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 JOINT PETITION OF THE UTILITY REFORM NETWORK AND SOUTHERN CALIFORNIA GENERATION COALITION FOR MODIFICATION OF D.11-06-017

AVISHA A. PATEL

Attorney for

SOUTHERN CALIFORNIA GAS COMPANY
SAN DIEGO GAS & ELECTRIC COMPANY
555 West Fifth Street, Suite 1400
Los Angeles, California 90013
Telephone: (213) 244-2954
Facsimile: (213) 629-9620
E-mail: APatel@semprautilities.com

May 11, 2018

TABLE OF CONTENTS

Page

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 JOINT PETITION OF THE UTILITY REFORM NETWORK AND SOUTHERN CALIFORNIA GENERATION COALITION FOR MODIFICATION OF D.11-06-017

Pursuant to Rule 16.4(f) of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), Southern California Gas Company ("SoCalGas") and San Diego Gas & Electric Company ("SDG&E") (jointly, "Respondents") hereby submit their Response to the Joint Petition of The Utility Reform Network ("TURN") and Southern California Generation Coalition ("SCGC") for Modification of D.11-06-017 ("Response").

I. INTRODUCTION

In the Joint Petition of The Utility Reform Network and Southern California Generation Coalition for Modification of D.11-06-017 ("Petition"), TURN and SCGC argue that a petition for modification has been necessitated based on the Respondents' interpretation that the subject decision, Decision ("D.") 11-06-017 ("Decision"), requires them as part of their Pipeline Safety Enhancement Plan ("PSEP") to bring pipelines into compliance with the modern standards embodied in Title 49 of the Code of Federal Regulations, Part 192, Subpart J ("Subpart J").[1] This fails to explain why TURN and SCGC have brought the Petition almost seven years after the Decision was issued. TURN and SCGC (a) were aware of Respondents' interpretation for many years, including within one year of the Decision itself and (b) acknowledge that they agreed in a joint (with the Respondents and the Office of Ratepayer Advocates ["ORA"]) stipulation submitted to the Administrative Law Judge in A.16-09-005 as of February 24, 2017

[1] Respondents refer to this portion of their PSEP prioritization as "Phase 2B."

that the parties' disagreement as to interpretation of D.11-06-017 "should be resolved in a different proceeding," specifically, "in a forecast application or Applicants' General Rate Case to be filed in the future, at which time parties may assert their positions."[2] TURN and SCGC's delay and sudden about-face have not been explained, let alone justified.

Moreover, the issue raised in the Petition currently is under review in a pending proceeding. Subsequent to the parties' stipulation, the Respondents filed their general rate cases (A.17-10-007 and A.17-10-008, which were consolidated) ("GRC"), and TURN and SCGC became (and are active) parties in that proceeding. The Assigned Commissioner's Scoping Memorandum and Ruling dated January 29, 2018, issued by assigned ALJ Lirag and Commissioner Randolph, lists three "main issues" and six "sub-issues," the third of which is "[t]he Interpretation of D.11-06-017 regarding pressure testing of pipeline segments in accordance with the Subpart J standard and whether there are exclusions."[3]

TURN and SCGC ultimately acknowledge that the relief they seek is not a *modification*, but rather a clarification. Just like in Respondents' GRC, the question at the heart of the Petition is whether the Decision requires pipeline operators both (a) to replace or pressure test all pipelines not tested in accordance with federal regulations adopted in 1970, i.e., Subpart J, *and* (b) end historic exemptions regarding establishing Maximum Allowable Operating Pressure ("MAOP"), or merely the latter, i.e., end historic exemptions regarding establishing MAOP. Did the Commission intend to render superfluous language in D.11-06-017 regarding bringing pre-1970 pipelines into compliance with "modern standards" or, as TURN and SCGC argue, did the Commission intend merely to end grandfathering allowances to establish the MAOP for certain pipelines? This question of *interpretation* is already within the scope of the GRC and, because it is a question of interpretation and not modification, is not appropriately resolved by a petition for modification.

Respondents believe our interpretation is best supported by the language in the Decision; however, to the extent TURN and SCGC believe another interpretation is correct, Respondents welcome clarification from the Commission. The Respondents' goal in executing PSEP has been, and continues to be, to comply with the Commission's orders. However, as this exact

[2] A.16-09-005, *Amended Assigned Commissioner and Administrative Law Judge's Scoping Memo and Ruling* dated as of April 24, 2017 at pp. 4-5.
[3] A.17-10-007 / A.17-10-008, *Assigned Commissioner's Scoping Memorandum and Ruling* dated January 29, 2018 at pp. 4-5.

same issue is already within the scope of the Respondents' GRC – at TURN and SCGC's specific request – it is inappropriate to commence another proceeding to address the same issue. Allowing the Petition to proceed in two separate forums risks the possibility of two different outcomes which, in turn, will necessitate further Commission intervention. If the Petition is not denied outright, the Respondents recommend that the Petition be transferred to ALJ Lirag, the ALJ assigned to Respondents' GRC.

II. THE PETITION IS PROCEDURALLY DEFECTIVE BECAUSE TURN AND SCGC WERE AWARE OF RESPONDENTS' INTERPRETATION OF THE DECISION WITHIN ONE YEAR AFTER THE DECISION BECAME EFFECTIVE

Unless not possible, a petition for modification must be brought within one year of the effective date of the decision. Rule l6.4 of the Commission's Rules of Practice and Procedure provides:

> [A] petition for modification *must be* filed and served within one year of the effective date of the decision proposed to be modified. *If more than one year has elapsed, the petition must also explain why the petition could not have been presented within one year of the effective date of the decision.* If the Commission determines that the late submission has not been justified, it may on that ground issue a summary denial of the petition.[4]

The "Commission's longstanding process permits the reopening of a proceeding when new facts come to light – even after the passage of a year – as long as the petitioner explains why the petition 'could not have been presented within one year….'"[5] The Petition does not meet the procedural standards prescribed by the Rules and must be denied as untimely. Not only could the Petition have been brought within one year of the effective date of the Decision – because Respondents' interpretation of the Decision's requirements was evident within that time – but TURN and SCGC have offered no credible justification for bringing the Petition almost seven years after the Decision became effective.

First, the language of D.11-06-017 is plain. In Ordering Paragraph 4 of the Decision, California pipeline operators were directed 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

[4] CPUC Rules of Practice and Procedure, Rule 16.4(d) (emphasis added).
[5] D.09-04-033, mimeo., at pp. 9-10.

California has been pressure tested in accord with 49 CFR 192.619, excluding subsection 49 CFR 192.619 (c)."[6] The Commission issued this order after concluding that "all natural gas transmission pipelines in service in California must be brought into compliance with modern standards for safety. Historic exemptions must come to an end with an orderly and cost-conscience implementation plan."[7] Findings of Fact 6 and 7 supporting these conclusions and order state as follows:

> 6. Natural gas transmission pipelines placed in service prior to 1970 were not required to be pressure tested, and were exempted from then-new federal regulations requiring such tests. These regulations allowed operators to operate a segment at the highest actual operating pressure of the segment during the five-year period between July 1, 1965 and June 30, 1970.
>
> 7. Natural gas transmission pipeline operators should be required to replace or pressure test all transmission pipeline that has not been so tested.[8]

It is clear that pipeline operators are to (a) replace or pressure test all pipelines not tested in accordance with federal regulations adopted in 1970, i.e., Subpart J, *and* (b) bring an end to historic exemptions regarding establishing MAOP.[9]

Second, although TURN and SCGC mischaracterize the Respondents' expression of their understanding regarding "modern standards" as evolving over time,[10] the Respondents' interpretation of the Decision was clearly stated *within one year* of D.11-06-017. In Application ("A.")11-11-002, the Respondents' witness Richard Morrow stated in his **December 2, 2011** written testimony:

> In addition to addressing these 385 miles of transmission pipelines located in Class 3 and 4 locations and Class 1 and 2 High Consequence Areas, in order to satisfy the directives set forth in D.11-06-017, SoCalGas and SDG&E will also need to test or replace all remaining pipeline segments *that do not have sufficient documentation of pressure testing to satisfy modern standards.* Based on preliminary review of records and assumptions based on the review of pipelines

[6] D.11-06-017, mimeo., at pp. 29 (COL 4), 31 (OP 4).
[7] D.11-06-017, mimeo., at p. 18.
[8] D.11-06-017, mimeo., at pp. 27-28 (FOF 6, 7).
[9] Pacific Gas and Electric Company ("PG&E") indicates in its recent Gas Transmission and Storage Rate Case that it also shares this interpretation: "There are another approximately 869 miles that have a valid test record that met code at the time of the test, but the test does not meet current Subpart J requirements. Typically, this is due to a test not meeting a test multiplier or a test duration consistent with current Subpart J requirements." A.17-11-009, Pacific Gas and Electric TY2019 Gas Transmission and Storage Rate Case, Chapter 5 Prepared Direct Testimony of Bennie Barnes at p. 5-43.
[10] TURN and SCGC's Petition at p. 5.

> located in Class 3 and 4 locations and High Consequence Areas, SoCalGas and SDG&E estimate that about an additional 2,000 miles of transmission pipeline segments will need to be assessed to determine whether they require testing or replacement.[11]
>
> ***
>
> In Phase 2, we propose to address all remaining transmission pipelines that do not have sufficient documentation of pressure testing to satisfy the Commission's directives.[12]

The Respondents' intent to ensure pre-1970 pipeline is brought into compliance with Subpart J is crystal clear with their reference to ensuring pipelines have "sufficient documentation of pressure testing to satisfy modern standards."

ORA[13] noted in its testimony dated June 19, 2012 in the same proceeding that it, too, understood the Respondents' interpretation. Ms. Dao Phan wrote, "Sempra is interpreting D.11-06-017 to require all pipeline segments installed prior to 1970 to be tested in accord with 49 CFR 192.619, excluding subsection 192.619(c)."[14] In support of this, she cites to a data request response by Respondents dated **May 11, 2012** wherein Respondents clearly state their interpretation of the Decision. In response to a question asking them to state all assumptions underlying their estimation "that about an additional 2,000 miles of transmission pipeline segments will need to be assessed to determine whether they require pressure testing or replacement," Respondents stated, "[i]t is assumed that the CPUC will require pressure testing or replacement of pipeline installed prior to 1970 since modern standards were not in place before that time."[15] ORA certainly understood the Respondents' interpretation of the requirements of D.11-06-017.

---

[11] Motion for Official Notice in Support of Response of Southern California Gas Company (U 904 G) and San Diego Gas & Electric Company (U 902 G) to Joint Petition of The Utility Reform Network and Southern California Generation Coalition for Modification of D.11-06-017 ("MON"), Ex. A (A.11-11-002, Amended Direct Testimony of Richard Morrow – Chapter 2 dated December 2, 2011) at p. 18.
[12] *Id.* at p. 19.
[13] Formerly the Division of Ratepayer Advocates ("DRA").
[14] MON, Ex. B (A.11-11-002, DRA Report on the Pipeline Safety Enhancement Plan of Southern California Gas Company and San Diego Gas & Electric Company dated June 19, 2012) at p. 10.
[15] MON Ex. C (A.11-11-002, Response to Data Request DRA-DAO-29 dated May 11, 2012) at pp. 4-5 (Question DRA-DAO-29-04). The language used in the response to the data request mimics the question asked; Respondents do not assume the Commission will require testing to modern standards because it already has been ordered in D.11-06-017; rather, the assumption discussed underlies Respondents' calculation that some 2,000 miles are subject to testing or replacement in order to comply with Subpart J.

Finally, at least as of **April 27, 2012**, SCGC was on notice of the same interpretation. In response to a data request by SCGC to identify costs associated with testing or replacing "the 20 miles of pipeline segments installed between July 1, 1961 and 1970 [that do not have records indicated they] were tested and document per GO 112 requirements," Respondents stated:

> In compiling these costs, SoCalGas and SDG&E did not conduct an analysis to determine whether or not a segment installed in the above referenced date range has documentation to show compliance with the applicable GO-112 requirements, *because D.11-06-017 requires SoCalGas and SDG&E to bring all transmission pipelines into compliance with modern standards for safety* and does not exempt pipeline segments that satisfy historic requirements applicable at the time of installation.[16]

Simply, it is not credible for TURN and SCGC to argue that Respondents' interpretation of the Decision was not known to them within one year of the Decision. The fact that TURN and SCGC delayed bringing the Petition for years after they admit knowing Respondents' interpretation underscores that TURN and SCGC were not seeking a prompt resolution. The Petition should be denied as untimely without any justification.

III. THE COMMISSION IS CONSIDERING THE EXACT SAME ISSUE IN A DIFFERENT PROCEEDING

In its protest to Respondents' Application to Recover Costs Recorded in the Pipeline Safety Reliability Memorandum Account, the Safety Enhancement Expense Balancing Accounts, and the Safety Enhancement Capital Cost Balancing Accounts ("PSEP Reasonableness Review Application"), SCGC stated its position that "[e]xpanding PSEP Phase 2 beyond pipelines in less populated areas that lack sufficient documentation of pressure testing that do have documentation of pressure testing, albeit not up to the standards of Subpart J, would expand PSEP Phase 2 enormously,"[17] and that "[a]ny Commission decision addressing the Application in this proceeding should be narrowly crafted to explicitly avoid being construed to constitute approval of expanding PSEP Phase 2 to encompass what the Applicants call 'Phase

[16] MON Ex. D (A.11-11-002, Response to Data Request from SCGC-10 dated April 27, 2012) at p. 19 (Question SCGC-10.10) (emphasis added).

[17] MON, Ex. E (A.16-09-005, Southern California Generation Coalition Protest of the Southern California Gas Company and San Diego Gas & Electric Company Application to Recover Costs Recorded in the Pipeline Safety Reliability Memorandum Account, the Safety Enhancement Expense Balancing Accounts, and the Safety Enhancement Capital Cost Balancing Accounts dated October 10, 2016) at p. 5.

2B,' pressure testing or replacing pipeline segments that have adequate documentation of pressure testing prior to implementation of Part 192 but not fully up to Part 192 standards."[18]

Based in part on this position, and at the request of the ALJ assigned to A.16-09-005, TURN and SCGC agreed with Respondents and ORA as follows, as reflected in the Scoping Memorandum and Ruling in that proceeding:

> Applicants define Phase 2B segments as "pipelines with record of a pressure test, but without record of a pressure test to modern (49 Code of Federal Regulations Part 192, Subpart J) standards." The parties disagree as to whether the work identified as Phase 2B of PSEP has been mandated by the Commission due to differing interpretations of D.11-06-017. Applicants read the decision, particularly Ordering Paragraphs 3 and 4, to require the pressure testing or replacement of segments for which Applicants have a pre-Subpart J pressure test record. Intervenors read the decision, particularly Ordering Paragraph 3, as not requiring ratepayers to pay for retesting through the Pipeline Safety Enhancement Plan (PSEP), those segments for which Applicants possess a pre-Subpart J pressure test record, provided that the test met the requirements in place when the test was conducted. The parties agree that this disagreement should be resolved in a different proceeding. Notwithstanding their different interpretations of the Commission's prior decision, the parties agree to the following:
>
> - Accelerated miles are miles that would otherwise be addressed in a later phase of PSEP under the approved prioritization process, but are being advanced to Phase 1A to realize operating and cost efficiencies. Accelerated miles may include Phase 1B or Phase 2.
> - Incidental miles are miles not scheduled to be addressed in PSEP, but are included where their inclusion is determined to improve cost and program efficiency, address implementation constraints, or facilitate continuity of testing.
> - Recovering the cost of "incidental" and/or "accelerated" pressure testing or replacement of segments may be considered in this proceeding.
> - Any finding in this proceeding that costs of such work may be recovered would not be precedential for the issue of whether replacement or testing of all segments with a pre-Subpart J test record has been mandated or is necessary.
>
> The recovery of the costs of "standalone" Phase 2B segments will be addressed in a forecast application or Applicants' General Rate Case to be filed in the future, at which time parties may assert their positions.[19]

In short, TURN and SCGC agreed that their differing interpretations of the Decision would be resolved in a forecast application (which Respondents filed as required on March 30,

[18] *Id.* at pp. 6-7.
[19] A.17-10-007 / A.17-10-008, *Assigned Commissioner's Scoping Memorandum and Ruling* dated January 29, 2018 at pp. 4-5.

2017 [A.17-03-021] and is now pending a decision), or Respondents' general rate case. In accordance with this agreement, Respondents included the item in their general rate cases (A.17-10-007 and A.17-10-008, which were consolidated). ALJ Lirag is the assigned ALJ, and the Assigned Commissioner's Scoping Memorandum and Ruling dated January 29, 2018 ("GRC Scoping Memo") includes as an issue within the scope of the proceeding "[t]he Interpretation of D.11-06-017 regarding pressure testing of pipeline segments in accordance with the Subpart J standard and whether there are exclusions."[20] The GRC Scoping Memo followed TURN's November 17, 2017 protest in the consolidated proceeding, wherein TURN stated regarding Respondents' request to include the issue within the scope of the proceeding, "TURN supports SoCalGas's call for Commission resolution of this dispute."[21] TURN did not question whether the issue was appropriately determined in Respondents' general rate case or argue for an alternative forum; rather, TURN stated, "[w]hether this issue should be briefed on an expedited track in this proceeding, or through a different procedural mechanism in another docket (such as through a petition for modification of D.11-06-017 in R.11-02-019, which has general applicability to all California natural gas transmission system operators), is a question worth exploring."[22]

Indeed, because TURN (and SCGC) did not state this new position at the time and affirmatively supported inclusion of this issue in Respondents' GRC, the issue has been under consideration since October 2017. It is noteworthy that a proposed decision is expected in the GRC in November – just six months from now. There is no basis for TURN and SCGC's contention that commencing a new matter through the Petition will result in a sooner decision.[23]

Even setting aside that TURN and SCGC agreed the issue should be determined in Respondents' GRC, the fact remains that the issue remains within the scope of the proceeding

[20] A.17-10-007 / A.17-10-008, *Assigned Commissioner's Scoping Memorandum and Ruling* dated January 29, 2018 at pp. 4-5.
[21] MON, Ex. F (A.17-10-007/17-10-008, Protest of The Utility Reform Network dated November 17, 2017) at p. 10.
[22] *Id.* at p. 11.
[23] Nor is there a need for a decision to come sooner. In the pending reasonableness review (A.16-09-005), the parties, including TURN and SCGC, agreed that "Phase 2B" work could be considered for cost recovery because it was addressed only in conjunction with prioritized projects, and the matter is under submission after the parties waived hearings (see Section III *supra*). In the pending forecast application (A.17-03-021), neither TURN nor SCGC questioned the appropriateness of addressing Phase 2B work at hearings or in their briefs. That matter, too, is under submission.

and has been subject to discovery by the many parties to Respondents' GRC for over six months. Granting TURN and SCGC's Petition risks two different outcomes by two different ALJs.

IV. TURN AND SCGC'S INTERPRETATION OF THE REQUIREMENT IMPOSED BY D.11-06-017 IGNORES PORTIONS OF THE DECISION

As noted *supra* in Section II, the language of D.11-06-017 is plain. In Ordering Paragraph 4 of the Decision, California pipeline operators were directed 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)."[24] The Commission issued this order after concluding that "all natural gas transmission pipelines in service in California must be brought into compliance with modern standards for safety. Historic exemptions must come to an end with an orderly and cost-conscious implementation plan."[25] Findings of Fact 6 and 7 supporting these conclusions and order state as follows:

> 6. Natural gas transmission pipelines placed in service prior to 1970 were not required to be pressure tested, and were exempted from then-new federal regulations requiring such tests. These regulations allowed operators to operate a segment at the highest actual operating pressure of the segment during the five-year period between July 1, 1965 and June 30, 1970.
>
> 7. Natural gas transmission pipeline operators should be required to replace or pressure test all transmission pipeline that has not been so tested.[26]

The well-established rules of construction (i) promote giving effect to every provision and (ii) avoid an interpretation that renders any part as surplusage.[27] With this in mind, it is evident that the Decision requires pipeline operators both to replace or pressure test all pipelines not tested in accordance with federal regulations adopted in 1970, i.e., Subpart J, *and* end historic exemptions regarding establishing MAOP. TURN and SCGC's interpretation, that only the second portion has been ordered regarding establishing MAOP, requires ignoring both Findings

[24] D.11-06-017, mimeo., at pp. 29 (COL 4), 31 (OP 4).
[25] D.11-06-017, mimeo., at p. 18.
[26] D.11-06-017, mimeo., at pp. 27-28 (FOF 6, 7).
[27] *See, e.g., United States v. 1.377 Acres of Land, More or Less, Situated in the City of San Diego*, 352 F.3d 1259, 1265-66 (9th Cir.) (interpreting a contract); D.16-09-016, mimeo., at pp. 9-11 (interpreting a statute); D.07-05-063, mimeo., at pp. 13-14 (interpreting a statute).

of Fact 6 and 7 as well as the Commission's clear statement that "natural gas transmission pipelines in service in California must be brought into compliance with modern standards for safety."[28] The Commission likely did not intend to have these portions of the Decision ignored.

Respondents' interpretation is further supported by the Commission's stated over-arching intent to improve safety: "We are resolute in our commitment to improve the safety of natural gas transmission pipelines."[29] This follows the Commission's sobering statement that it "is currently confronting the most deadly tragedy in California history from public utility operations."[30] Time has passed, but these facts have not changed.

V. IF THE COMMISSION DOES NOT DENY THE PETITION, THE PETITION SHOULD BE ASSIGNED TO THE ALJ ALREADY PRESIDING OVER THE SAME ISSUE

As described in Section III, the exact issue that is the subject of the Petition – whether the Decision requires pipeline operators both to replace or pressure test all pipelines not tested in accordance with federal regulations adopted in 1970, i.e., Subpart J, *and* end historic exemptions regarding establishing MAOP, or merely end historic exemptions regarding establishing MAOP – is already pending before ALJ Lirag in Respondents' GRC. Allowing the Petition to proceed under the auspices of a different ALJ risks two different decisions which, in turn, will

[28] D.11-06-017, mimeo., at p. 18.
[29] D.11-06-017, mimeo., at p. 16.
[30] D.11-06-017, mimeo., at p. 16.

require further Commission involvement. In order to avoid this possibility, as well as preserve the Commission's resources, the Petition – if not denied – should be assigned to ALJ Lirag.

Respectfully submitted on behalf of SoCalGas and SDG&E,

By: */s/ Avisha A. Patel*
Avisha A. Patel

AVISHA A. PATEL

Attorney for
SOUTHERN CALIFORNIA GAS COMPANY
SAN DIEGO GAS & ELECTRIC COMPANY
555 West Fifth Street, Suite 1400
Los Angeles, California 90013
Telephone: (213) 244-2954
Facsimile: (213) 629-9620
E-mail: APatel@semprautilities.com

May 11, 2018