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COMMITTEE ON
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SUBCOMMITTEE ON GAS, ELECTRIC, AND TRANSPORTATION SAFETY

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Safeguarding Safety*:*
Participation of Safety Advocates in a Regulatory Landscape

Sunset Review of the Office of Safety Advocates

With the devastating natural gas transmission pipeline explosion in San Bruno, CA in 2010[1] and the gas leak at the Aliso Canyon Natural Gas Storage Facility in Los Angeles County in 2015,[2] the California Public Utilities Commission (CPUC) faced ever increasing demands to prioritize and appropriately value their safety oversight of the public utilities they regulate. These demands have only heightened following the deadly wildfires that afflicted California in the fall of 2017 and 2018 – many of which were caused by or linked to electricity infrastructure.[3] While certainly not a new responsibility of the CPUC, the Commission's safety oversight has faced intense public scrutiny in recent years, with calls for the CPUC to adopt an elevated and urgent approach toward utility safety. In 2016 following a budget proposal by the CPUC to create an internal Division of Safety Advocates,[4] this Subcommittee examined the safety orientation and management framework of the Commission.[5] The Subcommittee could not determine during that review how the CPUC had articulated its approach to safety nor how a Safety Advocate

[1] http://www.cpuc.ca.gov/sanbruno/
[2] http://cpuc.ca.gov/aliso/
[3] Prior subcommittee hearings on the topic may be found here:
https://seuc.senate.ca.gov/sites/seuc.senate.ca.gov/files/01-26-18_background.pdf
[4] https://esd.dof.ca.gov/Documents/bcp/1617/FY1617_ORG8660_BCP796.pdf
[5] May 3, 2016; *California Public Utilities Commission: Safety Intervenors and Effective Safety Management;*
https://seuc.senate.ca.gov/sites/seuc.senate.ca.gov/files/05-03-16_background.pdf

may improve the CPUC's effectiveness in promoting utility safety. Three years have elapsed since that review; the questions raised remain ever more urgently in need of answers. The purpose of this hearing is to examine the progress the CPUC and the Office of Safety Advocates (OSA) have made in promoting safety, not just for the utilities they regulate but internally as a formalized, proactive approach to addressing energy system safety.

Findings

- *The CPUC is firmly rooted in its role as a rate regulator, and as such, reforms may be necessary to ensure the promotion of utility safety.*
- *The presence of a safety advocate at the CPUC has proven beneficial, dedicating staff to improving the safety management and safety culture of the regulated utilities.*
- *The effectiveness of a safety advocate at improving safety management and safety culture within the CPUC largely relies on its ability to foster buy-in with Commission staff who may lack a collective capacity to see beyond what is currently done.*
- *An independent board, dedicated to improving utility safety, may better promote the safety goals of the CPUC. Such an organization could research best practices sector-wide and issue recommendations for the utilities and CPUC to consider without adopting the adversarial role characteristic of ratemaking. Such a board, however, runs the risk of being marginalized and could inadvertently separate the CPUC from its safety responsibilities.*

Trusting the Process: Who Fights for Safety and When Do They Engage?

As articulated in a recent analysis by the Senate Energy, Utilities, and Communications Committee, no external office or priority "*supplants the duty of the CPUC to exercise its authority to ensure that policies and procedures for utilities are safe.*"[6] The Public Utilities Code mandates the CPUC exercise its regulatory powers to ensure utility practices are safe; however many of these regulatory powers are established through the lens of ratemaking.[7] What has evolved is an historical tolerance at the CPUC of entertaining individual utility safety-related proposals within a rate case, with the utility committing to make the investments in exchange for the money to fund them. This has led, as noted in the previous Subcommittee report on the topic, to "*the CPUC's oversight of safety to be no less complicated than the operation of those utilities themselves.*"[8]

[6] Analysis of Senate Bill 199 (Hill, 2019), at pg. 5.
http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200SB199
Note: SEUC is the parent committee to this Subcommittee.
[7] The most classic example: PU Code §451
[8] At pg. 2; https://seuc.senate.ca.gov/sites/seuc.senate.ca.gov/files/01-26-18_background.pdf

Rate Case Complications. As noted in the previous Subcommittee report, what distinguishes rate-regulated public utilities from traditional businesses is not that government regulators set their rates. Government ratesetting occurs for services in many industries, including transportation, insurance, and healthcare. For public utilities, the difference is that government regulators set rates not for the entire industry but for individual companies. Subsequently, *this individualized ratesetting has allowed for individualized safety regulation.*

The individualized safety regulation in turn leads to siloing of utility safety practices. California's state-regulated energy utilities conform to largely unchanging industry-wide standards, but each utility—through decisions, resolutions, and settlement agreements approved by the CPUC—are subject to different requirements based on its service territory and operating history.[9]

Box 1: The Failing of Adversarial Relationships: An Example in Close Call Reporting

In February 2014, the CPUC held a workshop on NASA's close call reporting program.*

The close call reporting program uses an independent third-party to analyze reports submitted by utility employees and contractors to identify and report safety hazards across an industry. This type of program was implemented by the Federal Aviation Administration (FAA) 40 years ago and copied by the Federal Railroad Administration (FRA), the International Association of Fire Chiefs, and others. Both the FAA and FRA use NASA Ames to administer their close-call reporting systems.

The CPUC 2014 workshop was well received, but the notion of a close call reporting system for gas and electric utilities operated – even peripherally – by the CPUC struggled under the fear that the CPUC would use the program as a means to fine and penalize the utilities.

After being mentioned in the CPUC's 2015 Safety Action Plan and highlighted in the CPUC's 2017 Safety Action Plan, the responsibility of creating the close call reporting system has shifted to OSA to solve.

It is unlikely that the weight of the adversarial relationship between the CPUC and regulated entities can be overcome to establish such a program at the Commission. In order for such a program to succeed, OSA must find a third party independent enough to engender trust with utility employees and management.

*http://www.adminmonitor.com/ca/cpuc/workshop/20140213/

Compressing safety into the process of ratemaking creates a circular problem for the CPUC: first, it begs the question of a safety advocate within rate cases to keep utility spending focused on safety and to provide a balance point on the spectrum of excessive spending and strict affordability arguments.[10] Secondly, in so

[9] A recent, oft-discussed example of this disconnect is the difference in wildfire efforts between the Southern California utilities and those of Pacific Gas & Electric Company. Different clearance standards for vegetation, as well as facility inspection cycles – under General Orders 95 and 165 – arose following devastating fires in southern California in 2003 and 2007. However, these rules only (until recently) applied to San Diego Gas & Electric, and to some extent Southern California Edison, territory and not Pacific Gas & Electric.

[10] As noted in the Subcommittee's last report, simply designating a safety intervenor to pump more information into a rate case's proceeding record rarely leads to positive system safety changes. Rate case applications are fundamentally requests by utilities to increase rates to inact choices that the utility has already made. As such, these applications are designed to create a choice along a single dimension—equating more safety, reliability, and environmental promotion with higher rates—and, as an inherent consequence, ignore options that the utility has decided not to pursue.

creating a safety advocate and positioning safety in rate cases, the CPUC establishes from the onset an adversarial structure for safety considerations, framing them as a fight for ever-shrinking wedges of the pie. As discussed in Box 1, this adversarial relationship can have a chilling effect on safety promotion.

CPUC ratesetting proceedings have adjudicatory elements, so many of the quasi-judicial processes and rules of the CPUC apply. These include hearings to determine facts and considerations of due process, as well as the establishment of an "ethical wall" between staff who takes positions in proceedings and the agency decisionmakers.[11] This ethical wall effectively creates two classes of CPUC staff for any adjudicatory or ratemaking proceeding—one that advocates and is subject to ex parte restrictions, and one that provides counsel to Commissioners.[12]

Administrative law does not require an institutional separation between these two agency functions but allows it on a case-by-case basis.[13] Prior to the creation of OSA, the CPUC relied on staff within the Safety Enforcement Division (SED) to advocate and advise during utility rate cases or other safety-related proceedings. Currently, SED's units still advocate in some proceedings and advise in many.[14]

A Third Option for Safety Considerations. Aside from the quasi-judicial proceedings of adjudication and ratemaking, the CPUC has a third procedural vehicle to use at its discretion:

As Tom Long of TURN suggested in a 2015 Safety En Banc, the conflict between safety improvements and low rates is largely a construction, "a completely false dichotomy" because "the bigger revenue requirements do not necessarily lead to more safety." Testimony of Tom Long, CPUC Safety En Banc, September 24, 2015. Minute 00:42:40. http://www.adminmonitor.com/ca/cpuc/en_banc/20150924/2/

[11] PU Code §1701.1 et seq. This requirement from administrative law stems from the prohibition of ex parte discussions with the decisionmaker in court cases.

[12] In rulemakings, where there are no ex parte communication restrictions, there is no legal requirement to separate advisory and advocacy staff. As noted in the prior Subcommittee report, SED advocacy in safety-related rulemakings is occasional but not uncommon, and has been seen in the wildfire safety rulemaking (R.08-11-005/R.15-05-005) and a recent overhead line construction rulemaking (R.14-08-012), and has occasionally led to bizarre results. In one case, during a dispute over whether or not Pacific Gas and Electric Company (PG&E) should be allowed to restore the pressure on a natural gas pipeline running through the City of San Carlos, SED—serving in an advisory capacity—recommended the pressure be increased, while an SED consultant—working in an advocacy capacity—recommended the pressure remain at a reduced level. See: "Safety and Enforcement Division's Report on Its Investigation of PG&E's Transmission Line 147," November 14, 2013.

[13] *Morongo Band of Mission Indians v State Water Resources Control Board*, 45 Cal.4th 731 (2009).

[14] SED has five major units – Rail Safety; Electric Safety & Reliability (ESRB); Gas Safety & Reliability (GSRB); Office of Utility Safety (OUS); and the Risk Assessment and Safety Advisory (RASA) unit. Rail Safety is largely independent and solely focused on its safety responsibility and accountability for railroads. ESRB and GSRB are the electric and gas enforcement arms of SED, focused on ensuring federal and state regulations are followed. OUS is a leadership unit within SED, focused on management development and cross-agency collaboration. RASA's mission is "to promote safety by ensuring that the regulated entities integrate risk analysis and risk management practices."[14] RASA largely advises on the Safety Model Assessment Proceeding (SMAP) and the individual utilities' Risk Assessment Mitigation Phase (RAMP) proceedings at the Commission.

quasi-legislative (QL) proceedings or "rulemakings."[15] QL proceedings are used by the CPUC to establish policies or rules affecting a class of regulated entities – so that best practices and standards may be formed industry wide. The CPUC's rules on QL proceedings allow for more flexibility and less process – hearings are not required; ex parte communications are permitted without restriction; and as such, no ethical wall need be established for Commission staff.[16] Recent examples of QL proceedings include the establishment of a Fire Map and updating utility power line clearance requirements;[17] the establishment of physical security standards for electric facilities following the Metcalf substation attack;[18] the creation of a staff-lead citation program for violations made by electric and gas utilities as well as increased reporting requirements for these utilities;[19] and an examination of protocols surrounding electric utility power line de-energization.[20]

The use of QL proceedings seem a natural place to examine system-wide safety concerns and to develop leading indicators of safety hazards. However, many of the trappings – most concerning of which is the adversarial posture between the utilities and other parties – of CPUC quasi-judicial proceedings have the habit of bleeding into QL.[21] In the CPUC's budget letter requesting positions for what would become OSA, many assertions of crippling legal barriers for staff advocating for safety were incorrect.[22] The consequence of this process-bleed has led to

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[15] *Understanding a CPUC Proceeding* brochure:
file:///C:/Users/mcwillle/Downloads/Understanding%20a%20CPUC%20Proceeding%20(2).pdf

[16] California Code of Regulations, Title 20, Division 1, Chapter 1.
http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M209/K618/209618807.PDF

[17] R. 15-05-006

[18] R. 15-06-009. This proceeding has now evolved to establish standards for disaster and emergency preparedness plans for electrical and water corporations.

[19] R. 14-05-013

[20] R. 18-12-005

[21] A confusing example of this – the insistence of CPUC staff on due process for QL proceedings without clearly articulating what the due process requirements are for quasi-leg versus quasi-judicial proceedings. As noted by the CPUC, due process, at a minimum, "requires some type of notice and an opportunity to be heard." (D. 18-04-014) This definition of due process is fairly minimal compared to the timelines, prehearing conferences, oral arguments, ex parte restrictions, and extensive record development inherent to other CPUC proceedings. See: "Rulemaking 'Due Process': an Inconclusive Dialogue" by Gellhorn and Robinson; The University of Chicago Law Review, Vol. 48, No. 2, 1981 :

"Although due process has always been a concern lurking in the background of rulemaking authority and rulemaking procedure, attention has not been sharply focused on the issue. This previous lack of concern may be explained by the existence of other safeguards. Agency rules are not self-enforcing, preenforcement judicial review is available, and the necessity of enforcing agency rules through adjudication provides those affected by rulemaking both with notice and with an opportunity to be heard by an impartial tribunal prior to the imposition of any sanction."
https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=4232&context=uclrev

[22] From the Spring Finance Letter: "*Pursuant to Senate Bill 636 (Hill, Ch. 548, Stats. 2014), Commission staff cannot serve in both advisory and advocacy capacities in the same proceeding*"; "*We need dedicated staff to develop the record through testimony and analysis to highlight safety gaps. The PUC's SED group cannot perform this function because their role is to enforce and investigate; they cannot serve as a safety advocates*." In fact, SED has in the

misclassification of proceedings. As the Governor's Office recently noted "*many proceedings [at the CPUC] that could be quasi-legislative are currently subject to full rate-setting procedures."*[23] As described above, aligning the CPUC's safety posture to the rate case, or to the trappings of a rate case, has been a troubled effort for the simple reason that you cannot buy safety.[24] The CPUC needs to break itself of the reliance on the rate case to solve utility safety problems, and to better define and uphold the procedural flexibility afforded by quasi-legislative proceedings.

Enter the Office of Safety Advocates

During the 2016-17 Fiscal Year, the CPUC requested 11 permanent positions and $1.694 million in funding to create a Division of Safety Advocates within the CPUC.[25] The CPUC request cited, "*unprecedented failures of utility infrastructure over the past five years that threaten the safety of Californians*." This new Division – modeled on the Public Advocates Office (formerly the Office of Ratepayer Advocates) – was meant to fill the gap at CPUC proceedings where previously the CPUC had difficulty recruiting parties to intervene to advocate for safety. According to the CPUC, "*Creation of a Division of Safety Advocates would allow the CPUC to have a division dedicated to establishing a safety focus, testifying in hearings, and exclusively prioritizing and advocating for the protection and safety of Californians as a party to CPUC proceedings.*"

It was unclear in this budget request in which proceedings the CPUC envisioned the new Division to directly intercede. However a number of statements seemed to point to the ultimate target: the rate case. "*…there has been no formal testimony focused solely on safety, thus limiting the Commission's ability to proactively consider safety matters as part of the* ***official formal record****;" "Utility requests for infrastructure upgrades and related maintenance, inspection, and monitoring are increasing rapidly. Such requests are* ***considered in the General Rate Case****…;"* and *"part of the Division of Safety Advocates' role will be to determine whether additional safety improvements are required and, if so,* ***who should bear the costs****."*

The prospect of creating a division which would further embattle the rate case, albeit from the lauded vantage of safety, was concerning. Not only would such action lead to a formalization of an adversarial role for safety promotion, it could greatly disadvantage necessary safety

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past performed advocacy functions, and SB 636 applies to "staff" in the singular form, not the plural, and only in adjudicatory proceedings.

[23] Pg. 42 *Wildfires and Climate Change: California's Energy Future*; A report from Governor Newsom's Strike Force; April 12, 2019; https://www.gov.ca.gov/wp-content/uploads/2019/04/Wildfires-and-Climate-Change-California%E2%80%99s-Energy-Future.pdf

[24] The perennial question "*But how much safety are we willing to pay for*?" is particularly egregious after almost a decade has passed since San Bruno. Rarely are safety failures caused by a lack of money; they are caused by poor management. The answer to improving safety isn't to withhold money from utilities, nor is it to throw more money at them. The answer is to evaluate their management of safety.

[25] https://esd.dof.ca.gov/Documents/bcp/1617/FY1617_ORG8660_BCP796.pdf

expenditures if "safety" was improperly defined.[26] Additionally, focusing the safety advocate's attention on the rate case – the last step of a utility's planning process – could greatly minimize (and potentially compromise) the value of the safety advocate's participation. Moreover, the Legislature had seen this proposal before.

In 2011, immediately following the San Bruno explosion, the Legislature approved new positions for a CPUC unit charged with identifying and analyzing utility safety risks – the Risk Assessment Unit.[27] Using safety as the top priority, the group was to determine hazards and prevent accidents. Perhaps unsurprisingly, the Legislature questioned the need for the new Division of Safety Advocates, when the RAU was so recently formed and its charge so similar to that of the safety advocate.

In May of 2016, this Subcommittee held an informational hearing on the effectiveness of safety intervenors.[28] The report questioned whether the safety advocate would succumb to the whims of reactionary Commission priorities or be able to take a long-term view. It additionally expressed a desire for the CPUC to establish a safety management system that a safety advocate could promote and reinforce. Finally, the report cautioned the CPUC over the dual traps of either siloing the office or poorly defining it from the onset so that its work was redundant to other units inside SED. A key question that arose during the hearing mirrors a larger question of the CPUC as a whole: *how does the new division prioritize its engagement with CPUC proceedings and not become buried under the tidal wave of process and obligation?*

Following the subcommittee hearing, the CPUC's original budget request was modified by the Legislature: the desired positions and funding were adopted in the budget,[29] but the Division's goals and objectives were adopted in a companion bill, SB 62 (Hill, Chapter 806, Statutes of 2016). Senate Bill 62 established the "Office of Safety Advocates," rather than the "Division" as originally requested by the CPUC.

The goals established for OSA under SB 62 include[30] :

a) Advocate, as a party to CPUC proceedings and on behalf of the interests of public utility customers, for effective public utility safety management and infrastructure improvements.

b) Recommend improvements to the CPUC's safety management policy and procedures and its safety culture.

[26] If defined as the *absence* of accidents – which is nearly impossible to predict - safety will almost always be disadvantaged when weighed against other, measurable metrics such as GHG reduction, capacity, and cost.
[27] Now known as the Risk Assessment and Safety Advisory Unit (RASA)
[28] https://www.senate.ca.gov/media-archive/default?title=&startdate=05%2F02%2F2016&enddate=05%2F04%2F2016
[29]Pg. 2; http://www.ebudget.ca.gov/2016-17/pdf/Enacted/GovernorsBudget/8000/8660.pdf
[30] PU Code §309.8

c) Inform the official record on safety-related risks in applicable CPUC proceedings and assist the CPUC in its efforts to hold public utilities accountable for their safe operation.

Crucially, this enacting statute directed OSA's efforts not just at the utilities but at the Commission itself. This key insertion – that OSA would advocate for safety management not only at the utilities but at the CPUC – enables OSA to attempt to move the needle on the CPUC's own safety posture. Yet, the statute did not direct OSA to participate or lead specific utility proceedings, exposing the new office to the possibility of being absorbed in ratemaking.

As Senator Hill cautioned in a November 2016 letter to Commissioners regarding this newly formed office: "*…what happened to the Risk Assessment Unit? It was repurposed to work on the rate case. During the Safety in Ratemaking rulemaking (R. 13-11-006), SED's role was discussed, and the intervenors concluded…that SED would be advisory only and not play any role in advocacy or in identifying utility hazards, but could only comment on the applicant utility's risk assessment methodology. Some intervenors worried that SED, if allowed a voice, would embolden utility rate requests. Who in SED was selected for this limited role? The Risk Assessment Unit. Soon rate cases gobbled up the majority of the Risk Assessment Unit staff's time. Left unchecked, the same resource whirlpool will engulf the Office of the Safety Advocate, and instead of transforming the CPUC's approach to safety it will be forced to pick sides in false, adversarial dichotomies set up by major infrastructure investment proposals, and its personnel will be too thinly spread to investigate other changes that the CPUC and utilities could make that would more effectively improve utility safety."*

OSA – Where are they now?

As highlighted above, SB 62 laid out two core directives for OSA: advocating and informing utility proceedings, calling for safety management, safety related risk analysis, and safe operations; and enacting change internally at the Commission, to ensure a strong safety management and safety culture persists.

Advocating and informing utility proceedings. During the subsequent two-plus years since the passage of SB 62, OSA has provided annual reports on its activities to highlight how it is meeting its statutory directives.[31] These annual reports demonstrate an Office striving to balance the myriad safety considerations at the CPUC. OSA has participated in numerous CPUC proceedings,[32] and has made critical recommendations especially in lower-profile – but

[31] 2018 report here: http://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/About_Us/Organization/Divisions/Safety_Advocates/OSA%202019%20Legislative%20Report%2020190110%20-%20new%20version.pdf

[32] R.18-12-005; R. 18-10-007; A. 18-090-002; OII. 18-12-007; A. 17-11-009; A. 18-07-019; A. 17-02-003; A. 18-02-013; A. 18-12-009; OII 17-11-003; A. 17-10-007; OII. 15-08-019; A. 15-05-002; R. 14-05-013; and R. 17-07-007

just as important – cases where OSA was the only party aside from the utility.[33] Importantly, OSA continues to advocate for more quasi-legislative proceedings at the CPUC.

However it is unclear how OSA prioritizes its advocacy role. As shown in the Governor's recent budget proposal,[34] last year OSA operated with four staff. Four staff is stretching thin the management of casework in the proceedings OSA is currently party to, much less any additional ones that arise in subsequent years. More concerning, nearly half of the proceedings OSA engages in are rate cases.[35] Aside from receiving additional staff, as the recent budget proposal is requesting, OSA should undertake an effort to define its priorities for proceeding engagement.

Enacting change internally at the Commission. Overlaid with – and complicating – this balancing act of "being in all CPUC proceedings at once" are unclear directives at the CPUC globally regarding the CPUC's safety response. As noted by Schulman and Roberts in 2016:[36]

> "*One striking finding we discovered in our interviews is that there doesn't seem to be a clear conception or definition of safety shared throughout the Commission or across divisions or even across branches within the SED. We have heard the call for "more safety" but it's not clear that there's an underlying understanding of what that means*."

While this comment was made at the Commission prior to OSA's formation, it is unclear how thinking at the Commission has evolved since this observation. The CPUC's Safety Action Plan, a logical document to include a definition of "safety", does not. More troubling, the CPUC has quietly moved away from the Safety Action Plans entirely, with the last update in February 2017,[37] focusing instead on its Strategic Directives[38] and SED's Annual Work Plan[39] to provide the CPUC's comprehensive strategy on safety. SED's work plan – for its part – is not a comprehensive, CPUC-wide document laying out the vision of the Commission's safety posture. Rather, as the name suggests, it is a division-wide work plan for the upcoming year. The Strategic Directive on Safety – while recently updated – says little regarding the CPUC's own safety management and culture; while the CPUC's Safety Policy Statement[40] seems largely

[33] See A.18-07-019; Gill Rach Gas Storage transfer control proceeding
[34] Pg. 4, "OSA resource history" https://esd.dof.ca.gov/Documents/bcp/1920/FY1920_ORG8660_BCP2747.pdf
[35] Pg. 22-27 OSA 2018 Annual Report; See citation 30
[36] "Report on the Safety Management System Implementation at the California Public Utilities Commission"; Paul Schulman and Karlene Roberts; February 17, 2016; see: http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Transparency/Commissioner_Meetings/CPUC%20SMS%20Report%20Presentation%20and%20Report.pdf
[37] http://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/Safety/Other/2017_Safety_Action_Plan.pdf
[38] Pg. 5; the CPUC's safety directive is largely utility-focused, with a quick sentence included on "developing an effective safety management system" for themselves. http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Transparency/Strategic_Planning_Initiative/Draft%20SD%20Safety.pdf
[39] http://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/Safety/Other/2018%20SED%20Annual%20Plan.pdf
[40] http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Safety/VisionZero4Final621014_5_2.pdf

forgotten, having last been updated in July 2014. None of these documents provide a CPUC-wide working definition of safety.[41] Given this environment, it is unclear how OSA prioritizes its efforts and works toward a shared goal of "more safety."

A secondary concern from unclear safety objectives at the Commission broadly, is that OSA risks becoming redundant within the CPUC. As mentioned earlier, OSA's statutory responsibilities skirt closely to those of the Risk Assessment Unit. Interestingly, the Risk Assessment Unit is now known as the Risk Assessment and Safety Advisory (RASA) section, further blurring the jurisdictional lines between the two groups.

As highlighted in the 2016 Subcommittee background: "*Ambiguity* [around safety roles] *can lead to internal conflict, and the CPUC is no stranger to turf wars. Though SED has largely avoided these, the introduction of the Risk Assessment Unit in 2011 led to significant tension between it and the Gas Safety and Reliability Branch—a tension that took years to dissipate. The CPUC might wish to clarify the roles within SED, of the Safety Advocate, and of the Policy and Planning Division in order to avoid unnecessary confusion. In doing so, it might wish to describe these responsibilities in personnel duty statements.*" It appears that this directive of better clarification between SED units and OSA is still needed.

Box 2: Forgotten Recommendations?

In the Safety Culture proceeding (OII 15-08-019), NorthStar Consulting Group asserted – in its May 2017 Final Report – a number of recommendations for the CPUC to adopt internally.

OSA has advocated in testimony (Feb. 2018) and filings (Feb. 2019) for the CPUC to adopt these recommendations. Some of NorthStar's recommendations, such as a CPUC Safety Reporting System, have been included in OSA's priority list in their annual plan for years. However, the CPUC has made no public acknowledgement of their intention to take action on the recommendations.

It may be appropriate for the CPUC to weigh OSA's comments with every other party in a proceeding when adjudicatory action or ratemaking for a ***utility*** is being considered. However, OSA's role as advocate for reform internally at the ***CPUC*** should not be as easily ignored.

Additionally, OSA has highlighted within its annual reports a number of items it is undertaking to improve the safety culture of the Commission. One such item is the Safety Flag System, used to empower staff to submit concerns in order to identify safety gaps in the Commission's oversight. RASA mentions in SED's 2018 report that it manages the Safety Flag system,[42] while OSA seems to be the only CPUC staff to use it for identifying sector-wide safety gaps. Despite both RASA's and OSA's involvement, it is unclear how items reported through the Safety Flag System ever result in CPUC action or analysis, or if such Flags ever reach the Commissioners.

[41] The Safety Policy Statement provides the closest definition in its "guiding principles" section.

[42] pg. 12 SED 2018 work plan; http://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/Safety/Other/2018%20SED%20Annual%20Plan.pdf

Everyone Thinks of Changing the World, and Nobody Thinks of Changing Himself

Fundamentally, the question posed by the OSA's statutory directive is one pondered by many philosophers: the regeneration of self. How realistic is the expectation that an organization – particularly one engaged in multiple and sometimes conflicting priorities and laden with slow administrative processes – can change from the inside?[43] The last major reforms of the CPUC emerged from a potent mix of public outcry, political will, and independent analysts' recommendations, such as the National Transportation Safety Board[44] and the Independent Review Panel[45] reports on the San Bruno pipeline explosion. Both reports not only criticized the failing of the regulated utility, but took aim at the CPUC.

Given the devastation of the recent wildfire seasons, and the frustration of the public and Legislature at the seemingly slow pace the CPUC adapts to threats, a similarly potent mix may be returning. OSA in its most recent annual report signaled the weight outside observers carry. Rather than recommending improvements to the CPUC's safety culture, OSA recommended hiring third-parties to assess and audit it.[46]

The Structure of a Safety Organization

The ultimate goal sought for the CPUC, and one promoted by this Subcommittee in previous reports, is the wholesale adoption of a safety management system (SMS). The theory and four pillars of an SMS are reprinted for convenience in Appendix A, with the defining characteristics being a proactive organization that engages in long-term safety planning (Pillar 1 – Safety Policy); has a system to continually identify hazards, control for their risk, and questions the adequacy of the adopted risk controls (Pillar 2 & 3 – Safety Risk Management & Safety Assurance); and fosters an environment of cooperation, education, and trust. (Pillar 4 – Safety Promotion).

The CPUC is not currently engaged in a formalized, commission-wide SMS, although it has adopted some of the SMS Pillars in various activities and proceedings along the way. So how does the CPUC reorient to be able to sensibly promote safety, and is such a reorientation doomed to fail given the inherent adversarial role often taken in Commission decisionmaking? A potential solution is to remove the safety R&D function from the CPUC. This could occur two ways – either by creating an external advisory board for utility safety that can research best practices sector-wide and issue recommendations for the utilities to consider or by the wholesale removal of safety from the CPUC. These suggestions are not a new ones. CPUC President Michael Picker has publicly questioned the logic of the rate regulator also issuing safety recommendations. The NTSB, FAA, and Nuclear Regulatory Commission – to name a few – all operate as independent, external boards for safety separate from rate regulation.[47]

[43] Or, as that old saying goes: *If you want to know what water is, don't ask the fish*.
[44] https://www.ntsb.gov/investigations/AccidentReports/Pages/PAR1101.aspx
[45] http://www.cpuc.ca.gov/General.aspx?id=7373
[46] Pg. 29; in Long Term Roadmap; see citation 30
[47] For the entities regulated by PHMSA, DOT, and DOE respectively

Additionally, former NTSB vice chair Christopher Hart, who in reviewing the San Bruno explosion, raised the question of whether or not one organization should be both a rate regulator and a safety regulator, or whether the two roles posed an untenable conflict.[48]

In the event a Utility Safety Board is created, it could internally establish the SMS pillars and encourage such at the CPUC. Such a Board would not, as a rule, require the reduction or diminishment of safety considerations at the CPUC. Rather the Board – much like the Independent Review Panel's recommendations following San Bruno – would spotlight needed changes the CPUC may be struggling to see for itself. Yet in so removing the long-term vision for energy system safety from the CPUC, how does this new Board not become marginalized? How does the new Board ensure their recommendations are taken seriously? And how does safety remain the top priority at the CPUC? The Commissioners would be delegating their safety responsibilities to an entity without decision-making power – an entity which could be a scapegoat if something goes wrong. Ultimately, a new Utility Safety Board can only rely on its credibility. It must be vigilant and persistent in its safety oversight, competent and consistent in its recommendations, and build trust with the CPUC, utilities, and other stakeholders. However, it still runs the risk of being ignored.

A second proposal, far more sweeping than an oversight board, is the removal of safety from the CPUC. The Safety Enforcement Division would be the nucleus for a new agency which not only issues prescriptive and performance-based rules for the utilities to follow and actively audits compliance, but also focuses on the long term safety vision of the utilities it regulates and incorporates safety management into its structure. The new agency would have regulatory authority, otherwise its recommendations could easily be ignored, but would be structured around rulemaking not ratemaking. In such a scenario, OSA would remain at the CPUC, as its mission would be vital – the voice of safety in a purely ratemaking body.

[48] Concurrence of Vice Chairman Hart, National Transportation Safety Board. 2011. *Pacific Gas and Electric Company Natural Gas Transmission Pipeline Rupture and Fire, San Bruno, California, September 9, 2010* . Pipeline Accident Report NTSB/PAR-11/01. Washington, D.C. http://www.ntsb.gov/doclib/reports/2011/PAR1101.pdf

Appendix A: The Goal – a Safety Management System**

The safety management system (SMS) concept began not as a theory but as a set of best practices meant to address a number of problems that had emerged from the complexity of modern industrial systems. Principal among these problems are that:

1. Humans cause 80% of accidents, but organizations influence human behavior and the organizations themselves needed to be a focus of safety efforts.
2. Industrial systems are too complex for traditional, prescriptive standards and regulation and instead require a performance-based approach.
3. Accident investigations are too late to use as a tool to understand and prevent high-consequence accidents, as the consequences of infrequent accidents have become more and more intolerable.

Four Pillars of the SMS

1. **Safety Policy**
    - Provides management and personnel with policy direction, written procedures or rules, management controls, and corrective action processes to maintain safe operations.
    - Establishes senior management's commitment to continual improvement through measureable objectives and to provide sufficient resources to implement safety actions.
    - Establishes roles, responsibilities, and accountabilities in the organizations safety performance.
    - Articulates an enforcement policy.

2. **Safety Risk Management** consists of five process elements:
    - *System description:* establish an understanding of the system sufficient to identify hazards.
    - *Hazard identification:* through a combination of reactive, proactive, and predictive means, identify safety hazards.
    - *Analyze safety risk:* through quantitative and/or qualitative means, determine the severity and likelihood of the manifestation of hazards.
    - *Assess safety risk:* compare the safety risk of identified hazards with safety performance targets and determine the acceptability of the risk.
    - *Control safety risk:* implement risk controls to eliminate or mitigate safety risks.

3. **Safety Assurance** determines the effectiveness of risk controls and incorporates:
    - *Data Collection:* Collect information from reporting mechanisms, incident and accident investigations, audits, etc.
    - *Data Analysis:* Identify relevant questions, determine trends, compare data with industry benchmarks, and identify new hazards.
    - *Safety Performance Assessment:* Evaluate the safety performance of risk controls to determine their effectiveness.
    - *Corrective Action:* Ensure compliance with existing risk controls or, if necessary, conduct safety risk management to develop new risk controls.

4. **Safety Promotion**
    - Promote a positive safety culture by opening lines of safety communication.
    - Incentivize participation in safety management through all levels of the organization.
    - Ensure appropriate safety training and education opportunities.
    - Manage safety knowledge so that it may be acquired in a deliberate, organized fashion and accessible to internal and external stakeholders.

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