

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Establish Policies, Processes, and Rules
to Ensure Safe and Reliable Gas Systems
in California and Perform Long-Term
Gas System Planning.

Rulemaking 24-09-012
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**REPLY COMMENTS OF THE UTILITY REFORM NETWORK ON
QUESTIONS REGARDING THE ESTABLISHMENT OF THE
PILOT PROGRAM**



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REPLY COMMENTS OF THE UTILITY REFORM NETWORK ON QUESTIONS REGARDING THE ESTABLISHMENT OF THE PILOT PROGRAM

The Utility Reform Network (TURN) submits these Reply Comments pursuant to the *Second Amended Assigned Commissioner’s Scoping Memo and Ruling Requesting Comments on Pilot Program* (“Second Amended Scoping Memo” or “Ruling”), issued on October 16, 2025.

TURN limits these Reply Comments to issues raised in Opening Comments where there is material disagreement with TURN’s positions, with primary focus on proposals to impermissibly treat behind-the-meter (BTM) pilot costs as regulatory assets earning a rate of return. Where Opening Comments raised no conflict or where TURN’s Opening Comments remain sufficient, TURN states so expressly.

I. PILOT PROJECT APPLICATIONS

TURN has nothing to add to its Opening Comments regarding the information gas corporations should include in pilot applications. TURN’s recommendations remain unchanged.

II. DEFINITION AND IDENTIFICATION OF PILOT PROJECTS

TURN has nothing to add to its Opening Comments regarding the identification and prioritization of pilot projects. While some parties advocate for broad utility discretion and portfolio-based pilot approval, TURN reiterates that statutory constraints under Public Utilities Code Sections 661–663 require project-specific scrutiny, particularly for cost-effectiveness and customer impacts. TURN’s Opening Comments adequately address these concerns.

PG&E and SCE advocate for portfolio-based pilot approval frameworks with upfront authorization of revenue requirements and cost recovery.¹ TURN reiterates that such approaches risk obscuring statutory compliance at the project level, particularly with respect to cost-effectiveness, consent thresholds, and the prohibition on returns for behind-the-meter (BTM)

¹ Opening Comments of PG&E, pp. 4–7; Opening Comments of SCE, pp. 2–5.

costs. TURN's Opening Comments already explain why project-specific review remains necessary under SB 1221,² and TURN has nothing further to add.

III. PROJECT COSTS AND COST RECOVERY MECHANISMS

TURN provides additional argument below to further explain why SB 1221 forecloses regulatory asset treatment and any rate of return on BTM pilot costs, why the Commission lacks discretion to adopt the approaches proposed by certain parties, and why doing so would undermine both the statutory scheme and core ratemaking principles. Southwest Gas states, "Since the State of California is mandating that gas corporations carry out these pilots, which fall outside the scope of their regular business activities, it is appropriate for the corporations to be compensated for the full range of expenses incurred throughout the execution of these pilot projects."³ Nothing in SB 1221 mandates pilot projects, as correctly noted by other parties.⁴

A. Statutory Text and Structure Prohibit Earnings on BTM Pilot Costs

Public Utilities Code Section 663(b)(8) states that the Commission shall establish pilot program requirements including a prohibition on gas corporations earning a rate of return on BTM electrification investments associated with SB 1221 pilots. This language is mandatory, categorical, and unqualified. It does not condition the prohibition on accounting treatment, cost recovery mechanism, or the source of ratepayer funding. The operative restriction is on earning a rate of return, regardless of form.

² Opening Comments of TURN, pp. 23-24

³ Comments of Southwest Gas, p. 8.

⁴ See, e.g., Opening Comments of Coalition of California Utility Employees, p.2 ("CUE takes issue with the framing of this question, which suggests that gas utilities are required to participate in the SB 1221 pilot program. This framing misconstrues the plain language of Public Utilities Code Section 663(a), which makes clear that, while the Commission is obligated to adopt and implement the program, the program is "voluntary" for gas utilities to participate:")

Several parties attempt to avoid this prohibition by suggesting that the Commission reframe BTM expenditures as regulatory assets rather than capital assets. That distinction has no legal significance under Section 663(b)(8). A regulatory asset that earns the authorized rate of return is, in economic and ratemaking terms, indistinguishable from capital investment for purposes of utility earnings. The Commission has long recognized that regulatory asset treatment is an exception to standard ratemaking principles that allows utilities to earn on costs that would otherwise be expensed. Allowing that treatment here would nullify the Legislature’s express prohibition.

Statutory interpretation principles require the Commission to give effect to every word of the statute and avoid constructions that render provisions meaningless. Reading Section 663(b)(8) to prohibit only traditional capitalization, while permitting full earnings through regulatory asset treatment, would violate that principle. The Legislature did not prohibit “capitalization” in isolation. It prohibited earning a rate of return on BTM electrification investments. Any interpretation that allows earnings through alternative accounting mechanisms must be rejected.

B. SB 1221’s Deliberate Separation of Utility Infrastructure and Customer-Sited Measures

SB 1221 repeatedly and deliberately distinguishes between utility system investments and customer-sited electrification measures. Sections 661 and 662 focus on mapping, planning, and prioritization of gas system assets. Section 663 authorizes pilot projects only as a means of avoiding specific gas infrastructure investments, not as a vehicle for expanding utility ownership or earnings associated with customer equipment.

The statute’s structure reflects a conscious legislative choice. The Legislature authorized recovery of reasonable pilot costs to ensure feasibility but simultaneously imposed explicit

limitations to prevent pilots from becoming a backdoor mechanism for utility growth or earnings. Among those limitations are caps on the number of pilots, caps on customer participation, consent requirements, and the prohibition on earnings for BTM costs.

Allowing utilities to earn on BTM costs would distort pilot design incentives. Rather than prioritizing pilots that minimize total system costs and maximize avoided infrastructure, utilities would have a financial incentive to favor pilots with higher customer-sited spending. That outcome is directly contrary to the statutory purpose of testing cost-effective non-pipeline alternatives.

C. Regulatory Asset Treatment Is Not an Accounting Neutrality

Several parties characterize regulatory asset treatment as a benign or technical accounting choice. Commission precedent does not support that framing. Regulatory assets represent an extraordinary departure from standard ratemaking, permitted only where there is clear legal authority and a demonstrated ratepayer benefit. Several parties propose that behind-the-meter electrification costs associated with SB 1221 pilots be treated as regulatory assets earning a rate of return. Sierra Club and NRDC propose that BTM investments be treated as regulatory assets with a ten-year cost recovery period and afforded the gas corporation's authorized rate of return.⁵ PG&E similarly proposes recovery of BTM costs as regulatory assets earning the authorized rate of return, asserting that expensing such costs would limit the number of viable pilots.⁶

These proposals conflict directly with the statute. Public Utilities Code Section 663(b)(8) prohibits gas corporations from earning a return on BTM electrification investments associated with SB 1221 pilots. The statute draws a clear distinction between utility-side infrastructure and customer-sited investments. BTM electrification measures do not constitute utility plant, do not

⁵ Opening Comments of Sierra Club and NRDC, pp. 2–3.

⁶ Opening Comments of PG&E, pp. 3–4.

provide utility service, and do not meet the criteria for capital treatment under Commission precedent. Allowing a rate of return on BTM costs would nullify the express statutory limitation and result in additional return costs included in rates even if the utility BTM spending proves unsound for policy or economic reasons. .

TURN's Opening Comments explained that utilities may recover reasonable, incremental BTM pilot costs, but only on an expense basis without capitalization or return. No party identifies statutory language permitting a contrary result. Assertions that expensing BTM costs would reduce pilot participation or feasibility are policy arguments that cannot override explicit legislative direction. The Commission lacks authority to authorize earnings where the Legislature has expressly prohibited them.

When the Commission authorizes a regulatory asset earning a return, it provides an opportunity for cost recovery plus earnings regardless of future system need, customer participation outcomes, or pilot success. That opportunity is precisely what the Legislature sought to avoid for BTM investments under SB 1221. Pilot projects are experimental by design. They are intended to generate information, not to create new categories of utility earnings opportunity.

Moreover, the Commission has consistently required that expenditures earning a return be used and useful to the provision of utility service. BTM electrification measures fail that test. They are installed on customer property, owned by customers, operated for customer benefit, and not controlled or dispatched by the utility. They do not provide gas or electric distribution service and do not function as utility plant. The MHP rulemaking was a special circumstance that is not instructive here and should not be used as an example to undermine the principle of "used and useful" and ignore the unambiguous statutory prohibition.

D. Risk Allocation and Shareholder Incentives

Traditional ratemaking principles allocate risk between shareholders and ratepayers based on control and benefit. Utilities earn a return on investments they control and that provide ongoing service to customers. Customers bear the cost of those investments because they receive the service.

BTM electrification investments invert that relationship. Utilities do not control the assets, do not operate them, and do not bear performance risk once installed. Customers control usage decisions, maintenance, and replacement. Allowing utilities to earn a return on such investments would risk adding additional costs for ratepayers while preserving upside for shareholders. SB 1221 expressly rejects that allocation.

Arguments that expensing BTM costs would limit pilot participation implicitly assume that shareholders should be insulated from any risk the implementation of the pilot programs may create and therefore earn a full return on their investment. The Legislature made the opposite choice. SB 1221 permits recovery of reasonable costs to avoid chilling participation, but it does not permit utilities to earn on customer equipment as compensation for program administration.

E. Rebuttal of Pilot Feasibility and Scalability Claims

PG&E and others argue that without earnings on BTM costs, few pilots will be viable. This argument is unsupported and legally irrelevant. Many Commission programs involve expense recovery without earnings, including incentives, rebates, and customer-side programs administered by utilities. Those programs have been successful because cost recovery, not earnings, is sufficient to support utility administration, particularly where the utility purports to be supportive of the underlying state policy.

More importantly, feasibility concerns cannot override statutory limits. The Commission's role is to implement SB 1221 as written, not to redesign it based on utility preference. If the statutory framework proves insufficient to support widespread pilots, the appropriate remedy lies with the Legislature, not through administrative reinterpretation.

F. Distinguishing Prior Commission Decisions

Reliance on the Mobile Home Park Proceeding as precedent for utility treatment of BTM investments is misplaced.⁷ The case did not involve an express statutory prohibition on earning a rate of return. Accordingly, the Commission exercised discretion in the absence of legislative direction. SB 1221 presents the opposite circumstance. Here, the Legislature has spoken directly and imposed a clear limitation on earnings for BTM electrification investments.⁸ Commission discretion exists only where the statute is silent.

Second, BTM electrification measures under SB 1221 are customer-owned, customer-controlled, and do not provide gas or electric distribution service. They therefore do not qualify as utility plant or as functional equivalents to utility-side infrastructure.

Finally, extending the mobile home park example to SB 1221 would allow utilities to earn returns on customer equipment installed for policy purposes, expand the utility earnings base without corresponding service obligations and weaken the pilot program's function as a neutral test of alternatives to gas infrastructure replacement, a result directly at odds with the statutory design.⁹

IV. COST-EFFECTIVENESS

⁷ Opening Comments of PG&E, pp. 3–4.

⁸ Pub. Util. Code § 663(b)(8).

⁹ Pub. Util. Code § 663(b)(1), (b)(2).

TURN has nothing to add to its Opening Comments on cost-effectiveness. TURN reiterates that cost-effectiveness must be assessed using project-specific avoided cost estimates and a PVRR framework comparing zero-emission alternatives to avoided gas infrastructure costs.

V. CONCLUSION

TURN respectfully requests that the Commission reject proposals to treat behind-the-meter SB 1221 pilot costs as regulatory assets earning a rate of return. The statute does not permit such treatment and adopting it would undermine legislative intent and ratepayer protections. In all other respects, TURN's Opening Comments remain sufficient, and TURN has no additional reply.

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