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.	R.11-02-019 (Filed February 24, 2011)

RESPONSE OF SOUTHERN CALIFORNIA GAS COMPANY (U 904 G) AND SAN DIEGO GAS & ELECTRIC COMPANY (U 902 M) TO APPLICATION FOR REHEARING OF DECISION 13-10-024

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Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E) submit the following Response to the Office of Ratepayer Advocates' (ORA) Application for Rehearing of Decision 13-10-024 (Application for Rehearing), pursuant to Rule 16.1 of the Commission's Rules of Practice and Procedure.

I. INTRODUCTION AND SUMMARY

In its Application for Rehearing, ORA asks the Commission to commit legal error by ignoring the evidentiary record established for Southwest Gas' (Southwest Gas) plan and instead, adopt a decision based on the unique record applicable to Pacific Gas and Electric Company's (PG&E) plan. As support for this position, ORA argues that the Commission commits legal error by issuing a decision on Southwest Gas' plan that is different from its prior decision on PG&E's plan, even though statutory law makes clear that the Commission is not precluded from issuing new or different orders at any time. ORA further argues that the costs of bringing Southwest Gas' natural gas transmission system into compliance with new heightened safety standards adopted by the Commission in D.11-06-017 is not a reasonable cost of providing utility service. ORA's arguments are based on a flawed understanding of the record and the Commission's directives in this Rulemaking. D.13-10-024 is appropriately based on the

evidentiary record for Southwest Gas' Implementation Plan, is consistent with applicable law, and should be upheld by the Commission.

II. PROCEDURAL HISTORY

On June 9, 2011, the Commission declared that "all natural gas transmission pipelines in service in California must be brought into compliance with modern standards of safety. Historic exemptions must come to an end with an orderly and cost-conscience implementation plan."[1] To accomplish this mandate, the Commission directed all California natural gas pipeline operators to file and serve "a proposed Natural Gas Transmission Pipeline Comprehensive Pressure Testing Implementation Plan (Implementation Plan) to comply with the requirement that all in-service natural gas transmission pipeline in California has been pressure tested in accord with 49 CFR 192.619, excluding subsection 49 CFR 192.619 (c)."[2] Citing to the "unique circumstances of PG&E's pipeline records and pipeline strength testing program," the Commission ordered that "PG&E only" must include a proposed cost allocation between shareholders and ratepayers.[3]

On August 26, 2011, PG&E, SoCalGas, SDG&E and Southwest Gas filed, as directed, proposed plans to meet the Commission's objectives. The Commission initially contemplated considering all of the proposed plans simultaneously in this Rulemaking, but later transferred consideration of SoCalGas and SDG&E's proposed plan to their Triennial Cost Allocation Application Proceeding (TCAP) (A.11-11-002).[4]

Hearings were not conducted on Southwest Gas' proposed plan. An opening brief was filed by the ORA on June 16, 2012 and Southwest Gas submitted a reply brief on June 29, 2012. No other briefs were filed.[5]

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1 D.11-06-017 at 18.

2 D.11-06-017 at 31 (Ordering Paragraph No. 3).

3 *Id.* at 22-23. *See also* Ordering Paragraph No. 10a.

4 *See* D.12-04-021.

5 Hearings on PG&E's proposed plan took place from March 19 through March 29, 2012 and opening and reply briefs were filed on May 14, 2012 and May 31, 2012, respectively. Hearings on SoCalGas and SDG&E's plan did not take place until late August, and opening briefs were not filed until October 20, 2012.

In its opening brief on the Southwest Gas plan, ORA proposed that Southwest Gas be denied cost recovery for its entire plan, arguing that all of the costs of the plan were a result of Southwest Gas' failure to retain historic pressure testing records. In reply, Southwest Gas pointed out that ORA's argument ignored the directives of the Commission in D.11-06-017 and further, ignored the evidence presented by Southwest Gas with respect to applicable industry standards:

> DRA's argument that all costs associated with the Implementation Plan (regardless of whether the pipe is tested or replaced) should be disallowed stems from a wholly erroneous interpretation of D.11-06-017, which fails to acknowledge the Commission's efforts to promulgate new and unprecedented safety regulations for gas utilities. In fact, DRA opines that Southwest Gas' Implementation Plan serves the sole purpose of correcting alleged non-compliance with pre-existing regulations. As detailed more fully herein, pre-existing regulations did not require Southwest Gas to conduct a strength test (i.e. pressure test) on the pipe in its Victor Valley System – as is required by D.11-06-017. Nor did pre-existing regulations require Southwest Gas to maintain traceable, verifiable, and complete records to substantiate the MAOP of its transmission facilities. Accordingly, the Company's Implementation Plan was not designed, nor should it be construed, as a remedial measure. The Implementation Plan is a forward-looking plan to enhance the safety and reliability of the Company's transmission pipeline system in accordance with the directives of D.11-06-017, and Southwest Gas is entitled to recover the associated costs.[6]

On December 20, 2012, the Commission unanimously adopted D.12-12-030, and approved PG&E's Implementation Plan, but disallowed the recovery of pressure testing costs for pipelines installed after 1955. PG&E did not to present evidence with respect to the applicability of these historic industry standards and elected to accept shareholder responsibility for pipelines installed between 1956 and 1961. D.12-12-030 did not address the evidence submitted by Southwest Gas with respect to its plan, or the evidence submitted by SoCalGas and SDG&E with respect to their proposed plan.

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6 Reply Brief of Southwest Gas at 3.

On October 17, 2013, the Commission unanimously adopted D.13-10-024, approving Southwest Gas' Implementation Plan. In approving Southwest Gas' plan, the Commission considered the January 3, 2012 Technical Report submitted by the Consumer Protection and Safety Division, noted that no party opposed Southwest Gas' proposal to replace its Victor Valley system and add a remote-controlled shut-off valve to its Harper Valley system, and determined that this proposed work is consistent with the safety objectives adopted by the Commission in D.11-06-017.[7] The Commission further noted that the only dispute regarding the Southwest Gas Implementation Plan is whether shareholders should bear some of the costs associated with the Implementation Plan. Although ORA recommended that shareholders fund the entirety of the plan, after considering the record and an admission by Southwest Gas that the Commission could properly disallow the replacement costs for 2,175 feet of pipeline installed in 1965, the Commission allocated costs between shareholders and ratepayers consistent with this concession by Southwest Gas.[8]

III. DISCUSSION

A. ORA Asks the Commission to Commit Legal Error by Ignoring the Evidentiary Record.

In the Application for Rehearing, ORA asks the Commission to ignore the evidentiary record in order to disallow recovery of the costs of pressure testing Southwest Gas' Victor Valley System. This request is based on an argument that D.13-10-024, which approved Southwest Gas' Implementation Plan, is inconsistent with D.12-12-030, which approved PG&E's Implementation Plan. This argument is both substantively and procedurally flawed.

As for the substance of this argument, the two Commission decisions are not inconsistent. The decisions address two different records that were developed with respect to two different implementation plans, submitted by two different utilities to bring two different natural gas transmission systems into compliance with new requirements adopted by the Commission in

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7 D.13-10-024 at 8-12.

8 *Id.* at 12-14.

D.11-06-017. PG&E elected not to present evidence with respect to historic industry standards and further elected to accept shareholder responsibility for pipelines installed between 1956 and 1961. Under those unique circumstances, the Commission concluded in D.12-12-030 that it was reasonable for PG&E's shareholders to absorb the costs of pressure testing pipelines placed into service after January 1, 1956, or for which PG&E has no known installation date, and for which PG&E is unable to produce pressure test records.[9] PG&E presented no evidence to rebut this conclusion, and indeed, expressly stated that it did not oppose this disallowance, not because it agreed with the findings in the decision, but because PG&E chose to "accept this as an additional shareholder contribution."[10]

In contrast, Southwest Gas presented evidence that the voluntary industry standards that existed between 1956 and 1961 did not call for pre-service pressure testing of all pipeline installed during that time. Indeed, Southwest Gas conclusively demonstrated that the 1955 voluntary industry standards did not apply to the Victor Valley pipeline when it was installed in 1957. As explained by Southwest Gas in its Reply Brief:

> [T]he ASA pressure testing recommendations did not apply to all classes of pipe. The ASA guidelines only suggested pressure testing in instances where the pipe was operating above 100 psig in Class 2, 3 or 4 locations and in such cases, it was sufficient to conduct a leak test. Further, DRA misconstrues the Company's Implementation Plan, which discusses the segment's **current** Class 3 location. Although the relevant pipe segment is currently located in a Class 3 location (as determined by Department of Transportation Class definitions), Southwest Gas maintains that the segment was in a Class 1 location (as determined by ASA Class definitions) when it was installed in 1957, thereby rendering the ASA recommendations inapplicable.[11]

The Application for Rehearing asks the Commission to disregard the record developed with respect to Southwest Gas' Implementation Plan and assume that under the voluntary

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9 D.12-12-030 at 122 (Conclusion of Law No. 15).

10 Opening Comments of PG&E on Proposed Decision on PG&E's Implementation Plan, November 16, 2012, at 2.

11 Reply Brief of Southwest Gas at 7.

industry standards that existed between 1956 and 1961, all transmission pipelines installed between 1956 and 1961 were required to be pressure tested and that PG&E's acceptance of the cost recovery for pipelines installed during that time frame should have universal applicability. Such a finding would be in error.

B. The Application for Rehearing Urges an Outcome that Would be Inconsistent with Applicable Regulations.

The Application for Rehearing is also substantively flawed, because it ignores the fact that the 1955 voluntary industry standard was superseded by General Order 112 in 1961. General Orders 112, 112-A and 112-B, under "General Provisions and Definitions," Section 104.3, all expressly state that:

> It is not intended that these rules be applied retroactively to existing installations in so far as design, fabrication, installation, established operating pressure, and testing are concerned. It is intended, however, that the provisions of these rules shall be applicable to the operation, maintenance, and up-rating of existing installations.

Because General Order 112 expressly stated that its provisions were not to be applied retroactively, once General Order 112 went into effect, and because the 1956 to 1961 Code provisions were entirely *voluntary*, a pipeline operator may not have retained the original records of pressure tests that pre-dated General Order 112. SoCalGas and SDG&E presented evidence in the TCAP that once the MAOP was established the pressure test record had little operational value.[12] Similarly, Southwest Gas pointed out that:

> [T]he fact that Southwest Gas was unable to produce records in 2011 (in response to D.11-02-017) relative to pressure testing performed in accordance with the ASA standard that existed in 1957, does not mean a pressure test was never performed; nor is it an indication of non-compliance or imprudence. Because the ASA standards were voluntary and because the Victor Valley System was appropriately "grandfathered" into compliance under the

[12] *See* A.11-11-002, Ex. SCG-17 (Rosenfeld) at 28-30.

federal pipeline regulations adopted in 1970, it is not unusual that pressure test records from 1957 are unavailable.[13]

C. The Commission is Not Legally Required to Issue the Same Decision Over and Over Again, as Implied in the Application for Rehearing.

The Commission always retains the ability to rescind, alter or amend a prior order.[14] Thus, even if the Commission's decisions were inconsistent, the Commission does not commit legal error when it issues a decision that deviates from prior precedent. Accordingly, ORA's argument that D.13-10-024 is inconsistent with D.12-12-030 is both substantively and procedurally infirm.

D. The Commission's Decision is Consistent with Public Utilities Code Section 451.

Public Utilities Code section 451 requires that public utilities charge rates that are "just and reasonable." In the Application for Rehearing, ORA argues that because Southwest Gas does not have pressure test records for the Victor Valley system, the Commission's decision approving Southwest Gas' request to recover the costs of pressure testing the Victor Valley system is inconsistent with Public Utilities Code section 451. This argument is not well founded.

ORA's strained interpretation of section 451 is based on a flawed conclusion that Southwest Gas' plan to bring its system into compliance with new modern standards of safety, as directed by the Commission in D.11-06-017, is unreasonable. As explained by Southwest Gas in its Reply Brief, DRA's argument that all costs associated with the Implementation Plan should be disallowed is based on a flawed assumption that the Implementation Plan is to perform work that should have been done before and controverts the Commission's efforts to promulgate new and unprecedented safety regulations for gas utilities:

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13 Reply Brief of Southwest Gas at 8.

14 Cal. Pub. Util. Code § 1708.

> DRA's argument that all costs associated with the Implementation Plan (regardless of whether the pipe is tested or replaced) should be disallowed stems from a wholly erroneous interpretation of D.11-06-017, which fails to acknowledge the Commission's efforts to promulgate new and unprecedented safety regulations for gas utilities. In fact, DRA opines that Southwest Gas' Implementation Plan serves the sole purpose of correcting alleged non-compliance with pre-existing regulations. As detailed more fully herein, pre-existing regulations did not require Southwest Gas to conduct a strength test (i.e. pressure test) on the pipe in its Victor Valley System – as is required by D.11-06-017. Nor did pre-existing regulations require Southwest Gas to maintain traceable, verifiable, and complete records to substantiate the MAOP of its transmission facilities. Accordingly, the Company's Implementation Plan was not designed, nor should it be construed, as a remedial measure. The Implementation Plan is a forward-looking plan to enhance the safety and reliability of the Company's transmission pipeline system in accordance with the directives of D.11-06-017, and Southwest Gas is entitled to recover the associated costs.[15]

As described by the Commission in D.11-06-017, California natural gas transmission pipelines installed prior to July 1, 1970, were exempted from Federal pipeline safety regulations that require new transmission pipelines to be pressure tested prior to being placed in service.[16] The Commission expressed concern about these exemptions in D.11-06-017, stating:

> Consequently, the untested pipelines are also some of the oldest in the natural gas transmission system and the more likely to lack a complete set of documents allowing pipeline feature documents to be established without the use of assumptions. We find that this circumstance is not consistent with this Commission's obligations to promote the safety, health, comfort, and convenience of utility patrons, employees, and the public. [17]

That is why the Commission ordered that *all* transmission pipelines must now be tested to modern standards, and that "[h]istoric exemptions must come to an end . . .."[18] The Commission expressly and unambiguously eliminated grandfathering with its bold move to modern testing standards in D.11-06-017. Compliance with these new safety-related requirements is an unavoidable cost of providing utility service. The Commission's existing regulatory policy

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15 Reply Brief of Southwest Gas at 3.
16 *Id.* at 5, n. 3.
17 *Id.* at 18.
18 *Id.* at 31 (Ordering Paragraph No. 4).

provides that it is reasonable for cost-of-service regulated utilities to recover the reasonable costs of complying with new safety standards.[19]

ORA does not allege that Southwest Gas' proposed methods for bringing the Victor Valley system into compliance with new modern standards of safety is unreasonable or that its costs estimates are unreasonable. Rather, ORA seeks to shift the costs of complying with the new standard to shareholders.[20] It would be legal error for the Commission to on the one hand adopt new heightened safety standards and direct the State's natural gas utilities to propose implementation plans to bring their systems into compliance with the new standards, while on the other hand, determining that the costs of bringing a utility's system into compliance with the new safety standards is not a reasonable cost of providing utility service.

For each of these reasons, the Commission's decision does not violate Public Utilities Code Section 451.

IV. CONCLUSION

As discussed above, D.13-10-024 is consistent with applicable regulations, the evidentiary record established in this proceeding, and Public Utilities Code Section 451. The

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19 *See, e.g.*, D.09-08-029 at 43 and 49 (Finding of Fact No. 24) (Finding it is reasonable for each cost-of-service regulated utility to recover costs prudently incurred to comply with new safety regulations).

20 Application for Rehearing at 4.

outcome urged by ORA is not. Accordingly, ORA's Application for Rehearing should be denied.

Respectfully submitted,

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