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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U338E) for Approval of Energy Efficiency Rolling Portfolio Business Plan.	Application 17-01-013 (Filed January 17, 2017)
And Related Matters.	Application 17-01-014 Application 17-01-015 Application 17-01-016 Application 17-01-017

APPLICATION OF THE OFFICE OF RATEPAYER ADVOCATES FOR REHEARING OF DECISION 18-05-041

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I. INTRODUCTION

Pursuant to Rule 16.1 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure (Rules) and California Public Utilities Code Section 1731(b), the Office of Ratepayer Advocates (ORA) submits this Application for Rehearing of Decision (D.) 18-05-041, "Decision Addressing Energy Efficiency Business Plans", (Decision). The Decision approves the energy efficiency (EE) business plans of eight Program Administrators (PAs) with specified modifications. It also sets a cost-effectiveness threshold for the EE portfolios of the Investor-Owned Utilities (IOUs) and Marin Clean Energy (MCE). This application for rehearing is timely filed within 30 days of the Decision's issuance on June 5, 2018.

As discussed below, the Decision commits legal error because it violates the California Public Utilities Code, is incompatible with the evidentiary record, and violates the Commission's own procedural rules with regard to confidentiality. The Commission's threshold for approval of Annual Budget Advice Letters (ABALs) from the IOUs and MCE for program years 2019 through 2022 will result in the approval of EE portfolios that are not cost-effective. This violates the Commission's obligation to ensure that rates are just and reasonable. Furthermore, three rulings contain errors of law and contradict Commission decisions, directives, and policy.

The Commission should grant rehearing and modify the Decision to:

- Require the IOUs and MCE to achieve a portfolio-level Total Resource Cost (TRC) ratio of 1.25 on a forecast basis and 1.0 on an evaluated basis for 2019 to 2025.
- Change the threshold for approval of Annual Budget Advice Letters (ABALs), requiring a forecast TRC ratio of at least 1.25 for the IOUs' and MCE' ABALs for 2019 through 2025.
- Vacate the Administrative Law Judge's (ALJ) February 27, 2018 Ruling, April 9, 2018 Ruling, and June 14, 2018 Ruling;
- Affirm that the discovery schedule does not impact ORA's discovery rights;
- The record was not deemed submitted formally on October 13. 2017, thereby excluding additionally material and/or arguments;

- Public Utilities Code Section 583 does not apply to the substantive determination of whether material is confidential;
- Confidentiality is within scope; and
- ORA appropriately submitted the December 13, 2017 "Motion of the Office of Ratepayer Advocates to Deem as Public the Materials that Southern California Gas Company Improperly Marked as Confidential or Redacted; to Expedite a Ruling on This Motion, and to Impose Sanctions" pursuant to Rule 11.1.

ORA's proposed modifications are attached as Appendix A.

II. BACKGROUND AND PROCEDURAL HISTORY

In January 2017, Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), Southern California Edison Company (SCE), the Southern California Gas Company (SoCalGas), San Francisco Bay Area Regional Energy Network, Southern California Regional Energy Network, Tri-County Regional Energy Network, and Marin Clean Energy (MCE) filed applications for approval of their EE business plans for 2018 through 2025. The Commission consolidated these applications as Application (A.) 17-01-013 *et al.*

On April 14, 2017, the Assigned Commissioner issued a Scoping Memorandum and Ruling (Scoping Memo) for the proceeding. The Scoping Memo deemed that the appropriate cost-effectiveness threshold for EE portfolios was within the scope of the proceeding, but policy issues related to cost-effectiveness were not.[1]

Instead of testimony, evidentiary hearings, and briefs, the July 25, 2017 "Administrative Law Judge's Ruling Denying Motions for Evidentiary Hearings and Testimony, But Providing for Briefs" and the August 4, 2017 "Administrative Law Judge's Ruling Clarifying July 25, 2017 Ruling and Denying, in Part, Pacific Gas and Electric Company's Motion to Amend its Application" directed the parties to file final opening comments and reply comments with supporting materials, on September 25,

[1] Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judges (Scoping Memo), April 14, 2017, p. 5.

2017 and October 13, 2017 respectively. ORA timely filed final opening and reply comments.

On September 1, 2017, the PAs submitted Annual Budget Advice Letters (ABALs) requesting energy efficiency program funding. ORA served a protest of the ABALs on September 21, 2017. An ALJ ruling on February 8, 2018 consolidated the ABALs (as well as all supporting materials, protests, and replies) into A.17-01-013 *et al*.[2]

On December 13, 2017, ORA filed the "Motion of the Office of Ratepayer Advocates to Deem as Public the Materials that Southern California Gas Company Improperly Marked as Confidential or Redacted; To Expedite a Ruling on this Motion, and to Impose Sanctions" (ORA's Motion). ORA filed public and confidential versions of the document and requested the confidential version be filed under seal. On December 28, 2017, SoCalGas responded to ORA's Motion. On January 2, 2018, ORA requested leave to file a reply on January 12, 2018 and on January 3, 2018, ALJ Julie Fitch granted ORA's request.[3]

On February 23, 2018, ORA emailed to the ALJs, copying the service list, asking when a ruling on its December 13, 2017 motion could be expected. By email dated February 27, 2018, ALJ Kao denied the request to file ORA's December 13, 2017 Motion under seal, but not the underlying motion. Consequently, the February 27, 2018 ruling did not resolve the substantive issues regarding the propriety of SoCalGas' confidentiality claims, attorney client privilege claims, or ORA's request for sanctions. On March 15, 2018, ORA requested reconsideration of the February 27, 2018 Ruling. On April 9, 2018, ALJ Kao denied ORA's motion for reconsideration.

By email dated May 14, 2018, ALJ Kao issued a ruling directing ORA to resubmit its December 13, 2017 Motion.[4] ORA resubmitted its Motion on May 17, 2018.

[2] Ruling Consolidating 2018 Budget Advice Letters with Application 17-01-013 *et al* (Ruling Consolidating ABALs), February 8, 2018.

[3] Due to unforeseen circumstances, ORA could not file on January 12, 2018. Instead, on January 16, 2017, ORA filed public and confidential versions of a reply, again requesting that the confidential version be filed under seal. On the same day, ORA also filed a motion to accept late filed reply.

[4] Administrative Law Judge May 14, 2018 email ruling stated "By motion dated December 13, 2017, the Office of Ratepayer Advocates (ORA) sought leave to file under seal its motion to deem certain

However, as of the date of this Application for Rehearing, the following documents associated with ORA's Motion have been rejected:

- December 28, 2017 SoCalGas Response,
- January 16, 21018 Reply of ORA to SoCalGas' Response,
- January 16, 2018 ORA's motion to file the reply under seal, and
- January 16, 2018 ORA's motion to accept late filed reply.

On June 14, 2018, ALJ Kao issued a ruling granting the motion to file under seal and otherwise denying ORA's Motion.[5]

III. DISCUSSION

A. The Decision commits legal error by approving energy efficiency portfolios that cannot reasonably be expected to be cost-effective.

The Decision violates California Public Utilities (PU) Code Section 451, which requires that "[a]ll charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful."[6] The Decision also violates PU Code Section 381, which requires the Commission to "allocate funds collected" from Public Purpose Charges to "cost-effective energy efficiency and conservation activities."[7]

1. Approving energy efficiency portfolios based on marginally cost-effective forecasts risks burdening ratepayers.

The Commission has long recognized the risk that cost-effectiveness forecasts for EE portfolios will turn out to be excessively optimistic. For this reason, the Commission

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information as public. However, the docket card does not reflect that ORA's underlying motion was accepted for filing. In order to have a complete record, ORA is directed to resubmit the public and confidential versions of its motion to deem certain information as public, no later than ten days after the date of this email ruling (May 14, 2018)."

[5] Administrative Law Judge Ruling, June 14, 2018, pp. 1 - 2.

[6] Public Utilities Code § 451.

[7] Public Utilities Code § 381(b).

recognized, in D.09-09-047[8] and D.12-11-015, the need to set a more aggressive cost-effectiveness target "to ensure that the implemented portfolios are cost effective in reality."[9]

For instance, D.09-09-047 set a target TRC ratio of 1.5 and concluded that "the adopted portfolios must include a margin of safety so that the cost-effectiveness ratios using the TRC method are above 1.0 in order to meet the statutory obligation."[10] In D.09-09-047 the Commission further stated:

> The proposed utility budgets result in unacceptably low Total Resource Cost (TRC) ratios for the 2010-2012 portfolios, in the range (as adjusted) of 1.15 to 1.25. In order to mitigate the risk of non-cost effective portfolios, we performed specified budget reductions in order to approach an overall budget TRC ratio of 1.5.[11]

The Commission followed the same logic in D.12-11-015 where it required each utility's EE portfolio "to have a TRC ratio of at least 1.25," independent of spillover effects, codes and standards activities, and the programs of non-utility PAs.[12] D.12-11-015 found that:

> All of the utility, MEA, and REN cost-effectiveness calculations are on a forecast basis, not based on actual programs delivered. Therefore there is a risk that the portfolios may not deliver the savings anticipated."[13]

D.14-10-046, which approved EE budgets for 2015 and established savings goals, waived the margin of safety and set the TRC ratio at 1.0 for 2015. However, the Commission specifically limited this change to a single year in order to reduce turmoil

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[8] D.09-09-047, p. 64, pp. 68-71, and Conclusions of Law 1-2.

[9] D.12-11-015, p. 99.

[10] D.09-09-047, p. 64 and Conclusion of Law 2.

[11] D.09-09-047, p. 64.

[12] D.12-11-015, p. 100.

[13] D.12-11-015, Finding of Fact 47.

while utilities adjusted to substantial policy changes. That decision states that, "We expect the TRC and PAC values to be at or above 1.25 in subsequent years."[14]

Thus, the Commission has recognized that cost effectiveness forecasts are often overly optimistic and that approving energy efficiency portfolios based on marginally cost-effective forecasts risks burdening ratepayers.

2. Cost-effectiveness forecasts substantially exceed reported and evaluated results.

The Commission's longstanding concern about overly optimistic cost-effectiveness projections is well founded. Recent EE portfolio performance shows a clear pattern of forecasted TRC ratios of EE portfolios exceeding the actual, evaluated cost-effectiveness of the portfolio. Similarly, the record in this proceeding shows that EE portfolios with a forecast TRC ratio close to 1.0 will have a TRC ratio below 1.0 when implemented and later evaluated. ORA submitted evidence showing that cost-effectiveness ratios decline from the *ex ante* forecasts to the reported results.[15] Indeed, in 2016, all four utilities reported results that were significantly worse than their forecasts. In particular, SCE forecasted a TRC ratio of 1.26 for its EE portfolio and reported a ratio of 1.00. Also in 2016, SoCalGas forecast a TRC ratio of 1.27 and reported a ratio of 0.74, while PG&E and SDG&E both reported ratios below 1.0, as well.[16] Ultimately, the entire statewide EE portfolio was not cost effective in 2016,[17] despite using a more

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[14] D.14-10-046, pp. 109-110.

[15] Ruling Consolidating ABALs, pp. 51-55, "The Office of Ratepayer Advocates' Protest to Pacific Gas & Electric Company Advice 3881-G/5137-E, Southern California Edison Company Advice 3654-E, Southern California Gas Company's Advice 5183-G, San Diego Gas & Electric Advice 3111-E/2607-G, and Marin Clean Energy Advice 25-E (September 1, 2017 – Energy Efficiency Annual Budget Advice Letters)" (ORA Protest of PAs' 2018 ABALs), September 21, 2017, pp. 3-4.

See also: Final Comments of the Office of Ratepayer Advocates on Energy Efficiency Program Administrators' Business Plan Applications (ORA Final Comments), September 25, 2017, pp. 3-5.

[16] Ruling Consolidating ABALs, pp. 51-55, ORA Protest of PAs' 2018 ABALs, p. 3.

See also: Final Comments of the Office of Ratepayer Advocates on Energy Efficiency Program Administrators' Business Plan Applications (ORA Final Comments), September 25, 2017, pp. 3-5.

[17] Ruling Consolidating ABALs, pp. 51-55, ORA Protest of PAs' 2018 ABALs, p. 3.

favorable (and now outdated) calculation of costs and benefits.[18] Thus it is reasonable to expect TRC ratios to decline 20 to 40 percent from the forecast to the reported results.

The reality is likely to be even worse than the evidence suggests. The evidence ORA provided compares forecasts with reported (or claimed) results. Subsequent to program implementation, Energy Division conducts evaluations of ratepayer-funded EE programs in order to determine the actual impacts of EE portfolios. Energy Division's evaluations typically show an additional reduction in savings from what the PAs report.[19] Thus, the TRC ratio for a portfolio can be expected to decline twice: first from the *ex ante* forecast to the reported outcome, and then from the reported to the evaluated outcomes.[20]

3. Nothing in the record shows that the utilities can deliver energy efficiency portfolios that meet or exceed their cost-effectiveness forecasts.

The only party to dispute the evidence ORA provided showing that IOU forecasted savings substantially exceed actual performance was SCE. SCE asserted that ORA's comparison of SCE's 2016 forecast and reported (claimed) TRC ratios was inaccurate,[21] but provided no evidence to support its assertion. SCE did not provide forecast and reported TRC ratios that it believes would be more accurate than ORA's data.

While SCE asserts that ORA's comparison of forecast and reported TRC ratios is inaccurate, it does not say by how much.[22] SCE's assertion does nothing to cast doubt on

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[18] Reply Comments of the Office of Ratepayer Advocates on Energy Efficiency Program Administrators' Business Plan Applications, October 13, 2017, p. 3.

[19] ORA Final Comments, p. 4.

[20] Ruling Consolidating ABALs, pp. 51-55, ORA Protest of PAs' 2018 ABALs, pp. 3-4.

[21] Ruling Consolidating ABALs, pp. 299-307, "Reply of Southern California Edison to Various Parties' Protests of Advice Letter 3654-E," September 28, 2017, p. 5.

[22] SCE offered a muddled and unhelpful response, and provided no clear evidence to challenge ORA's evidence. SCE's comments are confusing because SCE asserts that the *claimed* TRC in ORA's evidence "was calculated for resource programs only, (rather than for resource and non-resource programs together)." If this is true, the problem is even worse than ORA has presented. Including non-resource programs in the TRC calculation invariably lowers the ratio.

the key fact that ORA presented: TRC ratios decline from the forecast to reported values. SCE does not even bother to contest this claim.

No party offered evidence showing that the utilities can deliver an energy efficiency portfolio that meets or exceeds their cost-effectiveness forecasts. No utility showed evidence that, in recent years, their portfolio TRC ratios have *risen* from forecasts to reported or evaluated results. The utilities' failure to present such evidence further supports the conclusion that approval of EE portfolios on a forecast basis that do not include a 1.25 TRC hedge will result in implemented EE portfolios that are not cost-effective.

The PAs also have not shown any plan to avoid a decline from prospective to reported cost-effectiveness. Therefore, there is no reason to expect that the PAs will eliminate the discrepancy between forecasts and results in the future.

4. The Decision ignores the evidentiary record in this proceeding.

The record evidence in this proceeding documents the repeated failure of the IOUs to implement cost-effective portfolios. Nonetheless, the Decision directed Energy Division to approve ABAL filings for program years 2019 through 2022 as long as the TRC ratio exceeds 1.0.

The language of the Decision makes staff approval of ABALs obligatory, not discretionary: "If a PA's ABAL submitted for program year 2019 … through program year 2022 … meets the ABAL review criteria, staff will approve that PA's ABAL."[23] The approval criteria stipulate that the "forecasted TRC must meet or exceed 1.25 in the ABAL, except during program years 2019 – 2022, when the forecasted TRC must meet or exceed 1.0," and that the PAs must meet their energy savings goals and remain within budget.[24]

The Commission commits a legal error by directing Energy Division to approve EE portfolios that are highly unlikely to be cost-effective. The Decision's own findings

[23] D.18-05-041, pp. 134-135 and Ordering Paragraph 49.

[24] D.18-05-041, p. 133.

of fact indicate that cost-effectiveness forecasts are overly optimistic[25] and the Decision implements a margin of safety by requiring a 1.25 TRC forecast beginning in program year 2023.[26] By failing to implement a "margin of safety" for the cost-effectiveness threshold to ensure that EE programs are cost-effective when implemented and evaluated, the Commission has neglected its statutory obligation to allocate ratepayer funds only to cost-effective energy efficiency programs. The Commission has disregarded clear and undisputed evidence that EE portfolios with a forecast TRC ratio close to 1.0 will have a TRC ratio below 1.0 when evaluated.

Contrary to PU Code Section 381, this Decision sets a cost-effectiveness threshold that will result in the approval of cost-ineffective energy efficiency portfolios through 2022.[27] Customers will then be forced to bear the cost of programs which the Commission cannot reasonably expect to produce net benefits. Adding these costs to rates, through the Public Purpose Charges, results in rates that are not just and reasonable, in violation PU Code Section 451.

B. Authorizing cost-ineffective EE portfolios unduly burdens ratepayers.

The Decision authorizes $962 million annually for eight years for ratepayer-funded EE programs.[28] The purpose of the energy efficiency portfolio is to produce energy savings, which have economic value. Saving energy allows ratepayers to avoid the costs of constructing and operating generation plants, procuring natural gas, constructing and maintaining transmission and distribution infrastructure, and complying with state policies to mitigate climate change. Avoiding these costs allow utilities to keep rates lower. If the EE portfolios are not cost-effective, the costs of energy-saving investments exceed the system-wide benefits, saddling individual customers with

[25] D.18-05-041, Finding of Fact 43: "We remain concerned about the gap between ex ante, or forecast, cost-effectiveness estimates and evaluated results."

[26] D.18-05-041, Conclusion of Law 36.

[27] D.18-05-041, p. 133, Conclusion of Law 36 and Ordering Paragraph 49.

[28] D.14-10-046, Figure 7, p. 108. Utility EE budget levels were set by D.14-10-046. Per Ordering Paragraph 21 of D. 14-10-046, the budget level for 2015 applies through 2025.

investments that do not pay off and ratepayers with inflated rates. Since the EE portfolios are large, the potential burden on ratepayers is heavy.

SCE has stated that, if it were required to achieve a threshold TRC ratio of 1.25, it would eliminate programs that are not cost-effective, saving ratepayers $138 million annually.[29] PG&E has stated that it would need to eliminate resource programs with a TRC ratio lower than 0.55. This would save ratepayers $97 million annually.[30] PG&E's description of alternative scenarios to raise the TRC ratio of the portfolio clearly highlights that a threshold of 1.0 allows utilities to burden ratepayers with wasteful programs whose costs are far greater than their benefits.

C. The decision errs by failing to implement a margin of safety on cost-effectiveness until 2023.

The Decision errs by failing to meet Commission standards for approving cost-effective energy efficiency. The Decision directs approval of ABALs based on a TRC threshold of 1.0 through 2022. This is at odds with the findings of fact and conclusions of law in the Decision. As set forth more fully below, the Decision recognizes the need for a margin of safety on the cost-effectiveness threshold, yet leaves the threshold at 1.0 for the current year and the next four years, and does not implement a binding margin of safety until program year 2023.

1. The Decision adopts, but fails to fully apply the cost-effectiveness standard from Decision 12-11-015.

The Decision states that "the Commission's current cost-effectiveness standard for the IOUs is reflected in D.12-11-015."[31] In describing D.12-11-015 as the "current" standard, the Decision affirms the Commission's precedent in D.12-11-015. However,

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[29] SCE Opening Comments to the Proposed Decision Addressing Energy Efficiency Business Plans, April 24, 2018, pp. 4-5.

[30] Ruling Consolidating ABALs, pp. 150-167, "PG&E Advice 3881-G-A/5137-E-A: Supplemental 2018 Energy Efficiency Annual Budget Advice Letter in Compliance with Decision 15-10-028, Ordering Paragraph 4," November 22, 2017, p. 7.

See also: Ruling Consolidating ABALs, pp. 144-147, "PG&E's Reply to the Protest of Advice Letter 3881-G/5137-E," September 28, 2017, p. 2.

[31] D.18-05-041, p. 53.

D.12-11-015 specifically required all utility portfolios to meet a forecast TRC ratio of at least 1.25. D.12-11-015 cited a need for "hedges against uncertainties in the other components of the portfolios to ensure that the implemented portfolios are cost effective in reality."[32] The Decision also specifically cites D.12-11-015's TRC threshold of 1.25 and states that it "does not modify these requirements."[33] Thus, despite citing D.12-11-015 as establishing the "current cost-effectiveness standard," of a TRC ratio of at least 1.25, the Decision does not apply this standard to program years 2019 through 2022.

2. The Decision changes a major element of the Proposed Decision in an arbitrary and capricious manner.

The PD of April 4, 2018 established a cost-effectiveness threshold that was supported by the evidence in the proceeding. The PD required the utilities to submit ABALs that included forecast "portfolio TRCs that exceed 1.25."[34] This threshold was supported by the evidentiary record described above. It was also consistent with the reasoning in the PD. The PD recognized need for a margin of safety on cost effectiveness,[35] because "we remain concerned about the gap between *ex ante* forecasts and evaluated results, as we previously acknowledged in D.15-10-028."[36] The PD noted uncertainty about portfolio budgets[37] and the ability of PAs to deliver EE portfolios that meet their forecasts.[38] The PD found that there is "a high degree of uncertainty" about whether portfolios with a forecast TRC close to 1.0 would perform cost-effectively, similar to the situation that led the Commission to require an *ex ante* TRC ratio of 1.25 in previous decisions.[39]

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[32] D.12-11-015, p. 99.

[33] D.18-05-041, Finding of Fact 19.

[34] Proposed Decision (PD) of ALJs Fitch and KAO, April 4, 2018, p. 129, Conclusion of Law 35, Ordering Paragraph 47, and Ordering Paragraph 49.

[35] PD, Findings of Fact 19-20.

[36] PD, p. 70.

[37] PD, Findings of Fact 34-35.

[38] PD, p. 133, Conclusion of Law 73, and Finding of Fact 41.

[39] PD, p. 68.

Recognizing these risks, the PD adopted the logic and cost-effectiveness threshold from D.12-11-015,[40] which set "a higher TRC threshold, of 1.25, as a hedge against uncertainty that portfolio TRCs would not meet or exceed 1.0 on an evaluated basis."[41]

The PD also adopted a reasonable process for addressing proposed portfolios with a forecast TRC between 1.0 and 1.25 during the "ramp years" (which the PD defined as program years 2018 through 2020). The PD established a "probationary process," in which a PA whose portfolio forecast TRC is between 1.0 and 1.25 would be required to consult with stakeholders, propose portfolio improvements, and make a compelling case that its portfolio would be cost-effective when implemented and evaluated, even though the portfolio was only marginally cost-effective on a forecast basis.[42] In the probationary process, the Commission would then review the evidence and arguments and decide, via resolution, whether to approve the portfolio. The PD also envisioned "effective penalties" in case a PA's portfolio failed to perform despite the scrutiny and improvements imposed in the probationary process.[43] This process complied with PU Code Section 381 by managing the risk of poor performance and required the Commission to affirmatively decide whether the proposed spending is likely to be cost-effective despite the absence of the full cost-effectiveness hedge.

By changing the cost-effectiveness threshold for program years 2019 through 2022, the Decision reversed a major element of the PD, without significantly changing the reasoning or findings of fact. In response to comments on the PD, the Decision asserts that:

> We anticipate third party implementers will deliver savings more cost-efficiently than has been the case with PA-administered programs; similarly, their evaluated savings should also be closer to

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[40] PD, Finding of Fact 18.

[41] PD, Finding of Fact 19.

[42] PD, pp. 131-133, Conclusions of Law 36 and 71-72, and Ordering Paragraphs 49-50.

[43] PD, Conclusion of Law 73.

> forecast estimates than has been the case with the current portfolios.[44]

Yet the Decision cites no evidence to support these speculations, and acknowledges that these assertions will be impossible to verify until the Commission evaluates portfolios that comprise a large fraction of third-party programs, several years from now.

As they are unsupported by, and indeed contrary to, the proceeding record, these changes to the PD are arbitrary and capricious. The Commission is obliged to rely on the record of evidence in the proceeding and to give reasons that support its decisions. In this instance, the evidence and the reasoning of the Decision support one outcome, while the Decision orders a different outcome.

3. The Decision finds it necessary to impose an additional process for portfolios with a TRC close to 1.0 but does not require steps that would ensure cost-effective performance.

The Decision states that "we find it reasonable and necessary to require an additional process for PAs that propose a portfolio forecast TRC that exceeds 1.0 but does not meet or exceed 1.25."[45] Unfortunately, this additional process does not include any binding steps to ensure that the portfolios will achieve a ratio of 1.0 on an evaluated basis.[46] The additional process calls for a workshop, feedback from stakeholders, a plan for meeting the 1.0 threshold, and consultation with the Procurement Review Group. It neither requires the utilities to eliminate wasteful programs, requires them to file a revised business plan, nor applies penalties for failure.

The Decision raises the possibility of requiring the utilities to file a new business plan or applying undefined "additional repercussions." However, these eventualities would not occur unless and until evaluation results for 2019 show the portfolio TRC below 1.0.[47] EE impact evaluations often take two or three years to complete after

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[44] D.18-05-041, p. 147.

[45] D.18-05-041, p. 131.

[46] D.18-05-041, pp. 135-137 and Conclusion of Law 74.

[47] D.18-05-041, pp. 135-136.

program implementation, so evaluated results for 2019 will not be available until sometime in 2022 at the earliest, as the Decision acknowledges.[48] By that time, the utilities will already have filed their last ABALs of the "ramp years," rendering irrelevant the question of whether a forecast TRC of 1.0 is adequate.

4. The Decision designates "ramp years" for utilities to improve cost-effectiveness but takes no steps to ensure improvement or accountability during the ramp years.

The Decision refers to program years 2019 through 2022 as "ramp years,"[49] yet does not translate this concept into reality. The Decision states, "We consider the first few years of this business plan period (2018-2022) as ramp years in the context of third party solicitations, setting up the statewide administration framework, and affording the PAs an opportunity to improve portfolio cost-effectiveness."[50]

However, the Decision requires no improvement until 2023. Rather than moving the PAs steadily towards compliance with the Commission's stated policies, the Decision allows the PAs to continue implementing cost-ineffective EE portfolios, without accountability, for the next four and a half years.

5. The Decision fails to apply the standard of reasonableness it adopts.

The Decision commits legal error by failing to apply the standard of reasonableness it adopts. The Decision adopts the cost-effectiveness standards from D.12-11-015[51] and acknowledges that a forecast TRC ratio below 1.25 risks burdening ratepayers with energy efficiency portfolios that are not cost-effective when implemented. The findings of fact and conclusions of law show that it is not reasonable to approve energy efficiency portfolios with a TRC ratio below 1.25.[52] Given these

[48] D.18-05-041, p. 147.

[49] D.18-05-041, Conclusions of Law 36-37.

[50] D.18-05-041, p. 130.

[51] D.18-05-041, Finding of Fact 19.

[52] D.18-05-041, Findings of Fact 19-21, 24-26, 33-35, and Conclusions of Law 37 and 75.

findings, the Decision's direction to Energy Division to approve funding for portfolios that do not meet the 1.25 TRC threshold is unsupported by the Decision's own reasoning.

The Commission should grant this Application for Rehearing and the Decision should be revised to:

- Require the IOUs and MCE to achieve a portfolio-level TRC ratio of at least 1.25 on a forecast basis and 1.0 on an evaluated basis for 2019 to 2025.

- Change the approval criteria for the ABALs of the IOU PAs and MCE to require ABALs to show a forecast TRC ratio of at least 1.25.

If the utilities file advice letters that do not meet the threshold, the Commission should reject the advice letters and require utilities to submit a supplemental ABAL that meets the 1.25 TRC standard or file a new business plan application in accordance with the trigger criteria approved in D.15-10-028.[53]

In the alternative, the Commission should revise the Decision to adopt the probationary process for the ramp years that was included in the original PD issued on April 4, 2018. That process would require the utilities to clearly explain why portfolios with TRCs between 1.0 and 1.25 would still result in evaluated results greater than 1.0 and receive stakeholder input via a workshop and comments. Energy Division would prepare a draft resolution and the Commission would ultimately decide whether or not to approve the portfolio based on a specific determination of whether the proposed portfolio would be likely to meet a TRC of 1.0 on an evaluated basis. Such a process would be consistent with the findings of fact and conclusions of law cited above because it would permit the Commission to make a reasoned determination based on specific evidence that a particular portfolio would likely be cost-effective even though it does not meet the Commission's general 1.25 TRC forecast standard.

[53] D.15-10-028, p. 46 and pp. 56-57.

D. The Decision errs by failing to vacate various rulings that are based on errors of law.

The Decision commits legal error by failing to vacate rulings that are based on erroneous interpretations of law. The Commission should grant rehearing and modify the Decision to vacate the ALJ's February 27, 2018 Ruling, April 9, 2018 Ruling, and June 14, 2018 Ruling on ORA's Motion.[54]

ORA's Motion requested the enforcement of requirements related to confidentiality designations and legal requirements substantiating claims of attorney client privilege.[55] Specifically, ORA's Motion requested a ruling on whether SoCalGas can limit disclosure of relevant material to the public and Commission staff by marking the material confidential and redacting sections without specific, legitimate, and applicable legal justifications.[56] ORA's Motion showed that SoCalGas provided inadequate justification for its claims of confidentiality,[57] detailed how SoCalGas offered only broad and generic justifications for its confidentiality claims, and in general described conduct on the part of SoCalGas that is precisely contrary to Commission rules designed "to increase public access to records furnished to the Commission by entities we regulate, while ensuring that information truly deserving of confidential treatment retains that protection."[58] Rather than rule on the substantive issues raised in ORA's Motion and enforce the Commission's confidentiality requirements, ORA's Motion was rejected by a series of legally flawed procedural rulings. As shown in the sections that follow, these rulings were based on errors of law and denied ORA due process.

ORA addressed the February 27, 2018 Ruling and the April 9, 2018 Ruling in ORA's opening comments on the PD, urging the Commission to address the legal

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[54] "Motion of the Office of Ratepayer Advocates to Deem as Public the Materials that Southern California Gas Company Improperly Marked as Confidential or Redacted; to Expedite a Ruling on This Motion, and to Impose Sanctions", filed Dec. 13, 2017 (ORA's Motion).

[55] *See generally* ORA Motion; *See* D.16-08-024 at p.2, COLs 1 and 2, and OP 1.

[56] ORA Motion, pp. 6 – 12.

[57] *Id.*

[58] Order Instituting Rulemaking to Improve Public Access to Public Records Pursuant to the California Public Records Act at p. 1, Nov. 14, 2014.

errors.[59] The Decision commits legal error by adopting rulings based on erroneous legal findings. Rehearing should be granted to vacate the following three erroneous rulings:

1. The February 27, 2018 Ruling which denied ORA's request to file the ORA Motion under seal without addressing the underlying substantive motion and erred by:
   - Suggesting that the discovery cutoff date in the schedule for the above referenced proceedings limits ORA's broad discovery and investigatory rights; and
   - Stating that record can be deemed submitted based submission of final opening and reply comments even where there is neither a date specified or notice given.
2. The April 9, 2018 Ruling which denied reconsideration of the February 27, 2018 Ruling and erred by:
   - Stating Public Utilities Code Section 583 applies to the substantive determination of whether material is confidential;
   - Stating that the question of whether information is inappropriately marked confidential is outside the scope of the proceedings; and
   - Stating that a Public Records Act request is the appropriate vehicle to address ORA's request to deem public SoCalGas material.
3. The June 14, 2018 Ruling which reversed the February 27, 2018 Ruling, explaining that the February 27, 2018 Ruling was meant to deny ORA's Motion and ORA's request "to deem certain information as public"[60] and erred
   - Suggesting again that the discovery cutoff date in the schedule for the above referenced proceedings limits ORA's broad discovery and investigatory rights; and

[59] Comments of the Office of Ratepayer Advocates on the Proposed Decision Addressing Energy Efficiency Business Plans, April 24, 2018, pp. 12-15. ORA did not have the opportunity to comment on the June 14, 2018 Ruling as it was issued after the Commission voted out the Decision at the May 31, 2018 business meeting.

[60] Administrative Law Judge's Ruling Reversing Denial of Motion to File Under Seal and Denying Motion to Deem as Public, June 14, 2018, p. 1.

- Stating again that record can be deemed submitted based submission of final opening and reply comments even where there is neither a date specified or notice given.[61]

1. The discovery schedule does not limit ORA's discovery rights.

The February 27, 2018 Ruling asserts that all parties were supposed to complete discovery requests by August 10, 2017, the proceedings "set a date certain for service and tendering of final opening (September 25, 2017) and reply (October 13, 2017) comments" and "no provisions were made to accept additional information …."[62] The Ruling concludes there is no reason why the information submitted in ORA's Motion should be accepted and denies ORA's Motion to file under seal.[63] Rather than addressing the legal error of finding that the discovery schedule limits ORA's discovery rights, the June 14, 2018 Ruling again denies the request in ORA's Motion to deem certain information as public on claims that, "[t]he record was submitted on October 13, 2017, and discovery ended on August 10, 2017."[64]

The two rulings err in two ways. First, the rulings imply that the discovery cutoff date also limits ORA's discovery rights. In fact, ORA has broad discovery and investigatory powers and is not limited by the discovery schedule.[65] "ORA's scope of authority to request and obtain information from entities regulated by the Commission is as broad as that of any other units of our staff, including the offices of the Commissioners."[66] ORA can "undertake audits or investigations, obtain information, and

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[61] Since there are limited opportunities to challenge the rulings, and ORA already submitted a motion for reconsideration and interlocutory appeals are generally disfavored by the Commission, an application for rehearing is one of the few options available to ORA.

[62] Administrative Law Judge Email Ruling, February 27, 2018.

[63] While the "Administrative Law Judge's Ruling Reversing Denial of Motion to File under Seal and Denying Motion to Deem as Public" (June 14, 2018 Ruling) corrects the error of ruling only on the request to file under seal and not the underlying motion, the June 14, 2018 Ruling is based on legal error as well.

[64] Administrative Law Judge's Ruling Reversing Denial of Motion to File Under Seal and Denying Motion to Deem as Public, June 14, 2018, p. 1.

[65] P.U. Code § 314 (a); P.U. Code § 309.5 (e).

[66] D.01-08-062, p. 6.

ask questions at any time and for any purpose related to their scope of work on behalf of the Commission and the people of the state of California."[67] Unlike other parties, ORA can continue to investigate and submit data requests and receive responses outside the schedule in a proceeding. In the above referenced proceedings, ORA appropriately continued to engage in discovery and investigate SoCalGas after the August 10, 2017 discovery cutoff.

Second, the rulings seem to assume ORA's Motion is based on a discovery dispute. ORA had already received responses from SoCalGas and was not requesting that the Commission order SoCalGas to produce the documents. On the contrary, ORA's Motion was submitted pursuant to Rule 11.1, the general rule that governs motions.[68] ORA did not submit a motion pursuant to Rule 11.3 which only applies to discovery issues. Per Rule 11.1, a motion may be made at any time during the pendency of the proceeding. So long as the proceeding is open and regardless of whether it is deemed submitted, the ALJ can and should rule on the motion.

Indeed, both as a matter of law and policy, the ALJ should have ruled on ORA's Motion regardless of the discovery cutoff date. As a matter of law an ALJ (discovery cutoff) order cannot free SoCalGas of its obligation to comply with Commission rules governing confidentiality and privilege claims. And, a policy requiring claims of confidentiality and privilege to be addressed before the discovery cutoff would only serve to encourage specious claims and require increasingly lengthy discovery. Hence, the February 27, 2018 Ruling and the June 14, 2018 Ruling should be vacated in that they are based on errors of law by denying ORA's Motion based on the discovery cutoff date.

2. The record cannot be deemed submitted without notice.

The February 27, 2018 Ruling erroneously suggests that, to consider ORA's Motion, the submission of the record must be set aside.[69] As stated therein "ORA's

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[67] *Id.*, p. 7 (emphasis quoted from the decision).

[68] ORA Motion, p. 1.

[69] Administrative Law Judge Email Ruling, February 27, 2018.

December 13, 2017 motion offers no justification for why we should, in essence, set aside submission of the record in order to take the additional information it requests to file under seal."[70] The June 14, 2018 Ruling again emphasizes this point where it states, "the record was submitted on October 13, 2017."[71] These statements are both factually and legally suspect.

Pursuant to California Public Utilities Commission Rules of Practice and Procedure, Rule 13.14 (a):

> A proceeding shall stand submitted for decision by the Commission after the taking of evidence, the filing of briefs, and the presentation of oral argument as may have been prescribed.[72]

Here, there were no testimony or evidentiary hearings upon which to base briefs, instead of opening and reply briefs, the proceedings required opening and reply comments and allowed supporting materials to be attached to the comments. As such, the February 27, 2018 Ruling and the June 14, 2018 Ruling set the submission date on October 13, 2017.

However, several filings and rulings have been made in this proceeding since October 13, 2017. Without ever clarifying when the record was submitted for a specific matter or a separate phase was occurring for a different matter, after October 13, 2017, numerous examples indicate that the record is still open. Among other things:

- In the January 17, 2018 decision on third-party solicitation in the above referenced proceedings, the Commission ordered the investor owned utilities to jointly submit one standard third-party contract as a motion for contract approval within 60 days after the decision,[73] and noted that the parties will have an opportunity to respond on the record.[74]

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[70] *Id.*

[71] Administrative Law Judge's Ruling Reversing Denial of Motion to File Under Seal and Denying Motion to Deem as Public, June 14, 2018, p. 1.

[72] California Public Utilities Commission Rules of Practice and Procedure at Rule 13.14 (a).

[73] D.18-01-004, Jan. 11, 2018 at p. 41.

[74] *Id.* at pp. 41-42.

- On January 30 of 2018, a motion for party status was granted.[75]
- On February 8, 2018, a ruling issued consolidating 2018 budget advice letters with the above referenced proceedings, adding the advice letters, protests, responses, and replies to the proceeding record, and allowing parties the opportunity to file comments in response to the ruling.[76]
- New entities were granted party status on May 18, 2018.[77]
- On June 14, 2018 another Ruling issued regarding ORA's Motion.

Thus, even if the record was submitted on October 13, 2017, it subsequently had been re-opened.

Further, the parties were given no formal notice of the submission date, which means the parties did not have notice of the formal submission date and could not plan accordingly. The March 16, 2017 prehearing conference transcript, the April 4, 2017 Scoping Memo, and the July 25, 2017 "Administrative Law Judge's Ruling Denying Motions for Evidentiary Hearings and Testimony, But Providing for Briefs" (as modified on August 4, 2017), do not provide parties notice that the submission date will be based on the service of comments, or anything else. Consistent with this finding, at the time of the February 27, 2018 Ruling, the Commission's Case Information System (CIS), which has a slot for the submission date, was blank, indicating that the proceeding had not been formally submitted. Other than the February 27 and the June 14, 2018 Rulings addressing ORA's Motion, there is no designation of the submission date as October 13, 2017.

Because the proceedings structure did not allow for the application of Rule 13.14 (a) and there was no notice of when the record was deemed officially submitted, relevant and important material after October13, 2017 were improperly excluded. Due process

[75] On January 16, 2018, Rising Sun Energy Center filed the Motion for Party Status. On January 30, 2018, Rising Sun Energy Center was granted party status.

[76] Ruling Consolidating 2018 Budget Advice Letters with Application 17-01-013 et al., February 8, 2018 at pp. 5-6.

[77] On May 18, 2018, Western HVAC Performance Alliance, INC. and Kilowatt Engineering, INC. were granted party status.

requires notice of the submission of the record so that, among other things, parties such as ORA have an opportunity to submit relevant supporting material.[78] Here, due process demands that the materials regarding the substantive issue of SoCalGas' misuse of ratepayer funds in its codes and standards activities (discussed in ORA's Motion) should have been accepted.

3. Public Utilities Code Section 583 does not apply to the substantive determination of whether material is confidential.

In response to ORA's March 15, 2018 motion for reconsideration of the February 27, 2018 Ruling, the April 9, 2018 Ruling states that the Commission, not the ALJ, must determine whether information is public because "Public Utilities Code Section 583 provides, '[n]o information furnished to the commission by a public utility, … except those matters specifically required to be open to public inspection by this part shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding.'"[79] This is contrary to law and sets the wrong precedent. Rather than provide guidance as whether SoCalGas met confidentiality and privilege requirements, Section 583 of the Public Utilities Code pertains to the treatment of documents that are properly marked confidential.

The Commission has long held that even though "[m]any parties seeking confidential treatment characterize § 583 as creating a substantive right to such treatment,"[80] the burden of proving that confidential treatment appropriately rests with the entity seeking such treatment. Section 583 does not address how to determine whether an entity has met Commission requirements related to confidentiality designations, nor the requisite burden of providing a legal basis for such designations when seeking

[78] *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972) (discussing the central meaning of procedural due process to be the right to be heard and in order to be heard, one must first be notified).

[79] Administrative Law Judge Ruling, April 9, 2018, p. 2.

[80] D.07-05-032, Order Modifying decision (D.) 06-06-066 and Denying Rehearing of the Decision, as Modified, Appendix A, p. 26.

confidential treatment of information.[81] "Section 583 does not require the Commission to afford confidential treatment to data that does not satisfy substantive requirements for such treatment created by other statutes and rules."[82] Instead, Section 583 applies to Commission employee activities after the Commission determines material from a utility is in fact confidential and will be withheld from the public.[83]

Nothing in Public Utilities Code Section 583 prevents an ALJ from ruling on questions related to confidentiality and privilege requirements. The Commission's ALJs have historically taken an active role in implementing confidentiality requirements and providing for public participation and open decision making, stating that "We must scrutinize with rigor all confidentiality claims."[84] More recently, as a result of the rulemaking to improve public access to records, the Commission issued D.16-08-024 and D.17-09-023 and G.O. 66-D.[85] The purpose of these decisions and the updated general order was to standardize and clarify the Commission's process to review requests for confidential treatment.[86] The Commission reemphasized the utility's burden to identify the specific confidential information and the specific substantive basis for confidential treatment.[87] In short, Section 583 neither applies to the issues in ORA's Motion nor prohibits a ruling on the issues. The ALJ's interpretation of Section 583 improperly

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[81] *Id.*, p. 24 (stating "The party seeking protection of its documents always bears the burden of proof").

[82] *Id.*, p. 27.

[83] *Id.*, (stating "Section 583 sets forth a process for dealing with claims of confidentiality, and does not contain any substantive rules on what is and is not appropriate for protection."). D.17-09-023, pp. 12-13 (reiterating the findings in D.06-06-066 that Section 583 does not requires the Commission to provide confidentiality protection if the data dues not satisfy substantive requirements created by other statutes or rules.).

[84] *Id.*, p. 14 (explaining that "It is not enough, for example, that utilities redact large portions of their procurement plans and that we allow those redactions by default. Rather, we must examine different types of data critically, and determine whether utility assertions about confidentiality have merit."). *See also* D.07-05-032, Order Modifying and Denying Rehearing of the Decision, as Modified. *See*, e.g., D.16-01-014, pp. 87-88, pp. 104-117 (discussing Rasier-CA's claim that information is protected and confidential because it contains trade secrets); D.08-07-005, Findings of Fact 23 (finding GO-66-C adequate to protect information submitted on broadband subscribership).

[85] *See generally*, D.16-08-024; D.17-09-023; G.O. 66-D.

[86] D.17-09-023, p. 7.

[87] G.O. 66-D, pp. 2-3.

creates a conflict between D.16-08-024 and D.17-09-023, G.O. 66-D and Section 583.

4. Confidentiality is within the scope of a proceeding.

The April 9, 2018 Ruling errs by stating that the question of whether the material provided in discovery is entitled to confidential treatment is outside the scope of the proceeding.[88] Resolving confidentiality questions is consistent with the Commission's stated goal of greater transparency and necessary to ensure that only information truly requiring confidential treatment is withheld from the public.[89] Rather than a substantive issue regarding the larger policy and ratemaking issues of the proceedings, the determination of whether SoCalGas complied with the confidentiality requirements of D.16-08-024 is a procedural issue. ALJs routinely make rulings and determinations on procedural issues in general, and confidentiality questions in particular.[90]

The Commission has established specific rules and directives which require a party requesting confidentiality protection to show that such treatment is appropriate.[91] In the above referenced proceedings, ORA has made a factual showing that SoCalGas was using confidentiality claims to hide violations of Commission decisions, rules, and directives that were the subject of the proceedings. It is arbitrary and capricious for the Commission to refuse to enforce its own rules.[92]

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[88] *Id.*

[89] Order Instituting Rulemaking to Improve Public Access to Public Records Pursuant to the California Public Records Act, Nov. 14, 2014, p. 1, R.14-11-001. Even though R.14-11-001 discussed the Public Records Act, the resulting decisions (D.16-08-024 and D.17-09-023) apply when utilities mark material confidential and give guidance as to how to make the required determinations. Nothing in Commission policy indicates that the requirements of D.16-08-024 and D.17-09-023 only apply to Public Records Act requests and not to proceedings at the Commission.

[90] Whether material is confidential is a routine question that is within the scope of any proceeding. *See*, e.g., Assigned Commissioner and Administrative Law Judges' Ruling Granting in Part and Denying in Part Suburban Water Systems Motion for Reconsideration, A.17-01-001, May 11, 2018, pp. 2-3; D.16-01-014, pp. 87-88, pp. 104-117 (discussing Rasier-CA's claim that information is protected and confidential because it contains trade secrets); D.08-07-005, Findings of Fact 23 (Finding GO-66-C adequate to protect information submitted on broadband subscribership).

[91] D.16-08-024, p 2; G.O. 66-D, pp. 2-3.

[92] *Southern California Edison Company v. Public Utilities Commission* (2006) 140 Cal. App. 4th 1085, 1092 (holding that the Commission's Rules have the "force and defect of law" and failure to adhere to its Rules is a violation of law).

5. A Public Records Act request is an inappropriate vehicle to resolve ORA's request to deem public SoCalGas material.

The April 9, 2018 Ruling errs where it states: "[t]o the extent that ORA wishes to publicly release the materials outside of this proceeding, that is a matter for the Commission to decide in the context of a Public Records Act request."[93] A Public Record Act request would be inappropriate because ORA does not need to request the material from the Commission; ORA already possesses the material. Further, ORA would have to first provide the records to the Commission and then request the very same records from the Commission, a result unanticipated and unintended by the Public Records Act. Moreover, even if it the materials were submitted to the Commission and it was somehow appropriate for ORA to obtain the materials through a Public Records Act request, the fact remains that materials that are appropriately marked confidential are generally not available through Public Records Act requests. Thus, the logic of the April 9, 2018 Ruling is both flawed and circular.

IV. CONCLUSION

For the reasons stated above, ORA respectfully requests the Commission grant rehearing and modify the Decision to

- Require the IOUs and MCE to achieve a portfolio-level Total Resource Cost (TRC) ratio of 1.25 on a forecast basis and 1.0 on an evaluated basis for 2019 to 2025.
- Change the threshold for approval of Annual Budget Advice Letters (ABALs), requiring a forecast TRC ratio of at least 1.25 for the IOUs' and MCE' ABALs for 2019 through 2025.
- Vacate the Administrative Law Judge's (ALJ) February 27, 2018 Ruling, April 9, 2018 Ruling, and June 14, 2018 Ruling;
- Affirm that the discovery schedule does not impact ORA's discovery rights;
- The record was not deemed submitted formally on October 13. 2017;
- Public Utilities Code Section 583 does not apply to the substantive determination of whether material is confidential;

[93] *Id.*

- Confidentiality is within scope; and
- ORA appropriately submitted the December 13, 2017 "Motion of the Office of Ratepayer Advocates to Deem as Public the Materials that Southern California Gas Company Improperly Marked as Confidential or Redacted; to Expedite a Ruling on This Motion, and to Impose Sanctions" pursuant to Rule 11.1.

ORA's proposed revisions to the Decision are in Appendix A.

Respectfully submitted,

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July 5, 2018

APPENDIX A:
PROPOSED CHANGES TO THE PROPOSED DECISION, INCLUDING FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERING PARAGRAPHS

Below are ORA's recommended changes to the Proposed Decision. Recommended additions are in italics. Recommended deletions are indicated by strike through.

I. Text

Page 133:

We direct staff to evaluate the ABALs pursuant to the following **ABAL approval criteria**:

- **IOU PAs' and MCE's portfolios**
    - PA claims requiring staff verification:
        - Forecasted TRC must meet or exceed 1.25 in the ABAL~~, except during program years 2019 – 2022, when the forecasted TRC must meet or exceed 1.0~~. Verification shall include review of actual evaluated TRC for two previous years and analysis of provided program/ portfolio information so an energy efficiency expert would reasonably conclude the forecast will be achieved; and
        - …

Pages 134-137:

Strike Section 7.4 in its entirety.

II. Findings of Fact

….

20. D.12-11-015 set a higher TRC threshold, of 1.25, as a hedge against uncertainty that portfolio TRCs would not meet or exceed 1.0 on an evaluated basis. *D.09-09-047 (p. 64, pp. 68-71, and Conclusions of Law 1-2) also recognized that it is necessary to set a forecast cost-effectiveness target greater than 1.0 to ensure that energy efficiency portfolios are cost-effective when implemented.*

- *PAs' forecasts of the cost-effectiveness of their EE portfolios tend to exceed the performance of the portfolio when implemented, with the result that cost-effectiveness ratios decline from the forecast to the reports and evaluations. This uncertainty about the actual performance of the portfolios persists.*
- *No party has shown evidence that PAs are capable of delivering energy efficiency portfolios that meet or exceed their cost-effectiveness forecasts.*
- *ORA appropriately conducted discovery after the deadline of August 10, 2017 for completing discovery request set in the July 25, 2017 "Administrative Law Judge's Ruling Denying Motions for Evidentiary Hearings and Testimony, But Providing for Briefs."*
- *After October 13, 2017, the date reply comments were due in this proceeding, the case continued to be active, in that comments were accepted, requests for party status were granted, and rulings were issued.*

III. Conclusions of Law

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- *Public Utilities Code Section 381 directs the Commission to allocate ratepayer funds to cost-effective energy efficiency and conservation activities. The Commission should not allocate funds to energy efficiency activities that cannot reasonably be expected to be cost-effective.*
- *Due to the fact that EE portfolios forecasts are often excessively optimistic, we should set a portfolio TRC threshold of 1.25 to create a margin of safety on cost-effectiveness, in case the portfolios are less cost-effective than anticipated.*
- *The Administrative Law Judge email ruling dated February 27, 2018 erred by suggesting that the discovery cutoff date in the schedule limits ORA's broad discovery and investigatory rights.*
- *The Administrative Law Judge email ruling dated February 27, 2018 erred by stating that record can be deemed submitted based submission of final opening and reply comments even where there is neither a date specified or notice given.*
- *The Administrative Law Judge email ruling dated February 27, 2018 erred by determining that the record was deemed submitted on October 13, 2017.*

- *The Administrative Law Judge's Ruling dated April 9, 2018 contained errors of law regarding the applicability of Public Utilities Code Section 583 to the substantive determination of whether information is confidential.*
- *The Administrative Law Judge's Ruling dated April 9, 2018 contained errors of law regarding whether confidentiality is within the scope of the proceeding.*
- *The Administrative Law Judge's Ruling dated April 9, 2018 contained errors of law by stating that a Public Records Act request is the appropriate vehicle to address ORA's request to deem public SoCalGas material.*
- *The Administrative Law Judge's Ruling Reversing Denial of Motion to File Under Seal and Denying Motion to Deem as Public dated June 14, 2018 contained errors of law regarding ORA's broad discovery rights and the submission of the record on October 13, 2017.*
- *ORA's rights to obtain information from utilities pursuant to Section 314 and 309.5 do not require the existence of a related proceeding and may be exercised at any time for any purpose related to its scope of work.*
- *Public Utilities Code Section 583 does not apply to the substantive determination of whether material is confidential.*
- *Confidentiality is within the scope of the proceedings.*
- *"Motion of the Office of Ratepayer Advocates to Deem as Public the Materials that Southern California Gas Company Improperly Marked as Confidential or Redacted; to Expedite a Ruling on This Motion, and to Impose Sanctions" was appropriately filed pursuant to Rule 11.1.*

IV. Ordering Paragraphs

….

49. Staff is authorized to evaluate the annual budget advice letters pursuant to the approval criteria identified in Section 7.3 of this decision. *Staff shall only approve annual budget advice letters that meet a portfolio cost-effectiveness threshold of 1.25 on both the TRC and PAC tests.*

- *In calculating portfolio cost-effectiveness ratios for the purpose of showing compliance with the thresholds, PAs shall exclude codes & standards advocacy and market spillover effects, and shall include non-resource programs and Energy*

Savings Performance Incentive (ESPI) payments, consistent with Finding of Fact 19 of this Decision.

- *The Administrative Law Judge email ruling dated February 27, 2018 is vacated.*
- *The Administrative Law Judge's Ruling dated April 9, 2018 is vacated.*
- *The Administrative Law Judge's Ruling Reversing Denial of Motion to File Under Seal and Denying Motion to Deem as Public dated June 14, 2018 is vacated.*