN is focused solely on cost reductions.

The Commission’s 2010 decision on PG&E’s “Cornerstone” application to improve electric distribution reliability perfectly illustrates the importance of considering cost in making decisions regarding safety and reliability programs. In that case, PG&E had sought approximately \$2 billion of additional spending to improve the reliability of its electric system, largely in response to public criticism from two commissioners, including then-President Peevey, regarding frequent and major outages.³ Based in significant part on the analysis of TURN,⁴ the Commission found that PG&E had failed to demonstrate the need for its broad Cornerstone

¹ For example, the SFI states that “traditionally” intervenors in General Rate Cases (GRCs) review utility requests “from a cost reduction perspective” and that “hardly any parties” have had a “sole focus on utility safety.” (SFI, p. 3) In addition, the SFI’s question number 5 asks if there is a “conflict that should be addressed” when a “ratepayer advocate” also advocates for safety.

² See the next point in this section for a further discussion of how the utilities’ profit-maximizing goals can lead to requests and outcomes that are contrary to the public interest in optimizing safety spending.

³ D.10-06-048, p. 47, Finding of Fact (FOF) 1.

⁴ D.10-06-048, pp. 23-25, 27-28.

program and instead approved a program of much reduced scope costing less than \$400 million – only 18% of PG&E’s requested costs.⁵ The Commission explained that the importance of electric reliability did not, by itself, justify huge spending increases:

. . . our overarching policy is that PG&E must provide reliable electric service to its customers. However, that alone is insufficient reason for approving Cornerstone. We also have the obligation to ensure that rates are reasonable.⁶

The Commission concluded that the right balance was to approve a subset of proposed projects in which up to 68% of the reliability benefits of PG&E’s proposal could be achieved at 18% of the cost.⁷

Notably, in the Cornerstone case, the Commission never suggested that TURN’s recommendations to strike a different balance than PG&E regarding the trade-off between reliability improvements and cost reflected a conflict of interest. To the contrary, the Commission found that TURN “achieved a remarkable degree of success.”⁸ That “success” consisted of effectively analyzing the options for improving reliability and proposing an approach that achieved a more balanced outcome than PG&E’s proposal.

Point #3: Safety analysis by intervenors needs to be independent of the utilities. Any organization that may be charged with addressing safety issues should base its recommendations on analysis and expertise that is independent of the utilities. Rate-regulated utilities’ goal of maximizing profits can lead to results that are contrary both to safety and reasonable rates. As we have learned from the investigations of the San Bruno explosion, PG&E sought to boost

⁵ *Id.*, p. 2.

⁶ *Id.*, p. 16.

⁷ *Id.*, p. 2.

⁸ D.10-11-032, pp. 17-18.

profits by reducing costs below rate case authorized expenditures in a way that jeopardized safety. Utilities likewise have an incentive to exaggerate their claimed need for safety spending in order to increase their return on rate base (*i.e.*, profits) and to make it easier to keep expenses below authorized levels. For a safety intervenor to provide useful analysis to the Commission, that organization needs to be completely independent of the utilities and their paid consultants. Moreover, for the public to have confidence in the analysis and recommendations of a safety intervenor, there needs to be sufficient transparency to demonstrate that the intervenor's analysis and judgments are truly independent -- not based on effective behind-the-scenes lobbying by smooth-talking utility representatives whose bottom line is the company's interest, not the public interest.

In the remainder of these comments, TURN will address the Commission's questions, referencing the foregoing points as appropriate.

Question 1: Should the Commission ensure there is an organization specifically dedicated to utility safety issues in Commission proceedings?

If "specifically dedicated to utility safety issues" means only addressing safety without considering cost in the analysis, then, for the reasons stated in Points ## 1 and 2 above, TURN believes such an organization would be of limited assistance to the Commission's decision-making. An organization "with a sole focus on utility safety"⁹ could probably help the Commission to prioritize safety risks, but would be of little assistance to the Commission's more challenging task of optimizing safety programs and spending in light of limited ratepayer funds.

⁹ SFI, p. 3.

As a secondary point, TURN notes that, absent statutory change, the Commission's ability to "ensure" an organization carries out any activities is limited to those organizations over which the Commission has budgetary influence or control, namely the Safety and Enforcement Division ("SED") and, to a lesser extent, the Office of Ratepayer Advocates ("ORA"), which the legislature has given a measure of budgetary independence. As in the past, TURN would continue to support robust funding for SED and ORA to enable them to develop enhanced expertise on issues related to optimizing safety spending – such as through enhanced training to increase in-house knowledge and through use of outside experts. As stated in Point #3 above, the credibility of the analysis of either organization depends on public confidence that such analysis is fully independent from the utilities, which will always seek to influence Commission staff's analysis as much as they are allowed.

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

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

TURN views these questions as intertwined and will answer them together.

Compared to the utilities and ORA, TURN is a relatively small organization with limited resources. Accordingly, TURN chooses the cases -- and within cases, the issues -- it addresses with some care, based on its perception of the importance of the case/issue and TURN's ability to promote the public interest through its participation. As a result, TURN is not capable of serving as an organization that would address every issue in every case that bears some relation to safety.

With respect to the cases in which TURN does participate, if an issue relates to safety, TURN gives extremely high priority to limiting and reducing risks to safety. However, as explained in Points ##1 and 2 above, the Commission's decisions affecting safety will almost always involve a trade-off with cost – and certainly require careful scrutiny of whether the utilities' proposals optimize the use of limited ratepayer funds. TURN tries to give the Commission the analysis it needs to foster safety as cost-effectively as reasonably possible. In the cases/issues where TURN intervenes, TURN is thus fully comfortable serving as an advocate for both safety and reasonable rates.

ORA's statutory mandate in PU Code Section 309.5 (a) -- "lowest possible rate consistent with reliable and safe service levels" -- embodies the inherent trade-off between safety programs and cost considerations discussed in Points ## 1 and 2 above. Provided it receives adequate funding, ORA has the potential to be an organization that could effectively advocate in all relevant proceedings for both safety and reasonable rates. Unfortunately, too frequently ORA lacks the resources it needs to conduct an independent, thorough and expert analysis on all issues relating to safety.¹⁰ As indicated in response to Question 1, TURN supports increased funding for ORA for this purpose.

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

The following competencies would be useful for any intervenor advocating concerning safety-related issues for the energy utilities:

¹⁰ For example, at this point, ORA lacks the resources to actively participate in the Safety Model Assessment Proceeding, A.15-05-002 et al.

(1) Expertise in risk assessment and mitigation models. As the SFI recognizes, in D.14-12-025, the Commission mandated that the Commission and parties would scrutinize any models the utilities use to prioritize safety risks and to determine the most cost-effective risk mitigation programs. Such scrutiny will take place in triennial Safety Model Assessment Proceedings (“SMAPs”) and the Risk Assessment and Mitigation Phase (“RAMP”) of GRCs.

(2) Expertise in the engineering of the utilities’ key systems and the safety issues associated with those systems.

(3) Economics, budgeting, and project planning and management expertise to assess the reasonableness and cost-effectiveness of the utilities’ proposed safety-related programs and projects.

Question 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?

For the reasons given in Point #2 above, TURN disagrees with the apparent premise of this question. When an intervenor makes recommendations to optimize safety programs and spending in light of cost considerations, there is no “conflict.” Like the Commission, TURN and other intervenors are able to simultaneously balance safety and cost considerations.

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

As previously indicated in responses to Questions 1-3, the most important step the Commission could take to advance effective participation by intervenors (including ORA)

regarding safety issues would be to seek and obtain increased funding for such work by ORA and SED. Additional funding would improve the ability of such entity to retain outside experts, hire in-house expertise, and provide the training for staff where needed, all in aid of ensuring analysis that is fully independent of the utilities.

Conclusion

In conclusion, TURN notes that, while the SFI appears focused on safety issues specific to the systems and facilities of the energy utilities, safety-related concerns arise in other spheres of the Commission's regulatory responsibilities. For example, from its long experience in the communications arena, TURN is well aware of various issues that have the potential to affect public health and safety, including: the deteriorating quality of landline networks that reduce the ability of such networks to serve as a front-line communications medium in emergencies and disasters, limitations on back-up power of wireless and internet-enabled networks that similarly limit their value and effectiveness in emergencies and disasters, and persistent limitations on access to 911 from wireless phones. Although the Commission is understandably attentive to energy utility safety issues in the wake of the San Bruno disaster, the Commission needs to be mindful of the other threats to safety that are lurking with respect to the other industries the Commission regulates.

In both the energy and telecommunications arenas, the Commission can count on TURN to continue to be a forceful and independent advocate for safe and cost-effective utility services.

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Respectfully submitted,

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