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OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding Building Decarbonization.	Rulemaking 19-01-011 (Filed January 31, 2019)

OPENING BRIEF OF THE UTILITY REFORM NETWORK ON PHASE III ISSUES

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I. INTRODUCTION

Today, the cost of installing new gas infrastructure to connect new customers to the utility gas distribution system and to accommodate increased load from existing customers is shared between the utility and the customer requesting the service, per the Gas Tariff Rules.[1] As specified in these Tariff Rules, ratepayers pay for gas distribution main and service line extension allowances, refunds, and discounts (collectively, gas line subsidies) for residential and non-residential customers.

On November 16, 2021, the Commission issued the *Assigned Commissioner's Amended Scoping Memo and Ruling* opening Phase III of this proceeding, which is devoted to the question of whether the Commission should modify or eliminate residential and non-residential gas line subsidies to advance California's greenhouse gas (GHG) reduction goals by encouraging building decarbonization.[2] The impetus for Phase III is the Energy Division Staff Proposal (Staff Proposal), where Staff recommends the elimination of all gas line subsidies, effective July 1, 2023.[3]

Pursuant to Rule 13.12 of the Commission's Rules of Practice and Procedure and the Administrative Law Judges' Rulings issued on March 22, 2022, and April 18, 2022, The Utility Reform Network (TURN) respectfully submits this opening brief on Phase III

[1] *See* Gas Rules 15 and 16 for Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southwest Gas Company (SWG); Gas Rules 20 and 21 for Southern California Gas Company (SoCalGas).

[2] Assigned Commissioner's Amended Scoping Memo and Ruling, pp. 3, 5.

[3] Assigned Commissioner's Amended Scoping Memo and Ruling, Appendix A (Phase III Staff Proposal), p. 2 (summarizing Staff's recommendations); Appendix B (Questions to be Addressed in Parties' Comments in Response to the Staff Proposal).

issues.[4] As explained below, TURN strongly supports the elimination of all gas line subsidies for residential and non-residential customers. Current gas line extension policy contradicts critical efforts underway to decarbonize California's building sector as part of achieving the state's GHG emissions reduction imperative. Moreover, eliminating gas line subsidies – projected to exceed $159 million annually statewide from 2022-2026[5] – would reduce the future cost burden borne by those customers lacking the resources and/or opportunity to electrify, who, as the Staff Proposal recognizes, are likely to be disproportionately low-income and communities of color.[6]

TURN further opposes the adoption of blanket exceptions to this policy change. Instead, a gas utility believing that a specific project warrants ratepayer funded gas line subsidies should submit an application demonstrating the reasonableness of requiring ratepayers to subsidize the extension of the gas system.

In sum, eliminating all gas line subsidies is a no-regrets strategy for lowering near-term gas rates, discouraging growth in future stranded costs, and aligning the Commission's policy in this area with the many other Commission and State policies calling for building decarbonization to reduce GHG emissions.

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[4] TURN has used the common brief outline required in the 4/18/22 Administrative Law Judges' Ruling Admitting Data Into the Evidentiary Record and Addressing Outline for Briefs. As invited by the ALJs at p. 4, TURN does not address all issues in this opening brief but may address additional issues in its reply brief.

[5] Administrative Law Judges' Ruling Admitting Data Into the Evidentiary Record and Addressing Outline for Briefs, 4/18/22, Attachment 5 (Gas Line Subsidies from the Gas Utilities' Responses to Energy Division's Data Request (ED-DR)), p. 2 (Total Gas Line Subsidies for All Gas IOUs).

[6] Staff Proposal, p. 35.

II. LEGAL STANDARD AND REGULATORY BACKGROUND

TURN reserves the right to address this issue in its reply brief.

III. TURN'S POSITION ON THE ELIMINATION OR MODIFICATION OF GAS LINE SUBSIDIES FOR RESIDENTIAL CUSTOMERS

TURN urges the Commission to eliminate all gas line subsidies for residential customers as of July 1, 2023, as proposed in the Staff Proposal. TURN presented this recommendation with extensive justification in the Opening and Reply Comments submitted jointly with the California Environmental Justice Alliance (CEJA), Environmental Defense Fund (EDF), Natural Resources Defense Council (NRDC), and Sierra Club on December 20, 2021, and January 10, 2022, respectively.[7] TURN briefly summarizes that justification here and otherwise refers the Commission to its December 20, 2021, and January 10, 2022 comments, which demonstrate the necessity and appropriateness of eliminating gas line subsidies for residential customers.

First, by promoting growth in gas consumption and new gas hook-ups, the existing gas line subsidies work against the goals of multiple Commission-authorized building decarbonization programs also funded by ratepayers (either directly in rates or indirectly through Cap and Trade funds which would otherwise be returned to ratepayers through bill credits), as well as State and Commission policy.[8] Eliminating gas line subsidies for residential customers would bring the Gas Tariff Rules into better alignment with critical efforts underway in California to reduce GHG emissions.

Second, as State programs to electrify new and existing buildings and to

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[7] TURN et al. Opening Comments on the Phase III Staff Proposal, 12/20/21; TURN et al. Reply Comments on the Phase III Scoping Memo and Staff Proposal, 1/10/22.

[8] *See, e.g.,* TURN et al. Opening Comments on the Phase III Staff Proposal, 12/20/21, p. 2.

transform the market for electric appliances begin to take effect, in conjunction with a growing number of local reach codes promoting the use of electric appliances in new buildings and the electric-friendly 2022 California Energy Code, the customer base of gas utilities will shrink.[9] With customers leaving the gas system, the existing capital costs of the system will be stranded on customers unwilling, or unable, to transition to electric appliances.[10] Eliminating residential gas line subsidies, which comprise roughly three-quarters of total statewide gas line subsidies, would reduce the future cost burden borne by those customers lacking the resources and/or opportunity to electrify, likely to be disproportionately low-income and communities of color.[11] In this regard, eliminating residential gas line subsidies would prevent an exacerbation of the many inequities the Commission must work to dismantle as it plans for the gas system transition.[12]

Third, change is already underway, thanks to a variety of state and local government actions to encourage building decarbonization in existing and new homes.[13] Eliminating gas line subsidies for residential customers will merely complement these efforts; it will not be the only factor influencing decisions by home builders regarding the provision of gas service to the home.[14] Moreover, efficient electric alternatives to

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[9] *See, e.g.,* TURN et al. Opening Comments on the Phase III Staff Proposal, 12/20/21, p. 3.

[10] *See, e.g.,* TURN et al. Opening Comments on the Phase III Staff Proposal, 12/20/21, p. 3.

[11] TURN et al. Opening Comments on the Phase III Staff Proposal, 12/20/21, p. 2; Administrative Law Judges' Ruling Admitting Data Into the Evidentiary Record and Addressing Outline for Briefs, 4/18/22, Attachment 5 (Gas Line Subsidies from the Gas Utilities' Responses to Energy Division's Data Request (ED-DR)), p. 2 (Total Gas Line Subsidies for All Gas IOUs).

[12] *See, e.g.,* TURN et al. Opening Comments on the Phase III Staff Proposal, 12/20/21, pp. 2, 8-9, 11, 13; TURN et al. Reply Comments on the Phase III Scoping Memo and Staff Proposal, 1/10/22, p. 4.

[13] Staff Proposal, pp. 9-16.

[14] *See, e.g.,* TURN et al. Opening Comments on the Phase III Staff Proposal, 12/20/21, p. 14

residential gas appliances exist today. There is no justification for continuing to *subsidize* gas distribution infrastructure and gas appliances for new buildings.[15] The implementation plan proposed by the Staff Proposal would provide a reasonable and clear transition in gas line extension policy to align with other building decarbonization initiatives. It would offer greater certainty for the builder community, the contractor community, and the gas distribution workforce, while only increasing construction costs minimally or not at all (in the case of all-electric construction).[16]

IV. TURN'S POSITION ON THE ELIMINATION OR MODIFICATION OF GAS LINE SUBSIDIES FOR NON-RESIDENTIAL CUSTOMERS

TURN urges the Commission to eliminate all gas line subsidies for non-residential customers as of July 1, 2023, as proposed in the Staff Proposal, for the same reasons the Commission should eliminate all residential gas line subsidies. TURN presented this recommendation with extensive justification in the Opening and Reply Comments submitted jointly with the California Environmental Justice Alliance (CEJA), Environmental Defense Fund (EDF), Natural Resources Defense Council (NRDC), and Sierra Club on December 20, 2021, and January 10, 2022, respectively.[17] TURN refers the Commission to its December 20, 2021, and January 10, 2022 comments, which demonstrate the necessity and appropriateness of eliminating gas line subsidies for non-residential customers without exception. If there are special cases that deserve ratepayer

(response to Question 5, part j); TURN et al. Reply Comments on the Phase III Scoping Memo and Staff Proposal, 1/10/22, pp. 2-3, 6-7.

[15] TURN et al. Opening Comments on the Phase III Staff Proposal, 12/20/21, p. 17.

[16] *See, e.g.,* TURN et al. Opening Comments on the Phase III Staff Proposal, 12/20/21, p. 2.

[17] TURN et al. Opening Comments on the Phase III Staff Proposal, 12/20/21; TURN et al. Reply Comments on the Phase III Scoping Memo and Staff Proposal, 1/10/22.

subsidies due to purported economic and environmental benefits, the gas utilities should have to make that case in an application.[18]

A. Exceptions for Projects that Provide "Environmental and Financial Benefits"

1. The Commission Should Not Create An Exception for Projects that Provide "Environmental and Financial Benefits."

The Commission should decline to create an exception to the elimination of gas line subsidies for projects that provide "environmental and financial benefits" to ratepayers.[19] In order to establish such an exception, the Commission would need to define "environmental and financial benefits" and establish a standard to be met by any project seeking to benefit from the exception. Doing so would require such speculation today as to not be worth the potential benefits.

As explained by TURN in its February 22, 2022 Comments, any definition of environmental or financial benefits must assume a status quo, or baseline, which reflects environmental or financial conditions absent the project. Benefits would be calculated against this baseline over some period of time, for instance, the time period over which ratepayers would pay for the gas line subsidy (the depreciable life of the asset for ratemaking purposes) or the time period the asset would be in service. However, it is very difficult to define a reasonably accurate baseline for calculating either environmental or financial benefits to ratepayers because of the tremendous uncertainty

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[18] *See* TURN et al. Reply Comments on the Phase III Scoping Memo and Staff Proposal, 1/10/22, pp. 10-14.

[19] *See* TURN Comments in Response to the Assigned ALJ's Ruling Seeking Clarifications and Additional Information, 2/22/22.

in the path the State and Commission will take in the next few years to meet the GHG reduction goals for the utility sector.

Currently, the Commission is pursuing multiple paths. On the one hand, the Commission is requiring ratepayers to subsidize new construction and retrofit building electrification to reduce or eliminate direct gas consumption in buildings across a number of programs. To date, the Commission has authorized almost $535 million for building electrification programs, including roughly $335 million from ratepayers and another $200 million from cap and trade funds.[20] The Commission is likewise undertaking a planning process to support strategic decommissioning of gas system assets.[21] On the other hand, the Commission has authorized ratepayer-funded long-term investments in a "greener" gas system, such as dairy biogas pipeline interconnection projects[22] and mandates for long-term contracting for renewable gas procurement to serve core gas use.[23] The Commission must be mindful that ratepayers are already paying for this multi-pronged approach to GHG emissions reductions from the utility sector, while the Commission and the State try to sort out the optimal path forward for California.

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[20] *See* D.22-04-036, *Decision Establishing Heat Pump Water Heater Program Requirements,* issued in R.20-05-012, Table 8 at pp. 48-50 (plus the addition of $45 million authorized in that decision for Heap Pump Water Heaters). TURN notes that this table may be underinclusive.

[21] *See* R.20-01-007, *Amended Scoping Memo and Ruling*, January 5, 2022, pp. 4-7.

[22] *See* D.15-06-029 (authorizing $40 million incentive program for biomethane pipeline interconnection); D.17-12-004 (authorizing additional funding for dairy biogas interconnection projects).

[23] *See* D.22-02-025, *Decision Implementing Senate Bill 1440 Biomethane Procurement Program,* issued in R.13-02-008, p. 32 (mandating procurement of 72.8 billion cubic feet of biomethane each year for 2030 and beyond through long-term contracts with biomethane suppliers). The Commission estimates the cost of biomethane as $17.30 per Mcf. D.22-02-025, Finding of Fact 15 ($17.70 per MMbtu x 0.9756 = $17.30 Mcf). Assuming a current cost for natural gas of $4.00 per Mcf, the premium to be paid by core gas customers due to D.22-02-025 could be nearly *$1 billion a year*.

The uncertainty regarding the future of gas system utilization as the State moves towards compliance with the GHG emissions reduction goals creates significant uncertainty in the extent of environmental or financial benefits to ratepayers from gas line subsidies, if any. What is the proper baseline for calculating environmental benefits to ratepayers? Arguably, the project should be compared against an electrification scenario for on-site consumption, where feasible, and it should also assume extensive electrification of core load at some point in the future, thus reducing indirect environmental benefits from running renewable gas through the gas pipeline system. Further, it is premature to even contemplate continued ratepayer gas line subsidies for renewable gas developers given that the Commission mandated utility procurement of renewable gas in D.22-02-025.[24] This mandate provides significant market support and will cause ratepayers to pay a large premium for biogas above current natural gas prices.[25]

Similarly, what is the proper baseline for calculating financial benefits to ratepayers? Any project that adds new customer load to the gas system could, all else being equal, provide a contribution to margin for at least some amount of time. However, any system buildout today could become a stranded asset well before the end of the asset's life because of electrification – whether mandated by state or local building codes or inspired by ratepayer-funded incentive programs and market transformation. This serious risk cuts against any near-term financial benefits from increased sales associated with new customer load.

In sum, the tremendous uncertainty regarding future gas system utilization should

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[24] D.22-02-025, *supra* note 23.

[25] *Id.*

erode the confidence in any baseline assumptions that would be adopted today to calculate environmental or financial benefits to ratepayers from gas line subsidies in the future. As such, TURN urges the Commission not to undertake the effort of devising a definition of environmental or financial benefits to ratepayers for the purpose of continuing gas line subsidies for specific projects that meet pre-determined criteria for an exception.

2. The Commission Could Entertain Requests for Gas Line Subsidies By Utility Application.

While TURN strongly opposes the adoption of a blanket exception for projects that provide "environmental and financial benefits" to ratepayers, TURN acknowledges that a gas utility could file an application seeking ratepayer support for specific line extension projects.[26] The Commission should expect the utility to demonstrate that ratepayer funding would be just and reasonable in light of reasonably anticipated ratepayer benefits and then-current State and Commission law and policy related to utility system decarbonization.[27]

An application is the appropriate procedural vehicle for such a request, as it affords interested stakeholders the opportunity to conduct discovery and analyze the basis for the utility's request. Further, it positions the Commission to treat such requests as extraordinary and carefully consider the factual, legal, and policy basis presented by the utility before determining whether ratepayers should subsidize the extension of the gas

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[26] TURN Comments in Response to the Assigned ALJ's Ruling Seeking Clarifications and Additional Information, 2/22/22, pp. 4-5.

[27] *See* Reply Comments of the California Environmental Justice Alliance, Environmental Defense Fund, Natural Resources Defense Council, Sierra Club, and The Utility Reform Network, 1/10/22, pp. 5, 11, 14.

system as proposed by the utility.

For instance, PG&E suggests "there may be several instances where the continuation of non-residential allowances may offer financial and/or environmental benefit to our customers."[28] PG&E points to specific projects that it is "tracking" such as "facilities that are projected to increase natural gas load to displace coal, pet coke and other dirtier fuels."[29] PG&E further proposes broad definitions of "direct" and "indirect" environmental benefit that could be used to assess the appropriateness of gas line subsidies for a specific project.[30] However, PG&E acknowledges that "defining environmental or financial benefits" is a complex and challenging undertaking without sufficient details to provide a more specific framework to contextualize the definitions.[31] Should PG&E seek to provide ratepayer-funded gas line subsidies for any such project by filing an application, PG&E would have an opportunity to address the inherent complexities in defining financial and environmental benefits in the context of a specific project, as well as the status of current and reasonably foreseeable State law and regulation impacting assumptions about such benefits in the future.

B. Exceptions for Small Businesses

TURN reserves the right to address this issue in its reply brief.

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[28] PG&E Reply Comments, 1/10/22, p. 1 (un-numbered in original).

[29] PG&E Reply Comments, 1/10/22, p. 1 (un-numbered in original).

[30] PG&E Response to ALJ's Ruling Seeking Clarifications and Additional Information, 2/22/22, pp. 6-7.

[31] PG&E Response to ALJ's Ruling Seeking Clarifications and Additional Information, 2/22/22, p. 6.

C. Maintaining Existing Gas Line Subsidies to Focus on Short Lived Climate Pollutants

TURN reserves the right to address this issue in its reply brief.

D. New Methodology for Calculating and Applying Gas Line Subsidies

TURN reserves the right to address this issue in its reply brief.

V. TURN'S POSITION ON FINDINGS THE COMMISSION SHOULD MAKE PURSUANT TO PUBLIC UTILITIES CODE SECTION 783

A. Public Utilities Code Section 783(b)(1)

B. Public Utilities Code Section 783(b)(2)

C. Public Utilities Code Section 783(b)(3)

D. Public Utilities Code Section 783(b)(4)

E. Public Utilities Code Section 783(b)(5)

F. Public Utilities Code Section 783(b)(6)

G. Public Utilities Code Section 783(b)(7)

TURN reserves the right to address this issue in its reply brief.

VI. OTHER ISSUES WITHIN THE SCOPE OF PHASE III THE COMMISSION SHOULD CONSIDER

TURN reserves the right to respond to other issues raised in parties' opening briefs in its reply brief.

VII. CONCLUSION

For the foregoing reasons, TURN respectfully recommends that the Commission eliminate gas line subsidies for residential and non-residential customers, without categorical exception.

Date: May 4, 2022

Respectfully submitted,

By: __________/s/______________

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