BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion to Adopt New Safety and Reliability Regulations for Natural Gas Transmission and Distribution Pipelines and Related Ratemaking Mechanisms.	Rulemaking 11-02-019 (Filed February 24, 2011)

REPLY COMMENTS OF THE GREENLINING INSTITUTE ON THE PROPOSED DECISION

STEPHANIE C. CHEN
ENRIQUE GALLARDO
The Greenlining Institute
1918 University Avenue, Second Floor
Berkeley, CA 94704
Telephone: 510 898 0506
Facsimile: 510 926 4010
E-mail: stephaniec@greenlining.org

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I. Introduction

Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, the Greenlining Institute ("Greenlining") submits the following reply comments on the Administrative Law Judge's Proposed Decision Determining Maximum Allowable Operating Pressure Methodology and Requiring Filing of Natural Gas Transmission Pipeline Replacement or Testing Implementation Plans, issued May 10, 2011 ("PD").

II. Discussion

The Commission must leave open the possibility of alternative ratemaking treatments, not because of any misplaced conflation of past and present, but simply because the facts and circumstances might warrant it. It should be realistic in its assessment of shareholder risk and incentives. Further, the Commission should set forth minimum interim safety practices for all gas utilities. Above all, the Commission must be clear, thorough, and transparent in setting forth its reasoning when it priorities among critical interests and allocates costs among stakeholders. In dealing with an issue as sensitive as this, it is critical that the Commission leave no room for misinterpretation, and that it assume a clear position of policy leadership in determining how both it and the gas utilities should proceed.

A. Alternative Ratemaking Models Are Not A Punishment.

1. Alternative Ratemaking Is Appropriate under Non-Standard Circumstances.

The Opening Comments of the Coalition of California Utility Employees ("CUE") assert that any discussion of cost-sharing between ratepayers and shareholders conflates fault for Pacific Gas & Electric's ("PG&E") past failures with the interest of gas transmission safety statewide.[1] While it is important to keep these two issues separate, CUE's assessment of the situation is overstated and should not be adopted.

As The Utility Reform Network ("TURN") notes, "cost sharing is not a penalty."[2] It is absolutely critical that the Commission adopt this principle and abide by it throughout the proceeding. Extraordinary investments, which may be required in Southern California Gas' ("SoCalGas") and San Diego Gas & Electric's ("SDG&E") systems as well as in PG&E's, may warrant alternative ratemaking *not as an implication of fault or as a punishment*, but simply because of the unique circumstances necessitating the investments. TURN's comments about the risk profiles associated with such investments and the abundant precedent for ratemaking treatment appropriate for abandoned plant[3] should guide the Commission's reasoning on this essential point. The idea that alternative ratemaking is punitive is misplaced, in that it assumes that standard ratemaking is automatically owed to the utilities under any circumstances. Ample Commission precedent demonstrates that this is not, nor should it ever be, the case.

Further, where alternative ratemaking is found to be more appropriate, as TURN indicates, it is appropriate for all utilities, not just PG&E.[4] Applying it only to PG&E would run the risk, as CUE notes, of conflating the implications of the San Bruno explosion with forward-

[1] Opening Comments of CUE, p. 4.
[2] Opening Comments of TURN, p. 6.
[3] *Id.* at 7.
[4] Opening Comments of TURN, p. 6; Opening Comments of Greenlining, pp. 5-6.

looking systemwide safety issues. Whereas CUE concludes that the need to keep the two separate means that alternative ratemaking should not be considered for any utility under any circumstances, it is more proper to leave it on the table as an option for all utilities, where it is appropriate.

Finally, DRA notes that the appropriate cost allocation method, of the many available to choose from or build off of, will best be determined after the National Transportation Safety Board ("NTSB") has completed its analysis.[5] While Greenlining believes that options can be considered before NTSB has concluded its work, the Commission should not reach a final conclusion on ratemaking treatment until it has the opportunity to consider whether and how NTSB's findings impact its analysis.

2. Cost Allocation, Shareholder Incentives, and Public Trust.

CUE further asserts that anything less than the utilities' standard rate of return, regardless of the circumstances, will "undercut[] shareholders' incentives to quickly perform the necessary work."[6] This argument misconstrues the nature of the regulatory process and the obligations of the regulated utilities, and should be rejected.

The utilities' First Commandment is to provide safe and reliable service. It is – or should be – the bedrock of their operating principles, and it is the foundation upon which the companies exist in the first place. The idea that the shareholders of these companies would need a profit margin to incent them to make critical safety investments, regardless of the material circumstances surrounding the investments in question, is a surprisingly cynical and hopefully inaccurate assessment of the shareholders' priorities. The utilities are obligated to provide safe and reliable service, and to comply with Commission directives regarding the nature and

[5] Opening Comments of DRA, pp. 2-3.
[6] Opening Comments of CUE, p. 6.

magnitude of their plant investments. A Commission order to make certain essential upgrades in order to meet their "safe and reliable" mandate should be all the incentive the shareholders need to make the necessary investments.

If Greenlining is mistaken and it is in fact true that shareholders would drag their feet on making critical infrastructure upgrades required to maintain safe service, then the relationship between the utilities and their holding companies is drastically misaligned and must be immediately reconsidered. Under no circumstances should shareholder profit motives trump the need to keep Californians safe. The Commission must not be swayed by the misplaced assertion that shareholders must somehow be bribed into enabling the utilities to comply with their statutory and regulatory obligations.

B. The Commission Should Set Forth Minimum Interim Safety Requirements.

Greenlining supports the City and County of San Francisco ("CCSF") in urging the Commission to develop a list of "minimum safety requirements to be implemented as interim safety measures."[7] Greenlining further recommends that the Commission set forth deadlines by which these interim practices must be in place, as well as requirements regarding how long these practices should be in place.

C. The Commission Must Carefully and Transparently Balance Expediency and Thoroughness.

SoCalGas and SDG&E point out that *all* untested pipeline, as contemplated for testing by the PD, is substantially more than all NTSB Criteria Miles, and that testing *all* untested pipeline will take considerably more time than it would take to test all NTSB Criteria Miles. They then propose a three-stage testing process. Greenlining agrees that some prioritization will be required, but the Commission must be cautious about how long this process will take.

[7] Opening Comments of CCSF, p. 2.

According to SoCalGas' and SDG&E's proposal, Final Decisions would be issued a minimum of 30 days beyond the last date set forth for each of the three tracks. Though there is an unusual urgency pertaining to this proceeding, Commission decisions almost never issue 30 days after the proposed decision, especially in high-profile, hotly contested proceedings such as this. Further, the timelines proposed only contemplate completion and approval of the plans – they do not include the time required to complete the work itself.

The balance between thoroughness and expediency is particularly delicate in this proceeding, and the Commission must be deliberate in its analysis and weighing of interests. Above all, it must be transparent about its relative priorities in issuing a final decision. Under these circumstances, when the public relies not only on the utilities but also on the Commission to protect its safety, the Commission must be clear and direct about not only its orders but the reasoning behind them.

Dated: June 6, 2011

Respectfully submitted,

/s/ Stephanie Chen
Stephanie Chen
Senior Legal Counsel
The Greenlining Institute

/s/ Enrique Gallardo
Enrique Gallardo
Legal Counsel
The Greenlining Institute