BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking Regarding Policies, Procedures and Rules for the Self-Generation Incentive Program and Related Issues.	Rulemaking 20-05-012 (Issued June 8, 2020)

SIERRA CLUB AND NATURAL RESOURCES DEFENSE COUNCIL REPLY COMMENTS ON THE ORDER INSTITUTING RULEMAKING REGARDING POLICIES, PROCEDURES AND RULES FOR THE SELF-GENERATION INCENTIVE PROGRAM AND RELATED ISSUES

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On Behalf of NRDC

Dated July 7 2020

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Pursuant to Rule 6.2 of the California Public Utilities Commission ("Commission") Rules of Practice and Procedure, Sierra Club and the Natural Resources Defense Council ("NRDC") respectfully submit the following reply comments on the June 8, 2020 Order Instituting Rulemaking Regarding Policies, Procedures and Rules for the Self-Generation Incentive Program and Related Issues ("OIR").

Sierra Club and NRDC make the following three points in response to OIR opening comments.

1) SoCalGas' recommendation that the pause of SGIP funding of directed biogas projects "before holding the renewable generation workshop" is in direct contravention of D.20-01-021;

2) Energy Division should proceed with its heat pump water heater ("HPWH") proposal and disregard SoCalGas' efforts to undermine HPWH participation in SGIP;

3) As part of this proceeding, the Commission should reevaluate whether SoCalGas should continue in its role as a Program Administrator ("PA") now that SGIP includes fuel switching technologies it has sought to undermine.

1. SoCalGas' Recommendation that the Pause of SGIP Funding of Directed Biogas Projects "before holding the renewable generation workshop" is in Direct Contravention of D.20-01-021.

In its opening comments, SoCalGas recommends removing the hold on funding for directed biogas projects *before* a Commission decision resolves the serious concerns with their

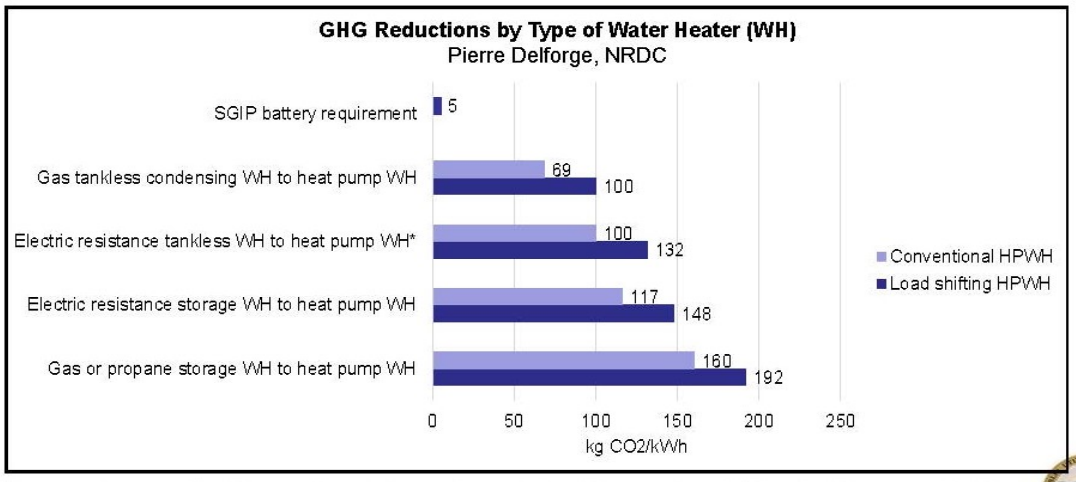
environmental integrity and benefits that were identified in D.20-01-021.[1] Under the Conclusions of Law in D.20-01-021, SGIP PAs must "immediately pause acceptance of incentive applications for renewable fuel technologies using collect/use/destroy as the biomethane baseline *until this Commission adopts a decision providing further guidance*."[2] Accordingly, SoCalGas' effort to expedite the removal of the pause on funding for direct biogas projects before a Commission decision on this issue is inconsistent with the requirements of D.20-01-021 and must be rejected.

2. Energy Division Should Proceed with its Heat Pump Water Heater ("HPWH") Proposal and Disregard SoCalGas' Efforts to Derail Successful HPWH Participation in SGIP.

Although a party to the HPWH Working Group, SoCalGas now raises a host of meritless roadblocks to HPWH participation in SGIP that the Commission should disregard. For example, SoCalGas incorrectly suggests that SGIP's statutory goals require that the baseline from which to determine greenhouse gas reductions is the electric grid.[3] SGIP's authorizing legislation contains no such caveat. Instead, it is properly focused on "reductions of emissions of greenhouse gases."[4] The fact that HPWHs result in substantial GHG reductions compared to the gas alternatives they replace is relevant to this inquiry. Moreover, SoCalGas' effort to reopen an evaluation of GHG reductions from HPWHs is procedurally improper. Not only has the record has been fully developed on this issue, but GHG eligibility for HPWHs was already scoped into the Thermal Energy Storage ("TES") working group process in D.19-09-027, the appropriate venue for SoCalGas to have raised its arguments.[5] However, even when considering GHG emissions reduction relative to the "electric grid" baseline, the following chart shows that HPWH

[1] R.20-05-012, *Comments of Southern California Gas Company to Order Instituting Rulmaking Regarding Policies, Procedures and Rules for the Self-Generation Incentive Program and Related Issues* at 5, 14 (June 29, 2020) ("SoCalGas Opening Comments"), https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M341/K393/341393484.PDF.
[2] D.20-01-021, *Self-Generation Incentive Program Revisions Pursuant to Senate Bill 700 and Other Program Changes* at 91, Findings of Law No. 4 (Jan. 16, 2020) (emphasis added).
[3] SoCalGas Opening Comments at 8–9.
[4] Pub. Util. Code § 379.6(l)(1).
[5] D.19-09-027, *Decision Establishing a Self-Generation Incentive Program Equity Resiliency Budget, Modifying Existing Equity Budget Incentives, Approving Carry-Over of Accumulated Unspent Funds, and Approving $10 Million to Support the San Joaquin Valley Disadvantaged Community Pilot Projects* at 99 (Sept. 12, 2019), https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M313/K975/313975481.PDF.

far exceed the 5 kg CO2/kWh annual threshold.



[6]

Similarly, the inherent ability of HPWHs to shift load has also been repeatedly demonstrated both within the HPWH Working Group and at public workshops. Energy Division Staff has the record it needs to develop its HPWH proposal for subsequent party comment as envisioned under the OIR. SoCalGas' belated efforts to raise new concerns, particularly where it had ample opportunity to do so through the working group process, should be rejected.

3. As Part of this Proceeding, the Commission should Reevaluate Whether SoCalGas Should Continue in its Role as a Program Administrator ("PA") How that SGIP Includes Fuel Switching Technologies it has Sought to Undermine.

SoCalGas' continued effort to erect obstacles to deployment of incentives to HPWHs in its opening comments highlights serious concerns as to the appropriateness of its continued role as a PA. In D.18-05-041, the Commission stripped SoCalGas of its "role in statewide code and standards advocacy" due to the "potential for SoCalGas to misuse ratepayer funds" following the discovery of "internal emails among SoCalGas managers discussing the potential for the

[6] California Public Utilities Commission, *Self-Generation Incentive Program Heat Pump Water Heater (HPWH) Workshop – Part 2* at 8 (May 7, 2020), https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Energy/Energy_Programs/Demand_Side_Management/Customer_Gen_and_Storage/SGIP.HPWH.Workshop.Part2.pdf

proposed standards to raise the cost of some gas furnaces and thereby encourage fuel switching away from natural gas."[7] With SGIP now encompassing gas to electric fuel switching technologies, the same conflict of interest is present here.

SoCalGas has a long history of working to undermine measures that would lead to increased deployment of HPWHs. Internal emails show that from at least 2014, SoCalGas actively campaigned against proposed increases in water heating efficiency standards under Title 24 because they posed "a significant threat" to SoCalGas' residential new construction load, which "constitutes at least 30% of [the Company's] residential load, or around $800m in revenues per year."[8] Once SoCalGas determined the change would be "detrimental" to the SoCalGas' business, only then did it move forward "with developing our position from an evidentiary perspective."[9] In other words, SoCalGas' business interests come first, the rationalizations for its positions to oppose deployment of electric water heating come second.

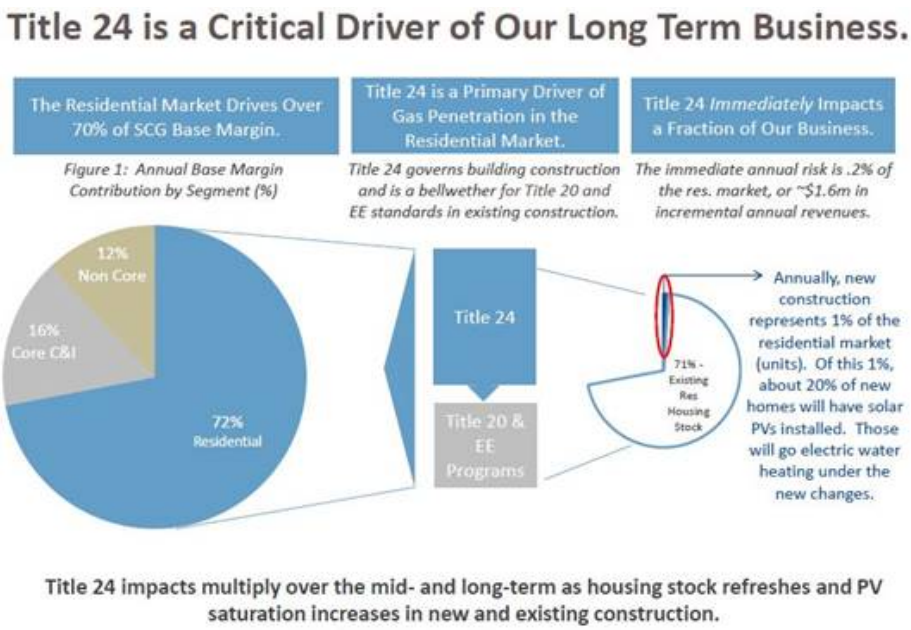
In a 2014 Powerpoint presentation for a SoCalGas Senior Management Meeting concerning 2016 updates to Title 24, the first slides mention SoCalGas' "aggressive steps" to address proposed code changes, and concerns that increased efficiency standards for water heating in new construction would result in increased adoption of HPWHs.[10]

[7] D.18-05-041, *Decision Addressing Energy Efficiency Business Plans*, at 139, 141–144 (June 5, 2018), http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M215/K706/215706139.PDF. The emails also detail "several situations in which SoCalGas appears to have frustrated the other IOUs' efforts to advance higher standards, including backing out of drafting a joint letter just one day before the response deadline to a 2017 DOE request for information (despite having decided a week earlier that they would not sign on)." *Id*.

[8] Attachment A, *Internal SoCalGas communicates re: 2016 Title 24 Update* at 8 (page numbers inserted by Sierra Club).

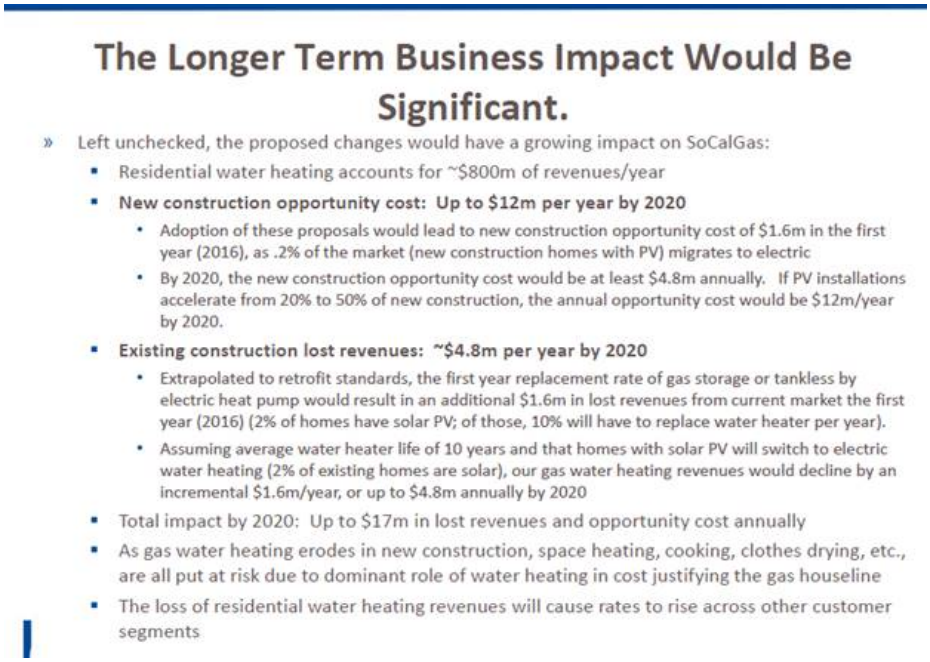
[9] *Id.* at 11.

[10] *Id.* at 15.



[11]

SoCalGas expressed concerns that "left unchecked," "as gas water heating erodes in new construction, space heating, cooking, clothes drying, etc., are all put at risk due to the dominant role of water heating in justifying the gas houseline."[12]



[11] *Id.* at 16.
[12] *Id.* at 15.

To avoid this outcome from being realized, SoCalGas then embarked on a "Title 24 Code Change Campaign," with the goal of "postpon[ing] the efforts of the California Energy Commission" to heighten efficiency standards for instantaneous water heaters.[13] The SoCalGas "campaign," included media messaging, expanding "SoCalGas's presence in the academic community to increase knowledge and bolster support of natural gas from non-biased third parties," and philanthropy/charitable institution to "influence policy discussions through active participation in non-profit organizations. In coordination with corporate-wide effort, place [SoCalGas] policy managers on non-profit boards and provide resource support for key organizations."[14] Starting at least six years ago, SoCalGas fought against measures that could result in increased HPWH deployment. Due to this demonstrated conflict of interest, allowing SoCalGas to administer a HPWH incentive program is untenable.

SoCalGas efforts to obstruct progress on electrification of gas appliances continue to this day. SoCalGas organized and funded the front group Californians for Balanced Energy Solutions to create the perception of public opposition to building electrification.[15] In a further investigation by the Public Advocates Office ("PAO"), evidence adduced thus far "goes to among, other things, whether SoCalGas paid people to appear to speak during the public comment portion of Commission voting meetings, without disclosing that they were acting on behalf of SoCalGas."[16] The depths of SoCalGas' anti-electrification campaign has yet to be fully known due to its continued obstruction of PAO's investigation. This includes its refusal to respond to discovery by claiming a "First Amendment right to protect its ability to 'associate' with paid lobbyists, and other consultants and vendors in order to develop a grass roots campaign that will communicate SoCalGas' message to legislators and the public."[17] As PAO notes, this "turns the law on its head in an effort to keep secret the full extent of the money it is spending on

[13] *Id.* at 1.
[14] *Id.* at 46.
[15] *See, e.g.,* Editorial Board, *Editorial: SoCalGas; sleazy 'Astroturf' effort to keep fossil fuels flowing in California*, Los Angeles Times (Aug. 10, 2019), https://www.latimes.com/opinion/story/2019-08-10/socalgas-astroturf-cpuc-aliso-canyon.
[16] Attachment B, *Response of PAO to SoCalGas Motion to Quash Portion of Subpoena, for an Extension, and to Stay Compliance* at 6 (June 1, 2020).
[17] *Id.* at 24.

hired lobbyists and communications companies."[18] PAO has now had to resort to a Motion to Find SoCalGas in Contempt for its refusal to comply with a Commission subpoena.[19]

As a gas-only utility with a track record of duplicitous conduct intended to obstruct critically needed progress on electrification of gas end uses, SoCalGas' role as a PA must be reevaluated now that SGIP includes fuel switching technologies like HPWHs. As evidenced by its opening comments on the OIR, SoCalGas is unrelenting in its efforts to preclude meaningful deployment of HPWHs. Accordingly, the question of whether the Commission should continue to allow SoCalGas to develop rules for SGIP participation as a PA should be included in the scope of this proceeding.

Thank you for your consideration of these comments.

Dated July 7, 2020

Respectfully,

/s/ MATTHEW VESPA

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On Behalf of Sierra Club

/s/ PIERRE DELFORGE

[18] *Id.* It is Sierra Club and NRDC's understanding that the Commission has yet to rule on SoCalGas objections, resulting in further delay in PAO's investigation.

[19] Attachment C, *Public Advocates Motion to Find SoCalGas in Contempt of this Commission in Violation of Commission Rule 1.1 for Failure to Comply with a Commission Subpoena Issued May 5, 2020, and Fined for Those Violations from the Effective Date of the Subpoena* (June 23, 2020). Sierra Club and NRDC strongly support PAO's Motion. As PAO properly observes, "SoCalGas' refusal to comply with the Commission Subpoena in this investigation is perhaps understandable given its prior unpunished defiance of a Commission subpoena in the Aliso Canyon investigation. Why should SoCalGas comply with Commission orders when there are no consequences for violations?" *Id.* at 4. The Commission's repeated failures to hold SoCalGas accountable for its dilatory tactics emboldens and enables its conduct.

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On Behalf of NRDC

Attachment A

Internal SoCalGas Communications re 2016 Title 24 Update

GOAL: ***Postpone the efforts of the California Energy Commission from supplanting the minimum Federal Department of Energy (DOE) Energy Efficiency (EF) level of Storage Water Heaters (SWH) of .675 EF to an Instantaneous Water Heaters (IWH) with a .82 EF until further study is completed.***

BACKGROUND/SITUATION

The California Energy Commission is currently revising the Energy Efficiency Standards for new buildings. The standards are updated on an approximately three-year cycle. The 2016 Standards will build upon the current 2013 Standards affecting new construction, additions, and alterations for, residential and nonresidential buildings. The 2016 Standards will go into effect on July 1, 2017.

SCG believes that in an effort to accelerate the move to Zero Net Energy (ZNE), the California Energy Commission (CEC) wants to accelerate technologies more quickly into codes and standards. In anticipation of eventually moving the Instant Water Heater (IWH) to the prescriptive option, the 2013 Title 24 code development cycle adopted a requirement that all residential new construction be plumbed for both storage and IWH. In January of 2014, Energy Solution was commissioned to perform a CASE study to advance IWHs into code earlier than had originally been anticipated. SoCalGas is a partner to this study and has shared funding responsibilities with the other Investor Owned Utilities (IOU).

Preliminary CASE Study recommendations include:

- Move the IWH to minimum prescriptive option at a .82 EF
- Accept natural gas storage water heaters meeting the federal minimum standard of .675 as a prescriptive option requiring installation of a solar thermal system of a 50% solar fraction.

AFTER completion of the initial draft report the CEC added two additional recommendations:

- Heat Pump Water Heaters (HPWH) added to the prescriptive option with solar PV of .55 fraction
- Remove requirement that natural gas water heating be installed where natural gas is available.

SCG Concerns with the CASE Study Recommendations and CEC recommendations:

- The technical data used in the CASE report does not provide validated information to accurately prove the wisdom of moving to standard with this technology;
- The data used in the cost-effectiveness calculation is flawed.
    - It inaccurately reflects a life-cycle cost for the IWH that is unproven;
    - The maintenance costs reflected are incorrect;
    - Installed costs do not show the true delta between the two technologies;
- To date, no verifiable test exists to show the study's claimed benefits of the IWH.
    - Extensive testing and consumer surveys are required over a specific period of time to achieve accurate data so that a true comparison can be made;

- New precedent set by increasing the standard efficiency by an extreme amount – from .675 EF to .82 EF

IMPLICATIONS

Implications to Southern California Gas Company include:

- With IWH accelerated to standard and no "next generation technology" to drive commensurate therm savings ready for market, SCG stands to loses EE incentive $ [AMOUNT].

- Residential New Construction (RNC) program at risk. 2/3 of RNC energy savings are from gas water heating.
    - Gas incentives to builders cut significantly.

- The inclusion of the HPWH as a prescriptive option forces the removal of the natural gas preference language and ultimately will further suppress gas choice

Implications to Southern California Gas Customers:

- Reduction of consumer choice.
    - Non-condensing gas storage water heater with higher EF does not exist.
    - Condensing water heaters that meet or exceed the .82 EF are four times the cost of a regular storage tank water heater

- Electric heat pump water heaters are introduced as a prescriptive measure. When adding the requirement for solar PV, this option is more expensive than storage.
    - Initial cost for basic storage unit (~$1200 - $1500), is comparable to IWH. However, this does not include cost to install solar PV as required in the prescriptive option, which increases the first cost

- Disproportionate impact on low-income community.
    - Increased cost of housing because of forced technology
        - BIA NUMBERS/IMPACT HERE
    - No common venting for IWH and/or heating systems. Builders must provide separate vent systems for heating air/ hot water. Pass cost on to customers
    - Cost for housing alteration/additions will require change to IWH. Expense borne by the homeowner

- Increased operating costs for household maintenance
    - Storage water heater maintenance is simpler and cheaper
    - IWH maintenance requires expertise and is more costly
        - NEED NUMBERS HERE

CAMPAIGN MESSAGING

- **SoCalGas is pro-energy efficiency, but this move to too much too fast.**

- **"This is bad for consumers."**
  - Reduces customer choice by REQUIRING IWH technology on new construction.
  - Impact on low-income families is disproportionate. New home prices and home addition construction rise.

- ***"Federal Preemption. CASE study is in conflict with federal minimum efficiency standards (National Appliance Energy Conservation Act -1987). Cannot conflict with federal standards"***
  - State exemption requires specific criteria to be met.
  - CASE Study proposal does NOT meet those criteria

- ***"CASE analysis of the data is not rigorous enough. It leaves out significant details in the cost/analysis section and does not approach from a broad perspective."***
  - Installed cost does not include previously mandated infrastructure installation
  - Analysis ONLY used storage water heaters with .62 EF. There are many other storage water heaters with higher EF which, if used in the analysis, would change the cost differential dramatically.
  - Maintenance costs are not reflective of actual costs.
    - Material required for IWH maintenance is higher than projected
    - Consumers will NOT maintain themselves. Cost of professional service to maintain IWH MUST be included in overall costs.
  - Life-cycle cost of IWH is unproven
    - NUMBERS
    - NUMBERS

- ***"There has been insufficient testing of the Instant Water Heater technology."***
  - With only 2% penetration nationally in the water heating market and less than 15 total years in the consumer market, validation of IWH benefits are not proven
  - Life-cycle of 20 years impossible to validate
  - Failure rates are higher than storage water heater: scaling and need for full consumer attention to maintenance
  - IWH warrantee voided in areas with very hard water quality. Needs more testing

- **"There is no precedent for any State to elevate an increase to standards for a piece of equipment to such a significant increase. This is too big a leap too quickly. "**

- DOE has increased the minimum efficiency of natural gas storage water heaters from .62 EF to .675 EF. This is a reasonable increase which allows manufacturers builders and consumers to adjust responsibly to the new standard.
  - Manufacturers have already invest significantly in product to meet DOE
  - Builders have already projected costs based on analysis of DOE standards
  - Introducing new higher standards for products not currently available would cause significant financial loss.

CEC TIMEFRAME

CEC Pre-rulemaking workshops	July 21, 2014
Final Draft of CASE Report	September 19, 2014
CEC releases Staff Report with proposed standards	October, 2014
CEC / Final rulemaking workshop	November 3, 2014
December / First Draft 2016 Standards (ISOR)	December, 2014
Release 45-Day Language	January, 2015
Release 15-Day Language	April, 2015
Adoption at Business Meeting	May, 2015
Update Compliance Manuals and ACM	May, 2015 – December, 2016
Effective Date of 2016 Standards	January 1, 2017

ADVOCACY STRATEGY

OPTION 1 / Staff Approach

Main assumptions:

- CASE Team, including IOU's have been notified that SoCalGas does not support the recommendations in the report;
- CEC staff have been notified of concerns and proposed opposition**;**
- CEC Commissioners will not be approached unless limited success at staff level;
- SCG Local Public Affairs will not be used in this option.

Phase 1 / September, 2014 – October, 2014

- AGA analysis of CASE study to identify problematic analysis and faulty conclusions
- SCG analysis of CASE study to identify potential market impact of conclusions
- SCG to assess AGA analysis and compare to SCG analysis – augment if necessary
- Meet with CASE authors to influence conclusions
- Establish a coalition of partners to secure support
- Develop tactics for meetings with CEC staff. Set appointments

Phase 2 / October, 2014 – January, 2015

- AGA/APGA meet with CEC staff to adjust Standards language
- Coalition members meet with CEC staff to adjust Standards language
- Develop Letter/Phone-Strategy in case of limited success

Phase 3 / February, 2014 – April, 2015 (If limited success with staff)

- Letters to CEC Commission from AGA, APGA and coalition members
- Senior meetings with CEC Commissioners and/or Executive Staff
- Phone calls from Coalition members and senior SoCalGas executives

OPTION 2 / Public Approach

Main assumptions:

- CEC Staff is committed to make the analysis yield desired results
- CEC Commissioners will weigh in on this issue if/when made aware of challenges
- SCG Local Public Affairs to be used in coordination with other efforts
- SCG Local Public Affairs to identify disadvantaged community group advocates

Phase 1 / September, 2014 – October, 2014

- AGA analysis of CASE study to identify problematic analysis and faulty conclusions
- SCG analysis of CASE study to identify potential market impact of conclusions
- SCG to assess AGA analysis and compare to SCG analysis – augment if necessary
- Meet with CASE authors to influence conclusions
- Develop collateral material (Fact Sheet, Analysis summary, Draft letters, etc.)
- Webinar with SCG Regional Public Affairs to indicate need for action
    - Request letters of support from local cities, chambers, etc...
- Establish a coalition of partners to secure support

  - Request letters of support from agencies, members, etc.
- Set appointments with senior CEC staff and, as necessary, Commissioners
- Continue meeting with CEC staff

Phase 2 / November, 2014 – January, 2015

- AGA/APGA meet with CEC senior staff as necessary
- Coalition members meet with CEC senior staff and Commissioners as necessary
- Coordinate letter-writing campaign with Regional Public Affairs
- Participate in CEC public meetings WITH partners in the community (local businesses, agency representatives, etc…)

Phase 3 / February, 2014 – April, 2015

- Senior meetings with CEC Commissioners (AGA, APGA and coalition members)
- SCG Executive meetings with CEC Commissioners and/or Executive Staff
- Phone calls from Coalition members and senior SoCalGas executives

COALITION PARTNERS

Partner	Contact	Status
California Building Industry Association	Bill Braley	
AHRI (Manufacturers trade group)	Frank Stanonik	
American Gas Association	Rick Murphy, Jim Ranfone, Ted Williams	
American Public Gas Association	Daniel Lapato (Cities of Palo Alto/Susanville)	
Long Beach Gas & Oil	Steve Bateman	
Southwest Gas	Frederic Zwerg	
California Association of Realtors	?	
California Housing Law Project	?	
Housing & Economic Rights Advocates	?	
Affordable Housing Advocates	?	

IWH CASE Study Briefing and Recommendation -

October 29, 2014

Original Language- Performance Approach:

1. Install a gas IWH meeting minimum federal efficiency levels

2. Install a gas storage water heater meeting minimum federal efficiency level plus a **solar fraction of 0.55** or

3. Install a gas storage water heater that performs as well or better than a gas IWH that meets the minimum federal efficiency level.

The **CEC's proposed code change was to eliminate requirements if gas is not available.**

- That is, if gas is not available, an applicant can comply with the Standards by installing an electric water heater

10/28/14 Conversation between Martha and Mike Hodgson, consultant to CBIA

- Would builders still stall IWH absent utility incentive? Yes, the incentive is only about $200
- With storage + QII is it more likely the builder is open to installing a storage water heater? Yes, QII adds an additional $400 and provides energy credit of 4 – 7% of energy budget. The likelihood of the builder installing storage + solar fraction was null due to roof space requirement and cost prohibitiveness.
- Currently, 40% of So. CA builders spec out IWH and 20 – 40% in No. Cal.

10/28/14 Conversation between Martha and Mazi Shirakh, CEC

- Mazi called Martha on 10/28 to follow-up on side comment from Martha after the 10/24 meeting stating the gas availability language was very important to SCG. Mazi left message stating CEC was willing to work with the language. Martha had conversation with Mazi and Mazi wanted to alter language specifying utility could not make the determination. Martha said we wanted original language to remain intact including as determined by the utility. Mazi said he would confer with internal CEC folks. Mazi left a message stating they were okay with the language remaining as originally stated abiding by SCG's request in turn they would like all IOU's to support this IWH measure in 2016 code cycle. Martha would discuss with upper management and informed Mazi hopefully final decision is arrived by SCG on 10/31.

Original concerns:

- Preemption/Federal Testing Standards- It remains a legal issue
- LCC analysis- CEC believes there are sufficient studies/data to support moving forward
- Gas availability language- SCG big win- language remains

Recommendation:

- SCG has **two key wins**
  - ***From storage + solar fraction → storage + QII***
  - ***From proposal to remove gas availability language → retaining language***

- **Recommendation is to support IWH measure and continue efforts to have natural gas play a role towards ZNE**
  - Ideally would like to have SCG's final position by 10/31/14

Manke, Adam P

From: Minter, George I
Sent: Thursday, August 14, 2014 10:31 PM
To: Chawkins, Ken D
Subject: Fwd: Help Needed: Title 24 Water Heating Issue
Attachments: Background and position draft 08-07-14 final.docx

Fyi.

George Minter
Sent by Wireless

-------- Original Message --------
Subject: Help Needed: Title 24 Water Heating Issue
From: "Alexander, Lisa" <LAlexander@semprautilities.com>
To: "Minter, George I" <GIMinter@semprautilities.com>
CC: "Schwecke, Rodger" <RSchwecke@semprautilities.com>,"Rendler, Daniel" <DRendler@semprautilities.com>

George -

I'd like to request your team's support regarding the CEC's Title 24 water heater CASE study. In a nutshell, the CASE recommendations pose a significant threat to our gas water heating load in residential new construction. To the extent that Title 24 policies eventually flow to Title 20 and the retrofit market, the CASE recommendations significantly weaken the position of residential gas water heating overall. Sue Kristjansson and Martha Garcia have been working this issue in recent weeks; I do not believe Ken has been involved, though he works with them both on ZNE which is related, so he may be aware.

Residential gas water heating today constitutes at least 30% of our residential load, or around $800m in revenues per year.

Detailed background is in email below.

Let me know your thoughts on how your team can engage.

Thank you...

-----Original Message-----
From: Kristjansson, Sue
Sent: Thursday, August 07, 2014 4:16 PM
To: Alexander, Lisa
Subject: Email version of T24 history and status for Rodger plus Word doc file.

Codes & Standards IWH CASE Study Issue

Overview
In June of 2014, The Codes and Standards group was in need of some support so Chris Goff was asked to cover the Title 24 conference calls to ensure SoCalGas was represented and he could elevate any concerns. Chris alerted us to the fact that the CEC was planning to accelerate the efficiency level of storage water heaters to .82 EF (Energy Factor), far in excess of the planned increase by the DOE (from .62 EF to .67 EF). The effect of this change would be to drive storage water heaters out of new construction: no storage water heater comes close to a .82 EF unless it is a condensing water heater at a much higher cost.

We immediately convened a team to assess the situation and the impact to our company and determined it to be detrimental regardless of the tankless end-use retention. We have elevated the concern to our directors and moved forward with developing

- In an effort to accelerate the move to ZNE (Zero Net Energy) the CEC is pushing technologies more quickly into codes and standards.
- In the 2013 T24 cycle, a provision was added to T24 code that all residential new construction development must plumb for both storage and instantaneous water heaters – paving the way to this next move. SoCalGas was a party to this provision.
- In January of 2014, Energy Solution was commissioned to perform a CASE study – SoCalGas is a partner to this study and shared funding responsibilities with the other IOU's.
- The current water heating CASE Study recommendations include:

o Modify the prescriptive requirement for gas domestic water heating system in single family homes and multifamily homes with dedicated water heaters from the current storage water heaters with an Energy Factor EF of 0.67 (actually EF is a formula, 0.67-0.0019V, where V is the volume of the water heater tank) to an Instantaneous Water Heater (IHW or Tank-less water Heater) with minimum EF of 0.82.

o If natural gas is not connected to the building the water heating system shall be an electric resistance water heater with a solar hot water system with solar fraction of at least 50%

o An alternate option will permit the installation of gas storage water heaters with EF 0.67 with a solar thermal water heating system with a solar fraction of 50%.

o More recently the CEC added two additional recommendations and they are:

♣ HPWH (heat pump water heaters) to be added to the prescriptive option with solar PV

♣ Remove the language that requires that natural gas water heating be installed where natural gas is available, as determined by the natural gas utility.

- The next steps from the CASE study:
- 2nd Draft of CASE Report ready for IOU Team review — Next week
- IOU Team review of CASE Report finished — ~ August 20
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- Standards take effect — January 1, 2017

Challenges to SoCalGas posed by the CASE water heating study and Title 24:

1. Tankless water heating accelerates into code; causes short term benefit but mid- and long-term loss.

- In the short term, SoCalGas benefits from the acceleration of tankless water heating into code. We will receive a lump sum therm savings that will support EE shareholder revenue.
- In the mid/long term, SoCalGas loses. From an EE perspective, we do not have a replacement technology to drive similar program-related therms savings as tankless did.
- This impact of Tankless accelerating into code is neutral on gas load. Tankless uses less gas, but still requires gas. Anecdotal information cites an increase in water usage with IWH

2. No non-condensing gas storage water heater exists – or will exist – that is compliant with the higher EF.

- The proposed changes eliminate customer choice

3. Electric heat pump water heaters are introduced as a prescriptive measure. Costs and efficiencies make these a highly attractive consumer offer.

a. First cost for basic unit ~$1200 - $1500, that is comparable to IWH but this does not include cost to install solar PV as required in the prescriptive option, which increases the first cost

b. In the prescriptive option the operating cost of HPWH with Solar PV is less because the onsite DG (solar panels) is used by the HPWH resulting in little to no utility bills

4. The recommended removal of the requirement that gas water heating be installed if natural gas is available as determined by the gas utility, will further suppress gas choice

Overall, all of these factors conspire to:

- Limit consumer choice in gas water heating
- Make electric options competitive with gas, if not more attractive
- Support site-based ZNE/electrification

Action Plan

1. Position: We have developed and expressed our opposition to the CASE study recommendations on the following basis:

a) We question the sudden inclusion of the HPWH (Heat pump water heater) considering it was not offered up as an option earlier in the process. The most recent argument heard was at the CEC Case Study workshop on July 21st when David Goldstein of NRDC proposed adding HPWH universally as a prescriptive option. SMUD also requested this to be included as per Mazi of the CEC. The result of adding HPWH as a prescriptive option has now prompted the removal of the language regarding natural gas water heating if natural gas is available. We would like to know what the data is that supports this recommendation at such a late date, and how it was so significantly adopted with advocacy from only two stakeholders.

b) The DOE is currently working on a new rating system (UED) to replace the current EF (Energy Factor) rating system to be in place by April, 2015. Elevating IWH to the standard prior to the new system being fully developed and introduced is premature and leaves a tremendous amount of uncertainty as to how different this new system will be and how it will impact the rating of water heaters in general. In addition, a new test method is also being developed – it too will create some uncertainty for all involved and primarily the manufacturers.

c) Cost Analysis Comparison – the study cites a cost effectiveness that seems to rely heavily on the life cycle of the IWH (of 20 years), which we believe to be unsubstantiated by any empirical data; the difference in maintenance costs between storage water heaters and IWH is not reflected as the author of the report states, “one of the IOU’s told us that the maintenance costs are equal”. We have reservations about this assertion and will work to provide data to support our argument; and, the reliability of IWH is not as solid as the storage water heater as examples are documented of issues that arise with IWH that are not a concern with storage.

d) There is still a question of the exemption to pre-emption between the CEC and the DOE. We believe that for the CEC to move to such a significantly higher minimum efficiency level they must receive exemption to the pre-emption from the DOE. The CEC asserts that they are well within their authority to move forward without the exemption but are working with their legal team to further assess.

2. We are developing a coalition to counter the CASE recommendations.

We have been in contact with the AGA, the APGA, storage water heater manufacturers, the American Heating, Air-Conditioning and Refrigeration Institute (AHRI). We have discussed this with our peers at the IOU’s, are examining options for advocates in the Real Estate area and CBO’s for different interest groups, ie, senior citizens, low income, etc.

3. We are in contact with the Sacramento office.

We have reached out to Tamara Rasberry and will be discussing this with her within the next few days.

Sue Kristjansson
Customer Strategy Manager, Clean Energy
Southern California Gas Co.
Telephone: (213) 244-5535
Fax: (213) 226-4317
Cell: (424) 744-0361

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-----Original Message-----
From: Alexander, Lisa
Sent: Thursday, August 07, 2014 2:36 PM
To: Kristjansson, Sue
Subject:

Have you sent me the revised overview of the title 24 situation?

Sent from my iPhone

Codes & Standards IWH CASE Study

A historical perspective of how we arrived at the situation we find ourselves in regarding the elevation of IWH (Instantaneous Water Heaters) to standard and creating an efficiency level that is virtually unattainable for storage water heaters (.82 EF).

Overview

In June of 2014, The Codes and Standards group was in need of some support so Chris Goff was asked to cover the Title 24 conference calls to ensure SoCalGas was represented and he could elevate any concerns. Chris alerted us to the fact that the CEC was planning to accelerate the efficiency level of storage water heaters to .82 EF (Energy Factor), far in excess of the planned increase by the DOE (from .62 EF to .67 EF). The effect of this change would be to drive storage water heaters out of new construction: nostorage water heater comes close to a .82 EF unless it is a condensing water heater at a much higher cost.

We immediately convened a team to assess the situation and the impact to our company and determined it to be detrimental regardless of the tankless end-use retention. We have elevated the concern to our directors and moved forward with developing our position from an evidentiary perspective.

Situation Assessment

- In an effort to accelerate the move to ZNE (Zero Net Energy) the CEC is pushing technologies more quickly into codes and standards.
- In the 2013 T24 cycle, a provision was added to T24 code that all residential new construction development must plumb for both storage and instantaneous water heaters – paving the way to this next move. SoCalGas was a party to this provision.
- In January of 2014, Energy Solution was commissioned to perform a CASE study – SoCalGas is a partner to this study and shared funding responsibilities with the other IOU's.
- The current water heating CASE Study recommendations include:
    - Modify the prescriptive requirement for gas domestic water heating system in single family homes and multifamily homes with dedicated water heaters from the current storage water heaters with an Energy Factor EF of 0.67 (actually EF is a formula, 0.67-0.0019V, where V is the volume of the water heater tank) to an Instantaneous Water Heater (IHW or Tank-less water Heater) with minimum EF of 0.82.
    - If natural gas is not connected to the building the water heating system shall be an electric resistance water heater with a solar hot water system with solar fraction of at least 50%
    - An alternate option will permit the installation of gas storage water heaters with EF 0.67 with a solar thermal water heating system with a solar fraction of 50%.
    - More recently the CEC added two additional recommendations and they are:
        - HPWH (heat pump water heaters) to be added to the prescriptive option with solar PV
        - Remove the language that requires that natural gas water heating be installed where natural gas is available, as determined by the natural gas utility.
- The next steps from the CASE study:
    - 2nd Draft of CASE Report ready for IOU Team review — Next week
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   - The proposed changes eliminate customer choice
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3. We are in contact with the Sacramento office.

We have reached out to Tamara Rasberry and will be discussing this with her within the next few days.

Title 24 Update

Senior Management Team Meeting
9/22/2014

- Title 24, the CEC codes and standards that govern new construction and typically precede changes to the retrofit market, is a critical driver of SoCalGas residential market share

- Current Title 24 update changes under discussion by the CEC regarding water heating standards will reduce customer choice, disadvantage many of our customers and potentially impact revenues in the future

- The immediate impact of the current Title 24 changes to SoCalGas is minor; however, over time the impacts will compound

- The changes move in a direction that tends to support electric equipment and over time will disadvantage natural gas water heaters, especially impacting economically challenged and rental communities

- These changes are driven by the State's path to Zero Net Energy homes, an aspirational policy which seeks to minimize fossil fuels and drive solar PV / renewables

- We are taking aggressive steps to address the proposed changes

The Residential Market Drives Over 70% of SCG Base Margin.

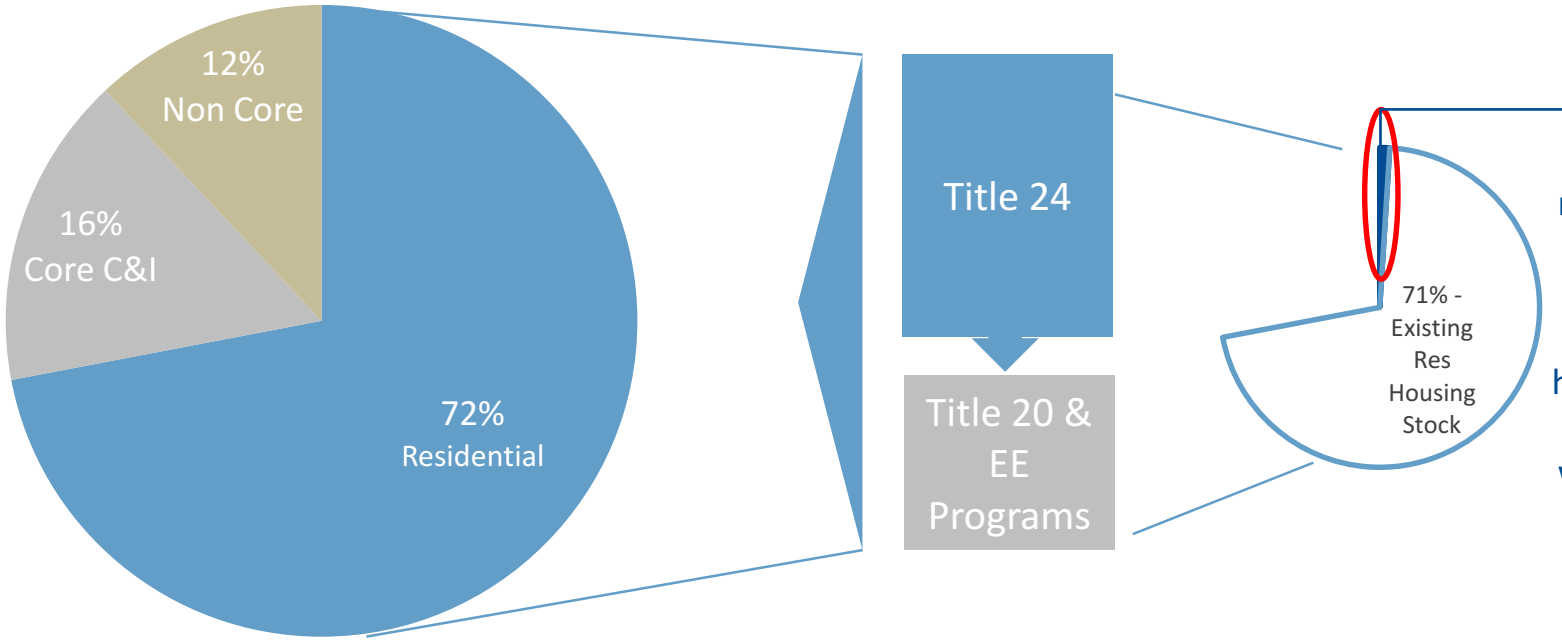
Figure 1: Annual Base Margin Contribution by Segment (%)

Title 24 is a Primary Driver of Gas Penetration in the Residential Market.

Title 24 governs building construction and is a bellwether for Title 20 and EE standards in existing construction.

Title 24 *Immediately* Impacts a Fraction of Our Business.

The immediate annual risk is .2% of the res. market, or ~$1.6m in incremental annual revenues.



Title 24 impacts multiply over the mid- and long-term as housing stock refreshes and PV saturation increases in new and existing construction.

The Proposed Changes Would Effectively Drive Electric Choice.

Title 24 Consists of 12 Parts

1: Admin Code
2: Building Code
3: Electrical
4: Mechanical
5: Plumbing
6: Energy
7: Elevator
8: Historical Bldg
9: Fire
10: Existing Bldg
11: Green Bldg
12: Reference Std.

Part 6: Energy is where the concerning changes are.

- Require gas water heaters to meet DOE standard for TANKLESS water heaters (.82 Efficiency Factor.).
- Effectively eliminate non-condensing gas storage water heaters as a qualified Title 24 water heating end use. The highest Efficiency Factor for AQMD-compliant gas storage is .67.
- Mandate for water heating:
  - Tankless water heaters; or
  - Gas storage water heaters that meet or exceed DOE tankless standard = condensing water heaters; or
  - High efficiency gas storage water heaters that meet DOE minimum (.67) WITH solar fraction of .55; or
  - ***Electric heat pump water heaters with solar fraction of .55***
- **Related CEC proposal would eliminate current requirement for gas water heating to be installed when there is a gas stub**

The Longer Term Business Impact Would Be Significant.

- Left unchecked, the proposed changes would have a growing impact on SoCalGas:
  - Residential water heating accounts for ~$800m of revenues/year
  - **New construction opportunity cost: Up to $12m per year by 2020**
    - Adoption of these proposals would lead to new construction opportunity cost of $1.6m in the first year (2016), as .2% of the market (new construction homes with PV) migrates to electric
    - By 2020, the new construction opportunity cost would be at least $4.8m annually. If PV installations accelerate from 20% to 50% of new construction, the annual opportunity cost would be $12m/year by 2020.
  - **Existing construction lost revenues: ~$4.8m per year by 2020**
    - Extrapolated to retrofit standards, the first year replacement rate of gas storage or tankless by electric heat pump would result in an additional $1.6m in lost revenues from current market the first year (2016) (2% of homes have solar PV; of those, 10% will have to replace water heater per year).
    - Assuming average water heater life of 10 years and that homes with solar PV will switch to electric water heating (2% of existing homes are solar), our gas water heating revenues would decline by an incremental $1.6m/year, or up to $4.8m annually by 2020
  - Total impact by 2020: Up to $17m in lost revenues and opportunity cost annually
  - As gas water heating erodes in new construction, space heating, cooking, clothes drying, etc., are all put at risk due to dominant role of water heating in cost justifying the gas houseline
  - The loss of residential water heating revenues will cause rates to rise across other customer segments

- **A CEC history** of trying to force broad social change through building codes, appliance standards, etc.
  - CEC changes are often ahead of available technology (i.e., ZNE homes by 2020)
  - CEC changes are often indifferent to customer economic conditions – leading to an expanding network of special programs and subsidies that mask true costs

- **Anti-fossil fuel sentiment** among some policy makers that burning any fuel, no matter how clean or necessary, must be "bad."

- Desire by some **electric utilities** to:
  - Return to the days of "Gold Medallion" all-electric homes as a way of counteracting the effects of growing distributed generation.
  - Preclude future gas fuel-based innovation (such as fuel cells, microturbines, NGV, etc.) that could impact electric sales

- **Delay implementation of tankless water heaters** / .82 EF standard to next cycle (2019)
  - Keeps .67EF storage water heaters as option
  - Allows time for further analysis - SCG will take lead on that
  - Allows time for market maturation for tankless water heaters
  - Also positions California to NOT go against DOE standards; to stay aligned with manufacturers and support broader consumer choice. Currently, the CEC expects a lawsuit because the proposed changes would pre-empt the DOE standard.

- **Delay implementation of electric heat pump water heaters** to 2019 cycle
  - Allows time for that technology to go through appropriate process and vetting that technologies usually do before becoming code

Appendix

Timing

	Title 24 Cycle Milestone	Projected Date
Joint Utility / Study Phase	2nd draft of CASE report ready for IOU team review opposition	August 2014
	IOU Team review of CASE Report finished	September 19
	Energy Solution Deliver Final Draft CASE Report to CEC	September 19
Rulemaking / Public Engagement Phase	CEC Releases staff report with proposed standards	Beg – October 2014
	CEC holds first rulemaking workshop	Mid – October 2014
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Table 1: Builder First Cost Water Heater Comparison

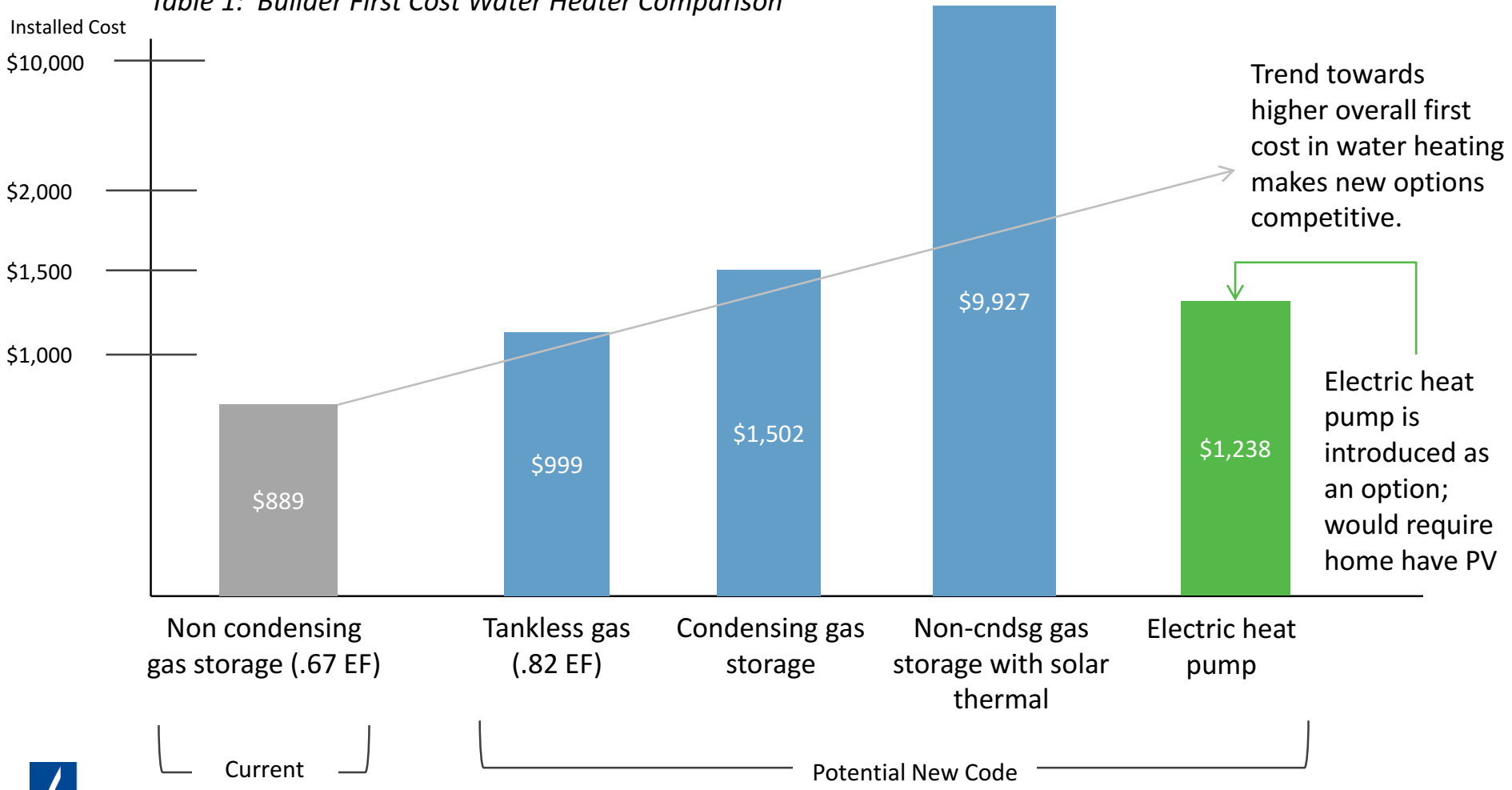
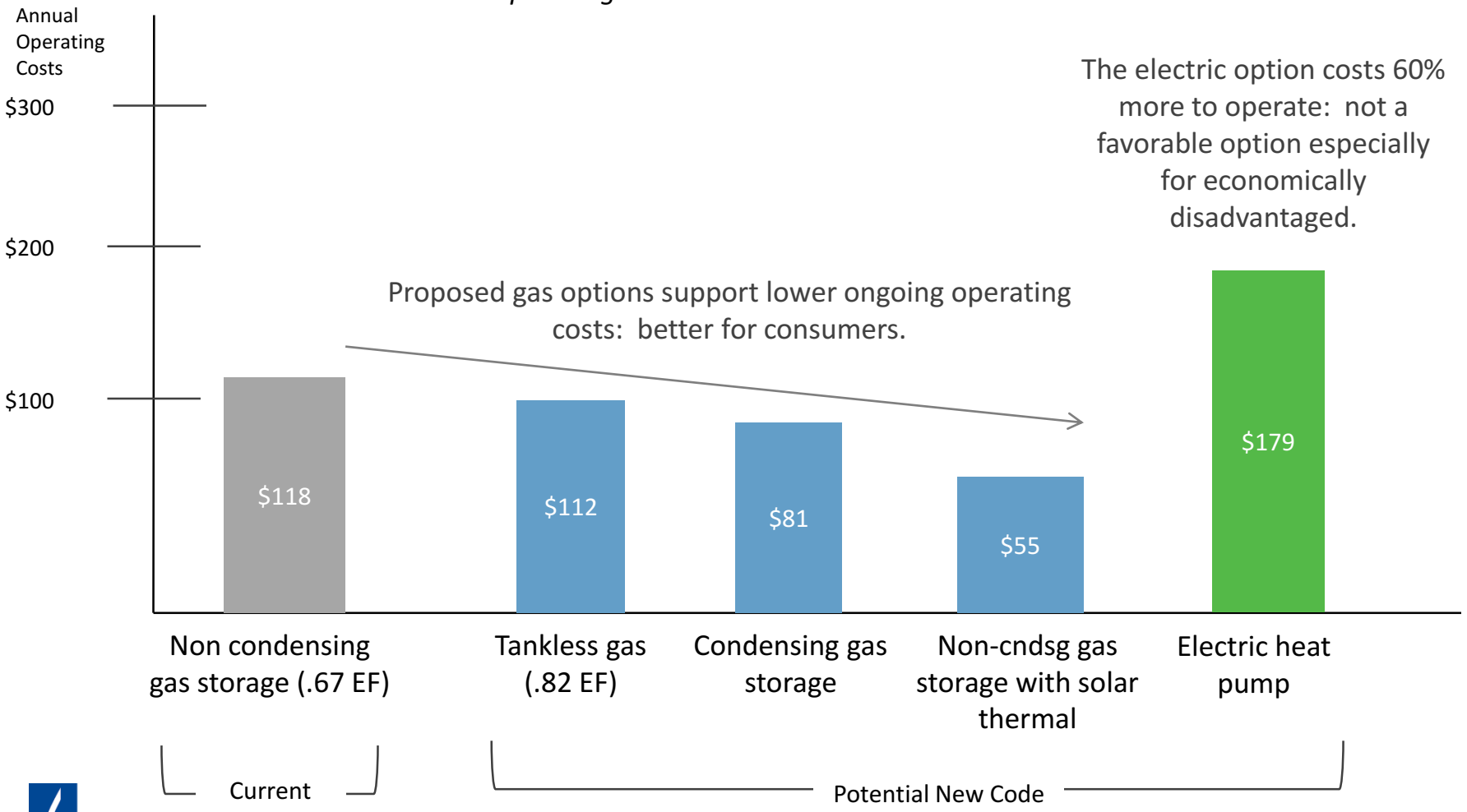


Table 2: Annual Consumer Operating Cost



The proposed movement of tankless to standard would create a gap in program goal attainment, but would still help portfolio cost effectiveness.

Energy Savings(1) (Annual)

EE Programs:	- 320,000 Therms
EE Codes & Standards:	+780,000 Therms
Total Portfolio:	460,000 Therms (Net Gain)

Because progress towards goal would be diminished, there is an associated negative shareholder impact related to EE earnings.

Shareholder Earnings(2) (Annual)

EE Programs:	- $64,000
EE Codes & Standards:	N/A
Total Portfolio:	$64,000 (Net Loss)

Notes:

1 - GOAL ATTAINMENT: The EE Portfolio goal is bifurcated between EE Programs and EE C&S so any gain in C&S savings would not have an impact on the ability to achieve the EE Program goal.

2 - EE Programs: Calculated from the loss in therm savings associated with the water heater unit forecast.

EE Codes & Standards: The C&S mechanism component is expenditure based so there is no impact to earnings from an increase in C&S therm savings. The SoCalGas co-fund portion of the study was $102k so we would earn roughly $12k from funding that study in 2015.

Detailed Costs by Water Heater Type

Water Heater Type	Storage Capacity	EF	Equipment Cost (List)	Installation Labor (List)	Volume Discount (Y/N)	Total first cost (builder)	Annual Electricity use [kWh]	Annual Gas use [therms] (CZ10)	Total Annual Operating Cost
Gas Storage, Std Eff (EF 0.62)	50	0.62	$579	$480	Y	$741	0	141	$128.00
Gas Storage, Std Eff (EF 0.67)	50	0.67	$805	$480	Y	$899	0	130	$118.00
Gas Storage, Condensing High Eff (EF 0.90)	50	0.90	$1,665	$480	Y	$1,502	0	90	$81.00
Electric Resistance Storage WH	50	0.90	$376	$480	Y	$599	2847	0	$399.00
Electric Resistance IWH	0	0.98	$469	$480	Y	$664	2614	0	$366.00
IWH, Std Eff (EF 0.82)	0	0.82	$947	$480	Y	$999	57	115	$112.00
IWH, Condensing High Eff (EF 0.91)	0	0.91	$1,141	$480	Y	$1,135	57	104	$102.00
2-flat panel glass Solar Thermal System with Gas Storage WH (EF 0.62-0.67)	50	0.62+	$9,927	$0	N	$9,927	0	61	$55.00
2-flat panel glass Solar Thermal System Gas Storage Condensing (EF 0.91)	50	0.90	$10,900	$0	N	$10,900	57	40	$45.00
2-flat panel glass Solar Thermal System IWH Std Eff (EF 0.82)	0	0.82	$10,182	$0	N	$10,182	57	52	$55.00
2-flat panel glass Solar Thermal System IWH Condensing High Eff (EF 0.91)	0	0.91	$10,376	$0	N	$10,376	0	47	$42.00
2-flat panel glass Solar Thermal System Electric resistance Storage WH (EF 0.90)	50	1.00	$9,611	$0	N	$9,611	1281	0	$179.00
2-flat panel glass Solar Thermal System Electric resistance IWH (EF 0.98)	0	1.00	$9,704	$0	N	$9,704	1176	0	$165.00
Electric heat pump WH storage (EF > 2)	50	2.00	$1,168	$600	Y	$1,238	1281	0	$179.00
Electric Heat Pump with Tank (EF > 2) for Charging at Night	80	2.00	$1,668	$1,000	N	$2,668	1281	0	$102.00

ZERO NET ENERGY(ZNE) & T24

ZNE (Zero Net Energy) is an aspirational goal of the California Long-Term Energy Efficiency Strategic Plan

ZNE has evolved from aspirational to commonly known as a "mandate"

All residential new construction must be ZNE by 2020

T24 is the pathway to ZNE – hence the acceleration of IWH to standard far ahead of the DOE

Southern California Gas Company A Sempra Energy utility®

Glad to be of service.®

DRAFT

TITLE 24 WATER HEATING OVERVIEW

Thursday, August 21, 2014

SITUATION

Residential New Construction water heating load at risk from 2016 T24 IWH CASE report recommendations:

- Report drives IWH to standard at .82 EF as opposed to DOE minimum efficiency requirement of .675 EF
- Storage water heating becomes a prescriptive option with solar thermal system
- Electric Heat Pump water heater is proposed also as prescriptive option with solar fraction of .55
- Removal of natural gas preference language in T24

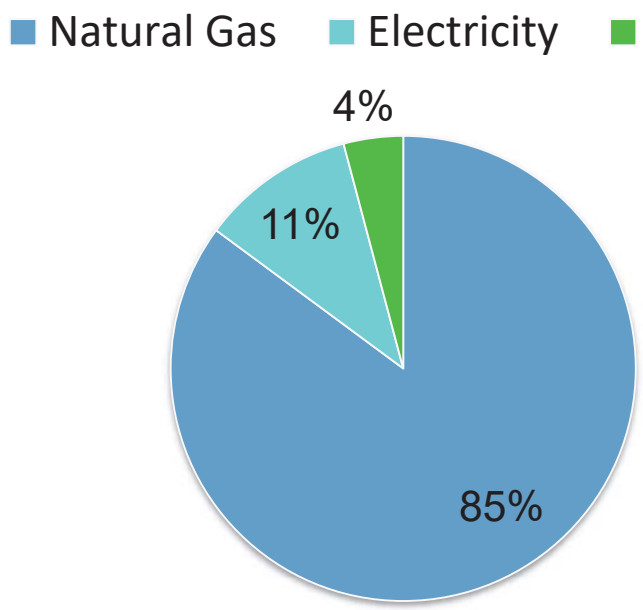
IMMEDIATE RISK – JAN 2017 (SEE APPENDIX)

- CAHP (California Advanced Homes Program) will no longer be able to provide incentives for IWH installed in residential new construction
- Residential rebates for all water heaters is eliminated with the exception of condensing units of .92 EF (significant cost increase)(validating this as the CASE team states this is untrue but our residential team says it is)
- Lays the groundwork for elimination of natural gas in new construction

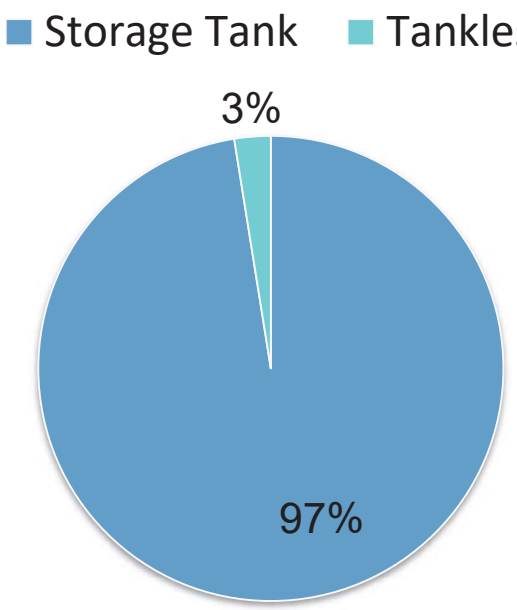
Long-Term Risk

- T24 is new construction, but leads T20, the retrofit market
- Builders may forego natural gas water heaters for the newly offered HPWH

Fuel used in CA Water Heating Market



CA Water Heating Market (Type)



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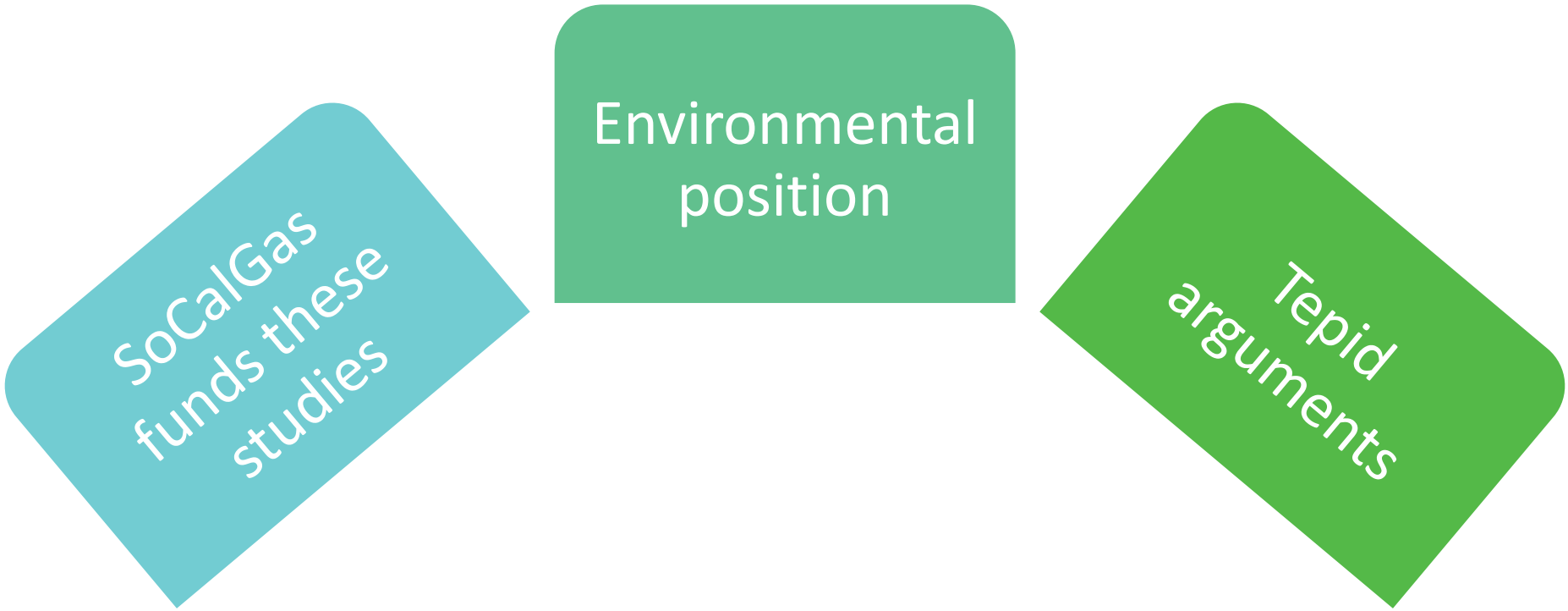
LESSONS LEARNED



SoCalGas Position - With State case Team

We are opposing on the following basis:

1. **Recommendation is too aggressive:**
   - IWH is still considered to be emerging in the natural marketplace (2% of market overall)
2. **Past Precedence:**
   - CEC has always followed DOE minimum standards in the past – why is this cycle different
3. **Questionable assumptions in cost-effectiveness calculations:**
   - Life-cycle unproven
   - First cost higher than stated
   - Maintenance cost differential not included

Action Plan

1. Internal team working on our opposition points with IOU's and CASE authors/team
2. External advocacy from AGA, APGA, Manufacturers and possibly builders, real estate organizations and community advocates
3. Environmental policy outreach to decision makers and State stakeholders (Ken Chawkins, Jared Liu-Klein, Tamara Rasberry)

POTENTIAL OUTCOMES

Best Case	Delay Title 24 code change until 2019 (Band-Aid solution)
	Align Title 24 water heating code with Federal Water Heating Standard (as has been the historical approach)
	Maintain natural gas language in T24 – ensures that largest residential end use will be present in new construction at least through 2019
Acceptable	Accept IWH as the standard (will receive large therm savings toward EE goal for moving this technology to standard)
	Downside, we have no additional technologies in the pipeline to replace IWH in EE programs, large reduction to EE budget
	Possible Interim Energy Factor (i.e. EF of .75) Electronic ignition? No pilot
Worst Case	IWH goes to standard
	Heat pump water heating becomes a prescriptive option/natural gas preference language removed from T24

ANALYSIS OF WH TECHNOLOGIES

Water Heater Type	Efficiency (EF)	Installed Cost	Yearly Energy Cost - National	Yearly Energy Cost - SoCal	Market Share	% Market Share
Conventional gas storage	0.6	$850	$350	$237.50	10,046,721	82%
High-efficiency gas storage	0.65	$1,025	$323	$219.18		
Condensing gas storage	0.86	$2,000	$244	$165.57		
Minimum Efficiency electric storage	0.9	$750	$463	$731.05	1,700,000	14%
High-eff. electric storage	0.95	$820	$439	$693.16		
Demand gas (no pilot) {Instantaneous}	0.82	$1,600	$256	***$173.71***	**250,000**	**2%**
Electric heat pump water heater	2.2	$1,660	$190	$300.00	200,000	1.60%
Solar with electric back-up	1.2	$4,800	$175	$276.32	Unknown	Unknown

APPENDIX

Potential Impact to SoCalGas EE Programs

» RNC Program Breakdown

	Gross Therm Savings	% of Savings
Domestic Hot Water Therms	658,081	**69.16%**
Space Heating Therms	293,405	30.84%
Total	951,486	

» Residential Program

- Eliminates all water heating measure except for .92 EF which is condensing and constitutes only (on average 16% of our rebate program)

Program Measure	Therms Eliminated	Budget Reduction
.82 IWH	676,020	$1,690,050
Storage Water Heaters	249,376	$817,910
Total	**925,396**	**$ 2,507,960**

CEC Case Report Calendar

Action Item	Projected Date
2nd draft of CASE report ready for IOU team review opposition	In Progress
IOU Team review of CASE Report finished	Delayed
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Title 24 Water Heating CASE Report

U.S. Dept. of Energy Water Heater Efficiency Standard effective April 16, 2015:

Product Class	Rated Storage Volume	Energy Factor (EF)
Gas Storage Water Heater	≥ 20 gallons and ≤ 55 gallons	0.675 – (0.0015*Vs)
Gas Storage Water Heater	< 55 gallons and ≤100 gallons	0.8012 – (0.00078* V_s)
Gas Instantaneous Water Heater	< 2 gallons	0.82 – (0.0019*V_s)

CEC Title 24 2016 New Construction Building Code:

- Exceeds Federal water heating Standards by ~ 25% (gas storage)
- Natural gas tankless with an Energy Factor of .82 would be the new minimum
- The Energy Factor (EF) rating of any water heater would have to be at least as high as the federal minimum EF (effective in 2015) for gas IWHs (0.82)

Proposed changes to the 2016 Title 24 building code (still being discussed):

- Gas storage water heating with a .55 solar fraction
- Electric water heating with a .55 solar fraction
- Removal of language regarding required use of natural gas if available

SoCalGas' Residential New Construction Program

RNC ENROLLED (PAID & COMMITED) UNITS
2010-2012 Campaign Projects

Pivot By The Number Of Therm Savings Associated Dollars and Dwelling Units			
Row Labels	**Sum of Gross Therm Savings (1st)**	**Sum of Expected Total Value**	**Sum of # Of Dwelling Units**
Domestic Hot Water Therms	658,081	$2,012,566	16,185
Space Heating Therms	293,405	$892,463	15,674
Grand Total	**951,486**	**$2,905,029**	**31,859**

Pivot By The Number Of Projects
Count of Proj Number
616

Title 24 Water Heating Outcome Scenarios

Best case scenario	• Delay Title 24 code change until 2019 (band-aid solution) • Align Title 24 water heating code with Federal Water Heating Standard (as has been the historical approach) • Maintain natural gas language in T24 – ensures that largest residential end use will be present in new construction at least through 2019
Acceptable	• Accept IWH as the standard (will receive large therm savings toward EE goal for moving this technology to standard) • Downside, we have no additional technologies in the pipeline to replace IWH in EE programs, large reduction to EE budget
Worst case	• IWH goes to standard • Heat pump water heating becomes a prescriptive option/natural gas preference language removed from T24

Water Heater Technology Comparison

Water Heater Type	Efficiency (EF)	First Cost - Equipment Only	Installation Cost	Installed Cost	Yearly Energy Cost	Annual op cost in SoCal	Life (years)	Total Cost (Over 13 Years)	Market Share
Conventional gas storage	0.60	$ 600	$ 250	$ 850	$ 350	$ 237.50	13	$ 5,394	
High-efficiency gas storage	0.65	$ 725	$ 300	$ 1,025	$ 323	$ 219.18	13	$ 5,220	10,046,721 or 82%
Condensing gas storage	0.86	$ 1,650	$ 350	$ 2,000	$ 244	$ 165.57	13	$ 5,170	
Minimum Efficiency electric storage	0.90	$ 500	$ 250	$ 750	$ 463	$ 731.05	13	$ 6,769	1,700,000 or 14%
High-eff. electric storage	0.95	$ 570	$ 250	$ 820	$ 439	$ 693.16	13	$ 6,528	
Demand gas (no pilot) {Instantaneous} 5	0.82	$ 1,200	$ 400	$ 1,600	$ 256	$ 173.71	13	$ 4,925	**250,000 or 2%**
Electric heat pump water heater	2.20	$ 1,160	$ 500	$ 1,660	$ 190	$ 300.00	13	$ 4,125	200,000 or 1.6%
Solar with electric back-up	1.20	$ 3,800	$ 1,000	$ 4,800	$ 175	$ 276.32	13	$ 7,072	Unknown or incalculable

Data from http://www.aceee.org/consumer/water-heating

The IEPR (Integrated Energy Policy Report)

- The Warren-Alquist Act (Division 15 of the Public Resources Code) is the legislation that created and gives statutory authority to the California Energy Commission. The Act designates the Energy Commission as the state's primary agency for energy policy and planning.
- Senate Bill 1389 (Bowen and Sher, Chapter 568, Statutes of 2002) requires that the Commission adopt and transmit to the Governor and Legislature a report of findings every two years. That report is called the **Integrated Energy Policy Report** or IEPR (pronounced eye'-per).
- The IEPR Committee provides oversight and policy direction related to collecting and analyzing data needed to complete the *Integrated Energy Policy Report* on trends and issues concerning electricity and natural gas, transportation, energy efficiency, renewables, and public interest energy research.
- The IEPR contains the definition of ZNE and subsequent information regarding how ZNE is to be implemented.

- Implications to Southern California Gas Customers:
    - No non-condensing gas storage water heater exists – or will exist – that is compliant with the higher EF.

    - Electric heat pump water heaters are introduced as a prescriptive measure. Costs and efficiencies make these a highly attractive consumer offer.

        a. First cost for basic unit ~$1200 - $1500, that is comparable to IWH but this does not include cost to install solar PV as required in the prescriptive option, which increases the first cost

        b. In the prescriptive option the operating cost of HPWH with Solar PV is less because the onsite DG (solar panels) is used by the HPWH resulting in little to no utility bills

        4. The recommended removal of the requirement that gas water heating be installed if natural gas is available as determined by the gas utility, will further suppress gas choice

One-on-One Meetings

Brief major policy stakeholders on issues and information relevant to developing and amending public policy and regulations that affect natural gas.

Target Audience: Regulators, agencies, elected officials and staff

Messaging: Pathways, decarbonize the pipeline and upstream methane emissions (future)

Workshops

Provide industry analysis and encourage high level public conversation regarding natural gas as a clean fuel and explain new uses of natural gas and incentives related to its use.

Target Audience: Energy stakeholders

Messaging: Pathways, decarbonize the pipeline

Community

Gain third party support for SoCalGas's sustainability and community initiatives.

Target Audience: Local civic and community organizations (e.g. Chambers, Rotary)

Messaging: Pathways, decarbonize the pipeline

Conferences

Create "buzz" around chosen topics and generate interest before critical time periods.

Target Audience: Energy stakeholders

Messaging: Pathways, decarbonize the pipeline

Internal

Educate SoCalGas employees about the benefits of using natural gas as a foundational fuel through group trainings as well as one-on-one meetings with departments and individuals relevant to the promotion of this campaign.

Target Audience: Employees and their families

Messaging: Pathways, decarbonize the pipeline and upstream methane emissions (future)

Philanthropy/Charitable Contributions

Influence policy discussions through active participation in non-profit organizations. In coordination with corporate-wide effort, place SCG policy managers on non-profit boards and provide resource support for key organizations.

Target Audience: Members of non-profits, state & local city councils, organizations

Messaging:

Academic

Expand SoCalGas's presence in the academic community to increase knowledge and bolster support of natural gas from non-biased third parties.

Target Audience: University policy and research communities

Messaging: Pathways, decarbonize the pipeline and upstream methane emissions (future)

Media

Use paid, earned and online media channels to reach the general public with information about the benefits of natural gas. Use media impact in conversations with public officials and, as necessary, target media to affect specific legislators by district. Potential *paid* media channels include: online advertising, print, radio, billboards. Potential *earned* channels include: media interviews, op-eds and promotion of company sustainability programs. Potential *online* channels include: online advertising, newsletters and social media

Target Audience: energy stakeholders, suppliers, contractors, opinion leaders, SoCalGas employees, general public

Messaging: Pathways, decarbonize the pipeline and upstream methane emissions (future)

MESSAGING

Streamlined and consistent messaging is necessary to ensure the proper representation of SoCalGas and its goals to the target audience. These messages are preliminary and may change if dictated by research and polling.

- Natural gas can help California reach the goals established by AB 32 and the Federal Clean Air Act

- Natural Gas vehicles and hybrids are reducing GHG emissions in the transportation sector- the largest emitter of GHG

- Natural gas transportation pathways reduce GHG emissions faster to reach ozone and emissions reductions goals sooner

- Natural gas reduces stationary emissions through distributed generation and renewables

- Multiple methods to reduce emissions using natural gas: NGVs, alternative fuel infrastructure, CNG & LNG

Decarbonizing the Pipeline messaging:

- Decarbonizing the pipeline is a long term strategy to reduce emissions and reach GHG goals

- Natural gas can be used to de-carbonize the pipeline through power-to-gas, carbon capture and storage, biogas, and other methods

- Natural gas needs to be involved in decarbonization as well as electricity to balance the load and avoid the "death spiral" for gas ratepayers

- Decarbonizing the pipeline utilizes pipe infrastructure already in place

- Natural gas's involvement in decarbonization balances the load as well as helps with seasonal energy storage needs other energy sources are unable to handle

- Decarbonizing our natural gas delivery systems keeps intact the energy efficiencies of natural gas without creating the dramatic increase in electric demand and systems costs which make decarbonizing electric generation such a challenge

Upstream Methane Emissions

- To be filed in after completion of the EDF studies

General messaging may include: These messages are place-holders and subject to review after the polling is completed.

- Natural gas is a cost-effective, highly efficient energy source for a wide range of residential and business uses

- Natural gas is clean burning which provides for cleaner electricity production and transportation

- Natural gas is a safe, clean and versatile fuel source

- Natural gas is a domestically produced fuel

- The natural gas industry provides employment for California with 8,200 jobs at SoCalGas alone
- California's plan to achieve the state's GHG emissions reductions goals by relying on electric and fuel cell vehicles comes up short in terms of reducing NOx emissions to meet federal ozone targets.
- Success of SoCalGas in implementing energy efficiency programs that could serve as a model statewide/federally
    - CNG fueling for transportation
    - Incentives Portfolio

TIMELINE

Timing of the strategies listed above should coincide with key legislative/regulatory dates and events. A long term strategy beyond the scope of this campaign should also be kept in mind in order to keep support growing.

Phase 1 – Pathways and vison for decarbonize of the pipeline

Phase 2 – Methane Emissions

Phase 3 – ?

Please see attached chart for specific dates.

MEASUREMENT

To measure the campaign's impact, outcomes must be measured regularly to assess progress and determine where/when adjustments need to be made. Potential methods for measurement are internal meetings, external opinion polls and legislation/proceedings tracking.

- Internal meetings with consultants, staff, and the interdisciplinary committee will allow for a monthly review of the campaign to assess progress and make modifications as needed.
- Public opinion is critical to influence legislative and regulatory behavior as well as for measurement purposes to know whether the campaign is hitting the right points or if it needs redirection. If consumer sentiment increasingly supports SoCalGas' positions it will provide evidence useful to legislators and regulators about where their support should lie. Using regular polls as benchmarks allows SoCalGas staff to adjust messaging as needed based on the poll results to ensure that our messaging matches the concerns and interests of both SoCalGas and the general public.
- Legislative outcomes should be tracked to produce a record of our involvement with bills/proceedings and whether the outcome was favorable for SoCalGas and the natural gas industry.

WORKING PARTS

Attachment B

CalAdvocates Response to SoCalGas 5-22-20 Motion to Quash (Not a Proceeding)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

RESPONSE OF PUBLIC ADVOCATES OFFICE TO SOUTHERN CALIFORNIA GAS COMPANY MOTION TO QUASH PORTION OF SUBPOENA, FOR AN EXTENSION, AND TO STAY COMPLIANCE

(NOT IN A PROCEEDING)

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June 1, 2020

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LIST OF EXHIBITS

I. INTRODUCTION

Pursuant to Public Utilities (PU.) Code §§ 309.5(e) and 314, and Rule 11.3 of the California Public Utilities Commission's (Commission's) Rules of Practice and Procedure (Rules), the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) submits this Response to Southern California Gas Company's (SoCalGas') Motion to Quash[1] part of a subpoena executed by the Commission's Executive Director. That subpoena ordered SoCalGas to provide Cal Advocates with "access to all databases associated in any manner with the company's accounting systems."[2] SoCalGas' Motion to Quash was served on May 19, 2020, and a substituted Motion was served May 22, 2020.[3]

SoCalGas' Motion to Quash represents a direct attack on the Commission's authority to regulate. It should be met with swift and decisive Commission action not only rejecting SoCalGas's Motion, but also imposing sanctions on both the company and its representatives for its persistent waste of limited Commission resources during these – as SoCalGas describes them – "challenging circumstances."[4]

In sum, there is no question that the Commission, be it through Safety and Enforcement Division, Energy Division, Cal Advocates, or otherwise, has not only the authority, but in fact an obligation to audit SoCalGas' accounts and records as Cal Advocates is attempting to do.[5] These accounts and records must be made available "at

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[1] The Motion to Quash is entitled "Southern California Gas Company's (U 904 G) Motion to Quash Portion of the Subpoena To Produce Access to Certain Materials in Accounting Databases and to Stay Compliance until the May 29th Completion of Software Solution to Exclude Those Protected Materials in the Databases (Not in a Proceeding)."

[2] The subpoena served May 5, 2020, is provided in the SoCalGas Motion to Quash, Declaration of Elliott S. Henry, Attachment A.

[3] This Response is timely filed consistent with a May 29, 2020, email from ALJ DeAngelis confirming that the Response could be filed on June 1, 2020 based on the date of the filing of the Substitute Motion.

[4] SoCalGas Motion to Quash, p. 16.

[5] See, e.g., PU Code §§ 314 & 314.5.

any time,"[6] and neither the Commission nor its staff have an obligation to explain the reasons why they seek access to the accounts and records or to defer access to a time more convenient to the utility.[7] Indeed, the very purpose of the Commission's broad authority in this regard is clearly, in part, because if the Commission were required to explain itself, the utility could modify its accounts and records prior to Commission review in order to hide or otherwise make relevant information unavailable.

Well-aware of this broad authority, and the reasons for it, SoCalGas nevertheless moves this Commission to: (1) modify its validly-issued subpoena and allow SoCalGas the discretion to exclude accounts of its own choosing from Cal Advocates' review; (2) grant it an extension to implement a method to withhold this information; and (3) allow SoCalGas to withhold information from Cal Advocates until the Commission rules on its appeal of claims that have already been rejected by an Administrative Law Judge (ALJ).[8] In support of its proposal, SoCalGas misrepresents the facts,[9] claims that the access ordered by the subpoena is not needed,[10] chastises Cal Advocates for demanding immediate access without explanation,[11] and blatantly states that it will defy both Commission rules and the governing statues as it see fit.[12] In addition, it is now

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[6] PU Code § 314(a).

[7] This is especially true here, where, as described in more detail below, SoCalGas has the ability to provide almost immediate remote access to its SAP system where its accounts and records are housed.

[8] The November 1, 2019 ALJ Ruling rejecting SoCalGas' First Amendment Claims is available at SoCalGas Motion to Quash, Declaration of Elliott Henry, Exhibit L.

[9] For example, the discussion in ¶ 13 of the Declaration of Elliott Henry, attached to the SoCalGas Motion to Quash does not accurately represent Cal Advocates statements during the May 18, 2020 conference call. Among other things, Cal Advocates representatives never used the word "impasse" and were clear that SoCalGas' request for an extension needed to be considered by Cal Advocates management. That request was not in any way denied on that call. Nevertheless, SoCalGas sought authorization from ALJ DeAngelis to file its Motion to Quash at 12:23 p.m. the next day – less than 24 hours after the conference call ended. Given the length and breadth of that Motion, it is clear SoCalGas had been planning to file it for many days.

[10] SoCalGas Motion to Quash, p. 16.

[11] SoCalGas Motion to Quash, p. 16.

[12] SoCalGas Motion to Quash, pp. 15-16, footnote 11 notifies the Commission that it will not

evident that SoCalGas has wrongly withheld information from Cal Advocates in the filings it made last week, as well as in prior filings, without clearly acknowledging what it was doing.[13] Once again, SoCalGas has opted to flout well-settled Commission rules and state laws to do exactly as it chooses.

As Cal Advocates explained in an email response to SoCalGas' service of the Motion, it should be rejected as inappropriate and untimely.[14] Indeed, any substantive ruling on the Motion would only serve to encourage SoCalGas' non-compliance with

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provide information contained in its accounts and records regarding its opposition to "Reach Codes" to Cal Advocates except as requested in the open proceeding on those issues, R.13-11-005.

[13] Exhibit 1, E.Henry-ALJ DeAngelis 5-19-20 EMail re Request to File Motions, which explains that SoCalGas would not provide hard copies of the confidential documents with its motions for a week because of COVID-19 related staffing issues. What SoCalGas did not say is that it intended to withhold all confidential versions of its filings from the Cal Advocates:

> In light of the ongoing pandemic and stay-at-home orders, SoCalGas does not have its legal staff at the office or in a position to effectively handle a confidential hard copy filing the same day as the public version is served to the service list. We therefore also request permission to file a hard copy within one week of today (consistent with the Commission guidance).

SoCalGas only acknowledged its intent to withhold the confidential versions of its filings from Cal Advocates the next day, after Cal Advocates insisted that SoCalGas immediately provide electronic versions of the confidential documents to the Commission, including itself and the ALJ. When caught, SoCalGas had the nerve to chastise Cal Advocates for including the ALJ and Commissioners on its emails insisting on its rights to review the information. SoCalGas also misrepresented that the reason for its withholding was "discussed in the brief." See Exhibit 2, E.Henry-ALJ DeAngelis 5-20-20 EMail Clarifying Withholding From CalAdvocates:

> Ms. Bone,
>
> With respect to the confidential versions of the documents, as noted in our email to Judge DeAngelis yesterday which you were copied on, we will tender a confidential hard copy for filing within a week. As shown by what is discussed in the brief, because the confidential information in the declarations overlaps with information we are requesting not to disclose to Cal Advocates in response to the Subpoena, the confidential versions will not be provided to Cal Advocates.
>
> If you have further questions of this nature, please feel free to contact me directly instead of the entire service list.

[14] Exhibit 3 - T.Bone-ALJ DeAngelis 5-19-20 EMail re Untimely Motion

Commission orders and state laws and, arguably, revitalize its rights to appeal the subpoena, which were waived when it sat on those rights.[15]

To the extent the Commission determines that it, or ALJ Division, should rule on the merits of the SoCalGas Motion to Quash, it should reject all three of SoCalGas' requests in the Motion for the following reasons:

(1) As a Commission-regulated utility, the law requires SoCalGas to provide the Commission and its staff with unfettered access to its books and accounts,[16] as well as those of its unregulated subsidiaries and affiliates.[17] The ability to review a regulated utility's accounts and records to ensure that the resulting rates will be just and reasonable is a fundamental component of the regulatory compact.[18] Deviating from this requirement would set troubling precedent that has the potential to undermine the Commission's authority.

(2) SoCalGas' First Amendment claims have no merit. Among other things, there is no protected First Amendment right to "associate" with hired lobbyists and consultants. Indeed, such activities are routinely subject to comprehensive reporting requirements, such as California's Political Reform Act.[19]

(3) As the record makes clear, SoCalGas has intentionally and routinely engaged in sharp litigation practices, bad faith discovery, and clear violations of law to obstruct this investigation and other related proceedings. Sanctions against both the company and its representatives are needed to correct this continuing pattern of abuse.

Each of these issues is addressed in detail below.

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[15] Id.

[16] See, e.g., California Public Utilities (PU) Code §§ 311, 314, 314.5, 314.6, 581, 582, 584, 701, 702, and 771.

[17] See PU Code § 314(b).

[18] The "Regulatory Compact" as it relates to just and reasonable rates is discussed in the Commission's recent "Decision Modifying The Commission's Rate Case Plan For Energy Utilities," D.20-01-002 (January 2020).

[19] The Political Reform Act is codified at California Government Code §§ 81000-91014.

II. BACKGROUND

A. Cal Advocates' Investigation Into SoCalGas' Use Of Ratepayer Monies To Fund Lobbying And Other Activities Related To Its Anti-Decarbonization Compaigns

For approximately 12 months, Cal Advocates has been investigating SoCalGas' funding and other activities related to its promoting the use of natural and renewable gas, and defeating state and local laws and ordinances proposed to limit the use of these fossil resources. This Cal Advocates investigation has attempted to identify, among other things, the extent to which SoCalGas has used ratepayer money to fund these efforts, including SoCalGas' creation, funding, recruitment for, and participation in the organization Californians for Balanced Energy Solutions (C4BES). SoCalGas' pivotal role in creating and funding C4BES came to light last year in the Commission's "Building Decarbonization" proceeding (Rulemaking (R.) 19-01-011, when Sierra Club filed a Motion to Deny Party Status to C4BES based on its intimate relationship to SoCalGas, which C4BES had not disclosed.[20] Sierra Club explained: "Because utility-created front groups have no place in Commission proceedings, the Commission should grant Sierra Club's Motion, and deny party status to C4BES."[21]

As part of this investigation, Cal Advocates has served SoCalGas with 14 data requests that seek to identify SoCalGas' role in numerous anti-decarbonization campaigns, and the source of funding for that work. For example, this discovery has sought consulting contracts associated with those efforts,[22] the ratepayer cost of those contracts,[23] the ratepayer cost of SoCalGas employee time spent managing the work

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[20] The Sierra Club Motion is entitled "Sierra Club's Motion to Deny Party Status to Californians for Balanced Energy Solutions or, in the Alternative, to Grant Motion to Compel Discovery." It was filed May 14, 2019 in R.19-01-011.

[21] Sierra Club Motion to Deny Party Status, May 14, 2019, R.19-01-011, p. 2.

[22] See, e.g., Exhibit 4 hereto, Data Request CalAdvocates-SCG-051719, Question 4; and Exhibit 5 hereto, Data Request CALADVOCATES-AW-SCG-2020-01, Questions 3, 10, 15, 18, and 21.

[23] See Exhibit 4 hereto, Data Request CalAdvocates-SCG-051719, Question 5; and Exhibit 5 hereto, Data Request CALADVOCATES-AW-SCG-2020-01, Questions 2, 4, 5, 9, 11, 12, 14, 16, 17, 19, and 22.

under those contracts and communicating with state and local officials,[24] and access to SoCalGas' accounts and records for audit purposes.[25]

The evidence adduced thus far goes to, among other things, whether SoCalGas paid people to appear and speak during the public comment portion of Commission voting meetings, without disclosing that they were acting on the behalf of SoCalGas. Cal Advocates has found evidence that invoices from SoCalGas consulting contracts have been allocated to accounts traditionally funded by ratepayers, suggesting that the contracts are not "100% shareholder funded," which is the foundation of SoCalGas's First Amendment argument. There is also evidence that SoCalGas may have modified documents provided in response to Cal Advocates' data requests, but this cannot be confirmed absent answers to the currently outstanding data requests.

SoCalGas' determination to flout the Commission's regulatory authority and undermine Cal Advocates' investigation has been well-documented. It has required over fifteen and confer discussions,[26] resulted in two Motions to Compel granted in favor of Cal Advocates,[27] and most recently SoCalGas' March 25, 2020 motion to stay all investigation discovery for an indefinite period of time, which was denied.[28] Similar to the instant Motion to Compel, that motion to stay, comprising over 50 pages, including five declarations with exhibits, was prepared while SoCalGas engaged Cal Advocates in numerous meet and confers where it sought extension after extension.

The Motion to Stay claimed that SoCalGas would "suffer irreparable harm" "[i]f left unable to defend itself in response to Cal Advocates' demands."[29] That frivolous

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[24] See Exhibit 4 hereto, Data Request CalAdvocates-SCG-051719, Question 3; and Exhibit 5 hereto, Data Request CALADVOCATES-AW-SCG-2020-01, Question 2, 9, 14, and 24.

[25] See Exhibit 6 hereto, Data Request CalAdvocates-TB-2020-03.

[26] Ex. 7, Declaration of Stephen Castello, ¶ 8.

[27] See Exhibits 8 and 9, the ALJ Orders granting those Motions to Compel

[28] See Exhibit 10, the ALJ April 6, 2020 Order denying SoCalGas' Motion for Emergency Stay.

[29] See Exhibit 11 SoCalGas Motion to Stay, p. 2.

motion was summarily denied before Cal Advocates could serve a response. As the Administrative Law Judge's April 6, 2020 Order (ALJ Order) stated:

> SoCalGas' Emergency Motion for a Protective Order Staying all Pending and Future Data Requests from California Public Office of Advocates is asking the Commission to act contrary to California law both in substance and form. No further consideration of SoCalGas' motion is warranted.[30]

That same ALJ Order "ask[ed] the parties to work together to find a schedule that is mutually agreeable and accommodates the additional demands resulting from the COVID-19 shelter-in-place directive."[31]

B. Events Following Denial Of SoCalGas' Frivolous Motion To Stay All Investigation Discovery Until The End Of The Stay-At-Home Orders

Since denial of SoCalGas' Motion to Stay, and consistent with the ALJ's request to "work together" to determine a mutually agreeable discovery schedule, Cal Advocates has participated in at least seven meet and confers to address its outstanding discovery requests. Notwithstanding these efforts, Cal Advocates still does not have complete responses to *any* of its outstanding data requests.

Faced with SoCalGas' continuing intransigence to discovery, and recognizing that a forensic audit of SoCalGas' accounts would be the most direct way for Cal Advocates to understand the breadth of SoCalGas' apparent misuse of ratepayer funds, on May 1, 2020, Cal Advocates issued a data request to SoCalGas seeking access to all of its accounts and records in order to undertake such an audit.[32] Further, given SoCalGas' history of intransigence and Cal Advocates' limited window to use existing accounting staff to begin the audit,[33] Cal Advocates requested and obtained a subpoena from the

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[30] See Exhibit 10, the ALJ April 6, 2020 Order denying SoCalGas' Motion for Emergency Stay.

[31] See Exhibit 10, the ALJ April 6, 2020 Order denying SoCalGas' Motion for Emergency Stay.

[32] SoCalGas' May 15, 2020 response to that data request is available in the SoCalGas Motion to Quash, Declaration of Elliott Henry, Attachment B.

[33] Cal Advocates had access to a retired annuitant that was available to immediately assist with the audit, but his time was limited. This internal time limitation was one of the many reasons Cal

Commission's Executive Director requiring SoCalGas to provide the requested access within three business days.[34] That subpoena was electronically served on SoCalGas on May 5, 2020.

SoCalGas did not timely move to quash the subpoena, never asked Cal Advocates for an extension to quash the subpoena, and never suggested that it was reserving its rights to do so in the future. Instead, SoCalGas repeatedly stated, both in writing and on the numerous conference calls intended to establish a "mutually agreeable" schedule for production of discovery,[35] that it was "taking its obligations under the subpoena extremely seriously."[36]

After service of the subpoena, SoCalGas and Cal Advocates participated in four conference calls related to: (1) the details of SoCalGas providing access under the subpoena; and (2) identifying dates SoCalGas would provide responses to data requests issued in December, February, and March. During those calls, SoCalGas confirmed that all SoCalGas accounting staff were working from home and had remote access to the utility's accounts and records through its SAP system.[37] SoCalGas also confirmed that it had previously made full remote access available to an auditor.[38] Thus, by the time of the last conference call on May 18, 2020, it was clear that SoCalGas could provide nearly immediate remote access to Cal Advocates' auditors, but that it would continue to withhold remote access from Cal Advocates based on its meritless First Amendment

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Advocates sought a subpoena to reinforce its companion data request issued May 1.

[34] The subpoena served May 5, 2020, is provided in the SoCalGas Motion to Quash, Declaration of Elliott S. Henry, Attachment A.

[35] See Exhibit 10, April 6, 2020 ALJ Order denying SoCalGas' Motion for Emergency Stay.

[36] See e.g. SoCalGas Motion to Quash, p. 2; and Exhibit 12, May 18, 2020 Letter from J. Wilson to T.Bone.

[37] Exhibit 7, Declaration of Stephen Castello, ¶¶ 9-10.

[38] Exhibit 7, Declaration of Stephen Castello, ¶ 10.

claims, and concerns regarding the disclosure of attorney/client communications or attorney work product.[39]

At no time did SoCalGas suggest on any of those calls that it sought an extension from Cal Advocates of its right to quash the subpoena, which clearly would not have been granted.[40] And contrary to the repeated claims in the Motion to Quash,[41] while Cal Advocates readily conceded that it should not and would not seek to review attorney-client or attorney work product information, at no time did Cal Advocates concede that such information would actually be available in SoCalGas' accounts and books, or that it could only review SoCalGas' accounts and books once such material was "walled off."[42]

During the last call on these matters, on Monday, May 18, 2020, SoCalGas requested that Cal Advocates give it an extension to comply with the subpoena until May 29, 2020, so that it could implement a form of "custom" computer program to wall off its law firm invoices and information it asserts is "protected" by the First Amendment. Cal Advocates did not refuse to provide the extension; rather, it replied that such an extension would need to be considered by its management.[43] Cal Advocates observed, among other things, that had its auditors appeared at SoCalGas' offices to review its accounts and records, SoCalGas would have been obligated under the law to provide the auditors immediate on-site access to all of these materials.[44]

Cal Advocates was hesitant to accept any "wall" for access to accounts associated with vendors and consultants that SoCalGas claimed were "protected" by the First Amendment because, among other things, such a wall would prevent Cal Advocates from determining for itself whether these accounts anticipate ratepayer or shareholder funding

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[39] Exhibit 7, Declaration of Stephen Castello, ¶ 11.

[40] Exhibit 7, Declaration of Stephen Castello, ¶ 12.

[41] See, e.g. SoCalGas Motion to Quash, pp. 3, 5 & 15.

[42] Exhibit 7, Declaration of Stephen Castello, ¶ 13.

[43] Exhibit 7, Declaration of Stephen Castello, ¶ 14.

[44] Exhibit 7, Declaration of Stephen Castello, ¶ 15.

of those activities. Indeed, as SoCalGas clearly understood, those are precisely the types of accounts, among others, that Cal Advocates intends to audit.[45]

SoCalGas filed the instant motion the next day, May 19, 2020, before its proposal for "walls" could even be submitted to Cal Advocates management, with no notice to Cal Advocates other than the same notice received by the Commission.

C. SoCalGas' Claims That Its Delays Are Related To COVID-19 Constraints Must Be Carefully Scrutinized

Significantly, contrary to SoCalGas suggestions that its compounded discovery delays are due to COVID-19 challenges, this is simply not the case. SoCalGas is intentionally flouting this Commission's prior discovery orders, while casting Cal Advocates as the bad actor committing "invasive" "assaults" on its First Amendment Rights.[46]

Cal Advocates served almost all of the outstanding discovery requests from which SoCalGas continues to withhold responses in December and February, well before the various stay-at-home orders were issued. In addition, during a March 19, 2020 meet and confer, SoCalGas committed to provide information it claimed it already had, but still has not produced.[47] Instead, of providing this or any other information, SoCalGas filed its

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[45] Exhibit 7, Declaration of Stephen Castello, ¶ 17.

[46] For example, see its use of the following terms to describe Cal Advocates' work in its Motion to Supplement: "Cal Advocates' latest incursion into SoCalGas's First Amendment rights" at p. 3; "emboldened Cal Advocates" at p. 4, "increasingly invasive efforts by Cal Advocates to pry into SoCalGas's protected materials" and "emboldened" at p. 5; "ongoing assault" on p. 6.

[47] See SoCalGas Motion to Stay, Declaration No. 2, Exhibit C, March 24, 2020 email from Ms. Bone to Mr. Tran:

> "There is a significant amount of work that SoCalGas employees can perform remotely in response to Cal Advocate's investigation – and such work should not be unduly burdensome. For example, Ms. Lee has stated that she has a list she could send us of which confidential designations could be lifted. Indeed, she obtained a one week extension for the meet and confer on this issue based on her prior representations that she would be consulting with her clients to identify those portions of the documents which would not require the confidential designations. At this point, review of those documents, lifting the confidential designations, and identifying the legal basis for any remaining confidential designations, can be easily performed remotely, and only requires the review of a

Motion to Stay on March 25, 2020, claiming that it had insufficient resources to answer questions posed by Cal Advocates.

The denial of that Motion to Stay has not improved matters. As described above, heeding the ALJ's instructions to "work together," the Cal Advocates has participated in at least seven conference calls with SoCalGas, which initially represented its desire to "reset" the relationship.[48] In retrospect, it is evident that SoCalGas made a number of misrepresentations to the Cal Advocates during those calls in an effort to continue to delay its discovery responses, and to prepare the instant motions to further grant itself *more time* to stall the Cal Advocates' investigation of its use of ratepayer monies to fund its anti-decarbonization campaigns.[49]

For example, on the last call on May 18, 2020, when directly asked whether SoCalGas was "slow rolling" responses to the Cal Advocates' outstanding requests, SoCalGas representatives assured Cal Advocates that SoCalGas *was not* slow rolling its responses.[50] Rather, SoCalGas explained that it was working hard to respond to the data requests and that many things that seemed simple were much more time consuming and were absorbing staff's time.[51] SoCalGas also represented that it was prioritizing compliance with the subpoena so that it was unable to provide other information at the same time, such as the removal of unsupported confidentiality designations that the Cal Advocatess had requested more than two months ago, on March 10, 2020.[52], [53]

> single attorney. Similarly, the majority of the questions in data request CalAdvocates-TB-SCG-2020-02 ask SoCalGas to explain how certain procedures work internally, or to provide documents, such as its GO77 filings. This type of information should be readily available and easily obtained through remote communications."

[48] Exhibit 7, Declaration of Stephen Castello, ¶ 22.

[49] Exhibit 7, Declaration of Stephen Castello, ¶ 21.

[50] Exhibit 7, Declaration of Stephen Castello, ¶ 23.

[51] Exhibit 7, Declaration of Stephen Castello, ¶ 23.

[52] Exhibit 7, Declaration of Stephen Castello, ¶ 23.

[53] Exhibit 13 – CalAdvocates-SoCalGas March 10-20, 2020 Emails re: Removal of Unwarranted

The length and breadth of the motions filed in the days immediately following this conference call unequivocally demonstrate that many of the SoCalGas representations made on Monday, May 18, 2020, were false statements intended to mislead Commission staff into providing additional, unnecessary extensions.[54] Specifically, motions of the type it filed the next day – with multiple declarations – are not prepared overnight. They require many days and many levels of review and coordination. Thus, at the same time that SoCalGas was assuring Cal Advocates that it was working hard to provide responses to the outstanding data requests and subpoena, and seeking extensions to provide outstanding materials, SoCalGas knew that it had instead been delaying discovery to prepare a lengthy Motion to Quash the subpoena and Motion to Supplement its appeal, as well as numerous declarations in support of both motions.

Cal Advocates will not belabor these and other misrepresentations that it is now evident SoCalGas made during the extensive conference calls held between April 16, 2020 and May 18, 2020. Instead, it reserves its rights to submit a motion for sanctions.

III. DISCUSSION

A. SoCalGas' Motion To Quash Should Be Rejected As Untimely and Invalid

1. SoCalGas Waived It Rights To File A Motion To Quash

On May 5, 2020, the Commission issued a valid subpoena to SoCalGas to provide "access to all databases associated in any manner with the company's accounting systems" no later than May 8, 2020. As described in the "Background" section above, Cal Advocates and SoCalGas had four conference calls after issuance

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Confidentiality Designations.

[54] See the Commission's Rules of Practice and Procedure, Rule 1.1, Ethics, which provides:

> Any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law.

of the subpoena to discuss how access would be provided, and SoCalGas represented on nearly every one of those calls that it was "taking its obligations under the subpoena extremely seriously."[55]

Relying on these SoCalGas representations, and consistent with the ALJ's request that the parties "work together,"[56] Cal Advocates granted SoCalGas several extensions to the May 8, 2020 due date. None of those extensions were for SoCalGas to move to quash at some later date, and SoCalGas never suggested that they were. SoCalGas now moves – 14 days after issuance of the subpoena, and 11 days after its compliance was due – to quash the subpoena. The Commission has stated that motions to quash "must be filed at the earliest opportunity."[57] To the extent that SoCalGas proposes that the Commission rely upon the California Code of Civil Procedure (CCP) "as instructive authority,"[58] the Motion to Quash must be rejected. Section 1987.1 of that code requires that such a motion must be "reasonably made." A motion to quash made *well after* the date that compliance was due is clearly not "reasonably made." As described in Section III.D below, in retrospect – and based on the timing and breadth of the motions filed – it is now clear that SoCalGas never had any intention of complying with the subpoena, and instead sat on its rights to delay compliance for as long as possible. Through these delays, SoCalGas has, once again, granted itself a reprieve from discovery in this investigation.[59]

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[55] See, e.g. SoCalGas Motion to Quash, p. 2 and Exhibit 12, May 18, 2020 Ltr from J.Wilson to T.Bone.

[56] See Exhibit 10, the ALJ April 6, 2020 Order denying SoCalGas' Motion for Emergency Stay.

[57] See, e.g., 60 CPUC 2d 326, *mimeo* at 7, Decision (D.) 95-06-021 (June 8, 1995) and 61 CPUC 2d 515, *mimeo* at 3-4, D.95-09-076 (September 7, 1995).

[58] SoCalGas Motion to Quash, p. 13.

[59] SoCalGas filed a frivolous Motion to Stay all discovery due to the COVID-19 situation. That Motion was denied. See Exhibit 10, ALJ April 6, 2020 Order denying SoCalGas' Motion for Emergency Stay.

2. SoCalGas' Email Arguments Do Not Change The Fact That It Waived Its Rights To Move To Quash

On May 20, 2020, SoCalGas offered three additional reasons why its Motion to Quash is not untimely in an email to Administrative Law Judge (ALJ) DeAngelis. None have any merit.

(a) Meet and Confer Discussions Do Not Toll The Obligation To Timely File A Motion to Quash

SoCalGas first claimed that its Motion to Quash is timely because SoCalGas "raised the issues" in both a meet and confer discussion before "the initial deadline for the subpoena" and in objections to the companion data request that preceded the subpoena.[60] Vague claims of having "raised the issues' aside, what SoCalGas does not say in either its Motion to Quash, its Motion to Supplement,[61] or in the multiple declarations and exhibits attached to those Motions, is that it never asked for an extension of time to file its motion to quash or suggested to Cal Advocates that it would file a motion to quash if an extension wasn't granted. Instead, as SoCalGas acknowledges, discussions between the parties focused on SoCalGas' "working as quickly as practicable to grant Cal Advocates access promptly."[62] SoCalGas also fails to acknowledge in any of its motions or declarations filed last week that:

(1) The parties were engaged in multiple meet and confers because ALJ DeAngelis asked the parties to "work together" on a discovery production schedule after SoCalGas lost its Motion to Stay all Cal

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[60] See SoCalGas Motion to Supplement, Declaration of Henry Elliott, Exhibit A, 5/20/20 10:45 a.m. email from E.Henry to ALJ DeAngelis.

[61] SoCalGas served a Motion to Supplement on May 20, 2020, and a substitute for that motion on May 22, 2020. That Motion to Supplement is entitled: "Southern California Gas Company's (U 904 G) Motion To Supplement The Record And Request For Expedited Decision By The Full Commission On Motion For Reconsideration/Appeal Regarding Administrative Law Judge's Ruling In The Discovery Dispute Between The Public Advocates Office And Southern California Gas Company, October 7, 2019 (Not In A Proceeding) If The Motion Is Not Granted To Quash Portion Of The Subpoena To Produce Access To Certain Materials In Accounting Databases And To Stay Compliance Until The May 29th Completion Of Software Solution To Exclude Those Protected Materials In The Databases (Not In A Proceeding)."

[62] See SoCalGas Motion to Supplement, p. 2.

Advocates' investigation discovery until the end of the COVID-19 shelter in place directives;[63]

(2) At the same time that SoCalGas was seeking discovery extensions from Cal Advocates, it was preparing both its 27 page Motion to Quash, and 20 page Motion to Supplement, both with multiple declarations;

(3) SoCalGas filed its Motion to Quash the day after it requested the extension that the Public Advocates Office staff agreed to take to its management; and

(4) Cal Advocates only sought the subpoena after SoCalGas lodged numerous objections to various data requests, repeatedly lost subsequent motions to compel filed by Cal Advocates, and then continued to make the same type of objections to the same type of data requests.[64]

Under these circumstances, SoCalGas' argument that objections raised in the meet and confers somehow toll the time allowed for it to file a motion to quash is nothing short of preposterous. Indeed, taken to its logical conclusion, SoCalGas' argument would allow a utility to refuse to comply with a subpoena through an objection, leaving Commission staff no recourse other than to file a motion to compel, or to seek another subpoena that the utility could again ignore after objections. Current requirements rightly put pressure on the parties to perform or seek relief, and endorsing the approach SoCalGas argues for would only encourage the type of frivolous objections, stalling, and bad faith negotiations experienced here.

(b) SoCalGas Bears The Burden Of Showing That Its Motion To Quash Complies With Applicable Rules

SoCalGas also argued in its email to ALJ DeAngelis that "Cal Advocates cites no authority to support its contention that where compliance with a subpoena is extended all potential objections are implicitly waived."[65] This SoCalGas argument wrongly attempts to shift its burden as the moving party to show that its Motion to Quash complies with the applicable rules to the Commission. SoCalGas misstates the issue. Cal Advocates does

[63] See Exhibit 10, ALJ April 6, 2020 Order denying SoCalGas' Motion for Emergency Stay.

[64] See discussion in Sections II.B & C and III.C.3.

[65] SoCalGas Motion to Supplement, Declaration of Henry Elliott, Exhibit A, 5/20/20 10:45 a.m. email from E.Henry to ALJ DeAngelis.

not contend that "where compliance with a subpoena is extended all potential objections are implicitly waived." What Public Advocates Office contends is that neither SoCalGas' boilerplate objections nor its discussions about "working as quickly as practicable to grant Cal Advocates access promptly" toll or extend the deadline for filing a motion to quash. Indeed, as explained above, the Commission has stated that motions to quash "must be filed at the earliest opportunity"[66] and that a motion to quash made *well after* the date that compliance was due is clearly not "reasonably made" as required by CCP § 1987.1. The burden is on SoCalGas, the moving party, to identify the authority for its claims that the deadline for filing a motion to quash is extended by objections and production discussion.

(c) SoCalGas Was On Notice That Motions To Quash Must Be Timely Filed

Finally, SoCalGas argued in its email to ALJ DeAngelis that Cal Advocates "never stated that SoCalGas had to waive its right to quash in exchange for additional time to comply."[67] In addition to wrongly assuming that Cal Advocates was somehow obliged to advise SoCalGas on the law and its obligations, and ignoring the fact that SoCalGas was the party requesting the extension, the fact is that SoCalGas was on notice that it could not wait to file a motion to quash a Commission subpoena until the day of performance, or thereafter.

Just a few months ago, counsel for the Commission's Safety and Enforcement Division (SED) informed SoCalGas that, regardless of its objections and meet and confers, it needed to either perform under a subpoena that had been validly issued by the Commission's Executive Director, or file a motion to quash by the stated deadline for performance.[68] SED and Cal Advocates are bound by the same Commission rules in this

[66] See, e.g., 60 CPUC 2d 326, *mimeo* at 7, Decision (D.) 95-06-021 (June 8, 1995) and 61 CPUC 2d 515, *mimeo* at 3-4, D.95-09-076 (September 7, 1995).

[67] SoCalGas Motion to Supplement, Declaration of Henry Elliott, Exhibit A, 5/20/20 10:45 a.m. email from E.Henry to ALJ DeAngelis.

[68] See I.19-06-016, "Safety and Enforcement Division's Response to Southern California Gas Company's Motion for Order to Quash the Subpoena of the Safety and Enforcement Division,"

regard. So, while Cal Advocates did not tell SoCalGas that regardless of its objections and meet and confers, it needed to either perform or file a timely motion to quash by the stated deadline for performance, SoCalGas knew or should have known of this requirement. Cal Advocates cannot be expected to advise SoCalGas on litigation strategy.

As explained above and in Cal Advocates' email response to the Motion to Quash, a Commission determination that SoCalGas' Motion to Quash was untimely is appropriate and will defeat SoCalGas' efforts to resurrect any claims that the subpoena was improper.[69]

B. Nothing Allows SoCalGas To Unilaterally "Exclude" Portions Of Its Accounts And Records From The Commission Or Its Staff; Concluding Otherwise Would Undermine The Commission's Authority

SoCalGas seeks to "wall off" two types of information from Cal Advocates review: (1) what SoCalGas describes as "information and documents for SoCalGas's 100% shareholder-funded activities that are protected under the First Amendment, such as those related to its advocacy for natural gas, renewable natural gas, and green gas as a part of the solution to achieving the State's decarbonization goals,"[70] and (2) law firm invoices and other information in its accounts and records that *might* include privileged attorney/client communications or attorney work product.[71]

SoCalGas proposes to establish a "custom software solution" to prevent Cal Advocates from accessing this information that it has unilaterally determined should not

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Nov. 19, 2019; and "Motion Of The Safety And Enforcement Division Requesting The Commission Issue An Order To Show Cause Against Southern California Gas Company As To Why It Should Not Be Sanctioned For Being In Contempt Of A Commission Subpoena And Violating Rule 1.1 Of The Commission's Rules Of Practice And Procedure," February 21, 2020, pp 1-2.

[69] Cal Advocates does not intend to suggest that SoCalGas should barred from seeking notice of the fact that the subpoena was issued.

[70] SoCalGas Motion to Quash, pp. 3-4.

[71] SoCalGas Motion to Quash, p.3.

be made available to Cal Advocates. There are multiple reasons why this proposal must be rejected.

As described above, the law provides the Commission and its staff with broad authority to review regulated utilities' accounts and records, including those of their unregulated subsidiaries and affiliates.[72] Thus, contrary to SoCalGas' claims that "100% shareholder-funded activities" are somehow protected from disclosure to its regulator, the law does not make such distinctions. Rather, it expressly gives the Commission and its staff authority to review *all* aspects of a utility's business, regulated or unregulated, and ratepayer or shareholder funded.[73] Further, there is nothing in those laws that allow a utility to unilaterally exclude portions of its accounts and records from Commission or staff review. Instead, the law provides meaningful protections against unauthorized disclosure of a utility's confidential information.[74]

Also problematic is that notwithstanding a 26 page motion and 3 declarations including over 100 pages of attachments, SoCalGas has failed to identify with specificity any of the materials it seeks to "wall off" from Cal Advocates review. Instead, as discussed more fully below, SoCalGas provides the Commission with vague speculation about information that only it possesses. For example, SoCalGas does not identify a single instance of an attorney/client communication or attorney work product in its SAP system and it does not identify a single account where the costs for "100% shareholder-funded" activities are booked. Instead, the Motion to Quash merely refers to the *possibility of* attorney/client communications, attorney work product, and only generally describes the materials it claims are protected by the First Amendment. Thus, SoCalGas proposes to exercise its own discretion to determine which materials fall into these

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[72] See, e.g., PU Code §§ 311, 314, 314.5, 314.6, 581, 582, 584, 701, 702, and 771.

[73] See, e.g., PU Code § 314.

[74] See, e.g. PU Code § 583. It is important to note that the Motion to Quash does not suggest that the Commission has improperly released any of the information that it is withholding, and SoCalGas has evidently been willing to provide the information to other parts of the Commission. Instead, SoCalGas specifically objects to providing the information to Cal Advocates.

general categories. Such a proposal would be unacceptable for any utility, but is especially problematic given the current history of SoCalGas discovery abuses and other sharp practices it has deployed in multiple forums, as described in Section III.C below.

1. It Is Not Evident That Any Of SoCalGas' Accounts Or Records Contain Attorney/Client Communications Or Attorney Work Product And Those Privileges Are Not Absolute

SoCalGas urges that "[t]he Subpoena should be quashed to the extent that it encompasses [] clearly privileged information."[75] However, SoCalGas does not assert that attorney/client communications or attorney work product is actually contained in the materials SoCalGas seeks to "wall off" from Cal Advocates review. For example, while the Motion to Quash asserts that SoCalGas' law firm invoices "contain, among other things, detailed descriptions of legal work performed for SoCalGas"[76] it does not assert that these materials are *actually* attorney/client communications or attorney work product. The declaration cited as support for this claim only explains that an invoice "*may include* the vendor's description of the services provided and other narrative information about the work they performed for SoCalGas."[77] Similarly, that declaration explains that the "'Line Item Text' field" allows for "narrative descriptions" to be entered and "*may contain* information reflecting the name of the vendor as well as descriptive information about the nature of its relationship with SoCalGas or the services it provides."[78]

Not every communication between an attorney and a client is a privileged communication. Rather, an attorney/client communication is generally understood to be a communication between an attorney and a client *relating to the purpose of giving or*

[75] SoCalGas Motion to Quash at 15.

[76] SoCalGas Motion to Quash at 14.

[77] SoCalGas Motion to Quash, Declaration of Dennis Enrique, ¶ 6 (emphasis added).

[78] SoCalGas Motion to Quash, Declaration of Dennis Enrique, ¶ 7 (emphasis added).

obtaining legal advice.[79] Information in a law firm invoice regarding a law firm's name, its relationship to SoCalGas, how much it is paid, and a *general* description of the services it provided (which should not include advice or strategy) is unlikely to be privileged information.[80]

The definition of attorney work product is similarly limited. As a general rule, it applies primarily to materials prepared in the course of legal representation, especially in preparation for litigation.[81] And even that rule is limited. For example, under Rule 26(b)(3) of the Federal Rules of Civil Procedure, an adverse party may discover or compel disclosure of work product upon a showing of "substantial need" and "undue hardship." And the U.S. Supreme Court has clarified that while it is presumed that an adverse party may not have access to materials prepared by a party's lawyers in anticipation of litigation, this presumption may be overcome when a party has relevant and non-privileged facts which would be essential to the preparation of the adverse party's case.[82]

Further, in the unlikely event SoCalGas could demonstrate that its accounts and records actually contain something that might qualify under the law as an attorney-client communication or attorney work product, there is the possibility that any privilege has been waived through disclosure to third parties. Indeed, SoCalGas' so-called "association" with contractors, including Marathon Communications (Marathon) and

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[79] For a related but more expansive definition see 8 John Henry Wigmore, Evidence In Trials At Common Law § 2292, at 554 (McNaughton 1961 & Supp. 1991).

[80] See, e.g., *USA v. Keystone Sanitation Co.,* 885 F. Supp. 672 ("there is general agreement that attorney billing statements and time records are protected by the attorney-client privilege *only* to the extent that they reveal litigation strategy and/or the nature of services performed. *See, e.g., Gonzalez Crespo v. The Wella Corp.,* 774 F. Supp. 688, 690 (D.P.R. 1991); *Colonial Gas Co. v. Aetna Cas. & Sur. Co.,* 144 F.R.D. 600, 607 (D. Mass. 1992); *Real v. Continental Group, Inc.,* 116 F.R.D. 211, 213-14 (N.D. Cal. 1986).").

[81] For more information about the attorney work product doctrine see, e.g., Florida State University Law Review, Volume 31, Issue 1, Article 3 (2003) pp. 67-100, "Pulling Skeletons from the Closet: A Look into the Work-Product Doctrine as Applied to Expert Witnesses," by Charles W. Ehrhardt and Matthew D. Schultz.

[82] *Hickman v. Taylor*, 329 U.S. 495 (1947).

Imprenta Communications Group (Imprenta), may well have waived any pre-existing privilege claims through sharing of information.[83] If an attorney/client communication from a law firm was shared with employees at either of these companies, the privilege would be waived. In addition, SoCalGas has admitted that it permitted a contractor full "external access" to its SAP systems,[84] so that contractor was able to review the SoCalGas law firm invoices, theregby potentially waving any privilege.

In sum, given the Commission's clear regulatory authority to audit a regulated utilities' accounts and records, the absence of any proof that privileged information actually exists in its accounts and records, the fact that the privileges are not absolute under the law, and SoCalGas' history of improper privilege and confidentiality claims, as discussed in Sections II.B and C above and III.C.1 below, approving SoCalGas' proposal to implement a "custom software solution" that prevents access to the accounts and books of its choosing is improper. In addition, approving SoCalGas' "solution" will undermine the Commission's authority, and waste further Commission resources because SoCalGas' implementation of this "solution" will likely be overbroad and provide further opportunities to stall discovery. Among other things, SoCalGas' "solution" would require it to provide a privilege log, and SoCalGas would take months to review and prepare such a log as it has done since before the COVID-19 situation. Then, given SoCalGas' history of unwarranted privilege claims, the Commission will necessarily be required to perform an *en camera* review of the materials designated as privileged to confirm the validity of SoCalGas' claims. SoCalGas' unsupported claims of privilege do not merit such attention, and therefore its proposal to wall off its law firm invoices from Cal Advocates should be rejected.

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[83] While SoCalGas has routinely marked the names of these two companies as "confidential," as explained in III.B.2 below, SoCalGas' association with these companies has been publicly known about since at least May 16, 2019 as a result of a Sierra Club Motion to Deny Party Status in R.10-01-001.

[84] SoCalGas Motion to Quash, Declaration of Elliott Henry, ¶ 11.

2. SoCalGas' First Amendment Claims Have No Merit So That A "Custom Software Solution" To Prevent Review Of Its Vendor And Consultant Contracts Is Unnecessary

In parallel with the instant Motion to Quash, SoCalGas also served a Motion to Supplement its December 2, 2019, Motion for Reconsideration to the Commission of the November 1, 2019 ALJ Order denying its First Amendment claims.[85] Through this Motion to Supplement, SoCalGas now seeks to supplement its fatally flawed Motion for Reconsideration on claims that "the issues present[ed] in the accounting database dispute mirror the issues already before the Commission."[86] The issues before the Commission have not changed; they relate to SoCalGas' use of ratepayer money for its anti-decarbonization campaigns. The subpoena's focus on accounting will inform this inquiry, providing insight into how or even whether SoCalGas is properly tracking these costs for both ratepayer recovery and lobbying disclosure purposes.

While SoCalGas has endeavored to make this inquiry a First Amendment freedom of association issue to avoid scrutiny on these issues, it has failed to do so. Nothing that SoCalGas proposes to add to its pending Motion for Reconsideration raises new First Amendment concerns or will change the fact that SoCalGas' First Amendment claims have no merit. However, given SoCalGas' resurrection of these issues in the instant Motion to Quash, and notwithstanding Cal Advocates' December 17, 2019 response setting forth the deficiencies in SoCalGas' original Motion for Reconsideration, it will reiterate and elaborate on some of the key positions requiring rejection of SoCalGas' claims.

As an initial matter, SoCalGas has failed to make the requisite *prima facie* showing required to claim First Amendment protection. As SoCalGas acknowledges, *Perry v. Schwarzenegger* (9th Cir. 2010) 591 F.3d 1147, 1160, and other cases it relies on, require the entity claiming the First Amendment privilege to "demonstrate that

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[85] See footnote 61 above.

[86] Motion to Supplement, p. 14.

enforcement of the [discovery requests] will result in (1) harassment, membership withdrawal, or discouragement of new members, or (2) other consequences which objectively suggest an impact on, or 'chilling' of, the members' associational rights."[87] SoCalGas fails to make this showing, as described in more detail below. However, even if SoCalGas had been able to make the requisite prima facie showing of an intrusion into its First Amendment rights of association – which it has not done – the U.S. Supreme Court has found that the right to association is not absolute, and that compelling governmental interests, such as the need for substantial government regulation of the election process, take precedence over the burden they impose on the freedom to associate.[88] The Cal Advocates' legislative mandate, its mission statement, and facts of record establish the Cal Advocates' has a compelling interest in the purported intrusion.

(a) SoCalGas Fails To Make The *Prima Facie* Showing Required To Claim First Amendment Protection

SoCalGas asserts that it has made a *prima facie* showing on claims that the materials Cal Advocates' seeks relate to 100% shareholder-funded activity that is constitutionally protected. While often and vociferously stated, the issue SoCalGas presents is not the subject of this dispute.

The record of the dispute makes two things abundantly clear. First, Cal Advocates is focused on "following the money" by asking how much has SoCalGas spent on its anti-decarbonization campaigns, where the money has been booked, and how Cal Advocates can be sure that the activities are 100% shareholder-funded, as SoCalGas has claimed. However, Cal Advocates has not received even remotely complete information to any of these questions. Rather, contrary to SoCalGas' frequent claims that the accounts at issue are 100% shareholder funded, the investigation discovery thus far suggests there is no evidence for this claim Though such accounts are needed for tracking purposes – there is, unfortunately for ratepayers, no evidence that SoCalGas

[87] SoCalGas Motion for Reconsideration, December 2, 2019, p. 11.

[88] See, e.g., *Buckley v. Valeo*, 424 U.S. 1 (1976).

routinely creates accounts for "100% shareholder-funded activities."[89] This explains why SoCalGas has not provided a list of its 100% shareholder funded accounts, even though it has been asked to do so on many occasions, and as recently as May 8, 2020.[90] Instead, while SoCalGas attorneys stress that these are 100% shareholder funded accounts, the evidence Cal Advocates has obtained shows that the known costs associated with some of SoCalGas' anti-decarbonization activities were originally recorded to a traditionally ratepayer-funded account and as a result of Cal Advocates inquiries, subsequently moved to a new "shareholder-funded" account on September 21, 2019.[91]

SoCalGas also fails to make its *prima facie* showing because SoCalGas is not claiming that the Cal Advocates' discovery infringes on its right to associate with people, such as members of organizations that share its views. Instead, as the declarations in its Motion for Reconsideration demonstrate,[92] SoCalGas claims a First Amendment right to protect its ability to "associate" with paid lobbyists, and other consultants and vendors in order to develop a grass roots campaign that will communicate SoCalGas' message to legislators and the public. SoCalGas thus turns the law on its head in an effort to keep secret the full extent of the money it is spending on hired lobbyists and communications companies. However, SoCalGas has failed to provide any legal support for its position that spending money for "hired guns" to do its bidding is the type of "association"

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[89] SoCalGas Motion to Quash, p. 3.

[90] Exhibit 14 - T.Bone-E.Henry 5-8-20 EMail re Accounts to Access.

[91] Exhibit 15 - R.13-11-005 -Data Response CalAdvocates-SK-SCG-2020-01 Q4:

> Balanced Energy internal order (IO) 300796601 was created in March 2019 for tracking all costs associated with Balanced Energy activities and the intent was to make it a shareholder funded IO. However, an incorrect settlement rule was set up for this IO to FERC 920.0 A&G Salaries, consequently, the costs initially settled to the incorrect FERC account. On September 21, 2019, the SoCalGas Accounting Controller and Accounting Director met with the Strategy, Engagement & Chief Environmental Officer, and confirmed that the Balanced Energy activities should be classified as FERC 426.4 - Expenditures-Civic & Related Activities/Lobbying Costs.

[92] Cal Advocates never received the confidential versions of the Motion for Reconsideration, but the fact that the declarations are made by vendors to SoCalGas is evident even in the redacted versions.

protected by the First Amendment. Indeed, its own Motion for Reconsideration reiterates that the right to associate, and the harms that must be demonstrate relate to "members" of "associations," not hired contractors.[93]

(b) The Information SoCalGas Seeks To Hide Is Similar To The Lobbying And Election Activities That Are Required To Be Publicly Reported

As explained above, SoCalGas' attempts to characterize its funding of lobbyists and consultants hired to develop and convey its anti-decarbonization activities as "associations" protected by the First Amendment. However, these "associations" appear to be more akin to the lobbying and election activities that the Supreme Court has recognized require regulation, and that local, state, and federal election laws require to be tracked and publicly reported. Specifically, SoCalGas explains that it "engages and contracts with consultants, partners, and vendors to, among other things, formulate strategies for effective lobbying, communications and messaging."[94] Indeed, every one of the consultants referred to in SoCalGas' declarations is a hired consultant. Those consultants are not claiming a right to free speech and association with others who share their views. Rather, they are seeking to protect their business interests by maintaining a cloak of confidentiality over their work for SoCalGas. Their claims of a "chilling effect" are not First Amendment claims; they are concerned their employment opportunities will be "chilled" if their work in support of SoCalGas' anti-decarbonization message is made public.[95]

There is also a significant question regarding whether SoCalGas and its consultants have been complying with their lobbying reporting obligations, among others. Consider, for example, California's Political Reform Act (Act), which applies to lobbying

[93] SoCalGas Motion for Reconsideration, December 2, 2019, p. 11, citing *Perry v. Schwarzenegger.*

[94] SoCalGas Motion to Quash, Declaration of Andy Carrasco, ¶ 5 (emphasis added).

[95] SoCalGas Motion to Quash, Declaration of Andy Carrasco, ¶ 8.

at the state level, including both the legislature and state agencies like the Commission.[96] All lobbying information reported under that Act is publicly available on the Secretary of State's website at http://cal-access.sos.ca.gov/Lobbying/. That website succinctly reflects that the purpose of the Act is to require "disclosure of the role of money in California politics." This includes the disclosure of contributions and expenditures in connection with campaigns supporting or opposing state and local candidates and ballot measures as well as the disclosure of expenditures made in connection with lobbying the State Legislature and attempting to influence administrative decisions of state government, such as the Commission.[97]

Mandated public reporting by both lobbyists and their employers under the Act includes disclosure of lobbyist names, pictures, contact information, and how much they were paid.[98] The Act also requires reporting from lobbying "coalitions" and the reporting of "grass-roots" lobbying. For example, the Fair Political Practices Commission, which is responsible for enforcing the Act, specifically advises in its lobbying disclosure manual that reporting is required for "grass- roots" lobbying, such as soliciting others to urge this Commission to act in a certain way.[99]

The City of Los Angeles and other jurisdictions have similar, if less comprehensive, requirements. And while these laws may not explicitly require disclosure regarding the consultants SoCalGas has hired to support its anti-decarbonization efforts, absent any clear law on this issue, there no reason to conclude that SoCalGas' association with such paid consultants is protected as free speech by the First Amendment.

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[96] California Government (Gov't) Code §§ 81000 – 91014.

[97] See the Secretary of State's website at https://www.sos.ca.gov/campaign-lobbying/ (emphasis added)

[98] Gov't Code §§ 86100-86118.

[99] See the November 2019 Lobbying Disclosure Information Manual, Chapter 5.22, California Fair Political Practices Commission, available at http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Lobbying/Lobbyist-Manual-Folder/Lobbying%20Manual.pdf

Finally, as explained in Cal Advocates' December 17, 2019, response to SoCalGas' appeal of the November 1, 2019 ALJ Ruling, the Supreme Court has held that the disclosure of names of contributors and recipients of campaign funds is valid because such disclosure makes it easier to detect violations of the Federal Election Campaign Act.[100] Similarly here, the inspection of documents related to SoCalGas' allegedly shareholder-funded activity enables Commission staff to ensure regulated utilities are not violating various state laws or Commission rules, including the Political Reform Act. It also ensures that the Commission and its staff have the ability to thoroughly inspect a regulated entities' accounts and records, thus permitting the Commission to fulfill its constitutionally-mandated responsibilities.

(c) Some Of The Information SoCalGas Seeks To Protect From Disclosure Is Already In The Public Domaine

Cal Advocates also notes that much of the "First Amendment" information that SoCalGas seeks to protect is already in the public domain. For example, over a year ago, Sierra Club filed a motion to deny party status to C4BES in Rulemaking 19-01-001.[101] That Motion to Deny identified both Marathon Communications and Imprenta Communications Group as working with SoCalGas on the activities SoCalGas claims are protected by the First Amendment.[102] Thus, it is already publicly known that SoCalGas has "associated" with these companies for political purposes related to its anti-decarbonization campaigns. Other information, which does not appear to be in the public domain, has already been produced to Cal Advocates,[103] and to the extent that it has not

[100] *Buckley v. Valeo*, 424 U.S. 1, 66-67 (1976).

[101] That motion is entitled: "Sierra Club's Motion To Deny Party Status To Californians For Balanced Energy Solutions or, In the Alternative, To Grant Motion to Compel Discovery" (Sierra Club Motion to Deny).

[102] Sierra Club Motion to Deny, May 16, 2019, R. 19-01-001, pp. 4-5.

[103] Exhibit 7, Declaration of Stephen Castello, ¶ 8.

been produced, it should have been. Consequently, there is no basis to now wall off such information from Cal Advocates' review.

(d) The Commission and Cal Advocates Both Have A Foundational, Statutory, And Compelling Interest In Ensuring That Ratepayer Funds Are Spent Lawfully

The Public Advocates Office is an independent organization within the Commission that advocates on behalf of utility ratepayers. Its statutory mission is to obtain the lowest possible rate for service consistent with reliable and safe service levels. As the only State entity charged with this responsibility, Cal Advocates has a critical role in ensuring that consumers are represented at the Commission on matters that affect how much they must pay for utility services and the quality of those services.

Here, Cal Advocates is investigating SoCalGas' role and funding in lobbying activities, whether such activities are shareholder or ratepayer funded, and the historical financial data regarding whether such activities have been ratepayer funded. The utility's financial records related to such activities are necessary to fully investigate the utility's actions. This type of investigation, to ensure that ratepayers are not harmed, is clearly within the scope of the Cal Advocates' Mission Statement, founding legislation, and Pub. Util. Code § 309.5(e).

Rather than show that there is a firewall between ratepayer and shareholder funded accounts or offer any evidence to show that the accounts actually are 100% shareholder-funded, SoCalGas seeks the cover of the First Amendment right to association and insists that both Cal Advocates and the Commission must 'trust without verifying' that ratepayer funds are not being used improperly. This approach is at odds with SoCalGas documented history of deception in this and other proceedings,[104] and would preclude both Cal Advocates and the Commission from fulfilling their statutory obligations.

[104] See, e.g., Section III.C below.

(e) The Harm SoCalGas Alleges Is Both Self-Inflicted And *De Minimis*

The record shows that Cal Advocates has gone to great lengths and tried multiple strategies to obtain information regarding SoCalGas's use of ratepayer funds to support its anti-decarbonization advocacy. SoCalGas has routinely asserted frivolous objections and provided incomplete answers when Cal Advocates has attempted to obtain proof that the accounts at issue were not ratepayer funded. SoCalGas has objected to the use of its own definition of lobbying; continued to object and not provide full and complete answers even after losing motions to compel answers to this question; and agreed to provide Cal Advocates with the requested information then subsequently refused to do so on more than one occasion. Having failed to perform as promised or as required by less intrusive approaches, SoCalGas cannot now be heard on claims that Cal Advocates failed to consider less intrusive means of obtaining information about SoCalGas use of ratepayer funds other than the forensic accounting Cal Advocates now seeks to undertake.

Moreover, existing law requires both Cal Advocates' and Commission staff to maintain the confidentiality of any information that SoCalGas properly identifies as confidential. Therefore, any harm to SoCalGas or others will be *de minimis*.[105] SoCalGas fails to acknowledge this protection, let alone provide compelling explanations of how it will be harmed by Cal Advocates Office and the rest of the Commission obtaining confidential information that it must keep confidential.

3. Granting SoCalGas' Motion Will Harm The Commission And The Public Interests It Has A Constitutional Obligation To Protect

Given the relevant facts and law, what is evident is that SoCalGas will not suffer "irreparable harm" if its Motion to Quash is rejected or denied. And while SoCalGas

[105] SoCalGas has no "members" as contemplated under the First Amendment right to association, and fails to identify a single shareholder claim of harm.

claims "no harm" will reach Cal Advocates,[106] this is not the case. Neither this Commission nor Cal Advocates has access to the type of resources that are available to SoCalGas. However, both this Commission and Cal Advocates have been required to spend innumerable hours over the past twelve months either drafting, responding to, reviewing, or deciding motions in an attempt to require discovery from SoCalGas that should have been provided without objection many months ago.

The discovery received, while useful in some instances, has often been non-responsive and heavily marked with confidentiality claims that cannot be sustained, requiring more motions and further reviews by Commission staff. As the Los Angeles County Superior Court recognized in the Aliso Canyon proceeding before it: "… [SoCalGas], through their counsel, stonewalled over an extended period of this litigation by misusing claims of privilege to attempt to throw Plaintiffs' counsel off the track with respect to documents to which they were entitled. As a result, Plaintiffs' counsel were delayed in obtaining documents at a time when they could have been used in deposing Defendants' current and former employees."[107]

SoCalGas' continued flaunting of Commission rules and state laws cannot be sustained without further injury to the Commission, its limited resources, and the ratepayers it serves.

C. SoCalGas' Record Of Discovery Abuses And Sharp Litigation Practices In Multiple Forums Reveals the Need for Decisive Action By The Commission, Including Sanctions

1. SoCalGas Discovery Abuses In The Los Angeles Superior Court's Aliso Canyon Case Show That SoCalGas Is Well-Versed In Sharp Litigation Practices And Is More Than Willing To Use Them

A February 20, 2020 Minute Order from a Los Angeles Superior Court Judge in the case *Gandsey v. SoCalGas* (civil litigation related to Aliso Canyon) reveals that

[106] SoCalGas Motion to Quash, p. 15.

[107] Exhibit 16, *Gandsey* February 20, 2020 Minute Order, p. 18.

SoCalGas is well-versed in discovery abuse, and only complies when its attorneys are faced with sanctions. That order, Exhibit 16 hereto, found that "[b]ased on the prior history of this case, …. [SoCalGas'] initial claims of privilege are unsupportable and/or are withdrawn an average of 94 percent of the time."[108] The Court found that SoCalGas' "(1) abusive misconduct in discovery; (2) repeated, unmeritorious objections to discovery by assertion of unsubstantiated claims of privilege; (3) repeated failure to provide opposing counsel and the court with legally required information to permit opposing counsel and the court to evaluate Defendants' claims of privilege; and (4) willful violation of court orders addressing these issues, when taken together, warrant sanctions ...."[109] The Court observed: "In many ways, what is most upsetting about the litigation tactics of Defendants is that they have only asserted good faith objections when threatened with sanctions or when this court required trial counsel to declare under penalty of perjury that there was a good faith basis for the privilege claims asserted."[110]

The Court rejected SoCalGas' claims that the conduct was unintentional: "The sheer number of privilege assertions that ultimately were unsupportable is evidence that [SoCalGas'] conduct is the result of a concerted policy, and not the hapless mistakes of a few document review attorneys."[111] The Court awarded monetary sanctions of $525,610 against SoCalGas and their counsel jointly for these discovery abuses, among other remedies.[112]

[108] Exhibit 16, *Gandsey* February 20, 2020 Minute Order, pp. 2-3 (emphasis added).

[109] Exhibit 16, *Gandsey* February 20, 2020 Minute Order, p. 10.

[110] Exhibit 16, *Gandsey* February 20, 2020 Minute Order, pp. 12-13 (emphases added).

[111] Exhibit 16, *Gandsey* February 20, 2020 Minute Order, p. 20.

[112] Exhibit 16, *Gandsey* February 20, 2020 Minute Order, p. 1.

2. Extreme Lobbying Tactics Used To Stall Adoption Of San Luis Obispo's Energy Code Leads To Mayor's Request For The Commission To Stop SoCalGas' Schoolyard Bullying

On May 6, 2020, the Los Angeles Times reported that Eric Hofmann, the Chair of C4BES – the anti-decarbonization organization that the Sierra Club Motion to Deny claims SoCalGas created with assistance from Marathon and Imprenta[113] – threatened officials in the City of San Luis Obispo out of voting on a new energy code limiting the installation of new gas facilities.[114] That article is attached as Exhibit 17. It explains that the City Council had previously voted in favor of the code, and that a second vote planned for April 7, 2020, would have finalized adoption of the code. The vote was "scrapped" and had not been rescheduled as of May 6, 2020, due, in part, to Mr. Hofmann's threats to Michael Codron, the City's Community Development Director, that if the City Council moved forward with the final vote, Mr. Hofmann would "bus[] in hundreds and hundreds of pissed off people potentially adding to this pandemic." He assured Mr. Codron that "there will be no social distancing in place."[115] While it remains to be seen whether SoCalGas had a hand in this matter – it appears that the individuals and organizations that SoCalGas has funded and supports are willing to use any tactic necessary to further their anti-decarbonization agenda.

In response to Mr. Hofmann's threats, CalMatters published a commentary by San Luis Obispo Mayor, Heidi Harmon, attached here as Exhibit 18. Among other things, Mayor Harmon chided the Commission for failing to sanction SoCalGas regarding its association with C4BES; she asserted that the Commission's failure to act "allowed my

[113] Sierra Club Motion to Deny, pp. 1-7.

[114] In addition to being Chair of C4BES, the Los Angeles Times reports that Mr. Hofmann is President of the Utility Workers Union of America, Local 132, representing thousands of SoCalGas employees, and that he is on leave from his job at SoCalGas during his tenure as President of the Union.

[115] A screen shot of the full text of the email is available on the article print out, Exhibit 17, p. 7.

city to continue to be bullied."[116] She concluded her commentary by "call[ing] on state leadership to be part of [the] vision for a prosperous California by ensuring that SoCalGas leaves their schoolyard bullying behind and joins us in creating a better world where – in times of crisis – we turn toward each other and not on each other."[117]

3. SoCalGas Has Engaged In Discovery Abuse Throughout The Cal Advocates' Investigation

In its motions and responses to motions, SoCalGas characterizes itself as a hapless victim suffering at the hands of the Cal Advocates unreasonable discovery requests. For Example, SoCalGas' Motion for Stay served on March 25, 2020 claimed that it has "diligently responded" to each of Cal Advocates' data requests and has "met and conferred in good faith with Cal Advocates on disputes arising out of those requests."[118] Nothing could be further from the truth. As the litany of sharp practices SoCalGas has recently engaged in demonstrate, it is familiar with those practices and willing to use them.

SoCalGas' attempts to slow-roll Cal Advocates' investigation into its apparent misuse of ratepayer monies to fund its anti-decarbonization campaigns has resulted in two Cal Advocates Motions to Compel, both of which were granted, SoCalGas' frivolous First Amendment appeal which was denied by the ALJ, its equally frivolous Motion to Stay, which was summarily denied before Cal Advocates could file its Response,[119] and now its Motion to Quash a validly issued subpoena and Motion to Supplement its First Amendment appeal. The evidence of SoCalGas' withholding of discovery described in these various motions reveals just the tip of the iceberg of SoCalGas' intransigence. The utility has routinely engaged in a "cat and mouse" form of discovery abuse which has successfully delayed Cal Advocates' investigation for the past year.

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[116] Exhibit 18 - Mayor Harmon CalMatters Commentary, p. 3.

[117] Exhibit 18 - Mayor Harmon CalMatters Commentary, p. 4.

[118] SoCalGas Motion to Stay, p. 3.

[119] See Exhibits 8 and 9, Orders granting Cal Advocates' Motions to Compel.

For example, Question 4 of data request CalAdvocates-SC-SCG-2019-07 asked SoCalGas to identify the costs associated with lobbying local municipalities that have adopted SoCalGas-prepared "Balanced Energy Resolutions." SoCalGas responded there were no costs associated with such lobbying, evidently taking the position that "outreach" to local governments to encourage adoption of such resolutions was not "lobbying":

> There are no lobbying costs associated with the municipalities in attachment B that have adopted Balanced Energy Resolutions. It is appropriate for SoCalGas to present our, and our customers', view with respect to what is happening from an energy perspective in the state. Such discussion allows local governments to take those views into consideration in making informed and balanced decisions.[120]

Question 1 of the next data request - CalAdvocatesSC-SCG-2019-08 - asked for the same information, but omitted the word "lobbying." This time, SoCalGas objected that the question was "overbroad and unduly burdensome" and declined to answer it on the basis that it does not track such costs and that employees talking to local governments are "salaried":

> SoCalGas objects to this question as overbroad and unduly burdensome, as well as vague with respect to the phrases "total costs to SoCalGas associated with" and "costs associated with." Subject to and without waiving its objection, SoCalGas responds as follows:
>
> SoCalGas did not track the costs associated with communications between Regional Public Affairs employees and municipalities. The Regional Public Affairs employees who communicated with the municipalities are all salaried employees.[121]

While SoCalGas has since identified a small handful of employees working on these matters, it has significantly understated their time committed to these efforts. Among other things, it is clear from recent discovery that SoCalGas has not been tracking and

[120] Exhibit 19, SoCalGas Response to CalAdvocates-SC-SCG-2019-07, Q 4.

[121] Exhibit 20, SoCalGas Response to CalAdvocates-SC-SCG-2019-08, Q 1.

reporting its lobbying of local governments, in violation of Sempra Energy's Political Activities Policy. That Policy defines lobbying broadly on page 3 as:

> any action intended to influence legislative or administrative action, including activities to influence government officials, political parties, or ballot measures. Lobbyists can be individual employees or the company that employees them, referred to as a Lobbyist-Employer."[122]

More recently, SoCalGas has taken to objecting to the definitions provided in Cal Advocates' data requests and refusing to apply them in its responses.[123] For example, when Cal Advocates instructed SoCalGas to use the definition of lobbying provided in the Sempra Energy Political Activities Policy, SoCalGas objected to its own definition of lobbying on claims that the term is "vague and ambiguous."[124] SoCalGas also objected that the definition does not apply because it has many other definitions of lobbying for reporting purposes.[125]

As Cal Advocates has repeatedly admonished on its conference calls with SoCalGas – and which SoCalGas already knows – a term in a data request is defined to provide clarity, and can be defined however the requester decides. Thus, SoCalGas objections to using a specific definition because "it does not apply" have no legal basis and simply make no sense, again evidencing SoCalGas' bad faith when responding to Cal Advocates' investigation discovery. SoCalGas and Cal Advocates both know what lobbying is for purposes of this investigation, and it is not one definition confined to a

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[122] Exhibit 21, Sempra Energy Political Activities Policy, Revised July 23, 2018, p. 3.

[123] In addition to making many spurious objections, it waits to make these objections until the day the responses are due, rather than within the five business days Cal Advocates has requested in its data request instructions.

[124] See Exhibit 5, SoCalGas Response to CALADVOCATES-AW-SCG-2020-01, Q 1.

[125] *Id.* The data response explains: "For CPUC accounting purposes, the Federal Energy Regulatory Commission (FERC) definition of lobbying applies. … Cal Advocates' request for lobbying activity and costs relate to accounting information and the treatment of costs attributable to ratepayers. Accordingly, the FERC definition is the appropriate definition for the purposes of responding to the data request in question. … For reporting purposes, SoCalGas uses the definition of lobbying that is consistent with Sempra's Political Activities Policy…"

specific legal application. To borrow a famous phrase from United States Supreme Court Justice Stewart – "I know it when I see it."[126] With regard to lobbying, we all know what is meant.

Unfortunately, while SoCalGas' motions are ultimately denied, they are nonetheless achieving their goals of distracting Cal Advocates from the real work of following up on, and analyzing, discovery. Indeed, discovery requests issued in December, February, and March remain pending, with little hope that, absent strong and swift action by the Commission, they will ever be honestly responded to. For example, SoCalGas has declined to provide complete responses to CALADVOCATES SC-SCG-2019-11, which was issued on December 11, 2019. Among other things, SoCalGas' responses failed to include all costs associated with influencing public opinion on the type of buses the Los Angeles County Metropolitan Transportation Authority should acquire, failed to break down those costs by year, failed to disaggregate those costs by requested categories, and perhaps most notably, failed to identify the accounts where those costs were charged.[127] Most of this information should have been recorded in its Lobbying Activities Tracking System (LATS) consistent with the training manuals SoCalGas has provided. However, all of this information appears to be missing.

SoCalGas has also unreasonably delayed its responses to the Cal Advocates data request issued February 14, 2020. Notwithstanding numerous discussions regarding this data request – the utility insisted on using its own definition of lobbying to answer the questions –Cal Advocates has been waiting more than three months for complete responses.[128]

D. Alternatives To SoCalGas' Demands

Notwithstanding the fact that the Commission has broad statutory authority to review a utility's accounts and records, to the extent the Commission seeks to further

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[126] *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring*).*

[127] See Exhibit 7, Declaration of Stephen Castello, ¶ 19.

[128] See Exhibit 7, Declaration of Stephen Castello, ¶ 20.

protect attorney/client communications or attorney work product that *might* reside in SoCalGas' law firm invoices, Cal Advocates notes that the Commission has two options. The most straightforward option would be to prohibit SoCalGas from installing any "custom software solution" and acknowledge that any Commission review shall not waive SoCalGas' ability to assert such privileges at a later date. This option would ensure that the Commission has access to all information needed to perform its audits without lengthy proceedings to determine what is and what is not privileged information.

The alternative – which Cal Advocates does not believe is needed – would be to allow SoCalGas to install a "custom software solution" solely to block Commission access to the law firm invoices – called "records attachments" – that would allow the Commission to access a record of the law firm invoice for a particular payment made.[129] This alternative would require additional undertakings by the utility, including, without limitation:

(1) A declaration under penalty of perjury from SoCalGas' Chief Financial Officer that all other access to the law firm information, such as who was paid, how much they were paid, when they were paid, and line item text fields containing narrative descriptions,[130] would continue to be transparent through the accounting system and that *no other modifications* were made to SoCalGas systems to limit the Commission's access to its accounts and records.

(2) SoCalGas' identification of every law firm it has contracted with over the past five years, including the law firm name, the vendor number, and the nature of the law firm's work for SoCalGas.

(3) For any law firms that the Cal Advocatess seeks to know more about, SoCalGas would need to provide the invoices within ten business days, but could redact those portions of the invoices that it has a good faith basis in the law to claim a privilege for, and provide a privilege log for each claim of privilege. Similar to the *Gandsey* Court's solution, for any such claim of privilege, a SoCalGas attorney should be required to provide a declaration under penalty of perjury that the attorney has

[129] See SoCalGas Motion to Quash, Declaration of Dennis Enrique, ¶ 6.

[130] See SoCalGas Motion to Quash, Declaration of Dennis Enrique, ¶ 7.

personally reviewed all of the claims of privilege and that each one has a good faith basis in the law.

For the reasons set forth in more herein, Public Advocates prefers the first option because it is consistent with the statutory law providing the Commission full access to all utility accounts and records, and because the alternative potentially establishes an troubling precedent and provides opportunities for utility abuse of process.

IV. CONCLUSION

For all of the reasons set forth above, the Cal Advocates requests that the Commission swiftly reject the SoCalGas Motion to Quash as untimely and order SoCalGas to, within 24 hours, provide remote read-only access to the Cal Advocates with no filters or walls and no requirements such as execution of a non-disclosure agreement[131]. Such an order should also require SoCalGas to:

(1) Identify every 100% shareholder-funded account;

(2) Identify every account where costs are booked that are associated with the activities that are the subject of its First Amendment appeal;

(3) Provide a list of all vendors and their identifying numbers;

(4) Identify all vendors performing shareholder-funded activities, including those activities that are the subject of its First Amendment appeal;

(5) Provide full access to all Work Orders and identify all of the Work Orders associated with the activities that are the subject of its First Amendment appeal; and

(6) Provide any other information related to its accounts and records that Cal Advocates requests in no later than five business days.

Only with full access to SoCalGas accounts and records, including this specific information, will the Commission, including the Cal Advocates, be able to determine whether SoCalGas is funding its anti-decarbonization activities with shareholder or ratepayer monies.

[131] While Cal Advocates has previously discussed signing a Non-Disclosure Agreement (NDA) with SoCalGas in order to speed its release of information, such an NDA is unnecessary given the statutory protections provided and Cal Advocates no longer proposes to sign one given that the purpose of the NDA has been defeated by the instant Motion to Quash.

Finally, given SoCalGas' continued intransigence in responding to discovery in this investigation, and its reliance on aggressive litigation tactics that include violations of Commission rules and state law, the Commission should order that SoCalGas: (1) shall respond clearly and completely to all outstanding discovery in the next ten business days; (2) has no more than five business days to object to the publication of any documents obtained through discovery in this investigation based on privilege or confidentiality claims; and (3) in addition to complying with GO-66 to support any privilege or confidentiality claim, SoCalGas shall provide a declaration under penalty of perjury from a SoCalGas attorney that the attorney has reviewed the materials associated with the privilege or confidentiality claims and that such claims have a good faith basis in the law.

Respectfully submitted,

/s/ TRACI BONE

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June 1, 2020

Attachment C

CalAdvocates Motion for Contempt and Sanctions 6-23-20

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

In The Matter Of The Public Advocates Office Investigation Pertaining To Southern California Gas Company's Accounting Practices, Use Of Ratepayer Monies To Fund Activities Related To Anti-Decarbonization And Gas Throughput Policies, And Related Matters	Not In A Proceeding

PUBLIC ADVOCATES OFFICE MOTION TO FIND SOUTHERN CALIFORNIA GAS COMPANY IN CONTEMPT OF THIS COMMISSION IN VIOLATION OF COMMISSION RULE 1.1 FOR FAILURE TO COMPLY WITH A COMMISSION SUBPOENA ISSUED MAY 5, 2020, AND FINED FOR THOSE VIOLATIONS FROM THE EFFECTIVE DATE OF THE SUBPOENA

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June 23, 2020

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LIST OF EXHIBITS

I. INTRODUCTION

Pursuant to Public Utilities Code §§ 309.5(e), 311(a), 314, 314.5(a), 581, 582, 584, 701 and 702,[1] the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) moves for the California Public Utilities Commission (Commission) to find Southern California Gas Company (SoCalGas) in contempt of this Commission, and therefore in violation of Rule 1.1 of the Commission's Rules of Practice and Procedure (Rules), for its refusal to comply with a subpoena issued May 5, 2020 by this Commission (Commission Subpoena).[2] Cal Advocates' also moves for imposition of daily penalties for these SoCalGas violations.

A. This Motion is Timely and Appropriate

This Motion is both timely and appropriately filed. Because this Commission has no obligation to rule on either SoCalGas' December 2, 2019 Motion for Reconsideration[3] or its late-filed May 22, 2020 Motion to Quash the Commission Subpoena,[4] the fact that

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[1] All section references are to the California Public Utilities Code unless otherwise stated.

[2] Five days before service of the subpoena, Cal Advocates' issued a data request seeking the same access to SoCalGas' accounts and records as required by the subpoena. As Cal Advocates explained to SoCalGas when the subpoena was issued: "The subpoena is consistent with the data request we served on Friday, May 1, 2020. While a subpoena is not a prerequisite to obtaining access to a utility's accounts, given our history with SoCalGas on this investigation, the Public Advocates Office (Cal Advocates) opted for the additional authority provided by a subpoena." See Exhibit 1, T.Bone 5-5-20 EMail serving subpoena on SoCalGas and Exhibit 2, Data Request CalAdvocates-TB-SCG-2020-03.

[3] The SoCalGas December 2, 2019 Motion for Reconsideration is entitled: "*Southern California Gas Company's (U 904 G) Motion For Reconsideration/Appeal To The Full Commission Regarding Administrative Law Judge's Ruling In The Discovery Dispute Between Public Advocates Office And Southern California Gas Company, October 7, 2019 (Not In A Proceeding).*"

[4] The SoCalGas May 22, 2020 Motion to Quash is entitled: "*Southern California Gas Company's (U 904 G) Motion to Quash Portion of the Subpoena To Produce Access to Certain Materials in Accounting Databases and to Stay Compliance until the May 29th Completion of Software Solution to Exclude Those Protected Materials in the Databases (Not in a Proceeding).*" It was originally served on May 19, 2020 with redacted declarations. When Administrative Law Judge DeAngelis ordered SoCalGas to provide confidential electronic versions of the declarations to the Commission and Cal Advocates, SoCalGas elected to instead

these filings have been made does not stay SoCalGas' obligation to comply with the subpoena. SoCalGas' inability to identify any statute or Commission Rule permitting it to file a motion with the Commission for reconsideration of an Administrative Law Judge discovery ruling not in a proceeding, or to file a motion to quash a validly issued Commission subpoena, emphasizes this point.[5] In contrast, multiple statutes grant Cal Advocates the right to obtain discovery from SoCalGas without delay.[6] Consistent with these statutes, the Commission must now act in support of Cal Advocates' and its own discovery rights, and make clear that SoCalGas' continued willful violation of the May 5, 2020 Commission Subpoena, and other contempt of the Commission, violates Rule 1.1.

As set forth below, the Public Utilities Code and Commission precedent support the imposition of daily fines for violation of a subpoena. In light of SoCalGas' prior willful violation of a Commission subpoena – described in Section I.C below – this Motion seeks:

(1) A Commission determination that SoCalGas is in contempt of this Commission for its willful and continuing refusal to comply with the Commission Subpoena;

(2) Imposition of fines of $100,000 per day pursuant to Public Utilities Code §§ 2107 and 2113, and Commission Rule 1.1 for each day that SoCalGas' violates the Commission Subpoena;[7]

(3) An order that SoCalGas comply immediately with the Commission Subpoena as set forth in the Conclusion below; and

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file a "substituted" version of the Motion to Quash on May 22, 2020.

[5] SoCalGas asserts that Commission "precedent" permitted it to move for reconsideration (see Motion for Reconsideration, Footnotes 1 and 2) and pursuant to Rules 11.1 and 11.3, which only apply to open proceedings, to quash the Commission Subpoena.

[6] See, e.g., Public Utilities Code §§ 309.5(e), 311(a), 314, 314.5(a), 581, 582, 584, 701 and 702.

[7] Rule 10.2(f) states: Anyone who disobeys a subpoena issued pursuant to this rule may be found to be in contempt of superior court and punished accordingly, as provided in Public Utilities Code Sections 1792 and 1793. In appropriate circumstances, such disobedience may be found to be a violation of Rule 1.1, punishable as contempt of the Commission under Public Utilities Code Section 2113.

(4) Resolution of outstanding discovery disputes through the adoption of the going-forward procedures proposed in the Conclusion below.[8, 9]

B. Cal Advocates' Investigation and the Commission's Issuance of the Subpoena

Since May 2019, Cal Advocates has been investigating SoCalGas' use of ratepayer monies to fund anti-decarbonization campaigns through "astroturf" organizations,[10] including efforts to both promote the use of natural and renewable gas, and to defeat state and local laws and ordinances proposed to limit the use of these resources. Cal Advocates has pursued this investigation pursuant to its statutory authority and obligation under Public Utilities Code § 309.5 to represent the interests of public utility customers.

As a result of SoCalGas' systematic failure to comply with discovery requests, on May 5, 2020, Cal Advocates served on SoCalGas a subpoena signed by the Commission's Executive Director. The Commission Subpoena orders SoCalGas to make available to Cal Advocates no later than May 8, 2020 "access to all databases associated in any manner with the company's accounting system."[11] The Commission Subpoena is consistent with the Commission's statutory authority to review *at any time* a utility's books and records.[12]

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[8] Note that the fines sought in this Motion are limited to SoCalGas violations of the Commission Subpoena. Cal Advocates reserves the right to seek further sanctions, including monetary penalties, for SoCalGas' other (numerous) violations of state laws and Commission requirements revealed by Cal Advocates' investigation.

[9] If the Commission desires to first issue rulings on SoCalGas' Motion for Reconsideration and/or Motion to Quash prior to granting the sanctions Cal Advocates requests here, it may stay action on this Motion for Contempt until those rulings have issued.

[10] "Astroturfing" is the practice of masking the sponsors of a message or organization to make it appear as though it originates from and is supported by grassroots participants. For a comedic explanation of what astroturfing is and why it is problematic, see John Oliver, Last Week Tonight, at https://www.youtube.com/watch?v=Fmh4RdIwswE

[11] Exhibit 3, Commission Subpoena served May 5, 2020.

[12] See, e.g., Public Utilities Code §§ 309.5(e), 311(a), 314, 314.5(a), 581, 582, 584, 701 and 702.

In lieu of compliance with the Commission Subpoena, SoCalGas delayed its response to the Commission Subpoena and ultimately filed an untimely Motion to Quash the Commission Subpoena. At this point, SoCalGas has willfully disobeyed the Commission Subpoena for more than six weeks.

C. SoCalGas' Practice Of Openly Defying Commission Orders Requires A Swift And Meaningful Response

SoCalGas has demonstrated that it is willing to disregard Commission subpoenas on multiple occasions, in clear disregard of the Commission's regulatory authority. On October 22, 2019, the Commission issued a subpoena on behalf of the Commission's Safety and Enforcement Division (SED) in the Order Instituting Investigation (OII) regarding SoCalGas' operations and practices with respect to the Aliso Canyon Storage Facility. SoCalGas refused to comply with that subpoena, and, in spite of being advised of the need to act timely, late filed a motion to quash. SoCalGas' motion to quash was denied.[13] SED then requested an order to show cause why SoCalGas should not be sanctioned for contempt and monetary penalties for SoCalGas' refusal to comply with the subpoena.[14] That motion was denied on procedural grounds.[15]

SoCalGas' refusal to comply with the Commission Subpoena in this investigation is perhaps understandable given its prior unpunished defiance of a Commission subpoena in the Aliso Canyon investigation. Why should SoCalGas comply with Commission orders when there are no consequences for violations?

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[13] See *Administrative Law Judges' Ruling Denying Southern California Gas Company's Motion for an Order to Quash the Subpoena of the Safety and Enforcement Division,* filed December 30, 2019 in I.19-06-016.

[14] See *Motion Of The Safety And Enforcement Division Requesting The Commission Issue An Order To Show Cause Against Southern California Gas Company As To Why It Should Not Be Sanctioned For Being In Contempt Of A Commission Subpoena And Violating Rule 1.1 Of The Commission's Rules Of Practice And Procedure,* filed February, 21, 2020 in I.19-06-016.

[15] *E-Mail Ruling Denying, Without Prejudice, the Motion of The Safety and Enforcement Division For an Order to Show Cause*, filed April 28, 2020.

II. BACKGROUND REGARDING ISSUANCE OF THE SUBPOENA AND SOCALGAS' DEFIANCE OF THAT SUBPOENA

On May 5, 2020, Cal Advocates served a Commission Subpoena signed by the Commission's Executive Director on SoCalGas ordering the utility to "make available to the Public Advocates Office at the California Public Utilities Commission (Cal Advocates), and staff and consultants working on its behalf, access to all databases associated in any manner with the company's accounting system no later than three business days after service of this subpoena."[16] The Commission Subpoena also provided that "[s]uch access shall include both on-site and remote access… ."[17]

After unilaterally determining that on-site access was not appropriate given the COVID-19 situation, SoCalGas obtained several extensions from Cal Advocates to provide remote access. Cal Advocates participated in four meet and confers with SoCalGas to facilitate its compliance with the Commission Subpoena, and to obtain complete responses to other outstanding data requests. In response to Cal Advocates' questions during the last meet and confer, SoCalGas represented that it was: (1) "taking its obligations under the subpoena extremely seriously,"[18] and (2) prioritizing compliance with the Commission Subpoena so that it was unable to provide other information that was long overdue.[19] The next day, SoCalGas filed a 27 page Motion to Quash the Commission Subpoena, along with over 150 pages of exhibits and declarations.[20]

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[16] Exhibit 3, Commission Subpoena served May 5, 2020.

[17] Exhibit 3, Commission Subpoena served May 5, 2020.

[18] See, e.g. SoCalGas Motion to Quash, p. 2 and Exhibit 8, J.Wilson Letter to T.Bone 5-18-20.

[19] Exhibit 4, Declaration of Stephen Castello, ¶ 23.

[20] That Motion to Quash is entitled: "Southern California Gas Company's (U 904 G) Motion to Quash Portion of the Subpoena To Produce Access to Certain Materials in Accounting Databases and to Stay Compliance until the May 29th Completion of Software Solution to Exclude Those Protected Materials in the Databases (Not in a Proceeding)." It was originally served on May 19, 2020 with redacted declarations. When Administrative Law Judge DeAngelis ordered SoCalGas to provide confidential electronic versions of the declarations to the Commission and Cal Advocates, SoCalGas elected to instead file a "substituted" version of the Motion to Quash on May 22, 2020.

In response to SoCalGas' late-filed (and unanticipated) Motion to Quash, Cal Advocates served a formal response on June 1, 2020.[21] However, Cal Advocates' first action, upon service of the Motion to Quash, was to demand immediate read-only access to all of SoCalGas' accounts and records. Cal Advocates also demanded that "SoCalGas provide all outstanding discovery that has been the subject of the prior conference calls."[22] SoCalGas has ignored these demands.

Instead, on the afternoon of May 29, 2020, SoCalGas notified Cal Advocates that "SAP Access is live for the users that you've requested" but that it was limited "[t]o protect our privileged information and First Amendment rights, information and transaction details (invoice transactions and accounting journal entries) pertaining to our outside counsel firms and also vendors performing 100% shareholder activities have been programmatically excluded from the display list."[23]

SoCalGas remains in willful violation of the Commission Subpoena based on the fact that it has – by its own admission – "programmatically excluded" accounts related to law firms and vendors performing 100% shareholder activities.[24] It is unreasonable for a regulated utility to unilaterally determine what portion of its financial records are available for inspection by Commission staff. Approval of such a mechanism would effectively render SoCalGas unregulated because it would be able to shield any expenses from review by Commission.

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[21] That Cal Advocates Response to the SoCalGas Motion to Quash is entitled: "Response Of Public Advocates Office To Southern California Gas Company Motion To Quash Portion Of Subpoena, For An Extension, And To Stay Compliance."

[22] Exhibit 5, T.Bone 5-22-20 Email to SoCalGas demanding immediate access to accounts and records.

[23] Exhibit 6, J.Wilson & T.Bone Emails to ALJ May 29-June 3 2020 Re Access to Accounts and Records.

[24] Exhibit 6, J.Wilson & T.Bone Emails to ALJ May 29-June 3 Re Access to Accounts and Records.

III. DISCUSSION

A. SoCalGas Is In Contempt of The Commission

Public Utilities Code § 2113 is explicit regarding the Commission's authority to punish contempt. It provides:

> Every public utility, corporation, or person which fails to comply with any part of any order, decision, rule, regulation, direction, demand, or requirement of the commission or any commissioner is in contempt of the commission, and is punishable by the commission for contempt in the same manner and to the same extent as contempt is punished by courts of record. The remedy prescribed in this section does not bar or affect any other remedy prescribed in this part, but is cumulative and in addition thereto.

To find a respondent in contempt, Commission decisions require the following:

- The person's conduct must have been willful in the sense that the conduct was inexcusable; or
- That the person accused of the contempt had an indifferent disregard of the duty to comply; and
- Proof must be established beyond a reasonable doubt.[25]

A review of the record here shows that the factors for a finding of contempt against SoCalGas have been established beyond a reasonable doubt.

It is undisputed that SoCalGas received the Commission Subpoena on May 5, 2020 – so that it had knowledge of the Commission Subpoena and what it required. It is also undisputed that SoCalGas has the ability to comply with the Commission Subpoena. SoCalGas confirmed that all of its accounting staff are working remotely and have remote access to its accounts and records, including the SAP system.[26] SoCalGas also confirmed that a third-party consultant was also granted full remote access to its

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[25] D.15-08-032, *Modified Presiding Officer's Decision Finding The San Francisco Municipal Transportation Agency in Contempt, in Violation of Rule 1.1 of the Commission's Rules of Practice and Procedures, mimeo* p. 10 citing *Re Facilities-based Cellular Carriers and Their Practices, Operations and Conduct in connection with Their Siting of Towers,* D.94-11-018, 57 CPUC2d 176 at 205, citing *Little v. Superior Court* (1968) 260 Cal.App.2d 311, 317; *In Re Burns* (1958) 161 Cal.App.2d 137, 141-142; 68 CPUC 245; 63 CPUC 76; 80 CPUC 318; and D.87-10-059.

[26] Exhibit 4, Declaration of Stephen Castello, ¶¶ 10 & 11.

systems.[27] More recently, SoCalGas has offered remote access to Cal Advocates, but only with certain accounts "excluded."[28]

The Commission Subpoena explicitly required SoCalGas to provide Cal Advocates "access to all databases associated in any manner with the company's accounting systems."[29] In response, SoCalGas has shown a willful disregard for the Commission Subpoena through: (1) its misrepresentations to Cal Advocates staff regarding its efforts to comply with the Commission Subpoena;[30] and (2) its programmatic exclusion of accounts related to law firms and vendors performing 100% shareholder activities.[31]

SoCalGas' willfulness is magnified by the fact that it has ignored Cal Advocates' demands, promptly issued after SoCalGas' service of its Motion to Quash, to provide immediate and unfettered remote read-only access to its accounts and records.[32] Instead of compliance, SoCalGas has demanded that Cal Advocates execute a non-disclosure agreement to access the subset of accounts and records it has offered to make available to Cal Advocates, even though there is no legal basis for requiring such an agreement from the Commission or any of its divisions or offices.[33]

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[27] Exhibit 4, Declaration of Stephen Castello, ¶¶ 10 & 11.

[28] Exhibit 6, J.Wilson & T.Bone Emails to ALJ May 29-June 3 Re Access to Accounts and Records.

[29] Exhibit 3, Commission Subpoena served May 5, 2020.

[30] Exhibit 4, Declaration of Stephen Castello, ¶ 23.

[31] Exhibit 67, J.Wilson & T.Bone Emails to ALJ May 29-June 3 Re Access to Accounts and Records.

[32] Exhibit 5, T.Bone 5-22-20 Email to SoCalGas demanding immediate access to accounts and records and Exhibit 6, J.Wilson & T.Bone Emails to ALJ May 29-June 3 Re Access to Accounts and Records.

[33] Exhibit 6, J.Wilson & T.Bone Emails to ALJ May 29-June 3 Re Access to Accounts and Records.

B. SoCalGas' Disagreement With A Commission Order Does Not Allow It To Disobey The Order

1. Cal Advocates Has A Statutory Right To Investigate SoCalGas

Cal Advocates has a statutory right to "compel the production or disclosure of *any information it deems necessary* to perform its duties from any entity regulated by the commission."[34] This authority exists to support the Cal Advocates mandate to "represent and advocate on behalf of the interest of public utility customers and subscribers within the jurisdiction of the commission" and to "obtain the lowest possible rate for service consistent with reliable and safe service levels."[35]

Numerous other statutes provide the Commission and its staff, including Cal Advocates, similarly broad authority to review regulated utilities' accounts and records, *including those of their unregulated subsidiaries and affiliates*.[36] SoCalGas' challenges these statutes and decisions by insisting that it can unilaterally and indefinitely "wall off" from its regulator information in its accounts and records regarding "100% shareholder-funded activities" based on claims of a First Amendment right of association, or law firm invoices that *might* contain attorney-client communications or attorney work product, even though the law already provides meaningful protections against a regulator's unauthorized disclosure of a utility's – and its subsidiaries' and affiliates' – confidential information.[37]

2. SoCalGas Has Unilaterally And Improperly Determined To Withhold Information From The Commission

Nothing in the law allows SoCalGas, as a regulated utility, to unilaterally and indefinitely disobey a Commission order simply by serving a motion disagreeing with

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[34] Public Utilities Code § 309.5(e) (emphasis added).

[35] Public Utilities Code § 309.5(a).

[36] See, e.g., Public Utilities Code §§ 311, 314, 314.5, 314.6, 581, 582, 584, 701, and 702.

[37] See, e.g., Public Utilities Code § 583.

that order.[38] Indeed, Commission decisions are almost always effective immediately, and Public Utilities Code § 1735 provides that filing an application for rehearing of a decision does not excuse compliance with any order or decision of the Commission. Decision (D.) 15-08-032 took a similar position when the San Francisco Municipal Transportation Authority (SFMTA) failed to comply with a Commission subpoena issued at the Safety and Enforcement Divisions (SED) request.

In that investigation, SFMTA withheld certain employee records requested by the Commission, claiming those records were protected by the employee's constitutional right to privacy.[39] The Presiding Officer's decision in that investigation, which was subsequently and unanimously ratified by the Commission, was comprehensive and is instructive here. Among other things, similar to the situation presented here, it found that SFMTA willfully disobeyed the Commission subpoena issued in that case by asserting legally untenable arguments.[40] Specifically, that decision found that:

(1) SFMTA did not have the legal option to only make the records available for inspection rather than producing them in full to the Commission;[41]

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[38] SoCalGas may assert attorney/client communications and work product privileges, but must provide a privilege log to support such assertions, which it has not done here. Regarding SoCalGas' constitutional claims, see the California Court of Appeal's rejection of Pacific Gas and Electric Company's efforts to "repackage in constitutional wrapping" arguments already rejected. *Pacific Gas & Electric Co. v. Public Utilities Com*., 237 Cal. App. 4th 812, 865 (2015) ("PG&E will not prevail in its attempt to repackage in constitutional wrapping the same intent-based arguments we have already rejected.").

[39] The difference in D.15-08-032 was that SFMTA was willing to make the records available to Commission staff, but only at SFMTA's office; it would not permit Commission staff to copy or otherwise take possession of those records. Here, SoCalGas insists on complete withholding of the records it claims are entitled to constitutional protection, or other privilege, by implementing a "custom software solution" to prevent Cal Advocates from accessing this information that it has unilaterally determined should not be made available to Cal Advocates. SoCalGas May 22, 2020 Motion to Quash, p. 2.

[40] D.15-08-032, *mimeo* at 15.

[41] Id.

(2) The claimed constitutional privacy rights of the employee did not outweigh the Commission's right to the employee's training, accident, and drug testing records;[42]

(3) The employee did not have an objectively reasonable expectation of privacy;[43]

(4) The production of the records did not constitute a serious invasion of a privacy interest;[44]

(5) The employee's rights to privacy cannot overcome the Commission's statutory duty to obtain and analyze the records;[45]

(6) Alleged prior practices of Commission staff in reviewing such records at SFMTA's offices did not excuse SFMTA's disobedience of the subpoena;[46]

(7) Because the Commission had a statutory obligation to pursue the investigation, it would be redundant for the Commission to have to establish a compelling need for the records;[47]

(8) The SFMTA's alleged fear of tort liability to the employee was not justification for disobeying the subpoena;[48]

(9) SFMTA's violation of the subpoena violated Rule 1.1;[49] and

(10) By violating the subpoena, SFMTA was subject to fines under Public Utilities Code § 2107.[50]

Many of the same observations can be made here:

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[42] Id. at 18.

[43] Id. at 21.

[44] Id. at 23.

[45] Id. at 27.

[46] Id. at 28.

[47] Id. at 29.

[48] Id. at 31.

[49] Id. at 35.

[50] Id. at 37.

(1) SoCalGas did not have the legal option to unilaterally design and impose a "custom software solution" to limit Cal Advocates' review of its accounts and records;

(2) Existing law requires SoCalGas to make its accounts and records fully available to the Commission and its staff at any time;

(3) Prior practices of Commission staff in reviewing SoCalGas' accounts and records do not excuse SoCalGas's disobedience of the subpoena;

(4) Because the Commission has a statutory right and obligation to review SoCalGas' accounts and records, it would be redundant for the Commission to have to establish a compelling need for access to those accounts and records;

(5) SoCalGas' violation of the subpoena violates Rule 1.1; and

(6) By violating the subpoena, SoCalGas is subject to fines under Public Utilities Code § 2107.

Thus, consistent with the determinations in D.15-08-032, while SoCalGas may timely assert valid legal arguments, it may not unilaterally or indefinitely withhold information pending resolution of those arguments, nor assert frivolous claims that frustrate Commission oversight.[51]

C. SoCalGas Should Be Penalized For Disobeying The Subpoena

1. The Commission Has Clear Authority To Punish SoCalGas For Contempt

As a public utility regulated by the Commission, Public Utilities Code § 2113 permits the Commission to find SoCalGas in contempt and to punish it for contempt "in the same manner and to the same extent as contempt is punished by courts of record."[52]

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[51] Cal Advocates has fully briefed the reasons why SoCalGas' constitutional arguments have no merit in Cal Advocates' December 17, 2019 response to SoCalGas' Motion for Reconsideration and Cal Advocates' June 1, 2020 response to the SoCalGas Motion to Quash, pp. 22-29.

[52] Public Utilities Code § 2113 provides in full:

While the civil punishment for contempt is $1,000, § 2113 also provides that "[t]he remedy prescribed in this section does not bar or affect any other remedy prescribed in this part, but is cumulative and in addition thereto." To this end, the Commission has determined that where it finds a jurisdictional entity in contempt, it can impose additional fines for violating Rule 1.1.[53] The Commission can and has found Rule 1.1 violations where there has been a "lack of candor, withholding of information, or failure to correct information or respond fully to data requests."[54]

Section 2107 provides that any utility that fails to comply with a direction, demand, or requirement of the Commission is subject to a penalty of not less than $500 nor more than $100,000 for each offense.[55] Section 2108 provides that in the case of a continuing violation, such as SoCalGas' ongoing refusal to comply with the Commission Subpoena, "each day's continuance thereof shall be a separate and distinct offense."[56]

> Every public utility, corporation, or person which fails to comply with any part of any order, decision, rule, regulation, direction, demand, or requirement of the commission or any commissioner is in contempt of the commission, and is punishable by the commission for contempt in the same manner and to the same extent as contempt is punished by courts of record. The remedy prescribed in this section does not bar or affect any other remedy prescribed in this part, but is cumulative and in addition thereto.

[53] D.15-08-032 *mimeo* pp. 34-36.

[54] D.15-08-032 *mimeo* p. 38, quoting from D.13-12-053 *mimeo* p. 21.

[55] Public Utilities Code § 2107 provides in full:

> Any public utility that violates or fails to comply with any provision of the Constitution of this state or of this part, or that fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars ($500), nor more than one hundred thousand dollars ($100,000), for each offense.

[56] See, e.g. D.15-08-032, *mimeo,* p. 39.

2. Burden of Proof

The burden of proof for establishing a Rule 1.1 violation is not as stringent as the burden of proof for establishing contempt. The party claiming the violation must establish a Rule 1.1 violation "by a preponderance of the evidence."[57]

That standard is easily met here, based on the facts set forth in Sections II and III.A above:

(1) It is undisputed that the Commission Subpoena explicitly required SoCalGas to provide Cal Advocates "access to all databases associated in any manner with the company's accounting systems."[58]

(2) It is undisputed that SoCalGas received the Commission Subpoena on May 5, 2020 – so that it had knowledge of the Commission Subpoena and what it required.

(3) It is undisputed that SoCalGas had and has the ability to comply with the Commission Subpoena.[59]

(4) It is undisputed that SoCalGas has offered to provide only limited access to its databases associated with its accounting system, rather than the complete access required by the Commission Subpoena, and that it has demanded that Cal Advocates sign a non-disclosure agreement to obtain even this limited access.[60]

(5) As shown by the facts set forth in Sections II and III.A, SoCalGas has shown a willful disregard for the Commission through its

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[57] D.15-08-032 *mimeo,* pp. 35-36. See also, D.90-07-026, D.94-11-018, D.16-01-014, and D.19-12-041.

[58] Exhibit 3, Commission Subpoena served May 5, 2020.

[59] As described in Section III.A above, SoCalGas has confirmed that all of its accounting staff are working remotely and have remote access to its accounts and records, including the SAP system. SoCalGas also confirmed that a third-party consultant was also granted full remote access to its systems. More recently, SoCalGas has offered remote access to Cal Advocates, but only with certain accounts "excluded." See Exhibit 4, Declaration of Stephen Castello, ¶¶ 10 and 11 and Exhibit 6, J.Wilson T.Bone Emails to ALJ May 29-June 3 Re Access to Accounts and Records.

[60] Exhibit 6, J.Wilson T.Bone Emails to ALJ May 29-June 3 Re Access to Accounts and Records.

misrepresentations to Cal Advocates staff during meet and confers regarding its compliance with the Commission Subpoena;

(6) As shown by the facts set forth in Sections II and III.A, SoCalGas has shown a willful disregard for the Commission Subpoena through its unilateral exclusion of accounts related to law firms and vendors performing 100% shareholder activities.[61]

(7) As shown by the facts set forth in Sections II and III.A, SoCalGas has shown a willful disregard for the Commission Subpoena through its demand that Cal Advocates execute a non-disclosure agreement before it can access the subset of accounts and records it has offered to make available to Cal Advocates.[62]

SoCalGas' willful disregard is also evidenced by the fact that it has failed to provide any information identifying the specific accounts that it has "walled off" from Cal Advocates review.

3. Criteria Considered When Setting The Fine

Commission Decision 98-12-075[63] and Public Utilities Code §§ 2107 and 2108 provide guidance on the application of fines. Two general factors are considered in setting fines: (1) the severity of the offense and (2) the conduct of the utility.[64] In addition, the Commission considers the financial resources of the utility, the totality of the circumstances in furtherance of the public interest, and the role of precedent.[65] The Commission also considers the sophistication, experience and size of the utility; the

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[61] Exhibit 6, J.Wilson T.Bone Emails to ALJ May 29-June 3 Re Access to Accounts and Records.

[62] Exhibit 6, J.Wilson T.Bone Emails to ALJ May 29-June 3 Re Access to Accounts and Records.

[63] D.98-12-075, 1998 Cal. PUC LEXIS 1016 distills the essence of numerous Commission decisions concerning penalties in a wide range of cases, and states that the Commission expects to look to these principles as precedent in determining the level of penalty in a full range of Commission enforcement proceedings. See D.98-12-075, 1998 Cal. PUC LEXIS 1016 at *52-*53.

[64] D.98-12-075, 1998 Cal. PUC LEXIS 1016 at *54-*60.

[65] Id.

number of victims and economic benefit received from the unlawful acts; and the continuing nature of the offense.[66] The following discussion addresses each of these specific criteria and their applicability to SoCalGas' willful and continuing violation of the Commission Subpoena.

a) Criterion 1: Severity of the Offense

In D.98-12-075, the Commission held that the size of a fine should be proportionate to the severity of the offense. To determine the severity of the offense, the Commission stated that it would consider the following factors.

- **Physical harm**: The most severe violations are those that cause physical harm to people or property, with violations that threatened such harm closely following.
- **Economic harm**: The severity of a violation increases with (i) the level of costs imposed upon the victims of the violation, and (ii) the unlawful benefits gained by the public utility. Generally, the greater of these two amounts will be used in setting the fine. The fact that economic harm may be hard to quantify does not diminish the severity of the offense or the need for sanctions.
- **Harm to the regulatory process**: A high level of severity will be accorded to violations of statutory or Commission directives, including violations of reporting or compliance requirements.
- **The number and scope of the violations**: A single violation is less severe than multiple offenses. A widespread violation that affects a large number of consumers is a more severe offense than one that is limited in scope.[67]

SoCalGas' willful refusal to comply with the Commission Subpoena – especially in light of the fact that this is SoCalGas' second refusal to comply with a Commission subpoena in less than eight months – has significantly harmed the regulatory process. Such harms cannot be taken lightly. The California Court of Appeal recognized that the Commission "takes a very dim view of denying it information, treating it as a factor in

[66] Id. at *73-*77.

[67] Id.

aggravation when it comes to fixing penalty."[68] The Court of Appeal cited the Commission's own words to support this conclusion: "The withholding of relevant information causes substantial harm to the regulatory process, which cannot function effectively unless participants act with integrity at all times. … [T]his criterion weighs in favor of a significant fine."[69]

SoCalGas has disrespected the Commission and its staff in violation of Rule 1.1. It has also acted in conscious violation of the law, which clearly requires – Commission Subpoena or not – that the Commission and its staff, including Cal Advocates, must have the ability to inspect *all* of the accounts and records of a utility *at any time*.[70] This requirement is critical to, among other things, prevent a utility's ability to destroy or otherwise tamper with evidence.

SoCalGas' unilateral and continuing withholding of access to its accounts and records for over a month based on untenable legal claims, combined with its refusal to comply with a Commission subpoena issued in October 2019 for SED's Aliso Canyon investigation, and its pattern and practice of filing frivolous motions in this investigation, cannot be countenanced. SoCalGas has consciously and systematically wasted limited Commission resources with these antics, and has unquestionably harmed the regulatory process, the Commission, Cal Advocates, and the ratepayers it serves. As San Luis Obispo Mayor Heidi Harmon accurately observed in a recent editorial, the Commission's failure to sanction SoCalGas for its May 2019 activities in the Building Decarbonization proceeding "allowed my city to continue to be bullied."[71] She called on "state leadership to be part of [the] vision for a prosperous California by ensuring that SoCalGas leaves

[68] *Pacific Gas & Electric Co. v. Public Utilities Com*., 237 Cal. App. 4th 812, 865 (2015).

[69] *Pacific Gas & Electric Co. v. Public Utilities Com*., 237 Cal. App. 4th 812, 865 (2015), quoting D.13-09-028, 2013 Cal.P.U.C. Lexis 514 at pp. *51-*52.

[70] Public Utilities Code § 314.

[71] Exhibit 7, Mayor Harmon CalMatters Commentary, p. 3.

their schoolyard bullying behind and joins us in creating a better world where – in times of crisis – we turn toward each other and not on each other."[72]

These factors compel the highest sanctions that can be imposed on SoCalGas.

b) Criterion 2: The Utility's Conduct

In D.98-12-075, the Commission held that the size of a fine should reflect the conduct of the utility. When assessing the conduct of the utility, the Commission stated that it would consider the following factors:[73]

- **The Utility's Actions to Prevent a Violation**: Utilities are expected to take reasonable steps to ensure compliance with applicable laws and regulations. The utility's past record of compliance may be considered in assessing any penalty.
- **The Utility's Actions to Detect a Violation**: Utilities are expected to diligently monitor their activities. Deliberate, as opposed to inadvertent wrongdoing, will be considered an aggravating factor. The level and extent of management's involvement in, or tolerance of, the offense will be considered in determining the amount of any penalty.
- **The Utility's Actions to Disclose and Rectify a Violation**: Utilities are expected to promptly bring a violation to the Commission's attention. What constitutes "prompt" will depend on circumstances. Steps taken by a utility to promptly and cooperatively report and correct violations may be considered in assessing any penalty.

Here, SoCalGas had the ability to comply with the Commission Subpoena yet engaged in a calculated decision not to comply for as long as possible by engaging in numerous meet and confers to defer compliance, filing an untimely Motion to Quash,[74] and conditioning Cal Advocates' access to that information it was willing to provide on Cal Advocates' execution of a non-disclosure agreement. These behaviors were calculated and deliberate. In addition, SoCalGas' refusal to comply with the Commission

[72] Exhibit 7, Mayor Harmon CalMatters Commentary, p. 4.

[73] D.98-12-075, 1998 Cal. PUC LEXIS 1016 at *73-*75.

[74] See Cal Advocates June 1, 2020 Response to SoCalGas Motion to Quash at § II.B.

Subpoena is ongoing, and is consistent with a pattern and practice of behavior that disrespects the Commission, Commission staff, and the regulatory process.[75]

c) Criterion 3: The Utility's Financial Resources

In D.98-12-075, the Commission held that the size of a fine should reflect the financial resources of the utility. When assessing the financial resources of the utility, the Commission stated that it would consider the following factors:[76]

- **Need for Deterrence**: Fines should be set at a level that deters future violations. Effective deterrence requires that the Commission recognize the financial resources of the utility in setting a fine.
- **Constitutional Limitations on Excessive Fines**: The Commission will adjust the size of fines to achieve the objective of deterrence, without becoming excessive, based on each utility's financial resources.

The need for deterrence is one of the primary factors driving this Motion for Sanctions. SoCalGas has determined to violate state laws and Commission requirements to achieve its objectives, whether related to the Commission's investigation of its Aliso Canyon activities, or its astroturfing activities that undermine state and local decarbonization efforts. Only substantial fines imposed for each day of its failure to comply with the Commission Subpoena will have the deterrent effect needed to curb SoCalGas' determination to disregard state laws and Commission requirements.

SoCalGas is a large company with the resources to pay a substantial fine. Sempra Energy Company's most recently filed Form 10-K reflects that SoCalGas supplies natural gas to approximately 22 million people over a 24,000 square mile service territory in Southern California. SoCalGas' operating revenues have increased every year for the

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[75] SoCalGas' practice of slow rolling or otherwise withholding responses to data requests is described in the Cal Advocates June 1, 2020 Response to SoCalGas' Motion to Quash at § III.C.3. SoCalGas' prior refusal to comply with the Commission subpoena is described in § I.C above.

[76] D.98-12-075, 1998 Cal. PUC LEXIS 1016, *75-*76.

past five years from $3.489 billion in 2015 to $4.525 billion in 2019. Its assets have increased in value over the past five years from $12.104 billion in 2015 to $17.077 billion in 2019. It had earnings of $641 million in 2019, an increase of $216 million from the prior year.[77]

Given SoCalGas' significant resources and prior violation of a Commission subpoena, anything less than imposition of the highest fine possible would not have any deterrent effect. Consequently, fining SoCalGas $100,000 for each day of its violation of the Commission Subpoena is both necessary and appropriate.

Finally, this Commission needs to unequivocally communicate to SoCalGas that this is just the beginning, and that the Commission will take swift and decisive action for every violation that SoCalGas commits.[78] No other strategy will get SoCalGas' attention.

d) Criterion 4: Totality of the Circumstances

In D.98-12-075, the Commission held that a fine should be tailored to the unique facts of each case considering the following factors:[79]

- **The Degree of Wrongdoing**: The Commission will review facts that tend to mitigate the degree of wrongdoing as well as facts that exacerbate the wrongdoing.
- **The Public Interest**: In all cases, the harm will be evaluated from the perspective of the public interest.

As described in the sections above, SoCalGas' has willfully and remorselessly engaged in a pattern and practice of violations of state laws and Commission rules and orders. In the process, these actions have disrespected the Commission and its regulatory process, have wasted the Commission's limited resources, and have prevented the Commission from meeting its obligations to protect the public interest. In considering

[77] SoCalGas is a subsidiary of Sempra Energy Company (Sempra). Sempra's most recent Form 10-K, filed February 27, 2020, is available at https://investor.sempra.com/financial-information

[78] In his book *The Tipping Point – How Little Things Can Make a Big Difference,* Malcolm Gladwell describes in Chapter 4 how a similar strategy was used to significantly diminish years of unchecked graffiti and fare evasions on New York City subways.

[79] D.98-12-075, 1998 Cal. PUC LEXIS 1016, *76.

the totality of circumstances and degree of wrongdoing, a daily fine of $100,000 for the entirety of the time that SoCalGas has violated the Commission Subpoena is justified. Indeed, the totality of the circumstances suggest that an even larger amount – if permitted by law – would be appropriate.

e) Criterion 5: The Role of Precedent in Setting the Fine Amount

In D.98-12-075, the Commission held that any decision that imposes a fine should (1) address previous decisions that involve reasonably comparable factual circumstances, and (2) explain any substantial differences in outcome.[80]

As precedent for considering the level of fines against SoCalGas, the Commission should consider past Commission decisions involving Rule 1.1 violations that occurred over multiple days, including D.15-08-032 – the SFMTA sanctions cases – given its comparable factual circumstances.

In considering the amount of the fine against SFMTA, D.15-08-032 considered the City of San Francisco's budget situation, the surplus available, and the amount necessary to serve as an incentive to deter future violations:

> The SFMTA is a part of the City and County of San Francisco. Its Mayor, Edwin M. Lee, presented proposed balanced budgets for the fiscal years 2013-2014, 2014-2015, and 2016. Additionally, San Francisco revealed a surplus of nearly $22 million. We conclude that the fine we establish of $210,500 is significant enough to serve as an incentive to deter future violations. Yet, the amount of the fine is conservative enough not to be excessive in view of the financial health that the City and County of San Francisco currently enjoys.[81]

The SFMTA fine is admittedly modest in comparison to fines assessed against utilities, presumedly because of SFMTA's more limited resources, its public agency status, and the determination that the amount was a sufficient deterrent. In contrast, the fines assessed against utilities are typically far more significant.

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[80] D.98-12-075, 1998 Cal. PUC LEXIS 1016, *77.

[81] D.15-08-032, *mimeo* at 44-45 (citations omitted).

- In D.08-09-038 the Commission imposed a $30 million penalty on Southern California Edison Company (SCE) for Rule 1.1 and other violations associated with seven years of false reporting of data in connection with its performance based ratemaking mechanism, *taking into consideration SCE's good faith cooperation with the CPUC once the violations were identified*;
- In D.02-10-059 the Commission imposed a $20.34 million penalty on Qwest Communications Corporation for slamming and unauthorized billings that occurred over approximately a year; and
- In D.04-09-062 the Commission imposed a $12.14 million penalty on Cingular Wireless for collecting early termination fees over a period of more than two years.[82]

Here, given SoCalGas' significant financial resources, the totality of the circumstances, prior Commission decisions, and what "is significant enough to serve as an incentive to deter future violations," a daily fine of $100,000 for a total of more than $4.5 million is appropriate.[83] To the extent the Commission is concerned that SoCalGas' First Amendment arguments will be upheld – which is unlikely – the Commission can require that the funds be sequestered until such time as a final ruling resolves those issues.

IV. CONCLUSION

For all of the reasons set forth above, Cal Advocates request that the Commission:

(1) Find SoCalGas in contempt of this Commission for its willful and continuing refusal to comply with the Commission Subpoena;

(2) Impose a fine of $100,000 per day pursuant to Public Utilities Code §§ 2107 and 2113, and Commission Rule 1.1 for each day that SoCalGas' violates the Commission Subpoena;

(3) Order SoCalGas to, within 24 hours, provide remote read-only access to Cal Advocates with no filters or walls and no requirements

[82] In each of these cases, restitution to consumers was addressed separately and was not a component of the penalty described here. In addition, none of these cases involved loss of life, which can result in significantly higher penalties.

[83] The total grows each day that SoCalGas fails to comply with the subpoena.

such as execution of a non-disclosure agreement.[84] Such an order should also require SoCalGas to:

a. Provide a chart of its accounts that shows how they are tracked to the FERC Uniform System of Accounts;

b. Identify by account number every 100% shareholder-funded account;

c. Identify by account number every account where costs associated with the activities that are the subject of its First Amendment arguments are booked;

d. Identify by name and vendor number all vendors associated with the activities that are the subject of its First Amendment arguments;

e. Identify by name and vendor number all vendors performing 100% shareholder-funded activities, including those activities that are the subject of its First Amendment arguments;

f. Provide full access to all Work Orders and identify all of the Work Orders associated with the activities that are the subject of its First Amendment arguments;

g. Provide any other information related to its accounts and records that Cal Advocates requests within five business days; and

h. Provide a declaration under penalty of perjury from SoCalGas' Chief Financial Officer that the read-only remote access provided to Cal Advocates does not contain any modifications to exclude information from Cal Advocates' review.

(4) Resolve ongoing discovery disputes by ordering SoCalGas to:

a. Respond clearly and completely to all outstanding discovery in the next ten business days;

b. Respond in no more than five business days with objections to the publication of any documents obtained through

[84] While Cal Advocates had previously discussed signing a Non-Disclosure Agreement (NDA) with SoCalGas in order to speed its release of information, such an NDA is unnecessary given the statutory protections provided and Cal Advocates no longer proposes to sign one given that the purpose of the NDA was defeated by SoCalGas' May 22, 2020 Substitute Motion to Quash.

discovery in this investigation based on privilege or confidentiality claims; and

c. In addition to complying with GO-66 to support any privilege or confidentiality claim, provide a declaration under penalty of perjury from a SoCalGas attorney that the attorney has reviewed the materials associated with the privilege or confidentiality claims and that such claims have a good faith basis in the law.

Only by granting these requests will Cal Advocates be able to pursue its investigation. And only by granting these requests will SoCalGas understand that its willful disrespect of the Commission and its requirements must end.

Respectfully submitted,

/s/ TRACI BONE

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