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)

COMMENTS OF THE UTILITY REFORM NETWORK ON THE PROPOSED DECISION REGARDING IMPLEMENTATION PLANS OF SAN DIEGO GAS & ELECTRIC COMPANY AND SOUTHERN CALIFORNIA GAS COMPANY

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SUBJECT INDEX OF RECOMMENDED CHANGES TO THE PROPOSED DECISION

TURN does not seek any changes to the outcomes of the Proposed Decision or its Findings of Fact, Conclusions of Law and Ordering Paragraphs. However, TURN recommends that the analysis in the Proposed Decision be modified as follows to avoid any appearance of resolving issues that are not necessary to the decision and that are in controversy among the parties to this proceeding:

1. a. Replace the sentence on page 7 that reads:

"Because that Plan, as set forth in D.11-06-017, imposes new obligations on these operators which could not have been foreseen in the last general rate case, these direct costs appear to be incremental to adopted revenue requirement and may be properly recorded in the memorandum account for subsequent review by the Commission."

with the following sentence:

"Because we are not yet ready to decide whether these costs are incremental to adopted revenue requirement but wish to preserve the opportunity for the utilities to recover these costs in rates, we will allow these costs to be recorded in the memorandum account for subsequent review by the Commission."

b. Modify the later sentence on page 7 as follows (addition *in italics*):

"The Commission will consider whether such properly recorded costs are reasonable *and incremental* and which costs, if any, may be recovered from ratepayers in revenue requirement at a later time in the Triennial Cost Allocation Proceeding."

2. Footnote 2, which is unnecessary to the Proposed Decision, should either be deleted in its entirety or revised to make clear that the discussion applies only to the CPSD Technical Report regarding the SDG&E and SoCalGas Implementation Plans.

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COMMENTS OF THE UTILITY REFORM NETWORK ON THE PROPOSED DECISION REGARDING IMPLEMENTATION PLANS OF SAN DIEGO GAS & ELECTRIC COMPANY AND SOUTHERN CALIFORNIA GAS COMPANY

I. INTRODUCTION AND SUMMARY

Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, The Utility Reform Network (TURN) submits these comments on the Proposed Decision ("PD") of Administrative Law Judge ("ALJ") Bushey regarding the Implementation Plans of San Diego Gas & Electric Company ("SDG&E") and Southern California Gas Company ("SoCalGas"). TURN does not oppose the outcomes of the PD, but recommends that certain aspects of the PD's analysis that are unnecessary to the decision be modified to avoid giving any appearance that the Commission is prematurely resolving issues that are hotly contested, both with respect to the Implementation Plans of SDG&E and SoCalGas and also with respect to the Implementation Plan of Pacific Gas & Electric Company ("PG&E"). Specifically, the PD should be modified to avoid: (1) any unnecessary determination about whether Implementation Plan costs are "incremental" to previous requirements or the result of new requirements; and (2) any unnecessary determination about the evidentiary weight to be given to the Consumer Protection and Safety Division ("CPSD") Technical Report regarding PG&E's Implementation Plan, in light of TURN's previous comments in this docket that certain findings in that CPSD Report are wholly unsupported and therefore entitled to little if any weight.

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II. THE PD'S ANALYSIS ON PAGE 7 SHOULD BE REVISED TO AVOID ANY APPEARANCE OF UNNECESSARILY AND PREMATURELY PREJUDGING THE OUTCOME OF HIGHLY CONTESTED ISSUES IN THIS PROCEEDING

Certain language in the PD prejudges one issue that is directly in dispute, and has potential to affect even more significant issues concerning "incremental" costs and "new obligations."

First, whether the scope of work included in the Implementation Plan is "incremental" to work authorized in prior rate cases is an issue that the Sempra Utilities must demonstrate during the course of the proceeding addressing their Plans. For example, PG&E's showing contained a section entitled "cost recovery criteria and incremental nature of costs," purporting to show that any costs are "incremental to existing rate case decisions."[1] The Commission should not prejudge this issue for Sempra prior to analyzing its showing.

Second, and even more importantly, the language regarding "new obligations" could be misinterpreted as applying more broadly than just to the incremental nature of requested costs.

TURN is preparing these comments shortly after the conclusion of nearly two weeks of evidentiary hearings on PG&E's Implementation Plan. TURN is now analyzing the record from those hearings and will file its opening brief on May 14, 2012. One of the important issues that the Commission will need to decide with respect to PG&E's Plan (and likely also with respect to the SDG&E and SoCalGas Plans) is the extent to which the Implementation Plans are remedial in nature -- i.e., remedying errors or omissions that a prudent operator would have avoided – or "incremental" in nature – i.e.,

[1] PG&E PSEP, Exh. 1, pp. 8-7 to 8-9.

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solely resulting from new regulatory requirements that go above and beyond what a prudent operator would have done. TURN takes the position that, at this point in the development of the collective evidentiary record regarding PG&E's past practices,[2] a high percentage of PG&E's Implementation Plan costs appear to be remedial in nature and would have been unnecessary if PG&E had operated its transmission system in a prudent manner. On the other hand, PG&E claims that, with certain limited exceptions, all of the work it would perform under its Implementation Plan is solely because the Commission imposed new standards in D.11-06-017.[3] Potentially at stake in this "remedial vs. incremental" debate are literally billions of dollars of Implementation Plan expenditures that will need to be apportioned between ratepayers and shareholders. TURN expects that the parties will brief these issues extensively in their opening and reply briefs and that the Commission will render a decision based on the record developed in the evidentiary hearings.

Against that backdrop, TURN is concerned that language appearing on page 7 of the PD, if adopted, could be argued by the utilities as a Commission determination in their favor on the "remedial vs. incremental" issue. In particular, TURN is concerned by the following sentence: "Because that Plan, as set forth in D.11-06-017, imposes new

[2] By "collective evidentiary record", TURN refers to the records of this docket, I.11-02-016 (record-keeping), I.11-11-009 (high consequence areas), and I.12-01-007 (San Bruno investigation).

[3] To preview its opening brief, TURN would note that the Commission's determination in D.11-06-017 that the utilities may no longer justify the maximum allowable operating pressure ("MAOP") of pre-1970 pipe segments using historical operating pressure does not resolve this issue. Among other things, TURN will show that for much of PG&E's pre-1970 pipeline: (1) General Order 112, Public Utilities Code Section 451, and industry standards necessitated hydrotesting and record-keeping sufficient to justify MAOP without reference to historical operating pressure; and (2) Integrity Management requirements applicable beginning in 2004 required hydrotesting of much of the pipe that PG&E now seeks to test or replace in its Implementation Plan.

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obligations on these operators which could not have been foreseen in the last general rate case, these direct costs appear to be incremental to adopted revenue requirements and may be properly recorded in the memorandum account for subsequent ratemaking review by the Commission."

TURN's reading of the PD is that it uses the word "incremental" to refer only to "revenue requirements" and not in the sense that PG&E used that term in the evidentiary hearings[4] or to otherwise affect or resolve any issues in the PG&E hearings. Indeed, it would be legal error to decide a highly contested issue before the record on that issue has even been submitted for the Commission's consideration. However, the "new obligations" language is sufficiently ambiguous that, if it appears in the final decision, TURN anticipates that the utilities will rely on it heavily in support of their positions. The result will be a time-consuming and unfruitful debate on what the Commission meant in its decision and a diversion of resources away from addressing the merits of the issue.

The good news is that the sentence, as framed, is unnecessary. To conclude that a memorandum account is warranted for the costs discussed on page 7,[5] the Commission need only find that it is unprepared at this point to reach any conclusion as to whether the costs are incremental and that it finds it appropriate to allow the utilities to track the costs in a memorandum account in order to preserve the possibility of recovery of such costs in

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[4] The meaning of "incremental" in the PD appears to be "not duplicative of costs incurred for projects covered by the last general rate case." Even under this definition, it would be inappropriate to reach such a potentially fact-intensive conclusion now before DRA and other intervenors have presented testimony and before evidentiary hearings have been held to explore the types of work that were contemplated under previous GRCs and whether the Sempra Utilities' Implementation Plans duplicate any of that work.

[5] TURN does not take a position on the appropriateness of a memorandum account for the costs discussed on page 7.

rates. Before allowing such rate recovery, the Commission would need to find that the costs in question are both reasonable in scope and amount and incremental to previous GRC activities.

Accordingly, to forestall unproductive litigation about the meaning of the unnecessary language on page 7, TURN recommends that the above-quoted sentence be replaced with the following sentence: "Because we are not yet ready to decide whether these costs are incremental to adopted revenue requirement but wish to preserve the opportunity for the utilities to recover these costs in rates, we will allow these costs to be recorded in the memorandum account for subsequent review by the Commission." In addition, TURN recommends that the later sentence on that page be modified to read as follows (addition in italics): "The Commission will consider whether such properly recorded costs are reasonable *and incremental* and which costs, if any, may be recovered from ratepayers in revenue requirement at a later time in the Triennial Cost Allocation Proceeding."

III. FOOTNOTE 2 OF THE PD SHOULD BE DELETED OR MODIFIED TO NOT APPLY TO THE CPSD REPORT REGARDING PG&E'S PLAN

TURN has a similar concern with respect to footnote 2 of the PD, appearing on pages 4 and 5. This footnote addresses CPSD Technical Reports regarding the Implementation Plans of each gas system operator (i.e., including PG&E) and states, for the first time, that the CPUC "will give great weight" to the recommendations in these reports and that any party disagreeing with any recommendation should put forward "compelling evidence" demonstrating a superior means to achieve the Commission's goal of public and employee safety.

Again, some background will elucidate TURN's concern. The fact that CPSD

would be sharing Technical Reports was first brought to the parties' attention in the Amended Scoping Memo ("ASM") issued on November 2, 2011. The ASM stated that the CPSD Reports were going to be provided "[t]o further assist the parties in preparing their testimony." The ASM contained no statement regarding the evidentiary weight that would be given the Reports -- or even that they would be considered "evidence" -- and no language regarding presumptions that would apply to any CPSD recommendations. In a short follow-up ruling on December 21, 2011, parties were permitted to file comments on the CPSD Reports.

On January 13, 2012, TURN filed comments in this docket on the CPSD Report regarding PG&E's Implementation Plan. TURN was highly critical of certain aspects of the Report. TURN stated that, while it found some aspects of that Report useful, it found the findings and conclusions in the Jacobs Consultancy ("Jacobs") report (comprising the bulk of the CPSD Report) regarding PG&E's pipeline modernization plan to be unsupported by any independent analysis or evaluations, "calling into question the weight that should be given" the Jacobs Consultancy conclusions.[6] TURN explained that the Jacobs report: appeared to rely on deference to PG&E's outside experts, suggested that Jacobs had not directly spoken to those outside experts or to any parties other than PG&E, and did not even identify the persons who prepared the Jacobs report or their qualifications. TURN concluded that it was thus "unclear about the bases for the conclusions reached" and concerned that the Report "implies greater validation of

[6] Comments of TURN on the CPSD and Jacobs Consultancy Reports Regarding PG&E's Pipeline Safety Enhancement Plan, R.11-02-019, Jan. 13, 2012, p. 2. TURN's Comments further note: "Aside from a detailed description largely copied from PG&E's testimony, there is absolutely no independent discussion of how PG&E's particular choices reflected in its decision tree relate to industry standard practices for identifying and remediating the relevant threat factors."

PG&E's analyses or outcomes than is warranted or perhaps intended."[7] In other words, TURN's basic point was, if the Jacobs report had been offered as testimony, it would be entitled to little if any evidentiary weight because it failed to explain the analysis it used to reach its conclusions.[8]

In light of this background, TURN is deeply troubled that the PD, *apparently without even considering TURN's comments and objections*, would have the Commission conclude that the Jacobs report is entitled to "great weight." Moreover, the time to state that the CPSD Report *regarding PG&E's Plan* would be considered part of the evidentiary record and would be given a heavy presumption of correctness was long before the PG&E evidentiary hearings. If the Commission had broadcast such intentions earlier, TURN and other parties could have made timely motions for an opportunity to conduct discovery and cross examination regarding the Jacobs report.

As with the language on page 7, the good news is that footnote 2 is entirely unnecessary to the disposition of the issues in the PD. Accordingly, TURN recommends that the footnote be deleted from the final decision. Alternatively, footnote 2 should be revised so that the discussion is limited to the only CPSD Technical Report that is relevant to the PD, namely the CPSD Report regarding the Plans submitted by SDG&E and SoCalGas. The fairness concerns discussed in the foregoing paragraph would not apply if the Commission were to announce its going-forward intention to give great weight to the CPSD Report regarding the Sempra utilities, at this still relatively early

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[7] *Id.*, pp. 2-3.

[8] Given this state of the record, if the Commission intends to give any evidentiary weight to the Jacobs Consultancy report regarding PG&E, it should at a minimum give parties a reasonable opportunity to conduct discovery and cross examine the (unnamed) Jacobs Consultancy reviewers as to the basis of their conclusions.

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point in the proceeding. Parties have sufficient time to file motions for whatever procedural avenues they wish to request in response to such a Commission pronouncement.

IV. CONCLUSION

For the reasons set forth above, the Commission should modify the PD to revise page 7 as indicated above and to delete or modify footnote 2 as indicated above.

Date: April 9, 2012

Respectfully submitted,

By: __________/s/______________

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APPENDIX A

TURN's Recommended Changes to the Findings of Fact, Conclusions of Law, and Ordering Paragraphs in the Proposed Decision

TURN does not recommend any changes to the Findings of Fact, Conclusions of Law, and Ordering Paragraphs.