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 UTILITY REFORM NETWORK ON THE PROPOSED DECISION OF ADMINSTRATIVE LAW JUDGE BUSHEY REGARDING IMPLENTATION PLAN OF SOUTHWEST GAS CORPORATION

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The Utility Reform Network ("TURN") submits these reply comments on the Proposed Decision of Administrative Law Judge Bushey ("PD") regarding the proposed Transmission Pipeline Comprehensive Pressure Testing Implementation Plan ("IP") of Southwest Gas Corporation ("Southwest"). TURN responds to erroneous claims in the opening comments of Southwest and Southern California Gas Company and San Diego Gas and Electric Company (collectively "the Sempra Utilities") that the PD would impose "penalties" on Southwest in violation of due process principles.

I. THE PD CORRECTLY CONCLUDES THAT SOUTHWEST HAS THE BURDEN OF SHOWING THAT ITS PROPOSED COSTS ARE REASONABLE AND PRUDENT

Southwest and the Sempra Utilities incorrectly claim that the PD would deprive Southwest of its due process rights by disallowing rate recovery of costs that are the result of Southwest's imprudent failure to retain complete and accurate as-built records of its Victor Valley system. As the PD correctly states (p. 10), under Public Utilities Code[1] Sections 451 and 454, any utility that seeks to recover increased costs in rates has the burden of demonstrating that such costs are just and reasonable.[2] It is well settled that costs that result from a utility's imprudence are not reasonable under Section 451 and may not be recovered from ratepayers.[3] As the Commission emphatically stated in D.84-09-120, "it would be unconscionable from a regulatory perspective to reward such imprudent activity by passing the resultant costs through to ratepayers."[4]

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[1] Statutory citations are to the California Public Utilities Code unless otherwise indicated.
[2] *See generally* Decision (D.) 09-03-025, slip. op., p. 8 and decisions cited therein.
[3] *See, e.g.*, D.94-03-048, 53 CPUC 2d 452, 456 (holding that it is not reasonable to pass on to Southern California Edison ratepayers costs resulting from the Mohave Coal Plant accident); D.85-08-102, 18 CPUC 2d 700, 715-716 (holding that ratepayers are not responsible for bearing the consequences of PG&E's imprudence with respect to the Helms Pumped Storage Project).
[4] 16 CPUC 2d 249, 283.

The PD (p. 11) is also correct in explaining that Southwest bears the burden of proving the reasonableness and prudence of the costs it proposes to recover from ratepayers. Commission decisions make clear that the utility is not entitled to a "presumption of prudence."[5] The utility must carry its burden affirmatively; requests for rate increases that lack sufficient evidence of reasonableness are subject to dismissal.[6]

Accordingly, Southwest and the Sempra Utilities are wrong in their assertion that the Commission was required to give Southwest specific notice that its proposed costs were subject to disallowances for imprudence. As a regulated utility subject to Sections 451 and 454, Southwest had ample notice that it would not be allowed to recover in rates any costs that are the result of imprudent actions.

II. DISALLOWANCES FOR IMPRUDENCE ARE RATEMAKING ADJUSTMENTS, NOT PENALTIES

The Sempra Utilities and Southwest base various legal arguments on the premise that the disallowances in the PD constitute penalties. This premise is completely incorrect because it ignores the important distinction between penalties (synonymous with fines) and disallowances for imprudence. Fines and penalties are levied pursuant to Section 2100 *et seq* and are imposed after a finding of a violation of a statute, rule, or Commission order. In contrast, disallowances for imprudence are an exercise of the Commission's ratemaking authority under Section 451 to prevent utilities from recovering in rates costs that result from imprudence and are therefore unreasonable. Such ratemaking adjustments are a well-established element of utility ratemaking.

[5] *See., e.g.,* D.85-08-102 ((Helms Pumped Storage Project), 18 CPUC 2d 700, 709-710; D. 93-05-013, 49 CPUC 2d 218, 220.
[6] D.86-10-069, 22 CPUC 2d 124, 150.

Here, the PD would impose a ratemaking adjustment for imprudence and the Commission does not and need not make any finding of a violation. Accordingly, due process arguments relevant to fines and penalties are inapplicable. In any event, Southwest was afforded all the process it was due when it was given the opportunity to present its IP plan and to demonstrate that its requested cost recovery was reasonable. Southwest only has itself to blame for failing to prudently manage its pipeline system and for the replacement costs that are made necessary by its inadequate records.

III. TAKINGS LAW DOES NOT APPLY TO DISALLOWANCES FOR IMPRUDENCE

The Sempra Utilities contend that the PD's disallowances would constitute a taking in violation of the United States and California Constitutions. They are incorrect. The general rule that utilities are entitled to a reasonable return on assets devoted to utility service does not apply when utility imprudence would make it unreasonable to approve full recovery. The Sempra Utilities do not, and cannot, point to any decisions that hold that the takings doctrine insulates a utility from disallowances for imprudence.[7]

IV. THE PD SHOULD BE CLARIFIED

The PD language on page 14 and in Ordering Paragraph 3 should be revised to clarify – consistent with page 13 and Conclusion of Law 8 -- that shareholders will not be allowed to recover any replacement costs of the Victor Valley Transmission system in excess of the $3.75 million of estimated pressure testing costs.

[7] See generally, *Market Street Railway v. Railroad Comm.*, 324 U.S. 548, 566-568 (1945) (regulatory commission has no obligation under the takings clause to insulate the regulated entity from impacts of a failed business model).

V. CONCLUSION

For the reasons set forth above, the legal objections raised by Southwest and the Sempra Utilities have no merit and should be rejected.

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Respectfully submitted,

By: _____/s/_____

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