

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

_____)
Order Instituting Rulemaking to Adopt Rules and)
Procedures Governing Commission-Regulated)
Natural Gas Pipelines and Facilities to Reduce)
Natural Gas Leakage Consistent With Senate Bill)
1371.)
_____)

R.15-01-008
(Filed January 15, 2015)

**REPLY COMMENTS OF SOUTHERN CALIFORNIA GAS COMPANY
(U 904 G) AND SAN DIEGO GAS & ELECTRIC COMPANY (U 902 G)
ON ADMINISTRATIVE LAW JUDGE’S RULING ENTERING
STAFF REPORT INTO RECORD AND SEEKING COMMENTS**

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Pursuant to the Administrative Law Judge’s Ruling Entering Staff Report Into Record and Seeking Comments filed on March 18, 2015 (ALJ Ruling), Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E) submit these reply comments.

I. Introduction and Summary

SoCalGas and SDG&E share the same action plan as the Environmental Defense Fund (EDF), the Utility Workers Union of America (UWUA), and the Office of Ratepayer Advocates (ORA) in focusing on the repair or replacement of pipe with Grade 3 leak indications, currently defined as “unintentional, non-hazardous releases.” However, the California Public Utilities Commission (CPUC or Commission) should not expand the scope of Senate Bill (SB) 1371 beyond what it intended to meet the State’s climate change goal. The Commission should uphold SB 1371’s requirements by establishing, with stakeholder input, a new timeline for remediating Grade 3 leak indications without disturbing the existing “leak” definition under the Department of Transportation (DOT) Pipeline and Hazardous Materials Safety Administration (PHMSA)¹ or appropriate grading distinctions under draft General Order (GO) 112-F.

¹ PHMSA defines a “leak” as “an unintentional escape of gas from the pipeline. A non-hazardous release that can be eliminated by lubrication, adjustment, or tightening, is not a leak.” *See* 49 CFR

Additionally, the Final Scoping Memo should specify that any actions pursuant to SB 1371’s climate change purpose take into account cost considerations before adoption. SoCalGas and SDG&E also agree with ORA that in establishing SB 1371’s reporting requirements, the Commission should assess if there are duplicative reporting requirements elsewhere. The Commission should adhere to the two-phase process outlined in the Order Instituting Rulemaking (OIR) that anticipates information gathering in Phase 1 and robust stakeholder input on rules and procedures in Phase 2. The Administrative Law Judge (ALJ) should issue a ruling to permit parties to file prehearing conference statements before a Final Scoping Memo is issued so that they can provide input on the processes and schedule to be adopted. The ALJ’s ruling should be issued before May 15 and should also clarify the scope, requirements, and definition of a “leak” for the limited information-gathering purpose of the May 15 Reports to be consistent with SB 1371, which should not prejudge the Commission’s ultimate decision on SB 1371’s “leak” definition based on a fully developed legal and factual record.

II. The Commission Should Adhere to the Existing “Leak” and “Hazardous” Definitions and Grading System, But Establish an Aggressive Repair Timeline to Address “Grade 3 Leaks” That are Currently Allowed to be Monitored Rather Than Scheduled for Repair

It appears there is already growing consensus among a diverse set of parties that the subset of leak indications currently categorized as Grade 3 should be a priority in this proceeding. SoCalGas/SDG&E, EDF, UWUA, and ORA’s opening comments all recognize this subset as an area for additional focus in implementing SB 1371’s climate change policy goal by reducing methane emissions. However, SoCalGas and SDG&E are concerned that EDF and UWUA’s support for the Staff Report’s proposed revisions to the “leak” definition and grading system² would distract from and undermine SB 1371’s safety goal as the top priority, which is to minimize Grade 1 hazardous leaks and Grade 2 non-hazardous leak indications that could

§ 191.11 and § 191.17 (incorporating by reference this definition in DOT Forms PHMSA F 7100.1-1 and 7100.2-1). Natural Gas Transmission and Distribution operators have reported data based on these definitions.

² EDF Comments, at 5 (“Including gas leaks hazardous to the environment in the definition of hazardous leaks is necessary to ensure that the environmental consequences of leaks are fully addressed.”); UWUA Comments, at 11-12 (“[UWUA] agrees that all leaks must be addressed and repaired within a reasonable time according to a priority scheme that considers safety as paramount, but which lends a sense of urgency and a more aggressive timetable for all leak repairs. The [Staff] Report properly read is fully consistent [by defining all leaks as ‘hazardous’].”).

present a probable future hazard under the framework of existing safety regulations.³ ORA recommends that Grade 3 be retained and that the Grade 3 category be “applied to leaks that are ‘hazardous to the environment,’ but not to ‘people or property’ and have some schedule for their repair.”⁴ A change to the grading scheme is not needed to establish a schedule for repair; the Commission can establish the requirements to address Grade 3 leak indications as part of this proceeding.

Although SoCalGas and SDG&E share the same goal and action plan as EDF and UWUA in focusing on Grade 3 leak indications to meet the State’s climate change goal, we respectfully disagree that Staff’s revisions to the “leak” definition and grading system are necessary to ensure Grade 3 leak indications are minimized through this proceeding.⁵ EDF suggested through opening comments that “retaining the existing 3-grade system may be possible while achieving the same goal of having all leaks deemed hazardous and fixed within a specified timeframe.”⁶ While SoCalGas and SDG&E support addressing Grade 3 leak indications within a specified timeframe, SB 1371 does not specify any “goal of having all leaks deemed hazardous.”⁷ To the contrary, SB 1371 clearly provides that its primary goal is to “minimize leaks as a hazard to be mitigated . . . *consistent with*” specified existing safety regulations.⁸ “Reduc[ing] emissions” is another important goal, but the statute requires that “nothing in this article shall compromise or deprioritize safety as a top consideration.”⁹ SoCalGas and SDG&E agree that SB 1371’s implementation should include an aggressive timetable and sense of urgency for remediation of Grade 3 non-hazardous leak indications. As

³ The CPUC’s draft GO 112-F currently categorizes Grade 1 as “hazardous leaks” for immediate repair, Grade 2 as “non-hazardous leaks” for repair within 15 months, and Grade 3 as “non-hazardous leaks” for monitoring to ensure they do not get worse or become hazardous.

⁴ ORA Comments, at 7.

⁵ It is unclear whether EDF supports changes to existing definitions and grading. Initially, EDF made statements in its opening comments that were supportive of the Staff’s definitions and grading. *See, e.g.*, EDF Comments, at 5 (“One of the most forward-thinking and important parts of the staff report is the proposal to change the leak grading system (and leak definition) to ensure that all leaks discovered by regulated utilities are understood to be hazardous.”). However, EDF indicated later on in its comments that “it might therefore be advisable to propose a system that achieves the same result (regularly quantifying and reporting methane emissions and repairing all leaks) while maintaining the existing grading bins, but with requirements that all leaks in grade 2 and 3 be repaired in accordance with the emission rate threshold currently proposed as the new grade 2.” *Id.* at 18.

⁶ *Id.* at 5.

⁷ *Id.*

⁸ SoCalGas/SDG&E Comments, at 5-6 (quoting SB 1371)(emphasis added).

⁹ *Id.* at 9.

suggested in SoCalGas/SDG&E’s opening comments, an aggressive plan and timeline should focus on either repair or replacement of pipes with a greater likelihood of leakage so that greenhouse gas (GHG) emissions from Grade 3 leaks are eliminated and future emissions are prevented.¹⁰ Indeed, SoCalGas has proposed such a plan in its General Rate Case (GRC), which is consistent with the intent of SB 1371. EDF and UWUA were supportive of preserving the current “leak” definition and grading system under existing safety regulations when supporting the passage of SB 1371.¹¹ That support is reflected in the statute’s language by requiring “consistency with” existing safety regulations as the top priority and distinguishing between “leaks as a hazard” and “reduc[ing] emissions.”¹² As noted in SoCalGas/SDG&E’s opening comments,¹³ we respectfully disagree with UWUA that safety can be considered as paramount through a “leak” definition that defines all leaks as “hazardous.” Conflating categories that should be prioritized based on safety versus emissions reduction factors would lead to public confusion and misallocation of limited resources away from public safety-related mitigation.

Even ORA’s recommendation of retaining Grade 3, but applying it to leaks that are “hazardous to the environment” would create ambiguity about safety versus climate change prioritization of resources. As noted by ORA, SB 1371’s goal to “minimize leaks as a hazard” refers to Section 961(d)(1) of the Public Utilities Code (PUC), which requires that safety plans “identify and minimize hazards and systemic risks in order to minimize accidents, explosions, fires, and dangerous conditions, and protect the public and gas corporation workforce.” ORA correctly argues that Staff’s proposed “leak” definition to include intentional releases through operations and maintenance (O&M) activities would be inconsistent with Section 961(d)(1) by

¹⁰ *Id.* at 3, 6-7.

¹¹ *See* UWUA Comments, at 2, n.1 (stating UWUA was a sponsor of and source for SB 1371 and citing legislative analysis showing support by both UWUA and EDF). *See* Amendment to SB 1371, approved by State Assembly on Aug. 22, 2014, at 2 (“to minimize leaks as a hazard to be mitigated pursuant to the Natural Gas Pipeline Safety Act of 2011, *consistent with specified federal regulations, and a specified order of the commission, . . .*”)(italics in original signifying added language) and 6 (“*consistent with the requirements of Section 192.703(c) of Subpart M of Title 49 of the Code of Federal Regulations, the commission’s General Order 112-E, and their successors*”)(italics in original signifying added language), available at http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_1351-1400/sb_1371_bill_20140822_amended_asm_v91.pdf; Senate Floor Analysis, dated Aug. 26, 2014, at 6 (showing support by UWUA and EDF after Assembly’s Amendment), available at http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_1351-1400/sb_1371_cfa_20140826_210129_sen_floor.html

¹² *See id.*

¹³ SoCalGas/SDG&E Comments, at 9-10.

diverting resources away from addressing truly hazardous leaks that pose a harm to persons or property.¹⁴ ORA’s reasoning could similarly be applied to Staff’s categorization of Grade 3 non-hazardous leaks as “hazardous to the environment.”¹⁵ Section 961(d)(1)’s listed dangers are all associated with human health and safety conditions, not climate change, which is listed separately as a GHG emissions reduction goal pursuant to Assembly Bill (AB) 32.¹⁶ Accordingly, there is no legal basis in the statute to justify a revision to the terms “leak” and “hazard” to include an environmental purpose. “Minimiz[ing] leaks as a hazard” only refers to consistency with existing safety regulations and gives no indication of an intent to change the definition or categorization of those terms.

Rather than obfuscate the prioritization of safety specified in SB 1371, the Commission should uphold SB 1371’s requirements by establishing, with stakeholder input, a new timeline for Grade 3 leak indications to be addressed without disturbing the existing “leak” definition or appropriate grading distinctions between “hazardous” and “non-hazardous” leaks based on safety considerations. As recommended by ORA, “the Commission should carefully review the comments of all parties and develop a definition of leaks that is based on a record of factual and legal analysis.”¹⁷ Thus, the Final Scoping Memo for this Rulemaking should not adopt the new definitions set forth in the Staff Report because there is no factual or legal basis to support them.¹⁸

If the Assigned Commissioner and ALJ desire to define “leak” terms and grading upfront based solely on this minimal record in the proceeding,¹⁹ at the very least, the Final Scoping Memo should adhere to statutory requirements in SB 1371 by clearly stating that any new timeline to address Grade 3 leak indications as currently defined in accordance with safety

¹⁴ ORA Comments, at 5-6.

¹⁵ *Id.* at 7.

¹⁶ *See* CAL. PUB. UTIL. CODE § 975(b)(2).

¹⁷ ORA Comments, at 2.

¹⁸ ORA is correct that “all parties [should] be provided the opportunity to participate in a thoughtful process to consider and comment on the proper definition of leaks in the context of this Rulemaking.” “Without the information from the respondents about their actual leaks and practices, [parties’] [c]omments on the SED Report are necessarily limited” and there is no factual record to provide input on whether definitions need to be redefined at all. *Id.*

¹⁹ As discussed in Section IV below, the Commission should adhere to the two-phase process outlined in the OIR that anticipates information gathering in Phase 1 and robust stakeholder input on rules and procedures in Phase 2. Phase 2 should include whether any definitions and categorizations need to be revised pursuant to SB 1371 and based on information provided in the May 15 Reports.

regulations are intended to meet SB 1371’s climate change policy goal of reducing GHG emissions, not minimizing leaks as a hazard.

As for intentional, non-hazardous releases from O&M and system design activities, ORA is correct that the Final Scoping Memo should specify that, consistent with existing safety regulations, these are not “leaks.”²⁰ Intentional, non-hazardous releases are required as part of the safe operation of the natural gas system. Should the Commission include these intentional, controlled releases into the scope of this proceeding, SoCalGas and SDG&E recommend it be for the purpose of reducing GHG emissions from a continuous system improvement perspective, and a new category called “emissions sources” or similar language be used to categorize these releases to clearly associate them with SB 1371’s climate change purpose provided in PUC Section 975(b)(2) and to tailor any ordered actions subject to PUC Section 977’s cost considerations.

III. The Final Scoping Memo Should Require That Any Ordered Actions Pursuant to SB 1371’s Climate Change Purpose Must Give Due Consideration to Costs

Parties such as EDF recognize that in establishing a timeline to remediate Grade 3 leaks, “SB 1371 principles such as technological feasibility and cost effectiveness” must be applied.²¹ SoCalGas and SDG&E agree with these observations and recommend that the Final Scoping Memo specify that any actions pursuant to PUC Section 975(b)(2)’s climate change purpose take into account PUC Section 977’s cost considerations before adoption. Providing utilities with flexibility where ordered actions are pursuant to a climate change purpose, not a safety purpose, will be key to achieving “best value for ratepayers” in this proceeding and ensuring safety remains the top priority in the deployment of limited resources. Although SB 1371 primarily

²⁰ UWUA similarly recommends that the “Rulemaking should continue to focus on leaks as conventionally understood,” not to include intentional releases during normal operations. UWUA Comments, at 13.

²¹ EDF Comments, at 16. EDF also notes that it may be “environmentally beneficial and cost effective to replace pipe” rather than repair certain leaks. *Id.* at 17. UWUA points out that leak prevention may be an appropriate focus for any cost-benefit analysis. UWUA Comments, at 9. ORA states that “for utilities with large service areas, it may not be practical or cost effective to repair small leaks immediately and that there should be flexibility on timing.” ORA Comments, at 7.

focuses on reduction and repair of hazardous leaks,²² it does contemplate that other preventative actions may be appropriate to achieve reduction of emissions, such as the “operation, maintenance, repair, and replacement of” Commission-regulated gas pipeline facilities.²³ For example, SoCalGas and SDG&E’s efforts to integrate biogas into their systems may be another area that can effectively contribute to the reduction of GHG emissions. To the extent that such methane-reducing measures are not funded elsewhere, this proceeding may explore proposals in addition to leak remediation that would achieve SB 1371’s climate change purpose.

IV. The Final Scoping Memo Should Minimize Duplication With Other Reporting Requirements and Enforcement and Follow the OIR’s Two-Phase Process

UWUA and EDF note additional regulatory entities and reporting requirements that may overlap with the CPUC’s authority and reporting requirements pursuant to SB 1371.²⁴ SoCalGas and SDG&E agree with ORA that “careful consideration be given to assess if there are duplicative reporting requirements elsewhere, or if there is another report the required information could be best integrated into.”²⁵ Much of the information contemplated by Staff for inclusion in the May 15 Reports and subsequent annual reports would be duplicative of reports already provided to the PHMSA, the California Air Resources Board (ARB), CPUC, and local AQMDs. As required by the OIR, “[p]ursuant to § 975(g), and consistent with § 961(e), the Commission is to facilitate the ‘robust ongoing participation of . . . those state and federal entities that have regulatory roles of relevance in all aspects of the proceeding to ensure that the rules and procedures it adopts are not inconsistent with the regulations and procedures adopted by those agencies.’” Duplicative reporting requirements may obscure the scope of SB 1371 by not carving out what the Commission seeks to focus on in this proceeding versus other similar efforts in other CPUC proceedings or by other regulatory entities. Jurisdictional clarity is also needed for SB 1371’s scope and for the CPUC’s role versus other regulatory agencies for such reporting and enforcement.

²² UWUA correctly notes that SB 1371 does not require utilities to “eliminate” methane leaks, as suggested by the Staff Report. UWUA Comments, at 10 (citing Cal. Pub. Util. Code § 975(e)(1) (requiring rules “for the maximum technologically feasible and cost effective avoidance, reduction and repair of leaks and leaking components . . .”).

²³ See CAL. PUB. UTIL. CODE § 975(b).

²⁴ See UWUA Comments, at 17; EDF Comments, at 19 (noting PHMSA, GO 112-F, local Air Quality Management Districts (AQMDs), etc.).

²⁵ ORA Comments, at 10.

Minimizing duplication and overlap with other oversight is particularly important for future annual reports where this stakeholder process will have more time to develop what is necessary for SB 1371's purpose based on utilities' information provided in the May 15 Reports in Phase 1 and parties' proposals in Phase 2 for rules and procedures.²⁶ The Commission should adhere to the two-phase process outlined in the OIR that anticipates information gathering in Phase 1 and robust stakeholder input on rules and procedures in Phase 2, including the requirements for future annual reports. According to the OIR, "the assigned Commissioner or ALJ will issue a ruling that describes the processes that will be used, and the schedule to be followed."²⁷ SoCalGas and SDG&E recommend that the ALJ issue a ruling to permit parties to file prehearing conference statements before a Final Scoping Memo is issued so that they can provide input on the processes and schedule to be adopted.

V. The ALJ Should Issue a Ruling to Clarify the Scope, Requirements, and Definition of a "Leak" for Purposes of the May 15 Reports

ORA states that the OIR's first phase is the filing of the utility reports on May 15, 2015 after a CPUC Safety and Enforcement Division (SED) workshop "to discuss the format, and to ensure consistency with the data reported to the [ARB] and [PHMSA]."²⁸ SoCalGas and SDG&E request that the ALJ issue a ruling before May 15 to clarify the scope, requirements, and definition of a "leak" for the limited purpose of the May 15 Reports to be consistent with SB 1371. Because this report is due before the prehearing conference scheduled for June 8 and the Final Scoping Memo to be issued thereafter, the utilities have no formal direction in the record as to the contents of the report, except for the OIR.²⁹ Additionally, there continues to be ambiguity

²⁶ OIR, at 10 ("The reports, which are to be filed by May 15, 2015, may provide useful information as to what kind of information gathering needs to be undertaken by the Commission *before* considering what rules and procedures should be adopted.") (emphasis added); *Id.* at 8 ("This rulemaking will consist of two parts. First, pursuant to § 975(c), we will require each of the respondents to file a report that includes the information described in § 975(c). This will allow us to gather additional information about natural gas leaks from such facilities, and how those leaks are currently being managed and mitigated.") *Id.* at 10 ("The second part of this rulemaking is to solicit input from the utilities and other interested persons on what rules and procedures should be adopted by this Commission.").

²⁷ *Id.* at 14.

²⁸ ORA Comments, at 4, n.13 (quoting OIR, at 9-10).

²⁹ Although Staff has provided further informal guidance through Data Request-related communications and the April 6 workshop's discussion of Staff's reporting templates, there is no direction formally reflected in the record.

regarding Staff's definition of a "leak" for purposes of the report and Staff's broader requirements than the items listed in the OIR and statute. The OIR states that "[f]irst, pursuant to § 975(c), we will require each of the respondents to file a report that includes the information described in § 975(c)." The items listed in Section 975(c) and repeated in the OIR are much more limited than what has been requested by Staff.³⁰ An ALJ Ruling should reflect the statute and OIR's reporting requirements; if instead Staff's template is adopted, the ruling should note that it is broader than what is required by statute, which may also affect the availability of data. This will make clear that the broader information is for purposes of information gathering only in Phase 1 and does not necessarily mean it is relevant for purposes of establishing rules and procedures in Phase 2.³¹

"[T]o ensure consistency with the data reported to the [ARB] and [PHMSA],"³² SoCalGas and SDG&E also request that the ALJ Ruling clarify the definition of a "leak" for purposes of the May 15 Report. On February 9, 2015, SoCalGas and SDG&E indicated to Staff while seeking clarification on the definition of SED/ARB's Data Request³³ that we would only have responsive information to most of Staff's requested items based upon the PHMSA definition, since we would not have tracked historical information based on Staff's new definition of a leak. Staff indicated agreement with SoCalGas and SDG&E's clarification of the definition for this limited purpose:

- For Items 1-8 listed in Staff's reporting template, which primarily pertain to summaries of utility leak management practices and inventory of discovered, repaired, and open leaks, "leak" is defined the same as under PHMSA's definition

³⁰ See OIR, at 3-4 (quoting CAL. PUB. UTIL. CODE § 975(c)):

- (a) A summary of utility leak management practices.
- (b) A list of new methane leaks in 2013 by grade.
- (c) A list of open leaks that are being monitored or are scheduled to be repaired.
- (d) A best estimate of gas loss due to leaks.

³¹ For example, Staff's reporting template requests leak data as far back as 2008 while the statute only requests data from 2013 and the OIR from 2013 and 2014. See OIR, at 3-4, 9. Staff also requests more detailed information regarding leaks, such as various attributes and GIS information for open leaks. Some limited GIS information may need to be redacted to protect Critical Energy Infrastructure Information (CEII). Finally, in Item 9, Staff requests calculable losses due to intentional, controlled releases, which is not discussed anywhere in SB 1371.

³² ORA Comments, at 4, n.13 (quoting OIR, at 9-10).

³³ As of March 23, 2015, Staff appears to require that the same information requested in SED/ARB's Data Request should be filed in the report for this proceeding, both of which are due on May 15.

