

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)

**OPENING COMMENTS OF
SOUTHWEST GAS CORPORATION (U 905 G)
ON THE AUGUST 5, 2013 PROPOSED DECISION MANDATING
SAFETY IMPLEMENTATION PLAN, DISALLOWING COSTS,
AND AUTHORIZING MEMORANDUM ACCOUNT**

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9 **AND AUTHORIZING MEMORANDUM ACCOUNT**

10 Southwest Gas Corporation (Southwest Gas or Company) hereby submits its Opening
11 Comments to the California Public Utilities Commission (Commission) concerning the August
12 5, 2013¹ Proposed Decision Mandating Safety Implementation Plan, Disallowing Costs, and
13 Authorizing Memorandum Account (Proposed Decision), in accordance with Rule 14.3 of the
14 Commission's Rules of Practice and Procedure.

15 The evidence undisputedly demonstrates that Southwest Gas' Natural Gas
16 Transmission Pipeline Comprehensive Pressure Testing Implementation Plan (Implementation
17 Plan) was designed to enhance the safety and reliability of the Company's transmission
18 pipeline system in accordance with the Commission's directives, and that Southwest Gas is
19 entitled to recover the associated costs. Notwithstanding, the Proposed Decision contains
20 multiple errors of both law and fact that, if adopted, will result in a punitive disallowance of
21 nearly half of the Implementation Plan costs.

22 The Proposed Decision denies Southwest Gas due process by, for the first time in this
23 proceeding, associating unavailable as-built records with operator imprudence without
24 providing the Company notice and an opportunity to be heard. Moreover, the Proposed
25 Decision misinterprets the Company's Implementation Plan to reach the erroneous conclusion

¹ A previous Proposed Decision, issued April 8, 2013, was subsequently withdrawn from the Commission's agenda.

1 that Southwest Gas “imprudently failed to retain complete and accurate as-built records”² and
2 that, as a result, a portion of the Company’s Implementation Plan costs should be assigned to
3 shareholders.

4 **I. Introduction and Procedural History**

5 On February 24, 2011, the Commission adopted its Order Instituting Rulemaking on the
6 Commission’s Own Motion to Adopt New Safety and Reliability Regulations for Natural Gas
7 Transmission and Distribution Pipelines and Related Ratemaking Mechanism (OIR), in what it
8 called a “forward-looking effort to establish a new model of natural gas pipeline safety
9 regulation”.³ On June 9, 2011, the Commission issued Decision No. 11-06-017 (D.11-06-017),
10 which ended the historic exemptions, or “grandfathering” for establishing Maximum Allowable
11 Operating Pressure (MAOP) for certain pipelines, and required California gas utilities to submit
12 plans for the pressure testing or replacement of all transmission pipelines that were not
13 previously tested or for which records are not available.⁴ In order to further its goal of
14 “[o]btaining the greatest amount of safety value...for ratepayer expenditures...”, the
15 Commission directed utilities to include ratemaking proposals in their plans that included
16 specific rate base and expenses amounts, as well as proposed rate impacts.⁵ The one
17 exception related to Pacific Gas & Electric Company (PG&E), which was the only utility
18 directed to submit a proposed cost allocation between shareholders and ratepayers.⁶

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² Proposed Decision, at 13.

24 ³ OIR, at 3.

25 ⁴ D.11-06-017, at 18-19.

⁵ Id. at 23, 28.

⁶ Id. at 23 (“The unique circumstances of PG&E’s pipeline records, the costs of replacing the San Bruno line, and the public interest require that PG&E’s rate Implementation Plan include a cost sharing proposal”).

1 Southwest Gas submitted its Implementation Plan August 26, 2011.⁷ Southwest Gas
2 operates approximately 15.4 miles of transmission pipeline in California, which can generally
3 be described as the Victor Valley System and the Harper Lake System. Consistent with the
4 directives in D.11-06-017, and as discussed more fully below, Southwest Gas proposed
5 replacing the Victor Valley System.⁸ Because the Harper Lake System complies with the
6 pressure test requirements of D.11-06-017, the Company proposed only to install a remote
7 control shut-off valve (RCV) to minimize the time to shut off gas flow in the event of an
8 unanticipated release of gas.⁹ The Company's Implementation Plan and the associated
9 ratemaking treatment were supported by Company witnesses Lynn Malloy and Edward
10 Giesecking, respectively.¹⁰ The Division of Ratepayer Advocates (DRA) opposed Southwest
11 Gas' proposed recovery of Implementation Plan costs based on what it described as the
12 Company's "failure to produce adequate pressure test records".¹¹ DRA did not address as-
13 built records in its argument against cost recovery, and offered no testimony concerning
14 Southwest Gas' Implementation Plan. The Implementation Plan was not the subject of a
15 hearing. DRA filed an Opening Brief on June 16, 2012, and the Company filed a Reply Brief
16 on June 29, 2012.

17 The Proposed Decision recommends approval of Southwest Gas' Implementation Plan,
18 yet it improperly characterizes the scope and purpose of the Commission's OIR and prior
19 related decisions, as well as specific statements in the Company's Implementation Plan, to
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22 ⁷ PG&E, Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E)
23 also filed pipeline safety implementation plans in this proceeding on August 26, 2011. Thereafter, the review
24 and consideration of SoCalGas and SDG&E's plan was transferred to their Triennial Cost Allocation
25 proceeding (A.11-11-002).

⁸ Implementation Plan, at 10-11.

⁹ Id. at 16-17.

¹⁰ See, Prepared Direct Testimony of Lynn A. Malloy, Prepared Direct Testimony of Edward Giesecking, and
Supplemental Prepared Direct Testimony of Edward Giesecking.

¹¹ DRA Brief, at 3.

1 wrongly conclude that the Company was imprudent.¹² As a result, and despite the fact that
2 PG&E was the only utility instructed to provide a proposed cost allocation between customers
3 and shareholders, the Proposed Decision inappropriately allocates Southwest Gas'
4 Implementation Plan costs between customers and shareholders.

5 Southwest Gas further notes that the Proposed Decision is inconsistent and unclear in
6 recommending a cost allocation. For example, page 13 and Conclusion of Law 8 of the
7 Proposed Decision reference an allocation where the costs of pressure testing are assigned to
8 ratepayers, and the incremental costs of replacement are assigned to shareholders.¹³ In
9 contrast, Ordering Paragraph 3 suggests that pressure testing costs should be borne by
10 shareholders.¹⁴ Under both scenarios, the Proposed Decision proves unreasonable by
11 assigning Southwest Gas' shareholders either 48 or 52 percent of the total Implementation
12 Plan costs.¹⁵ Notwithstanding, due to the inconsistent references, Southwest Gas has not
13 received proper notice of the exact penalty the Proposed Decision seeks to impose.

14 **II. Discussion**

15 The Proposed Decision contains errors in both law and fact that, without modification,
16 stand to deprive Southwest Gas of its due process rights by denying it notice and an
17 opportunity to be heard on an issue that is raised, for the first time, in the Proposed Decision.
18 The Proposed Decision also ignores the directives of D.11-06-017 and misconstrues the
19 Company's Implementation Plan, resulting in an excessive and unwarranted penalty against
20 the Company.

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23 ¹² Proposed Decision at 13, Conclusion of Law 6.

24 ¹³ Id. at 13, Conclusion of Law 8.

25 ¹⁴ Id. at 19.

¹⁵ If the incremental costs of replacing the Victor Valley System are allocated to shareholders, they will be responsible for approximately 48 percent of the total estimated Implementation Plan costs of \$7.1 million. If the Proposed Decision intends to assign shareholders the estimated cost of hydrostatic pressure testing (\$3.75 million), shareholders will be responsible for approximately 52 percent of the total costs.

1 **A. The Proposed Decision Denies Southwest Gas Due Process**

2 Due process requires that parties affected by a Commission decision be provided
3 notice and an opportunity to be heard, and that the Commission act only upon evidence in the
4 record.¹⁶ The Commission has previously held that when an action alters or modifies the
5 requirements articulated in prior Commission decisions, "...due process is not satisfied merely
6 by giving a party the opportunity to object to a proposal or protest in a proposed decision."¹⁷
7 There is no dispute that both the Rulemaking and D.11-06-017 focus on the pressure testing
8 requirements used to establish MAOPs for natural gas transmission systems. As the very first
9 page of D.11-06-017 makes clear, the Commission's order requiring gas utilities to submit
10 Implementation Plans was meant to, "...achieve the goal of orderly and cost effectively
11 replacing or testing all natural gas transmission pipeline that have [sic] not been pressure
12 tested."¹⁸ The Commission went on to state that the Implementation Plans should propose to,
13 "...either pressure test or replace all segments of natural gas pipelines which were not
14 pressure tested or lack sufficient details related to the performance of any such test"¹⁹, and
15 that, "[t]he analytical nucleus of the Implementation Plan will be a list of all transmission
16 pipeline segments that have not been previously pressure tested, with prioritized designations
17 for replacement or pressure testing."²⁰

18 Nevertheless, the Proposed Decision concludes that Southwest Gas acted imprudently
19 and allocates a portion of the Victor Valley System replacement costs to shareholders based
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21 ¹⁶ Cal. Const., Art. XII §2. See *also*, *People v. Western Air Lines, Inc.*, 42 Cal.2d 621, 632 (1954).

22 ¹⁷ *In re Practices and Policies for Processing General Rate Cases and to Revise the General Rate Case*
23 *Plan for Class A Water Companies*, R. 03-09-005, D. 06-06-037, 2006 WL 1749635, at *2-3 (Cal P.U.C.
24 2006); See *also*, *People v. Western Air Lines, Inc.*, 42 Cal.2d. 621, 632 (1954)(Parties must be afforded
adequate notice and an opportunity to be heard before a valid order can be made); *Duquesne Light Co. v.*
Pennsylvania Public Utilities Commission, 96 Pa. Cmwlth. 168, 507 A.2d 433 (1986)(Commission violated
due process by determining an issue and assessing liability without affording utility a reasonable opportunity
to address the issue at hearing).

25 ¹⁸ D.11-06-017, at 1.

¹⁹ *Id.* at 19.

²⁰ *Id.* at 20.

1 solely on the notion that, “[M]aintaining complete and accurate as-built records of a natural gas
2 transmission system is a requirement for the prudent operation of the natural gas system”.²¹
3 Indeed, in this single, unsupported statement, the Proposed Decision works to modify the
4 Commission’s directives in D.11-06-017 by shifting the long-standing focus of this proceeding
5 away from establishing a new, forward-looking standard for pressure testing transmission
6 facilities, and raising an issue related to the maintenance of as-built records for the first time.
7 Southwest Gas submits that it is unaware of any reference in the evidentiary record for its
8 Implementation Plan that provided the Company notice that the maintenance of as-built
9 records was an issue in this proceeding that could result in a penalty to Southwest Gas.
10 Consequently, because this issue was not raised prior to the Proposed Decision, Southwest
11 Gas has not been afforded the opportunity to submit testimony or request a hearing regarding
12 its as-built record keeping, nor was it able to address the alleged imprudence associated with
13 its maintenance of as-built records in its briefing. Further, no other party raised this issue prior
14 to the Proposed Decision, and the record is void of any citation to industry standards or expert
15 testimony regarding standards for maintaining as-built records.

16 The fact that the Administrative Law Judge (ALJ) introduces this purported “as-built
17 records standard” for the first time as part of the Proposed Decision further exacerbates the
18 deprivation of due process because the ALJ is not subject to discovery requests or cross-
19 examination. By usurping the legal process and denying Southwest Gas notice and an
20 opportunity to examine, investigate and submit evidence in response to this new issue, the
21 Proposed Decision invades the Company’s due process rights.

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²¹ Proposed Decision, at 13.

1 **B. Even Assuming the Proposed Decision’s Reference to As-Built Records is**
2 **Appropriate, the Proposed Decision Misinterprets Southwest Gas’**
3 **Implementation Plan**

4 Even if there is no due process error in the Proposed Decision’s reference to as-built
5 records, the Proposed Decision wrongly interprets Southwest Gas’ Implementation Plan to
6 reach the conclusion that costs should be allocated to both customers and shareholders.
7 Consistent with the directives set forth by the Commission in D.11-06-017, Southwest Gas
8 drafted its Implementation Plan to provide, “...forthright and timely explanations of the issues,
9 as well as comprehensive analysis of the advantages and disadvantages of potential
10 actions.”²² However, the Proposed Decision ignores the Commission-required comprehensive
11 analysis performed by the Company, inappropriately hones in on select statements regarding
12 unknown material specifications, and construes them entirely out of context.

13 Southwest Gas’ Implementation Plan does identify unknown material specifications as
14 a challenge to pressure testing and a benefit of replacement,²³ but the Company was not (as
15 the Proposed Decision implies) admitting that it was imprudent with respect to its
16 recordkeeping, nor was it suggesting that its recommendation to replace the Victor Valley
17 System would change if the material specifications were known. Indeed, the Proposed
18 Decision erroneously attributes Southwest Gas’ recommendation of the “higher cost option”²⁴
19 to a lack of records when the Implementation Plan clearly shows that the recommendation was
20 the result of sound engineering analysis, which considered a number of factors, including but
21 not limited to the following:²⁵

22 ²² D.11-06-017, at 17.

23 ²³ Implementation Plan, at 8, 10.

24 ²⁴ Proposed Decision, at 13.

25 ²⁵ Implementation Plan, at 8-11.

- 1 • Replacement allows the Company to accommodate in-line inspection tools;
- 2 • Replacement results in minimal or no customer outages;
- 3 • Replacement enhances the integrity of the Southwest Gas system by removing pipe
- 4 that is over 50 years old;
- 5 • Replacement reduces the operating stress level and allows the Company to classify
- 6 the Victor Valley System as distribution pipe rather than transmission pipe, resulting
- 7 in additional safety benefits through the elimination of all High Consequence Areas
- 8 (HCA) in the System; and
- 9 • While pressure testing offers a lower estimated cost, testing complications and other
- 10 variables that are not associated with the replacement option could significantly
- 11 drive up the estimated cost.

12 After carefully weighing all relevant factors, Southwest Gas concluded that replacing
13 the Victor Valley System would provide the highest level of safety and reliability to its
14 customers. Further, Southwest Gas' entire analysis of both the pressure testing and
15 replacement options was reviewed by the Consumer Protection and Safety Division (CPSD).²⁶
16 As the Proposed Decision acknowledges, CPSD "supported Southwest Gas' proposal to
17 replace the Victor Valley System"²⁷ without finding any imprudence on the part of the
18 Company²⁸, and without recommending any disallowances with respect to the 1957
19 installation.²⁹ It is therefore inappropriate not only for the Proposed Decision to deem
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22 ²⁶ CPSD is now known as the Safety Enforcement Division (SED).

23 ²⁷ Proposed Decision, at 6.

24 ²⁸ See *generally*, Technical Report of the CPSD regarding Southwest Gas Corporation's Pipeline Safety
25 Implementation Plan.

²⁹ CPSD recommended a disallowance with respect to the 2,175 feet of pipe installed on the Victor Valley
System in 1965. As stated in the Company's Reply Brief, should the Commission decide that some form of
shareholder/ratepayer allocation is warranted, the shareholder responsibility should be no greater than the
disallowance recommended by CPSD with respect to the 1965 installation.

1 Southwest Gas imprudent, but to suggest that the only reason for replacing the Victor Valley
2 System is to “safely and completely” address the alleged imprudence.³⁰

3 **C. The Proposed Decision Erroneously Concludes that Southwest Gas was**
4 **Imprudent and Inappropriately Imposes a Penalty**

5 As discussed above, the Proposed Decision takes a sharp and misguided turn away
6 from the scope and intended purpose of both the Rulemaking and D.11-06-017 by introducing
7 the theory that natural gas utilities could be disallowed cost recovery as the result of what the
8 Proposed Decision calls an “imprudent failure” to maintain complete and accurate as-built
9 records.³¹ The Proposed Decision fails to cite any portion of Southwest Gas’ evidentiary
10 record in support of the finding of imprudence. Indeed, there is no reference in Southwest
11 Gas’ evidentiary record to an industry or engineering standard by which the Proposed Decision
12 is purporting to hold Southwest Gas accountable. Moreover, the Commission has previously
13 stated:

14 In our review of the reasonableness of any utility action, the Commission has
15 applied certain general principles. The starting point being the facts that are
16 known or should have been known by the utility management at the time of
17 the decision in question. **This standard is used to avoid the application of
18 hindsight in reviewing the reasonableness of utility conduct** (Emphasis
19 added).³²

18 Here, the majority of the Victor Valley System (approximately 35,325 feet) was installed
19 in 1957.³³ Since as-built drawings, material specifications and other construction data are
20 associated with pipe installation, 1957 is the relevant time frame for examining any issues as
21 to the Company’s prudence in retaining such records, and the analyses must be guided by the
22 practices and procedures in place at that time. In 1957, the Company followed the 1955

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24 ³⁰ Proposed Decision, at 17, Conclusion of Law 7.

25 ³¹ Id. at 13.

³² Weitbrecht Communications, Inc. v. Pacific Bell, 36 CPUC2d 583, 600 (D. 90-06-031)(1990). See also, In re Southern California Edison Co., 24 CPUC2d 476 (D. 87-06-021)(1987).

³³ Implementation Plan, at 5.

1 version of the voluntary industry guidelines offered by the American Standards Association
2 (ASA).³⁴ Nowhere within the 1955 ASA guidelines is a recommendation that utilities maintain
3 as-built records or material specifications. In fact, the guidelines are completely silent on the
4 issue of as-built records. Given that the most relevant industry information available to the
5 Company in 1957 (i.e., the ASA guidelines) did not even reference record keeping for as-built
6 drawings and material specifications, it is neither unreasonable, nor an indication of
7 imprudence on the part of Southwest Gas, that such records are unavailable today. Although
8 industry practices and regulations have evolved over the last 50 years, it is erroneous and
9 inequitable to retrospectively apply today's standards to the 1957 Victor Valley System
10 installation, and to penalize the Company for not maintaining records that, in 1957, it was
11 under no obligation to maintain.

12 **D. The Proposed Decision's Findings Regarding the Memorandum Account**
13 **Require Modification**

14 The Proposed Decision grants Southwest Gas' request for a memorandum account to
15 record Implementation Plan expenditures "prior to the 2014 test year"³⁵, with "any accumulated
16 balance on December 31, 2013, plus interest, amortized in the 2014 test year general rate
17 case"³⁶. Although the Proposed Decision reflects Southwest Gas' original request when
18 Implementation Plan testimony was submitted, circumstances have changed such that the
19 original memorandum account request requires modification. Southwest Gas anticipated
20 approval of its Implementation Plan by the end of 2011, to be well underway with construction
21 by the time it filed its test year 2014 general rate case, and to have completed its
22 Implementation Plan prior to the 2014 rate case test period. As the Company does not yet
23 have a final order approving its Implementation Plan, it has not yet begun to address the

24 ³⁴ ASA B31.1.8-1955.

25 ³⁵ Proposed Decision, at 18, Conclusion of Law 10.

³⁶ Id. at 19, Ordering Paragraph 2.

1 measures it expected to complete prior to its general rate case.³⁷ As such, approval of the
2 memorandum account as originally proposed does not provide Southwest Gas the necessary
3 relief.

4 If the Implementation Plan had been approved as originally anticipated, Southwest Gas
5 would have recorded its costs in the memorandum account through December 31, 2013 and
6 those costs would have been included in its 2014 revenue requirement and recovered through
7 the rates effective January 1, 2014. However, since Implementation Plan activities will not
8 begin until the end of 2013 or early 2014, the Company seeks modification of the Proposed
9 Decision such that it authorizes a memorandum account for the Company to record costs
10 beginning from the effective date of the final decision in this proceeding. The accumulated
11 balance, plus interest, will be amortized either in the Company's 2015 post-test year rate
12 adjustment filing, or its next general rate case.³⁸

13 **III. Conclusion**

14 The evidence clearly demonstrates that Southwest Gas' Implementation Plan is
15 consistent with D.11-06-017, and that the costs associated with the Implementation Plan are
16 reasonable and should be fully recovered through rates.

17 As set forth herein, the Proposed Decision abandons the goals and directives
18 articulated in the Rulemaking and in D.11-06-017 in favor of an entirely new, and never before
19 raised analysis centered on as-built records – an analysis void of any support from Southwest
20 Gas' evidentiary record. As a result, Southwest Gas was denied its right to notice and an
21 opportunity to be heard on the issue. Further, the Proposed Decision wrongly interprets the
22 Company's Implementation Plan and the circumstances surrounding the 1957 installation of

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24 ³⁷ Southwest Gas filed its Test Year 2014 General Rate Case Application on December 20, 2012 (A.12-12-
024).

25 ³⁸ To the extent any portion of the Implementation Plan costs are included in rates as the result of the final
order in Southwest Gas' Test Year 2014 general rate case, such costs will not be reflected in the
memorandum account.

1 the largest portion of the Victor Valley System, resulting in a finding of imprudence and the
2 imposition of a significant penalty – neither of which is supported by a sound legal or factual
3 basis. Based upon the foregoing, Southwest Gas submits that the Proposed Decision is
4 erroneous and should not be adopted.

5 DATED this 26th of August, 2013.

6 Respectfully submitted,
7 SOUTHWEST GAS CORPORATION

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Appendix

Appendix of Proposed Revisions to Findings of Fact, Conclusions of Law and Ordering Paragraphs

Proposed Findings of Fact

~~5. Southwest Gas does not possess complete and accurate as-built record of the materials, construction and fittings for the entirety of its 7.1 mile Victor Valley Transmission System.~~

5. Southwest Gas' Implementation Plan is designed to bring its natural gas transmission pipelines in compliance with new safety standards, and is consistent with the safety objectives we adopted in D. 11-06-017.

~~6. Southwest Gas does not possess complete and accurate as-built records of the materials, construction and fittings for the 1957 installation of 875 feet of 6-inch and 34,450 feet of 8-inch pipeline in the Victor Valley System.~~

~~7. Southwest Gas does not possess complete and accurate as-built records of the materials and fittings for the 1965 installation of 2,210 feet of 6-inch pipe in the Victor Valley System.~~

~~11. Southwest Gas based its decision to replace rather than pressure test, in part, on the unknown material specifications of the pipe as well as unknown fittings and lateral pipelines in the Victor Valley transmission System.~~

Proposed Conclusions of Law

~~6. Southwest Gas imprudently failed to retain complete and accurate as-built record of the materials, construction and fittings for the entirety of its 7.1 mile Victor Valley Transmission System.~~

~~7. Safely and completely addressing Southwest Gas' imprudence requires replacement of the Victor Valley Transmission System rather than the less-expensive pressure testing of the System.~~

8. Southwest Gas ratepayers should bear **should recover in rates the costs of pressure testing, and shareholders should bear the incremental costs equivalent to replacement of the Victor Valley Transmission System **associated with its Implementation Plan since the Implementation Plan is designed to bring the Company's natural gas transmission pipelines in compliance with new safety standards and is consistent with the safety objectives we adopted in D. 11-06-017.****

~~10. A memorandum account should be approved for all Implementation Plan projects prior to the 2014 test year.~~

Proposed Ordering Paragraphs

2. Southwest Gas is authorized to file a Tier 1 Advice Letter to create a memorandum account in which to record expenditures pursuant to the Implementation Plan from the effective date of today's decision ~~through December 31, 2013~~. Any accumulated balance ~~on December 31, 2013~~, plus interest, will be amortized in the ~~2014 test year~~ **either in the Company's 2015 post-test year adjustment filing or in the Company's next** general rate case.

3. Southwest Gas must limit the amounts recorded in the memorandum account authorized in Ordering Paragraph 2 to \$250,000 for the remote controlled shut-off valve in the Harper Lake system, and the actual capital cost and expense of replacing the Victor Valley system, ~~less \$3.75 million~~.