BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking Concerning Energy Efficiency Rolling Portfolios, Policies, Programs, Evaluation, and Related Issues.	Rulemaking 13-11-005 (Filed November 14, 2013)

OPENING BRIEF OF SIERRA CLUB IN THE ORDER TO SHOW CAUSE ISSUED DECEMBER 17, 2019 AGAINST SOUTHERN CALIFORNIA GAS COMPANY

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SUMMARY OF RECOMMENDATIONS

The Commission should adopt the following remedies for SoCalGas' use of ratepayer funds to advocate against stringent energy efficiency measures:

- Disgorgement of all costs SoCalGas collected from ratepayers for conducting its codes and standards program in the years 2014–2017.
- Disgorgement of all shareholder incentives SoCalGas collected for conducting its codes and standards program in the years 2014–2017.
- Total fines of $255.3 million, reflecting a $230,625,000 fine for using ratepayer funds to advocate against stringent state and federal energy efficiency codes and standards in the years 2014–2017 and a $24,675,000 fine for using ratepayer funds to advocate against local reach codes in 2019 and 2020; with these penalties allocated to Commission building electrification programs to remedy the harms caused by SoCalGas' conduct.
- Permanent removal of SoCalGas from an active role in the statewide codes and standards advocacy program.
- Prohibit SoCalGas from recovering the costs of any future advocacy against stringent codes and standards, including local reach code adoption, either on its own behalf or through gas industry trade groups.

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OPENING BRIEF OF SIERRA CLUB IN THE ORDER TO SHOW CAUSE ISSUED DECEMBER 17, 2019 AGAINST SOUTHERN CALIFORNIA GAS COMPANY

Pursuant to Rule 13.11 of the California Public Utilities Commission's ("Commission" or "CPUC") Rules of Practice and Procedure and the *E-Mail Ruling Revising Schedules for Orders to Show Cause* that Administrative Law Judge ("ALJ") Kao issued October 6, 2020, Sierra Club respectfully submits this *Opening Brief of Sierra Club in the Order to Show Issued December 17, 2019 Cause Against Southern California Gas Company*.

I. INTRODUCTION

Since at least 2014, Southern California Gas Company ("SoCalGas" or the "Company") repeatedly violated Commission requirements by using ratepayer funds intended to support utility advocacy in "advanc[ing]…more stringent codes and standards" to instead campaign against robust efficiency measures at the federal and state level.[1] From Department of Energy ("DOE") furnace standards to residential water heating standards under California's building code ("Title 24"), SoCalGas took positions at odds with other California utilities and the California Energy Commission ("CEC") as it sought to neutralize efficiency standards to avoid any incentive to fuel switch from gas to electric end uses. After the Commission reaffirmed that its codes and standards ("C&S") advocacy programs are meant to strengthen energy efficiency requirements, SoCalGas nonetheless dispatched its ratepayer-funded employees to campaign against stringent local requirements known as "reach codes" that increased building efficiency by requiring or incentivizing all-electric new construction.

SoCalGas' conduct was not limited to attacks on proposed rules. In coordination with the gas industry trade groups it funded, SoCalGas questioned the entire premise of efficiency standards, urging the Trump Administration to block Obama-era regulations from taking effect

[1] *See*, *e.g.*, Decision ("D.") 12-05-015, *Decision Providing Guidance on 2013–2014 Energy Efficiency Portfolios and 2012 Marketing, Education, and Outreach*, at 257 (May 18, 2012) ("D.12-05-015").

and deprioritize efficiency.[2] SoCalGas even publicly questioned the economic benefit of efficiency, when its own experts opined otherwise.[3] At a gas industry conference, a SoCalGas employee funded though the ratepayer efficiency program warned industry colleagues that achievement of California's efficiency and climate policies would drive electrification and diminish gas consumption.[4] SoCalGas used its Codes and Standards Manager's ratepayer-funded labor to organize a keynote speech at another gas industry conference on "The Moral Case for Fossil Fuels" that addressed the industry's #1 concern: "That the environmental and energy efficiency lobbies continue to be successful persuading the public sentiment and many lawmakers that the U.S. should move from the direct use of natural gas in all residential and commercial applications to an all-electric society as soon as possible because it will not be long before the country's electricity can and will be generated by all renewables."[5] In every way it could, SoCalGas sought to diminish the critical role of the codes and standards program, violated Commission rules and the public trust, and frustrated achievement of California's efficiency and climate objectives. A reckoning for SoCalGas' years of duplicitous and self-serving tactics is long overdue.

The Commission must severely sanction SoCalGas for its repeated egregious and long-standing violations of Commission efficiency rules. First, SoCalGas' violations of Commission rules are unequivocal. Since at least 2005, the Commission has recognized that "[u]sing ratepayer dollars to work towards adoption of higher appliance and building standards may be one of the most cost-effective ways to tap savings potential for energy efficiency and procure least-cost energy resources on behalf of all ratepayers."[6] As the Commission subsequently observed, "authorization of energy efficiency funding for codes and standards makes clear"

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[2] Exhibit Cal Advocates/Sierra Club-1, App. C, Ex. 7 at 3–5.

[3] *Compare id.* at 4–5 (stating that "studies by environmental advocates" have found significant macroeconomic and consumer benefits from energy efficiency regulations, but urging the DOE to weigh those findings against unidentified research by other stakeholders) *with* Exhibit Cal Advocates/Sierra Club-13 (June 22, 2017 email from SoCalGas' consultant Marc Esser, observing "[i]t has been shown (in the US and elsewhere) that energy efficiency is great for the economy... apart from the direct $ and job benefit, it fosters innovation, which in turn helps a country stay competitive internationally" and offering to provide supporting sources).

[4] Exhibit Sierra Club R-6 at slide 9.

[5] Exhibit Sierra Club R-3 (the SoCalGas Codes and Standards Manager also asked the keynote speech to address the concern that: "We need to get formulate [sic] some talking points or information points that will be compelling and easily explainable – and then we need the entire industry to mobilize.").

[6] D.05-09-043, *Interim Op.: Energy Efficiency Portfolio Plans and Program Funding Levels for 2006–2008 — Phase 1 Issues*, at 177, Findings of Fact ¶ 40 (Sept. 27, 2005) ("D.05-09-043").

utilities must use efficiency funding for this purpose.[7] Indeed, SoCalGas' own reports to the Commission confirm that the Company has long understood that the Commission authorized spending on energy efficiency advocacy to strengthen standards. For instance, in its 2017 energy efficiency report, SoCalGas states: "The Statewide Codes and Standards (C&S) Program saves energy on behalf of ratepayers by influencing regulatory bodies such as the California Energy Commission and the U.S. Department of Energy (DOE) to *strengthen* energy efficiency regulations."[8] SoCalGas was fully aware that the advocacy its codes and standards staff conducted *against* stringent standards in 2017 undermined the purpose of the C&S Program, and so its report to the Commission does not disclose that advocacy. Similarly, the Commission authorized the utilities to conduct reach code advocacy within their energy efficiency programs to "increase the likelihood of code adoption and compliance."[9] Increasing the adoption of reach codes is a policy priority for the Commission because these stringent local codes are "an important stepping stone and testing ground to collect data on adoption rates of new technologies" that lead to future statewide codes that are stringent enough "to meet aggressive goals or policy mandates."[10] Yet SoCalGas' ratepayer-funded public affairs staff repeatedly urged local governments not to adopt reach codes.

Second, the motivation for SoCalGas' conduct is its complete fealty to its shareholders' interest in maintaining demand for fossil fuels. SoCalGas has been gaming out how increasingly stringent efficiency codes and standards would lead to the electrification of gas appliances and erode its revenue in internal documents since 2014—well before building electrification became part of climate policy vernacular. SoCalGas saw the threat California's efficiency and climate policies posed to its business and launched sophisticated campaigns to water down proposed standards to keep gas appliances competitive or even create regulatory carve outs for inefficient gas appliances. It did this despite understanding that electrification is necessary for California to meet its greenhouse gas ("GHG") reduction requirements. SoCalGas put its shareholders' interest above that of California ratepayers and did so with ratepayer funds.

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[7] D.18-05-041, *Decision Addressing Energy Efficiency Business Plans*, at 143 (June 5, 2018) (quoting D.05-09-043) ("D.18-05-041").
[8] Exhibit SCG-27 at 28 (emphasis added).
[9] D.09-09-047, *Decision Approving 2010 to 2012 Energy Efficiency Portfolios and Budgets*, at 203 (Oct. 1, 2009) ("D.09-09-047").
[10] D.12-05-015 at 254–55.

Third, SoCalGas' violations have resulted in substantial harm. In multiple cases, SoCalGas fervent opposition to strict efficiency standards was successful. In the CEC's 2016 update to the Title 24 building code, SoCalGas achieved its campaign objective of delaying the adoption of stringent standards for water residential heaters until a future code update.[11] At the federal level, SoCalGas participated in a coordinated campaign with the gas industry that persuaded the DOE not to adopt a proposed rule that would have applied stringent efficiency standards to residential furnaces of all sizes, frustrating the CEC's recommendation that the DOE approve a standard even more stringent than what it proposed.[12] Stringent efficiency codes and standards represent the "the largest source of [energy efficiency] savings" and are superior to the Commission's other tools for deploying energy efficiency because they lead directly to savings at mandated and predictable rates.[13] In fighting against stringent codes and standards, SoCalGas blunted one of California's most effective weapons in combating the climate crisis. SoCalGas' ratepayer-funded tactics to delay the transition to efficient electric appliances has resulted in additional GHG pollution, exacerbating the climate crisis and making it "that much more difficult for California to meet its GHG emission reduction goals."[14]

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[11] *See generally* Section V.A.1.

[12] Section V.A.2 of this brief discusses SoCalGas' advocacy on the federal furnace rule in detail. The CEC comment letter to the DOE agreed that the proposed 92% annual fuel utilization efficiency ("AFUE") is cost-effective in California and nationwide, and explained that a 95% AFUE standard would achieve the improvement in energy efficiency that federal law demands. Exhibit Cal Advocates/Sierra Club-3 at 4.

[13] D.17-09-025, *Decision Adopting Energy Efficiency Goals from 2018–2030*, at 35 (Oct. 2, 2017); *See* D.14-10-046, *Decision Establishing Energy Efficiency Savings Goals and Approving 2015 Energy Efficiency Programs and Budgets (Concludes Phase I of R.13-11-005)*, at 55–56 (explaining reasoning behind choosing code as a baseline rather than existing conditions, stressing the importance of additionality of energy efficiency savings) (Oct. 24, 2014) ("D.14-10-046").

[14] CEC Docket No. 18-IEPR-01, *2018 IEPR Update Volume II*, at 26 (Mar. 21, 2019) ("New construction projects, retrofitting existing buildings, and replacing appliances and other energy-consuming equipment essentially lock in energy system infrastructure for many years. As a result, each new opportunity for truly impactful investment in energy efficiency and fuel choice is precious. If the decisions made for new buildings result in new and continued fossil fuel use, it will be that much more difficult for California to meet its GHG emission reduction goals.") ("2018 IEPR Update Volume II"), https://www.energy.ca.gov/data-reports/reports/integrated-energy-policy-report/2018-integrated-energy-policy-report-update. The Commission routinely takes official notice of the CEC's Integrated Energy Policy Reports, which are an official act of the CEC. *See*, *e.g.*, D.09-12-044, *Decision Granting a Certificate of Public Convenience and Necessity for the Tehachapi Renewable Transmission Project (Segments 4–11)*, at 13, n.29 (Dec. 24, 2009); D.12-07-021, *Decision Denying Sacramento Natural Gas Storage, LLC's Appl. for Certificate of Public Convenience and Necessity to Construct and Operate a Gas Storage Facility*, at 87 (July 18, 2012) ("D.12-07-021").

To properly hold SoCalGas accountable, the Commission should adopt the following remedies for SoCalGas' use of ratepayer funds to advocate against stringent energy efficiency measures:

- Disgorgement of all costs SoCalGas collected from ratepayers for conducting its codes and standards program in the years 2014–2017.
- Disgorgement of all shareholder incentives SoCalGas collected for conducting its codes and standards program in the years 2014–2017.
- Total fines of $255.3 million, reflecting a $230,625,000 fine for using ratepayer funds to advocate against stringent state and federal energy efficiency codes and standards in the years 2014–2017 and a $24,675,000 fine for using ratepayer funds to advocate against local reach codes in 2019 and 2020; with these penalties allocated to Commission building electrification programs to remedy the harms caused by SoCalGas' conduct.
- Permanent removal of SoCalGas from an active role in the statewide codes and standards advocacy program.
- Prohibit SoCalGas from recovering the costs of any future advocacy against stringent codes and standards, including local reach code adoption, either on its own behalf or through gas industry trade groups.

II. PROCEDURAL HISTORY

The Commission first became aware that SoCalGas was improperly using ratepayer funds to advocate against stringent energy efficiency standards in 2017. That year, in comments in Application 17-01-013, the Public Advocates Office ("Cal Advocates") described SoCalGas' use of energy efficiency funds to the DOE's proposal to strengthen furnace standards and other misbehavior in the Company's energy efficiency program.[15] Based on the information presented at that time, the Commission found "SoCalGas has not worked towards adoption of more stringent codes and standards," despite the Commission making clear its intent for how utilities must use energy efficiency funding for codes and standards advocacy: "to work towards adoption of higher appliance and building standards" during its 2018–25 business plan.[16] Accordingly, the Commission ordered that "SoCalGas shall have no role in statewide codes and standards advocacy other than to transfer funds to the statewide codes and standards lead for program implementation."[17] The Commission declined to sanction SoCalGas for its past

[15] D.18-05-041 at 140–41.
[16] *Id.* at Findings of Fact ¶¶ 77, 143.
[17] *Id.* at 144.

misconduct in that proceeding. Instead, it found that this proceeding would be the appropriate venue for Cal Advocates to request sanctions against SoCalGas.[18]

In October 2019, the Commission approved incentive awards through the Energy Efficiency Savings and Performance Incentive ("ESPI") for program years 2016 and 2017 for all four of California's large investor-owned utilities. Cal Advocates protested SoCalGas' request for incentive payments for its 2017 codes and standards advocacy and asked the Commission to require SoCalGas to return the incentive award previously authorized for 2016 advocacy.[19] The Commission had "serious questions about whether SoCalGas followed the clear intent of the C&S incentive program and, if it failed to do so, what consequences should flow from that," but did not determine what remedies would be appropriate in Resolution E-5007.[20] Instead, the Commission resolved to issue an order to show cause in this proceeding "directing SoCalGas to explain whether it is entitled to recover the costs of its 2016-2017 Codes and Standards (C&S) advocacy from ratepayers, and whether its activities warrant any other remedies."[21]

On December 17, 2019, Assigned Commissioner Liane Randolph issued the Order to Show Cause Directing SoCalGas to Address Shareholder Incentives for Codes and Standards Advocacy Expenditures ("OSC") in this proceeding. After holding a prehearing conference and reviewing responses to the OSC from SoCalGas, Cal Advocates and Sierra Club, the Commission issued a scoping memo for this OSC on March 2, 2020.[22] The Scoping Memo establishes two factual questions that this OSC will address.[23] On March 25, 2020, ALJ Valerie Kao issued an email ruling, clarifying that the Commission will address the following factual issues:

1. Whether Respondent booked any expenditures to its Demand Side Management Balancing Account, and associated allocated overhead costs, to advocate against more stringent codes and standards during any period of time between 2014 and 2017 (inclusive); and

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[18] *Id.*
[19] Resolution E-5007 at 8 (Oct. 11, 2019).
[20] *Id.* at 34.
[21] *Id.* at 2.
[22] R.13-11-005, *Assigned Comm'r's Ruling Setting the Scope and Schedule for the Order to Show Cause Against SoCalGas*, at 1 (Mar. 2, 2020) ("Scoping Memo"), https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M328/K472/328472429.PDF.
[23] *Id.* at 2.

2. Whether Respondent ever used ratepayer funds, regardless of the balancing account or other accounting mechanism to which such funds were booked, to advocate against local governments' adoption of reach codes.[24]

If those factual questions are true, the Commission will determine:

1. Whether Respondent [SoCalGas] is entitled to shareholder incentives for codes and standards advocacy in 2014 through 2017;

2. Whether Respondent's shareholders should bear the costs of its 2014 through 2017 codes and standards advocacy; and

3. Whether any other remedies are appropriate.[25]

Instead of gathering evidence on these issues through evidence and hearings, the Commission gave parties the opportunity to request the admission of evidence via motions. On October 19, 2020, ALJ Valerie Kao admitted all exhibits that SoCalGas had submitted.[26] In the same ruling, ALJ Valerie Kao admitted all but one of Cal Advocates and Sierra Club's exhibits, after considering SoCalGas' objections that Cal Advocates and Sierra Club had submitted 18 exhibits that were outside the scope of the OSC.[27]

III. LEGAL BACKGROUND

A. Commission Decisions Have Long Been Clear That Ratepayer Funded Codes And Standards Advocacy May Only Be Used To Advocate For Adoption Of More Stringent Standards.

The intent of the Commission's codes and standards advocacy program has been clear for well over a decade: "Using ratepayer dollars to work towards adoption of higher appliance and building standards may be one of the most cost-effective ways to tap the savings potential for energy efficiency and procure least-cost energy resources on behalf of all ratepayers."[28] Accordingly, the Commission has "authorized utilities to spend EE dollars advancing more stringent codes and standards."[29] The Commission expounded on its finding that advocacy for

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[24] R.13-11-005, *E-mail Ruling Clarifying Scope of Order to Show Cause and Providing Further Instructions for Hr'g* (Mar. 25, 2020) ("Email Ruling Clarifying Scope"), https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M330/K052/330052254.PDF.
[25] *Id.*; Scoping Memo at 2.
[26] Email Ruling Clarifying Scope.
[27] *Id.*
[28] D.05-09-043 at 177, Findings of Fact ¶ 40.
[29] D.14-10-046 at 61; *see also* D.07-10-032, *Interim Op. on Issues Relating to Future Savings Goal and Program Planning from 2009–2011 Energy Efficiency and Beyond*, at 119 (Oct. 19, 2007) ("[T]he utility

higher standards could be one of the most cost-effective ways for utilities to unleash energy efficiency resources on behalf of their customers, by explaining that the goal of ratepayer funded energy efficiency programs is market transformation and the incorporation of gains into codes and standards.[30] Consistent with this purpose, the Commission's energy efficiency Strategic Plan incorporates the strategy of utilities advocating to "continually strengthen and expand building and appliance codes and standards," and the Commission has approved codes and standards programs based on the finding that they met the strategies in the Strategic Plan.[31] In contrast, the Commission has never authorized ratepayer funding to advocate against heightened energy efficiency codes and standards. Using energy efficiency program funds to fight stronger standards is a clear violation of the Commission's decision that utilities should advocate to *strengthen* codes and standards.

In 2018, the Commission reaffirmed that its "intent for such activities [advocacy funded through the C&S program] has been clear since we first authorized energy efficiency funding for those activities."[32] As discussed above, the Commission's clear intent was for utilities to use "ratepayer dollars to work towards adoption of higher appliance and building standards."[33] Therefore, the Commission saw no reason in D.18-05-041 to consider what might constitute "a reasonable basis for taking a position other than in support of more stringent standards."[34] Instead, the Commission found SoCalGas contravened "the Commission's clear policy intent for [ratepayer] funds" based on evidence Cal Advocates submitted.[35] Although the Commission did not penalize SoCalGas at that time, it took the precautionary measure of limiting its future

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programs should include efforts to encourage the adoption of more stringent C&S."); D.12-05-015 at 257 ("The Commission has supported funding for the IOU codes and standards program to: (a) advance the adoption of more stringent code and standards through the codes and standards program advocacy work; (b) improve code compliance through the Extension of Advocacy and Compliance Enhancement Program; and (c) promote adoption of Reach Codes among local jurisdictions.").

[30] D.07-10-032 at 21; *see also id.* at 22 (providing the example that utilities cannot have a program to replace incandescent light bulbs without also pursuing advocacy for higher codes and standards for lighting).

[31] D.09-09-047 at 200, 206.

[32] D.18-05-041 at 144.

[33] *Id.* at 168–69, Findings of Fact ¶ 78 ("the Commission's intent for the use of such funds is articulated in D.05-09-043, which states '[u]sing ratepayer dollars to work towards adoption of higher appliance and building standards may be one of the most cost-effective ways to tap the savings potential for [energy efficiency] and procure least-cost energy resources on behalf of all ratepayers.'").

[34] *Id.* at 144.

[35] *Id.* at 150–151.

involvement in codes and standards advocacy during the business plan period that lasts through 2025.[36]

B. The Commission Requires The Utilities' Reach Code Advocacy Programs To Promote Reach Codes Because They Are An Important Tool For Achieving State Targets.

The Commission's longstanding support for reach codes began in 2009, when it authorized a reach code C&S subprogram to "increase the likelihood of code adoption and compliance."[37] Accordingly, the Commission ordered that SoCalGas and the other large utilities "shall ensure that activities that are related to voluntary programs related to reach codes support activities associated with other energy efficiency programs."[38] Under this order, the utilities' reach code advocacy must support the Commission's other energy efficiency programs, including the codes and standards advocacy programs that the Commission designed "to work towards adoption of higher appliance and building standards."[39] The Commission's Codes and Standards Enhancement ("CASE") teams have confirmed that all-electric new construction is a cost-effective strategy for reducing emissions across California, including SoCalGas' service territory.[40] Utility advocacy to prevent or delay the adoption of reach codes undercuts the other energy efficiency programs by depriving California of the opportunity to demonstrate stringent, cost-effective measures that it can scale-up in a statewide code.

As the Commission has explained, it authorizes IOU efforts to promote the adoption of reach codes and other codes and standards advocacy because "[p]rogressive increases in building and appliance efficiency standards are a critical component of achieving the State's long-term energy efficiency goals."[41] Within the IOUs' broad suite of C&S activities, the promotion of reach codes is designed to play a unique and vital role by paving the way for stringent statewide standards: "for future codes to meet aggressive goals or policy mandates . . . local jurisdictions which adopt reach codes become an important stepping stone and testing ground to collect data

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[36] *Id.* at 151, Ordering Paragraph ¶ 53.
[37] D.09-09-047 at 203.
[38] *Id.* at 378, Ordering Paragraph ¶ 25(b).
[39] D.05-09-043 at 123, 177, Findings of Fact ¶ 40.
[40] Exhibit Cal Advocates/Sierra Club-53 at 12, *Figure 1: Single family all-electric cost-effectiveness comparison* (showing that in every California climate zone the benefit-cost ratio for single family homes is greater for "No NG" cases than "NG Available" cases). The statewide C&S program's 2019 update to this report is also available at https://localenergycodes.com/content/resources.
[41] D.12-05-015 at 243.

on adoption rates of new technologies."[42] To these ends, the Commission ordered that SoCalGas and the other utilities "shall coordinate with the Codes and Standards program and the California Energy Commission's Codes and Standards Programs to . . . support the advancement of emerging technologies and approaches, including demonstration of technologies, that are candidates for adoption into future codes and standards as well as Reach Codes."[43] SoCalGas repeatedly violated this order by, not just failing to support reach codes and technologies that were candidates for statewide codes and standards, but advocating *against* them.

In D.18-05-041, the Commission "prohibit[ed] SoCalGas from *using ratepayer funds* to conduct codes and standards advocacy."[44] It found this prohibition reasonable because Cal Advocates had submitted evidence that SoCalGas had contravened the Commission's clear intent for how ratepayer funds should be used in energy efficiency advocacy.[45] Despite the Commission's efforts to protect ratepayers from bearing the costs of SoCalGas' advocacy against stringent codes and standards, the Company charged ratepayer-funded accounts for its advocacy against stringent local building codes.

IV. FACTUAL BACKGROUND: As SoCalGas Understood, Achieving California's Climate and Efficiency Polices Could Eliminate the Use of Gas.

California has long charted a path towards deep decarbonization to avoid the most severe impacts of the climate crisis. Senate Bill ("SB") 32 requires economy wide GHG emissions to be reduced to at least 40 percent below 1990 level by 2030 and Executive Order B-55-18 directs California to achieve carbon neutrality by 2045.[46] Yet even these targets are likely insufficient. As Californians across the state experience the increasingly catastrophic effects of climate change, Governor Newsom has recognized the need for accelerated action, stating, "across the entire spectrum, our goals are inadequate to the reality we're experiencing."[47]

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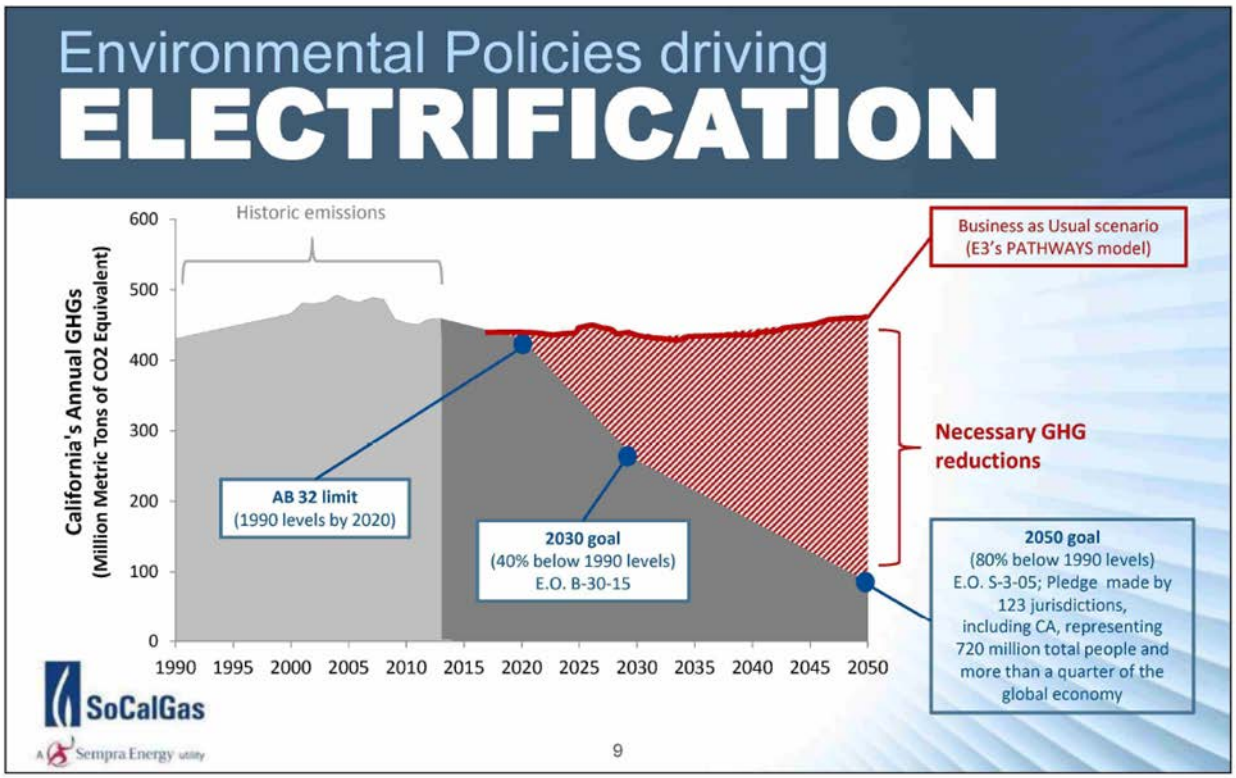
[42] *Id.* at 254–55.
[43] *Id.* at 420 (Ordering Paragraph ¶ 99). Because the Commission seeks to increase reach code adoption, it has used adoption of CEC-approved reach codes as a program performance measure for the IOUs' energy efficiency programs. *See*, *e.g.*, Resolution E-4385 (Dec. 2, 2010).
[44] D.18-05-041 at 150 (emphasis in original).
[45] *Id.* at 150–51.
[46] Cal. Exec. Order No. B-55-18 (Sept. 10, 2018), https://www.ca.gov/archive/gov39/wp-content/uploads/2018/09/9.10.18-Executive-Order.pdf.
[47] Sammy Roth, *Boiling Point newsletter: Gavin Newsom just promised 'giant leaps forward' on climate. Will he follow through?*, LA Times (Sept. 17, 2020), https://www.latimes.com/environment/newsletter/2020-09-17/gavin-newsom-just-promised-giant-leaps-forward-on-climate-will-he-follow-through-boiling-point.

Achieving California's climate objectives will require the widespread switch from gas appliances and other end uses that currently rely on fossil fuels to efficient electric options.[48] Reflecting the findings of multiple analyses, the CEC has determined that "[t]here is a growing consensus that building electrification is the most viable and predictable path to zero-emission buildings" and is "essential to California's strategy to meet its GHG reduction goals for 2030 and 2050."[49] SoCalGas presentations to gas industry allies show it understands this reality. For example, in a 2017 presentation at conference for gas utilities and appliance manufacturers, SoCalGas recognized that California's environmental policies are "driving electrification."[50]

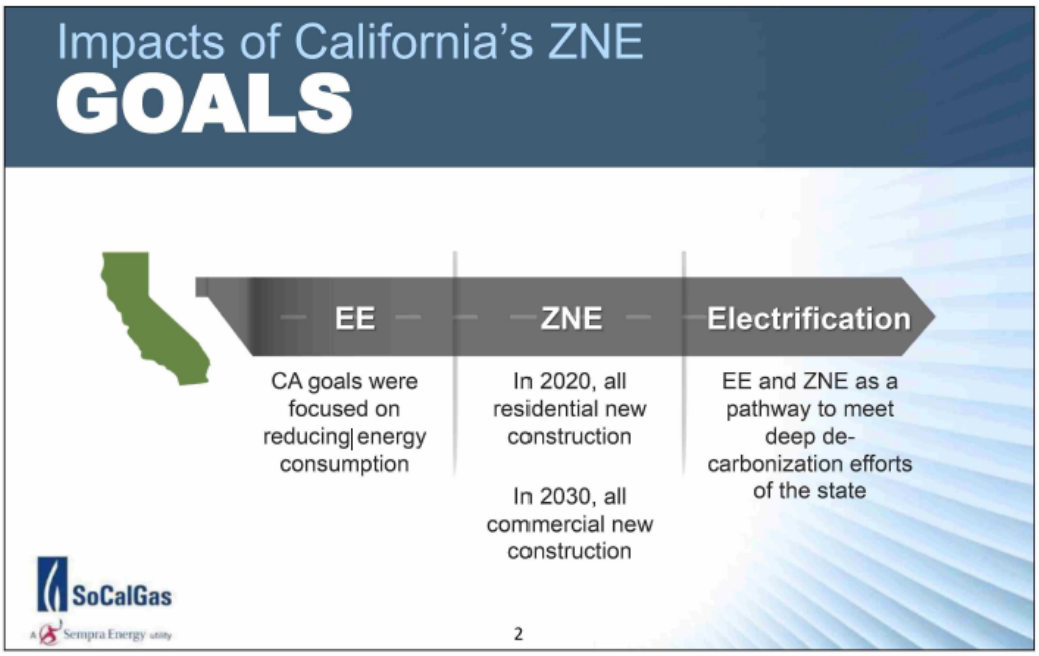


[48] *See*, *e.g.*, CEC, *2019 California Energy Efficiency Action Plan*, at 84 (Nov. 2019) ("[T]he most viable and least-cost path to immediate zero-emission residential and commercial buildings" is electrification of gas end uses, "in particular, electrification of space and water heating to high-efficiency, demand-flexible technologies[.]"), https://ww2.energy.ca.gov/business_meetings/2019_packets/2019-12-11/Item_06_2019%20California%20Energy%20Efficiency%20Action%20Plan%20(19-IEPR-06).pdf. Reports of the Commission's sister agencies are subject to official notice and show the conclusions of experts on California energy and climate policymaking. *See* D.07-04-049, *Order Modifying Decision (D.) 07-01-041 and Den. Reh'g of the Decision, as Modified*, at 10–12 (Apr. 16, 2007) ("D.07-04-049").

[49] 2018 IEPR Update Volume II at 28, 32. The Commission routinely takes official notice of the CEC's Integrated Energy Policy Reports, which are an official act of the CEC. *See*, *e.g.*, D.09-12-044 at 13, n.29; D.12-07-021 at 87.

[50] Exhibit Sierra Club R-6 at slides 2, 7.

Codes and standards are among the potential polices driving electrification of gas end uses. Because electric appliances like heat pump space and water heating are much more efficient than gas alternatives and can be powered by an increasingly renewable grid, they are necessary to achieving California's GHG reduction requirements. In the same 2017 presentation to gas industry stakeholders, SoCalGas explains that energy efficiency and zero net energy ("ZNE") are "a pathway to meet deep de-carbonization efforts of the state" and specifically identifies the CEC's appliance and buildings standards as having the potential to "eliminate use of gas."



California is leading the way in
ZNE POLICY

CEC		
	Integrated Energy Policy Report (IEPR)	• Zero Net Energy (ZNE) definition may exclude role for gas in residential sector
	Energy Efficiency	• Appliance standards may eliminate use of gas -- T-24 Water Heater Regulations • Building standards may eliminate gas end uses – regulate/eliminate venting
	Indoor Air Quality Study/NG use	• Micro particles/NORM

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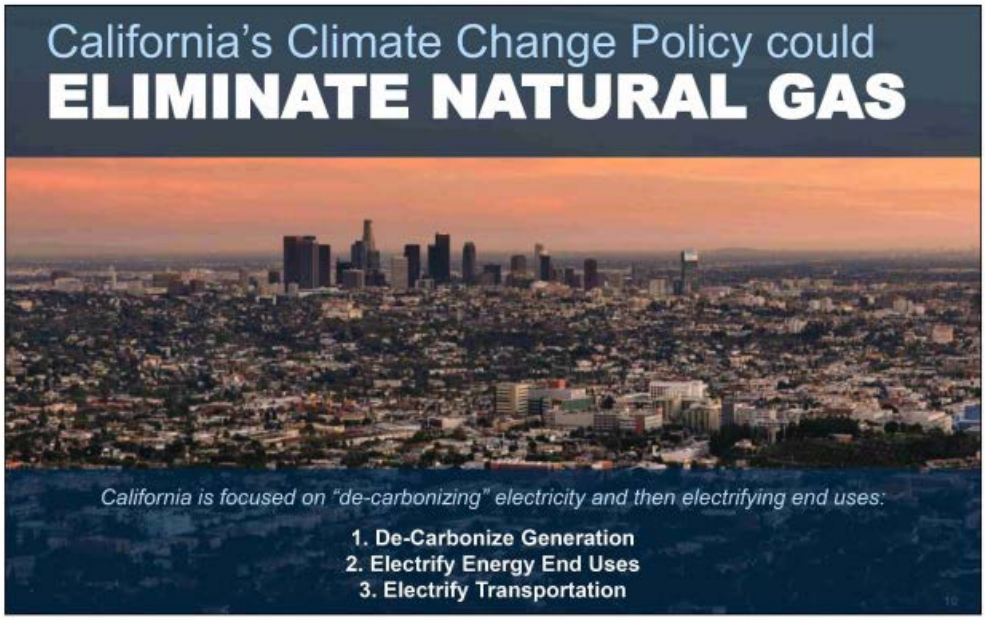
Indeed, as SoCalGas emphasized to other members of the gas industry, between decarbonization of the energy supply and the electrification of transportation and gas end uses "California's Climate Change Policy could ELIMINATE NATURAL GAS."[51]



[51] *Id.* at slide 10.

In communications with gas industry groups, SoCalGas frankly acknowledges the conflict between its business interests and the Commission's energy efficiency policies, and seeks guidance on dealing with that conflict. One example arose in 2016, after SoCalGas joined the other investor-owned utilities ("IOUs") in supporting a stringent federal efficiency standard for commercial water heaters. A partner at the American Public Gas Association ("APGA") asked why SoCalGas joined the IOUs' letter. SoCalGas' C&S manager explained that her "team erred in briefing me on what the letter was proposing. Their understand[ing] was that TSL 3 was a lower standard than the 95% being proposed and that they believed the letter reflected that. My bad. I didn't dig as deep as I should have."[52] In other words, SoCalGas joined the IOUs' support letter because it was under the false impression that the letter requested a standard that was less stringent than DOE's proposal. The manager lamented the conflicting pressures SoCalGas faces from its interest in increasing gas sales and the Commission's C&S mandates, and asked APGA for advice on how to deal with those "two masters": "My dilemma is that I also have to play nice in the sandbox here on Mars because we have mandates to move this stuff forward based on funding so in effect, I live two worlds. I would love to get some feedback from you on good ways for me to bridge between my two masters….for real."[53] SoCalGas' failure to "dig deep" and to thereby sign a letter supporting a higher standard for commercial water heaters represented a rare departure from its research and advocacy strategy. As explained in this brief, SoCalGas consistently did the deep digging necessary to identify when a proposed standard was stringent enough to threaten gas usage, and funded its advocacy against such standards with ratepayer money.

[52] Exhibit Cal Advocates/Sierra Club-40.
[53] *Id.*

V. FACTUAL QUESTIONS TO BE ADDRESSED IN THIS OSC

A. SoCalGas Booked Expenditures To Its Demand Side Management Balancing Account To Advocate Against More Stringent Codes And Standards Between 2014 And 2017.

1. CEC Rulemaking on Residential Water Heating for 2016 Title 24 Code Cycle.

a. SoCalGas' Response to Proposed Water Heating Standards Was Driven by its Determination that the Standard Would Reduce its Revenue and Lead to Electrification.

In 2014, SoCalGas staff coordinated heavily with the American Gas Association ("AGA"), APGA, and other trade groups to undermine the advances under consideration for the CEC's 2016 Building Code cycle for efficiency standards for residential instantaneous water heaters ("IWHs"). Fighting these standards was crucial to maintaining SoCalGas' gas throughput because residential water heaters constituted at least 30% of SoCalGas' residential load.[54] As an internal SoCalGas email explained: "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."[55]

SoCalGas co-sponsored the report prepared by the Statewide CASE Team alongside the other IOUs, but subsequently sought to undermine the report after failing to prevent the report from recommending efficiency standards that SoCalGas determined would have unacceptable impacts on its business. As soon as SoCalGas reviewed a draft of the CASE Report in late August 2014, it "immediately convened a team to assess the situation and the impact to our company and determined it to be detrimental . . ."[56] The "situation" was a recommended modification of the prescriptive requirements for gas water heating in residences.

Under the existing standard, homeowners were required to install gas water heaters in their homes if gas was available, and could choose between gas-fired storage water heaters and

[54] Exhibit Cal Advocates/Sierra Club-20, Attach. B, Ex. 41 at 1.
[55] *Id.* "CASE" refers to the Codes and Standards Enhancement process that the Commission funds through the energy efficiency codes and standards program.
[56] *Id.*

more efficient IWHs.[57] An early draft of the CASE report recommended giving homeowners three options for water heating:

- 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 . . . 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%.[58]

Consistent with these early drafts, the CASE team's September 2014 report to the CEC recommended a cost-effective transition to highly-efficient IWHs in 2016. That is, the report recommended requiring IWH technology that achieves an energy factor of 0.82 when natural gas is available in new homes, carving out an option to use inefficient gas storage water heaters only in combination with solar thermal water heating.[59]

SoCalGas found this proposed change threatening, because, as internal reports stated, "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."[60] Because SoCalGas "[did] not have a replacement technology to drive similar program-related therms savings as tankless [IWHs] did," it quickly determined that this change would diminish shareholder revenue from energy efficiency programs based on therms savings.[61] As another internal company report noted, this left SoCalGas with a crucial question: "What is more important to us? The C&S Program Vs Market Relevance !"[62] And, as it would

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[57] CEC Docket No. 15-BSTD-01, *CASE Initiative, Residential IWHs* (TN# 74360), at viii (September 2014) ("2014 IWH CASE Report"), https://efiling.energy.ca.gov/GetDocument.aspx?tn=74360&DocumentContentId=15902. The Commission has taken notice of the existence of filings in other proceedings and of materials posted on websites that is not subject to interpretation. D.16-01-014, *Modified Presiding Officer's Decision Finding Rasier-CA, LLC, in Contempt, in Violation of Rule 1.1 of the Commission's Rules of Practice and Procedure, and that Raiser-CA, LLC's License to Operate Should Be Suspended for Failure to Comply with Comm'n Decision 13-09-045*, at 20–21 (Jan. 15, 2016) ("D.16-01-014").
[58] Exhibit Cal Advocates/Sierra Club-20, Attach. B, Ex. 20 (emphasis omitted).
[59] 2014 IWH CASE Report at 7.
[60] Exhibit Cal Advocates/Sierra Club-20, Attach. B, Ex. 24, at 1.
[61] *Id.* at 2.
[62] Exhibit Cal Advocates/Sierra Club-20, Attach. B, Ex. 20 at 1.

consistently conclude for the next six years, SoCalGas' answer to this question was: market relevance.

In addition to the draft CASE Report's recommendation to raise the standard for gas-fired water heaters, CEC staff signaled interest in allowing new homes to install electric heat pump water heaters and removing the requirement that new homes use gas-fired water heaters if gas is available.[63] The CEC received requests for this code update from the Sacramento Municipal Utility District and the Natural Resources Defense Council.[64] SoCalGas' internal analysis found that one of the "[c]hallenges to SoCalGas posed by the CASE water heating study and Title 24" is that the option to install electric heat pump water heaters was "a highly attractive consumer offer."[65] Overall, SoCalGas found that the code updates under the CEC's consideration would "conspire to . . . [m]ake electric options competitive with gas, if not more attractive."[66]

Given the high stakes, SoCalGas' Senior Management Team ("SMT") received a briefing on the proposed changes to Title 24 and vetted the Company's Action Plan for fighting stringent residential water heating standards. A September 22, 2014 presentation at the SoCalGas SMT Meeting explained that "Title 24 . . . is a critical driver of SoCalGas residential market share" and that "we are taking aggressive steps to address the proposed changes."[67] Slides in this presentation, pictured here, showed the near- and long-term projected effects on SoCalGas revenues. As explained to SoCalGas senior management, the effects on SoCalGas shareholder revenue included an "immediate annual risk" of approximately $1.6 million, and "longer term business impact" of "up to $17m in lost revenues and opportunity cost annually" by 2020.[68]

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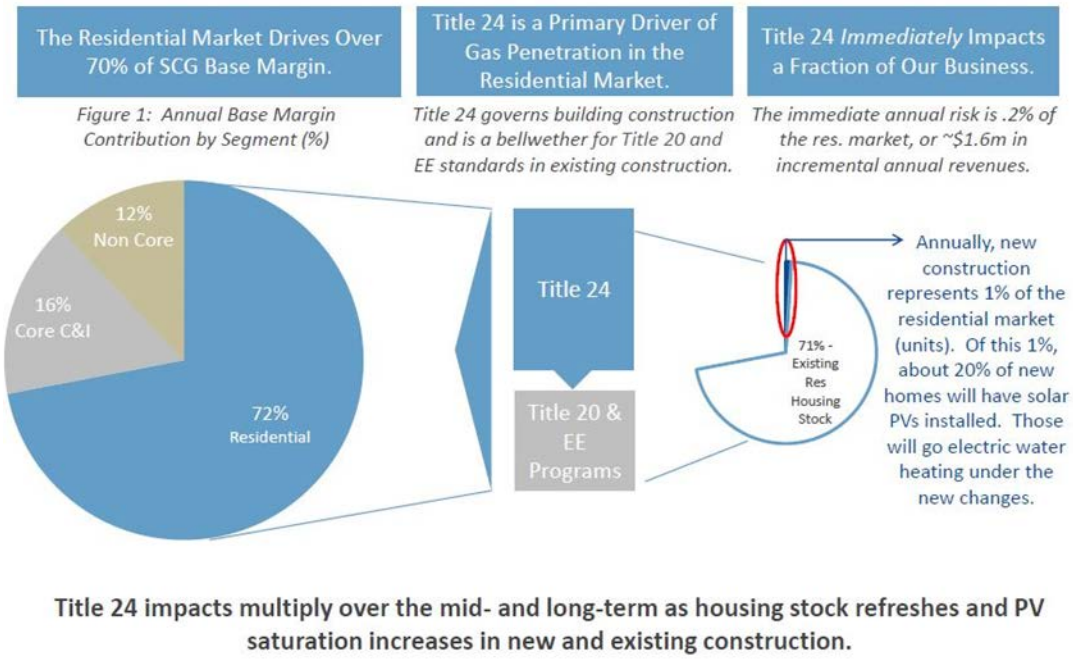
[63] *Id.* at Ex. 68 (email from Martha Garcia).
[64] *Id.*
[65] *Id.* at Ex. 24.
[66] *Id.*
[67] *Id.* at Ex. 35.
[68] *Id.*



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

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

The presentation states that the direction of the proposed changes "tends to support electric equipment and over time will disadvantage natural gas water heaters" and lists as a top-level goal: "Delay implementation of electric heat pump water heaters to 2019 cycle." SoCalGas

employees received CEO Dennis Arriola and Chief Operating Officer Bret Lane's "validation that Title 24 represents a significant risk to our business and have both their support to execute the action plan."[69] As a follow-up, SoCalGas executives received "talking points relating to T24 for speeches," a meeting at the CEC and an AGA board meeting.[70]

With the support of senior management, SoCalGas continued its "aggressive steps," which consisted of a multi-faceted campaign to undermine the CASE report and delay the adoption of the recommended standard for at least one more code cycle, in significant coordination with "coalition partners who have common cause."[71] SoCalGas' internal roadmap for its "Title 24 Code Change Campaign" stated the objective in bold: "***GOAL: Prevent California Energy Commission from accelerating the minimum standard for Energy Efficiency level of storage water heaters from .62 EF to .82 EF until further study is completed***."[72] To this end, SoCalGas partnered with AGA, APGA, and the Air Conditioning, Heating, and Refrigeration Institute ("AHRI"), a trade association that represents manufacturers of water heaters and heating, ventilation, and air conditioning ("HVAC") equipment.[73] Acting as an informant to the gas industry, SoCalGas staff forwarded the draft CASE Report from August 2014 to its coalition partners to develop comments and critiques,[74] despite knowing that this preliminary draft of the report was not meant to be distributed publicly.[75] After AGA submitted comments criticizing the stringent proposal, SoCalGas leadership congratulated a Demand Side Management Balancing Account ("DSMBA")-funded employee on getting the trade association involved.[76] Internally, SoCalGas also strategized to use AGA's analysis to put Codes and

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[69] *Id.* at Ex. 48 (Sept. 22, 2014 email from Lisa Alexander describing the presentation she and Dan Rendler delivered to SMT on Title 24); *id.* at Ex. 47 (In today's SMT, Dennis and Bret both stated that they wanted to be sure to have a steady drumbeat of messaging about Title 24 in their upcoming speeches, namely Dennis's CEC preso on Oct 8 and Bret's UC Davis one on Oct 1. I understand you're developing the talking points for both of those.").
[70] *Id.*
[71] *Id.* at Ex. 21.
[72] *Id.* at Ex. 19 (emphasis in original).
[73] *Id.* at Ex. 4 at 4–5; *see also id.* at Ex. 24 ("We are developing a coalition to counter the CASE recommendations" and have contacted AGA, APGA, and AHRI).
[74] *Id.* at Ex. 3 (August 28, 2014 email from Sue Kristjansson to Daniel Lapato, Jim Ranfone and others).
[75] Exhibit Cal Advocates/Sierra Club-74 (Sierra Club-09 SoCalGas Response, Question 1).
[76] Exhibit Cal Advocates/Sierra Club-20, Attach. B, Ex. 7 ("Sue/Team – See below from the AGA update. Great job getting them engaged."); Exhibit Sierra Club-76 (explaining that Sue Kristjansson's time was funded through the DSMBA in Revised Response to 9th DR, Question 2(d)).

Standards Manager Martha Garcia "in a position to control the conversation, not the CEC,"[77] a letter from AHRI to the CEC opposing the standard on the basis that AHRI believed it was federally preempted, and delivering critiques of the CASE Report mirrored in SoCalGas campaign documents;[78] and comments from AGA, APGA, and AHRI at CEC workshops regarding the CASE Report.[79] Much of this work was coordinated by and carried out by DSMBA-funded employees.[80]

b. SoCalGas Succeeded in Weakening Proposed Water Heating Standards.

SoCalGas' intense efforts to influence the CASE report delivered "key wins."[81] SoCalGas' first strategy was to ask the other utilities to support a complete postponement of the update for water heater standards until 2019, but failed to get buy-in from the other CASE team members.[82] SoCalGas' "win" came from revising the CASE team's recommendation so that the proposed update would not drastically erode their market share. Whereas the original CASE report recommended only allowing the installation of inefficient gas storage water heaters in combination with solar technology, the CASE team issued an updated report—changing its recommendation to allow gas storage water heaters with Quality Insulation Installation ("QII").[83] The CEC ultimately adopted this approach in its 2016 Title 24 amendments.[84] Thus, SoCalGas

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[77] Exhibit Cal Advocates/Sierra Club-20, Attach. B, Ex. 77.
[78] *Id.* at Ex. 61.
[79] *Id.* at Ex. 68 at 2.
[80] Exhibit Sierra Club-76 and -76C (SoCalGas stating in response to Question 2(d) that Sue Kristjansson and other employees were DSMBA funded); Exhibit Cal Advocates/Sierra Club-20, Attach. B, Ex. 42 ("My understanding is that Ken will lead the charge on advocacy, including APGA etc. It seems that Martha will lead on the joint IOU working groups/comments now that she's back, and Sue can support and provide overall strategy and coordination across those two efforts.").
[81] Exhibit Cal Advocates/Sierra Club-20, Attach. B, Ex. 23.
[82] *Id.* at Ex. 76 (Codes and Standards Manager Martha Garcia stating: "I also asked all other IOU's (PG&E, SDG&E and SCE) whether they were in support of SCG requesting postponement to 2019 code cycle and none are in support, they are all in agreement to continue with CASE study and continue evaluating life cycle cost analysis questions.").
[83] *Id.*; CEC Docket No. 15-BTSD-01, C&S Enhancement Initiative (CASE) Residential Instantaneous Water Heaters (TN# 75515), at 65 (Mar. 26, 2015) ("2015 IWH Case Report"), https://efiling.energy.ca.gov/GetDocument.aspx?tn=75515&DocumentContentId=16205. The Commission has taken notice of the existence of filings in other proceedings and of materials posted on websites that is not subject to interpretation. D.16-01-014 at 20–21.
[84] CEC Docket No. 15-BTSD-01, 2016 Building Energy Efficiency Standards for Residential and Nonresidential Buildings (Marked Version) (TN# 76412), at 267 (Dec. 2, 2015) ("2016 Building Energy Efficiency Standards for Residential and Nonresidential Buildings"), https://efiling.energy.ca.gov/GetDocument.aspx?tn=76412&DocumentContentId=16666. This code update is subject to official notice as an official act of the CEC.

achieved its principal goal of weakening the Title 24 update to allow storage water heaters that only achieve an EF of .67 to persist on the market. SoCalGas charged its customers for participation in the CASE team through the DSMBA.[85]

SoCalGas could have achieved a second "key win" if it had accepted a bargain with the CEC and supported the updated gas water heater efficiency requirements in exchange for the CEC's agreement to retain the requirement that homes use gas water heaters if gas is available.[86] As discussed above, the standards in effect in 2014 required all residential hot water heaters to be gas appliances when gas is available, preventing customers from installing efficient electric water heaters if they had access to gas.[87] The CEC offered to retain this requirement—which SoCalGas Codes and Standards Manager described as "a huge win for us"— in exchange for SoCalGas' support for the stricter rules around gas storage water heaters.[88] The decision on whether to accept this bargain with the CEC was made by senior management, as SoCalGas employees needed them to advise on whether it would serve "the overall business of the Gas Company."[89]

Ultimately, SoCalGas could not support even the CEC's watered-down update to Title 24 that allowed customers to install inefficient storage water heaters with quality insulation. As SoCalGas stated in its internal documents, it needed to "Get Ahead of 2019 Title 24 Cycle."[90] Supporting Title 24 standards for water heating might undercut SoCalGas' ability to continue arguing that these standards are preempted by federal law—an argument that SoCalGas assessed as its "biggest hammer" against the Title 24 update and that it had been vigorously pressing with CEC staff.[91] SoCalGas' gas throughput from residential water heating would be far more secure

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[85] Exhibit Cal Advocates/Sierra Club-74 (Response to question 2(d)).
[86] Exhibit Cal Advocates/Sierra Club-20, Attach. B, Ex. 23.
[87] *See* 2016 Building Energy Efficiency Standards for Residential and Nonresidential Buildings at 267 (deleting the requirement that "For systems serving individual dwelling units, an electric-resistance storage or instantaneous water heater may be installed as the main water heating source only if natural gas is unavailable").
[88] Exhibit Cal Advocates/Sierra Club-20, Attach. B, Ex. 23 (CEC staff representative Mazi Shirakh "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."); *id.* at Ex. 51 (explaining that SoCalGas told CEC staff that "the gas availability language was very important to us" and CEC's willingness to do so "is a huge win for us").
[89] *Id.* at Ex. 52.
[90] *Id.* at Ex. 35.
[91] Exhibit Cal Advocates/Sierra Club-20, Attach. B, Ex. 57; Exhibit Cal Advocates/Sierra Club-20, Attach. B, Ex. 13.

in the long-term if it could convince the CEC or a court that it would be illegal for California to take any action addressing the efficiency of water heaters; this legal theory could stop even indisputably cost-effective CEC standards. In SoCalGas' formulation, it continued its advocacy "to simply stay consistent" with its prior positions.[92] SoCalGas had no regard for improving efficiency; its singular focus was on avoiding impacts on the long-term demand for gas.

c. SoCalGas Kept Its Logo on the CASE Report Despite Aggressively Seeking to Undermine its Recommendations to Be Eligible for Shareholder Incentives.

SoCalGas knew that its claim to shareholder incentives for its work on the CEC water heating standard would be in jeopardy if it did not support the CASE report's recommendation for more stringent standards. Consequently, SoCalGas emailed CEC staff to ask whether it would forfeit any future therm savings from the code change if it did not support the code change.[93] After CEC staff forwarded this inquiry to CPUC staff, Commission Regulatory Analyst Paula Gruendling explained to SoCalGas that the attribution of therms savings to a utility during the evaluation of its energy efficiency activities is considered a statewide program adjustment "based on the effort the IOUs contribute to the adoption of the standard," and that if an IOU opposed or otherwise did not support adoption of a standard, "it seems like it (that particular IOU) would be forfeiting attribution of the savings for that standard."[94] Further, Ms. Gruendling explained that in the unprecedented event that one utility opposed a standard, the utilities that supported the standards would receive credit for the savings.[95] After removing Ms. Greundling from the email thread, the SoCalGas' Codes and Standards Manager Martha Garcia

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[92] Exhibit Cal Advocates/Sierra Club-20, Attach. B, Ex. 18.

[93] Exhibit Cal Advocates/Sierra Club-23 (email from Ron Caudle to Mazi Shirakh: "Hi Mazi, while speaking with my counterparts a SoCalGas it was stated that they were informed (person unknown) that if the IWH Case Study is approved, and SoCalGas elects not to sign on due to unresolved previously expressed concerns, there is a possibility that our utility would forfeit any future therm savings resulting from the code change. As we move forward in the process we request to know how the utility will and/or may be impacted regarding therm savings credit when a utility chooses not to support a specific code change direction. In essence we need to understand all potential ramifications towards our EE programs.").

[94] *Id.* (Sept. 10, 2014 email from Paula Greundling).

[95] *Id.* ("The IOUs that supported it would be attributed the due savings credit. It would be a first.").

explained that SoCalGas was still requesting to have its logo on the study "to claim savings if it [is] eventually adopted" despite continued concerns with the CASE report.[96]

Even without being copied on the communications with CPUC staff, it was clear to Southern California Edison ("SCE") and Pacific Gas and Electric Company ("PG&E") that it would be improper for SoCalGas to put its name on the CASE report if it opposed the report's recommendations. The SCE representative stated that she was "a bit confused" by SoCalGas' efforts to keep its logo on the CASE report, noting that "it would be a conflict of interest to keep SCG's logo on the CASE topic" if SoCalGas was actively opposing it during the rulemaking, and that doing so "could also negatively impact the image of the Codes & Standards Program and the utilities as a whole."[97] Indeed, SCE itself had removed its logo from the CASE report on the standard for LED lighting and took a neutral position after the CASE team moved in a direction that did not align with SCE's opinion.[98] Similarly, PG&E's representative suggested that if SCG is planning to fight the proposal, "we should try to reimburse you" and that "[w]e cannot co-sponsor a CASE study with an IOU that intends to oppose the proposal."[99] However SoCalGas refused PG&E's offer to reimburse its funding on the report because, as discussed above, it believed keeping its name on the report would entitle it to shareholder incentives.[100] The final report indeed bore SoCalGas' logo, despite SoCalGas' aggressive efforts to undermine the report's recommendations.[101]

d. SoCalGas Continued to Use DSMBA Funds to Weaken Proposed Water Heater Standards After the Final Case Report Was Issued.

After the final CASE report was submitted in September 2014, SoCalGas continued to lobby the CEC directly on the IWH standard. Immediately following the report's submission, SoCalGas sent a letter to CEC staff, noting that "[a]s funding partners" to the report, it was

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[96] *Id.* (Sept. 10, 2014 email from Martha Garcia). DSMBA-funded SoCalGas employees are on these email chains concerning the potential for SoCalGas to lose energy efficiency incentives based upon therms savings pursuant to the policies in the CASE report they opposed, and arguing that SoCalGas should still get credit for the recommendations of the Report despite seeking to undermine it. Exhibit Sierra Club-76 and -76C (SoCalGas stating in response to Question 2(d) that Sue Kristjansson and other employees were DSMBA funded).
[97] Exhibit Cal Advocates/Sierra Club-25 (Sept. 11, 2014 email from Matthew Evans).
[98] *Id.*
[99] *Id.* (Sept. 10 and Sept. 11, 2014 emails from Patrick Eilert).
[100] Exhibit Cal Advocates/Sierra Club-23 (Sept. 10, 2014 email from Martha Garcia).
[101] 2014 IWH CASE Report.

"pleased to have participated in its submittal" to the CEC, but nonetheless that SoCalGas recommended delaying advances in IWH standards to the 2019 code cycle to allow time for further analysis.[102] SoCalGas also claimed that it is "wholly in favor of progressive policies which drive us toward more efficient technologies and a reduced environmental impact," but that more time was necessary to "clarify our alignment" and to "understand the full impacts to all customers."[103] In November 2014, SoCalGas submitted another letter to CEC staff expressing its continued concerns with data in the CASE report, offering to "spearhead" additional research into its own "alternative set of assumptions," and requesting that the CEC "refrain from adopting further Title 24 regulations on IWH until this research is complete."[104] SoCalGas' customers bore the costs of these delay tactics through the DSMBA.[105]

2. DOE Rulemaking on Residential Furnaces

a. In 2015, the DOE proposed an efficiency rule for residential furnaces that threatened to encourage customers to switch to electric appliances, and the CEC became a major adversary in SoCalGas' efforts against the rule.

In 2015, the DOE opened a rulemaking to update its efficiency standards for residential furnaces. From the very beginning, SoCalGas was alarmed that the proposal could impede the Company's ability to sell gas. After receiving an alert that DOE released a Notice of Proposed Rulemaking ("NOPR") that "could create fuel switching away from gas," SoCalGas' Residential Energy Programs Supervisor exclaimed, "Surrounded by Assassins!" and his manager agreed that this was an "effort we need to address."[106] Afterward, SoCalGas reached out to a consultant at the Gas Technology Institute ("GTI") to ask how the rule would affect fuel switching in its service territory:

> [D]o you happen to have any deeper dive data regarding the potential for fuel-switching in California? Of course I would love it if you had information as granular as our service territory or even to Southern California but will take what you've got.

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[102] Exhibit Cal Advocates/Sierra Club-70.
[103] *Id.*
[104] Exhibit Cal Advocates/Sierra Club-27.
[105] R.13-11-005, *Joint Statement of Stipulated Facts December 17, 2019 Order to Show Cause Against Southern California Gas Company (U 904 G)*, at 2 (Oct. 2, 2020) ("Joint Stipulation of Facts") (Facts 1 and 2 related to SoCalGas' energy efficiency program activity for program years 2014–17).
[106] Exhibit Cal Advocates/Sierra Club-1, App. C, Ex. 26 at 13 (note that when viewing Cal Advocates and Sierra Club's joint exhibits, this document appears at page 316 of the 1945-page PDF file).

> I've convened an internal group to assess the furnace NOPR over the next couple of weeks to determine whether this is good, bad or indifferent to our customers and I sure don't want to make that determination/recommendation without all of the info.[107]

Three weeks later, Neil Leslie of GTI sent SoCalGas analysis of the potential for fuel switching in California, cc'ing staff from AGA and APGA.[108] Two weeks after receiving this preliminary analysis, SoCalGas was already pursuing a contract with GTI. In April 2015, the Company's C&S Manager thanked Mr. Leslie, told him she looked forward to his quote, and promised to communicate "up the flagpole in my company and hope that they are willing to incur the appropriate costs."[109] SoCalGas was also relieved that it could use his analysis in an attempt to undermine DOE's proposal. The C&S Manager explained that one of her biggest concerns was that they would "come up with an erroneous validation of the DOE."[110]

SoCalGas' approach to this rule was strikingly different from PG&E's. SoCalGas declined an early invitation from PG&E to develop joint comments on a proposed DOE standard, explaining that "[c]onsidering our gas only status it is important for our position to be informed based on SoCalGas only data."[111] The relationship between SoCalGas and PG&E deteriorated as the months passed and SoCalGas learned that PG&E was fully supporting the DOE's proposed rule. In an internal email beginning, "DO NOT SHARE," SoCalGas' Codes and Standards Manager complained that "the larger issue is that they [PG&E] are working in concert with the CEC."[112]

While PG&E was working in concert with the CEC, SoCalGas was partnering with the AGA and APGA to oppose a rule that threatened to make fuel-switching an attractive option. SoCalGas hired GTI to apply the same methodology it had developed for AGA and APGA to draft a report on the cost-effectiveness of the rule for customers in southern California.[113]

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[107] Exhibit Cal Advocates/Sierra Club-16 (Mar. 1, 2015 email from Sue Kristjansson to Neil Leslie).
[108] Exhibit Cal Advocates/Sierra Club-17 (Mar. 20, 2015 email from Neil Leslie to Sue Kristjansson). Rick Murphy works for AGA, whereas Dave Schryver and Dan Lapato work for APGA. Exhibit Cal Advocates/Sierra Club-20, Attach. B, Ex. 4.
[109] Exhibit Cal Advocates/Sierra Club-18 (Apr. 3, 2015 email from Sue Kristjansson to Neil Leslie).
[110] *Id.*
[111] Exhibit Cal Advocates/Sierra Club-1, App. C, Ex. 17 (emails produced in Response to ORA-A1701013-SCG004, Question 3).
[112] *Id.* at App. C, Ex. 9 (emails produced in Response to ORA-A1701013-SCG004, Question 3).
[113] *Id.* SoCalGas, Comment on the Energy Efficiency and Renewable Energy Office Published Supplemental Notice of Proposed Rulemaking on Energy Conservation Standards for Residential

SoCalGas submitted this GTI report to the DOE and booked the costs of this filing to the DSMBA.[114] While this report critiques the Department's analysis as technically flawed, the SoCalGas Codes and Standards Manager explained in an internal email that "PG&E and the CEC seem to be trying to correct the DOE's analysis with new numbers. That's why I wanted to use an analysis that is exactly based on DOE's inputs but with Southern California's demographics and specifics."[115] SoCalGas was not interested in assessing the furnace standards with PG&E and the CEC's data corrections, but instead chose its methodology to suit its desired outcome.

SoCalGas' advocacy against the proposed furnace rules directly undermined California state policy. As the CEC explained in its comments:

> DOE's outdated and weak standards for furnaces, among other covered products, have formed a significant barrier to California being able to achieve its climate goals through cost-effective codes and standards for new and existing buildings. California is at a critical point in its fight to reduce greenhouse gases. Any further delay in adopting stringent federal furnace standards threatens to set California back in its efforts to double energy efficiency in existing buildings by 2030 and to achieve zero net energy buildings in 2020.[116]

SoCalGas violated Commission policy that utilities use their C&S programs to advance the stringent standards that—according to the CEC—are necessary to achieve California's climate goals.

b. In 2016, the DOE offered the gas industry a compromise on the furnace rule, and SoCalGas crafted its public positions to support AGA's negotiations with the Obama administration.

SoCalGas continued to spend ratepayer money to fight stringent furnace standards in the next round of stakeholder engagement on the furnace rule, which began when DOE proposed a "compromise" approach of only applying its proposed 92% efficiency standard to larger furnaces, while applying a less stringent 80% standard to smaller furnaces.[117] Whether this

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Furnaces and Announcement of Public Meeting with attachments (Jan. 9, 2017), https://www.regulations.gov/document?D=EERE-2014-BT-STD-0031-0304.

[114] Exhibit Cal Advocates/Sierra Club-1, App. C, Ex. 13; Joint Stipulation of Facts at 2 (Fact 3 related to SoCalGas' energy efficiency program activity for program years 2014–17).

[115] *Id.* at App. C, Ex. 9 at 21 (emails produced in Response to ORA-A1701013-SCG004, Question 3).

[116] Exhibit Cal Advocates/Sierra Club-3 at 3.

[117] Exhibit Cal Advocates/Sierra Club-10 (Oct. 4, 2015 email from Sue Kristjansson to Rodger Schwecke).

compromise would allow SoCalGas to escape the threat of fuel switching would depend on where DOE set the threshold for the size of furnace that would be subject to the stricter standard. SoCalGas found that "our best indicator is that 65 KBtu/h is the minimum furnace size that would help mitigate the impact to SoCalGas customers. Of course, we would prefer a higher threshold."[118] It should be noted that SoCalGas is careful to refer to fuel-switching impacts as "impacts to SoCalGas customers" in its outward communications, but the Company does not always bother with this code in its internal communications: "Anecdotal information suggests that our territory would need in the 60 – 70 Kbtu/h range to minimize the potential for fuel switching."[119] Regardless, AGA predicted that DOE was likely to set a threshold below 45 KBtu/hr.[120] SoCalGas continued to advocate against DOE's proposals, aligning its positions to fit the AGA's. As SoCalGas was developing its negotiating position on the furnace rule, SoCalGas President Dennis Arriola advised SoCalGas' Director of Customer Programs & Assistance Daniel Rendler that "AGA will be asking for more than 70k, so don't sell our position short."[121] Duly noted, Mr. Rendler replied that "We were originally going to use 65K but in light of AGAs plan, I will be working with our internal stakeholders to suggest removing a specific number . . . This will allow us to benefit from a higher BTU level should the AGA be successful."[122]

SoCalGas continued to bill the DSMBA for its advocacy against furnace standards that threatened to induce fuel switching. In October 2016, SoCalGas flew two of its employees to Washington, D.C., to participate in a DOE public meeting on the furnace rule. SoCalGas C&S Manager Sue Kristjansson stated publicly to DOE that "clearly, there is a threshold for a noncondensing product class that would be acceptable for our customers. We're still working to determine what that threshold is."[123] However, emails produced in discovery reveal that this

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[118] Exhibit Cal Advocates/Sierra Club-54 (AGA Board of Directors Meeting materials presenting SoCalGas' recommended position on the furnace rule).
[119] Exhibit Cal Advocates/Sierra Club-1, App. C at C-090 (email from Sue Kristjansson to Rodger Schwecke).
[120] Exhibit Cal Advocates/Sierra Club-54 (presenting background information to the AGA Board, seeking advice on whether to attempt to negotiate a compromise or to focus on preparing for a court challenge).
[121] Exhibit Cal Advocates/Sierra Club-12 (Oct. 13, 2015 email from Dennis Arriola to Daniel Rendler).
[122] *Id.* (Oct. 13, 2015 email from Daniel Rendler to Dennis Arriola).
[123] Exhibit Cal Advocates/Sierra Club-14 (transcript of U.S. Department of Energy Supplemental NOPR for Residential Furnaces Energy Conservation Standards, Public Meeting Transcript at 45:11–14 (Oct. 17, 2016)).

statement was disingenuous; SoCalGas had already found that a 65,000 Btu/hr threshold to be acceptable, but promised AGA just four days before the public meeting that it would not recommend a threshold that would undercut AGA's negotiating positions.[124] Regardless, Ms. Kristjansson argued using this type of threshold to establish a second product class "will only act as a Band-Aid solution" and urged the DOE to address the methodological issues SoCalGas raised in its prior comments (which, as discussed above, parroted the methodological approach GTI developed for AGA).[125] Ratepayers bore the cost of this advocacy through the DSMBA.[126] Likewise, SoCalGas billed the DSMBA for the costs of preparing a second set of comments on the proposed federal standards for residential furnaces in 2016.[127] SoCalGas filed one last set of comments on the DOE's proposed furnace standards in January 2017, along with an updated consultants' report, and ratepayers again paid for this advocacy through the DSMBA.[128]

After taking advantage of ratepayer money to build its expertise on the proposed furnace rule, SoCalGas became a thought leader in the gas industry on how to fight DOE's proposals. SoCalGas presented recommendations to the AGA Board of Directors as it considered whether to attempt negotiating a compromise or instead focus on a potential court challenge, which were developed by DSMBA-funded labor.[129] SoCalGas explained its position that "the rule is founded on flawed methodology" and stated that it "does not oppose the AGA continuing to prepare for that eventuality [of litigation] considering the potential to not reach a consensus on furnace size among the stakeholder group."[130] Essentially, SoCalGas' ratepayers were footing the bill for the tools and expertise that the broader gas industry used to develop its strategy for undermining proposed energy efficiency standards.

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[124] Exhibit Cal Advocates/Sierra Club-12 (Oct. 13, 2015 email from Daniel Rendler to Dennis Arriola).
[125] Exhibit Cal Advocates/Sierra Club-14 (transcript of U.S. Department of Energy Supplemental NOPR for Residential Furnaces Energy Conservation Standards, Public Meeting Transcript at 44:16–46:3 (Oct. 17, 2016)).
[126] Exhibit Cal Advocates/Sierra Club-15 (Question 1, confirming that both travel costs and labor for Ms. Kristjansson and Ms. Sim were charged to the DSMBA).
[127] Joint Stipulation of Facts at 2 (Fact 4 related to SoCalGas' energy efficiency program activity for program years 2014–17).
[128] *Id.* at 3 (Fact 5 related to SoCalGas' energy efficiency program activity for program years 2014–17).
[129] Exhibit Cal Advocates/Sierra Club-54; Exhibit Cal Advocates/Sierra Club-1, App. C at C-132 (SoCalGas C&S Manager explaining that her team worked with another team to develop the attached AGA Board Book materials).
[130] Exhibit Cal Advocates/Sierra Club-54 (AGA Board of Directors meeting prep notes).

3. DOE Rulemaking on Commercial Packaged Boilers: SoCalGas asked the DOE to reject cost-effective regulations because they could take an old, inefficient technology off the market—which is the very goal of California's energy efficiency policies.

In June 2016, SoCalGas again took advantage of DSMBA funds to advocate against stringent federal appliance standards: the DOE's proposed efficiency standards for commercial packaged boilers.[131] The proposed standards were cost-effective, as San Diego Gas and Electric ("SDG&E") and PG&E's joint comments agreed.[132] In fact, SDG&E and PG&E found that even more stringent standards "would result in net positive benefits to consumers while resulting in only modest costs to manufacturers."[133] SoCalGas did not dispute that the DOE's proposal to set standards at its Trial Standard Level ("TSL") 2 would be cost effective or that modern condensing boilers could meet that standard.[134] Instead, SoCalGas' stated concern was that non-condensing boilers may not be able to achieve DOE's proposed standards.[135] The position that DOE should adopt a weak standard so that an outdated technology can persist in the market directly conflicts with California's energy efficiency policies. As the Commission's energy efficiency strategic plan explains, "Codes and standards are [] focused on eliminating inefficient products."[136] In May 2016, the DOE eloquently explained why it is inappropriate to design standards to allow condensing appliances to remain on the market: doing so would "effectively lock-in the currently existing technology as the ceiling for product efficiency and eliminate DOE's ability to address technological advances that could yield significant consumer benefits in the form of lower energy costs while providing the same functionality for the consumer."[137] It was clearly impermissible for SoCalGas to use ratepayer money to ask the DOE to adopt weak energy efficiency standards so that condensing commercial packaged boilers could remain on the

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[131] *See* Joint Stipulation of Facts at 3 (Fact 7 related to SoCalGas' energy efficiency program activity for program years 2014–17) (stipulating that SoCalGas booked the costs of preparing its comments to DOE on the standards for commercial packaged boilers to the DSMBA).
[132] Exhibit Cal Advocates/Sierra Club-7 at 1.
[133] *Id.*
[134] *See generally* Exhibit Cal Advocates/Sierra Club-6. Nonetheless, SoCalGas urged the DOE to set new standards based on the weaker TSL 1. *Id.* at 2; Exhibit Cal Advocates/Sierra Club-8 at 10-2 (defining the TSLs considered in the commercial packaged boiler rulemaking).
[135] Exhibit Cal Advocates/Sierra Club-6 at 2 ("by selecting TSL 2, DOE may be inadvertently disqualifying a significant amount of non-condensing equipment, and in some cases may be forcing a shift to condensing equipment").
[136] D.08-09-040, *Decision Adopting The California Long-Term Energy Efficiency Strategic Plan*, Attach. A at 69 (Sept. 19, 2008) ("D.08-09-040")).
[137] 81 Fed. Reg. 34,440, 34,463 (May 31, 2016).

market, especially when SDG&E and PG&E had identified more aggressive standards that were cost-effective.

4. DOE Request for Information: SoCalGas Gave the Trump Administration a Road Map for Lax Energy Efficiency Regulation.

In May 2017, the DOE issued a Request for Information ("RFI") to assist the Department in "identifying existing regulations, paperwork requirements and other regulatory obligations that can be modified or repealed . . . to achieve meaningful burden reduction."[138] This docket was the fruit of the gas industry's fight for deregulation in the Trump Administration; the SoCalGas Codes and Standards Manager explained in an internal email: "I believe that both AGA and APGA have responded and actually fed the DOE the information to launch the RFI."[139] California's IOUs took diametrically opposed approaches to answering the administration's request for ideas on regulatory rollbacks. On the one hand, PG&E, SCE, and SDG&E praised federal efficiency standards as "an effective and critical tool in reducing energy use in homes and businesses nationwide, freeing up economic resources for alternate uses."[140] On the other, SoCalGas coordinated with the gas industry to develop its response,[141] and offered predictably self-serving recommendations.

In its response to the DOE RFI, SoCalGas reprised its attacks on the furnace standards the DOE adopted during the Obama administration.[142] As discussed above, SoCalGas developed its arguments against these rules in concert with the industry associations whose interests depend on selling fossil fuels. The furnace standards were in the industry's crosshairs because the Obama administration did not finalize them, leaving them unprotected by anti-backsliding

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[138] Exhibit Cal Advocates/Sierra Club-1, App. C, Ex. 4 (U.S. Department of Energy, Request for Information, Reducing Regulation and Controlling Regulatory Costs, 82 Fed. Reg. 24,582 (May 30, 2017)).
[139] *Id.* at App. C, Ex. 15 at 1 (emails produced in Response to ORA-A1701013-SCG004, Question 1).
[140] *Id.* at App. C, Ex. 5 (Joint IOU RFI Letter).
[141] *Id.* at App. C, Ex. 15 at C-221 (SoCalGas C&S Manager agreeing with the Building Codes and Appliance Standards Project Manager's recommendation that "reaching out to AGA, APGA, or Spire may be helpful as they may have some points we can side with" in their response to the Request for Information.); Exhibit Cal Advocates/Sierra Club-13 (proposing process for editing draft response to the RFI in which "we can add in [points] if AGA, APGA has anything else we can piggy back off of"); Exhibit Cal Advocates/Sierra Club-48 ("Did you guys draft a comment letter to the DOE on their recent RFI? I looked on Basecamp and didn't see it. If so, can you forward it to me? We're looking to submit but want to get somewhat consistent with the tenor of your letter.").
[142] Exhibit Cal Advocates/Sierra Club-1, App. C, Ex. 7 at 5–6 (SoCalGas, Comment on the Department of Energy Proposed Rule: Reducing Regulation and Controlling Regulatory Costs (July 14, 2017)).

provisions in federal energy efficiency statutes.[143] By asking the DOE to delay and weaken the furnace rule,[144] SoCalGas directly undercut California policy. The CEC had explained in 2015 that "[a]ny further delay in adopting stringent federal furnace standards threatens to set California back in its efforts" to achieve its 2030 energy efficiency goals.[145]

In the same filing, SoCalGas also offered the Trump administration a roadmap for lax regulation. For instance, SoCalGas suggested "deprioritizing efficiency regulations where above-code equipment has already proven to be successful in the marketplace."[146] This argument flies in the face of Commission policy. As the Commission's energy efficiency Strategic Plan explains, "[t]he appeal of codes and standards for promoting energy efficiency is simple: they make better energy performance mandatory, and not just for early adopters or self-selected consumers but for all users of regulated products and structures."[147]

In one particularly specious argument, SoCalGas questioned the evidence that the other California utilities cited for the economic benefits of federal efficiency rules. SoCalGas characterized three reports cited in the PG&E, SCE, and SDG&E comments as "studies by environmental advocates" and advised DOE to weigh them against research by trade associations, although SoCalGas admitted: "[w]e have not identified" any such research.[148] In reality, these so-called "studies by environmental advocates" were conducted at the Department's own Lawrence Berkeley National Laboratory, the University of California, and the American Council for an Energy-Efficient Economy.[149] It was particularly disingenuous for SoCalGas to question the economic benefits of energy efficiency rules when the Company's own experts had recommended strengthening this line of argument in the joint IOU comments:

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[143] *See* 42 U.S.C. § 6295(o)(1).
[144] Exhibit Cal Advocates/Sierra Club-1, App. C, Ex. 7 at 5.
[145] Exhibit Cal Advocates/Sierra Club-3 at 3.
[146] Exhibit Cal Advocates/Sierra Club-1, App. C, Ex. 7 at 4.
[147] D.08-09-040, Attach. A at 67.
[148] PG&E, SCE, and SDG&E cited five different papers to show that "Energy efficiency regulations have provided significant economic benefits for consumers through saving energy and freeing up funds for other use, which culminates in broader macroeconomic benefits to both local and national economies." Exhibit Cal Advocates/Sierra Club-1, App. C, Ex. 5 at 7–9 (joint IOU RFI comments discussing research by Mauer, et al.; Gold, et al.; Wei, et al.; Nadel and deLaski; and Taylor et al.). SoCalGas argued that Gold et al., Wei, et al., and Taylor et al., were conducted by environmental advocates, and that this provenance should affect how the DOE weighs their findings. Exhibit Cal Advocates/Sierra Club-1, App. C, Ex. 7 at 4–5.
[149] Exhibit Cal Advocates/Sierra Club-1, App. C, Ex. 5 at 12.

> It has been shown (in the US and elsewhere) that energy efficiency is great for the economy... apart from the direct $ and job benefit, it fosters innovation, which in turn helps a country stay competitive internationally. The ever tighter DOE standards are a great way to ensure the US doesn't fall behind in this respect. I think that point is made in Marshall's paper [i.e., the draft of PG&E C&S team member Marshall Hunt], but I feel that it should be more prominent/stronger. It aligns with Trump-think more than most other arguments that we'll make, so the DOE will be more inclined to accept it. We can find sources to make that point if needed.[150]

Rather than accepting their consultants' offer to find additional sources showing that "energy efficiency is great for the economy," SoCalGas impugned the economic benefits of energy efficiency codes and standards and urged the Trump administration "not to over-generalize any findings" in the reports that the other IOUs put in the record.[151]

5. SoCalGas' DSMBA-funded advocacy against stringent codes and standards was not isolated to the specific accounts for statewide appliance and building standards advocacy.

Although SoCalGas may attempt to minimize the extent of its advocacy against stringent codes and standards by asking the Commission to narrowly examine activities it booked to particular C&S sub-accounts, the Commission should reject this blinkered approach. SoCalGas' opposition to stringent codes and standards animated the positions it took across DSMBA-funded programs. Further, SoCalGas fought stringent codes and standards through their participation in gas industry trade associations, using labor it billed across DSMBA sub-accounts.

a. SoCalGas' used its DSMBA-funded Zero Net Energy and C&S Planning Coordination Direct Implementation programs to undermine stringent codes and standards.

SoCalGas' zero net energy ("ZNE") program was weaponized against policies to swiftly transition to efficient electric technologies because the Company's ZNE program manager believed "ZNE (ZEB) is a smokescreen or distraction for the ultimate goal of electrification."[152] Although she acknowledged that California's increasing Renewable Portfolio Standard ("RPS") would eventually make gas appliances "less efficient and desirable" under a ZNE paradigm, her strategy was to slow down electrification by arguing "that natural gas is the best option at this

[150] Exhibit Cal Advocates/Sierra Club-13 (June 22, 2017 email from Marc Esser of Negawatt Consulting to SoCalGas C&S Project Manager Daniela Garcia).
[151] Exhibit Cal Advocates/Sierra Club-1, App. C, Ex. 7 at 4–5.
[152] Exhibit Cal Advocates/Sierra Club-39 at 965.

point in time using the source based approach. If you convince people to keep natural gas in the home, even with a super high efficiency piece of equipment, you have extended our use."[153] Ultimately, SoCalGas' ZNE program manager explained that "if our actions are appropriate, deep decarbonization will slow down."[154]

In one example, SoCalGas flew its DSMBA-funded Codes & Standards and ZNE Manager Sue Kristjansson to deliver a presentation on "Zero Net Energy: The Pathway to Electrification" at a gas industry conference, where she warned other gas companies of the dangers of "EE and ZNE as a pathway to meet deep de-carbonization efforts."[155] Ms. Kristjansson's presentation described "ZNE as a metric and electrification/deep de-carbonization as the real 'thing'" and ended with "an exercise in identifying what needs to happen."[156] SoCalGas refused to state in discovery how much it billed to the DSMBA for this activity because SoCalGas believes it is outside the scope of this OSC.[157]

Similarly, when Ms. Kristjansson joined a panel at a conference on energy efficiency in water heating technologies, she billed those costs to the "C&S Planning Coordination Direct Implementation" sub-account within the DSMBA.[158] SoCalGas' role in this panel was to represent the perspective of the gas industry. In an early draft of the agenda, conference organizers labeled her spot on the panel with the placeholder "TBD, American Gas Association."[159] Ms. Kristjansson relied on AGA Managing Director Rick Murphy to send her slides for the presentation.[160] Rather than properly restricting DSMBA funds to advance energy efficiency, SoCalGas used these funds to cover the costs of Ms. Kristjansson delivering gas industry talking points.

Not only did the SoCalGas presentation take slides directly from the AGA, but Ms. Kristjansson also doctored slides to hide biases that made gas appliances look more efficient. One slide from AGA's Mr. Murphy compared the efficiency of electric and gas appliances, stating the caveat that its figures were based on 2009 generation.[161] Ms. Kristjansson's 2017

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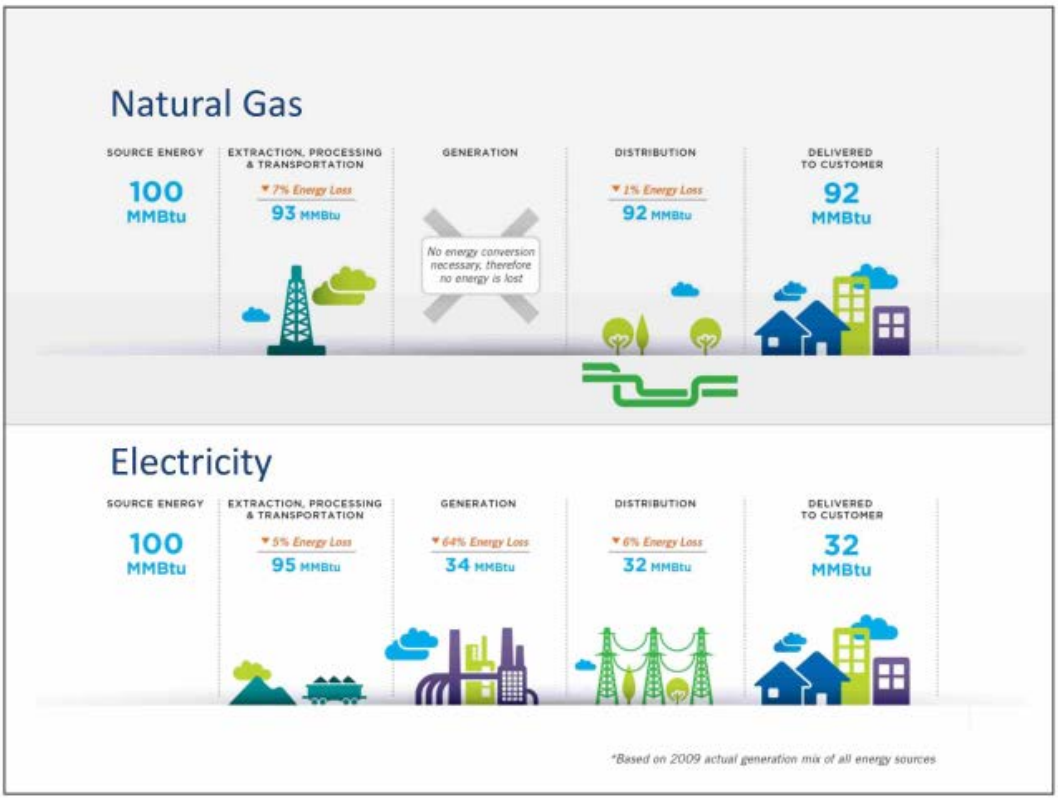
[153] *Id* at 962.
[154] *Id.*
[155] Exhibit Sierra Club R-6 at 196–197 (title slide and slide 2).
[156] Exhibit Sierra Club R-5 at 194 (June 12, 2017 email from Sue Kristjansson).
[157] Exhibit Cal Advocates/Sierra Club-52 (question 9).
[158] Exhibit Cal Advocates/Sierra Club-43 (question 3(c)).
[159] Exhibit Cal Advocates/Sierra Club-45 at 456.
[160] Exhibit Cal Advocates/Sierra Club-46 at 534.
[161] Exhibit Cal Advocates/Sierra Club-47 at 540.

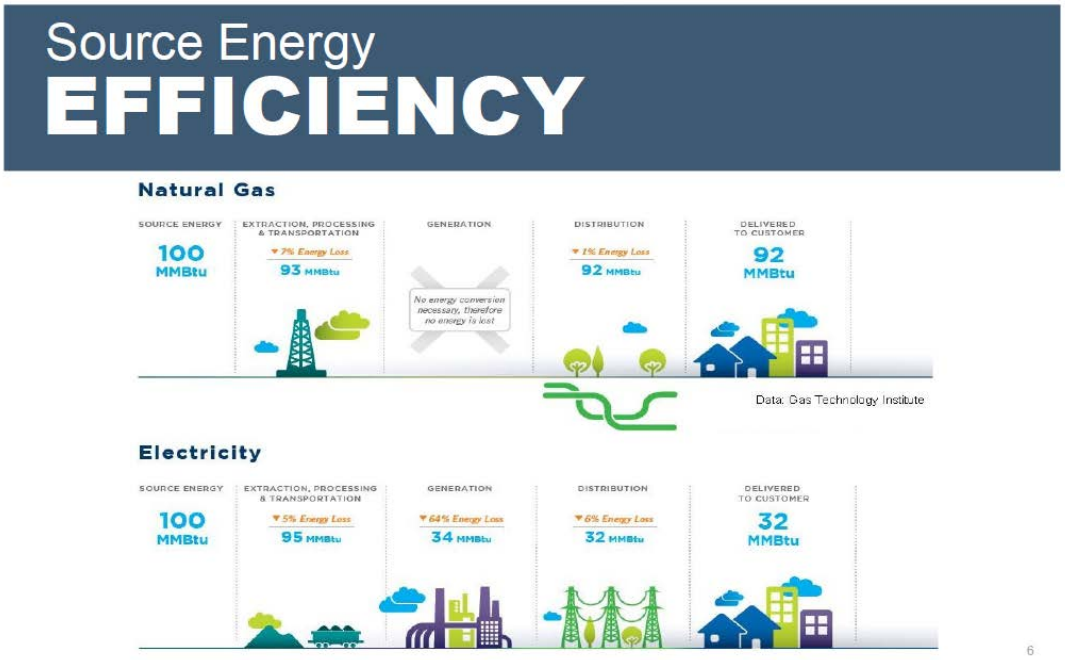
presentation included an almost identical slide, but omitted the caveat that it relied on data from eight years earlier.[162] A comparison of these two slides shows that SoCalGas removed whatever intellectual integrity AGA had included in its version:

Slide from AGA slide deck[163]



[162] Exhibit Cal Advocates/Sierra Club-44 at slide 6.
[163] Exhibit Cal Advocates/Sierra Club-47 at 540.

Slide from SoCalGas slide deck[164]



By misleadingly understating the efficiency benefits of electrification before national audiences, SoCalGas once again misused DSMBA funds to advocate against more stringent efficiency standards.

b. SoCalGas Used DSMBA-Funded Labor to Further Aggressive Anti-Efficiency and Anti-Electrification Positions by the American Public Gas Association.

SoCalGas joined the APGA Direct Use Task Group ("DUTG") in May 2016 and its participation in the committee was "one piece that is integral to success in fending off the ultimate goal. . . . no fossil fuels!"[165] SoCalGas did not produce information related to the labor and travel costs of its employees' participation in the regular telephonic and in-person meetings of APGA's Direct Use Task Group prior to 2018.[166] Nonetheless, the evidence in the record shows that DSMBA-funded SoCalGas employees were entrenched in APGA's multifaceted efforts to halt the adoption of stringent codes and standards that would threaten continued reliance on gas, even before SoCalGas was an official member of the DUTG.

[164] Exhibit Cal Advocates/Sierra Club-44 at slide 6.
[165] Exhibit Cal Advocates/Sierra Club-49 at 1284.
[166] Exhibit Cal Advocates/Sierra Club-73 (question 13).

i. SoCalGas' DSMBA-funded Codes & Standards Manager organized a professional climate denier's keynote speech at an APGA event.

SoCalGas' Codes & Standards and ZNE manager spent time in February 2016 raising funds for Alex Epstein—who makes his living speaking and writing on the "moral case for fossil fuels"—to deliver a keynote address at an APGA conference.[167] As the primary sponsor of Mr. Epstein's keynote, SoCalGas worked with APGA staff to give him direction on what he should cover in the speech.[168] The primary concern that they keynote organizers asked Mr. Epstein to address is that "energy efficiency lobbies" have been successful in promoting electrification "because it will not be long before the country's electricity can and will be generated by all renewables."[169] They asked him to answer questions such as:

> The market for residential commercial appliances and equipment in America appears to be working with consumers weighing the considerations of first costs versus operating costs. Why is the government meddling and forcing consumer decisions in this area and what can be done? We are seeing this in many venues from federal appliance efficiency rulemakings, to NGOs and consensus groups that develop building codes & standards.[170]

Accordingly, SoCalGas did not just misuse DSMBA to urge adoption of watered down efficiency, it went so far as to use DSMBA-funded labor to encourage their elimination, arranging talks by climate deniers on "what can be done" about "government meddling" in appliance standards and building codes in the hopes of enlisting allies in its crusade against efficiency. Ms. Kristjansson explained that the best case scenario for this event is that

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[167] Exhibit Sierra Club R-2 at 73 (SoCalGas Codes and Standards and ZNE Manager inquiring "did you think about the contribution to the APGA conference with Alex Epstein as keynote?" and explaining that "I'm just looking to off-set about $5-7K" of the $20K speaking fee); Exhibit Sierra Club R-3 at 1711–1712 (March 15, 2015 email from Alex Epstein's speaker's bureau requesting confirmation that the topic for the speech Alex Epstein should present is "The Moral Case for Fossil Fuels"); *See also The Moral Case for Fossil Fuels*, https://www.amazon.com/Moral-Case-Fossil-Fuels/dp/1591847443.

[168] Exhibit Sierra Club R-2 at 73 (SoCalGas intended to cover the majority of the speaking fee); Exhibit Sierra Club R-3 at 1710–1712 (Ms. Kristjansson exchanges emails with two APGA representatives to develop directions for how Alex Epstein can customize his speech to meet their interests). SoCalGas refused to provide information on how it booked the costs of sponsoring this conference on the grounds that it "does not appear to have concerned energy efficiency codes and standards or reach codes." Exhibit Cal Advocates/Sierra Club-52 (question 1).

[169] Sierra Club R-3 at 1710–1711 (March 16, 2016 email RE: Alex Epstein).

[170] *Id.*

"[a]ttendees feel motivated and empowered with information (from overall policy conference) to 'bang the drum' of the industry."[171]

ii. SoCalGas' Codes & Standards Manager contributed to APGA's advocacy documents, which urged Trump's Department of Energy to advance an extreme deregulatory agenda.

As a trade association, APGA can take advocacy positions that are too extreme for SoCalGas to take in its own name. For instance, when APGA staff on the DUTG asked SoCalGas Codes & Standards and ZNE Manager Sue Kristjansson for input on the debate over whether DUTG "should take a hard stance and oppose climate change," she responded:[172]

> Unfortunately, we do not oppose the concept of climate change. We used to but somehow that changed over the past few years and now we are proponents of acting as a response to climate change. ☹

Likewise, APGA's advocacy for less stringent codes and standards has been even more aggressive than the advocacy SoCalGas has conducted in its own name. The targets of this advocacy may not realize that an investor-owned utility like SoCalGas has a role in APGA's advocacy, as APGA holds itself out as "the national association for publicly owned natural gas distribution systems."[173] Yet SoCalGas has been an active contributor to APGA's federal codes and standards advocacy, supporting it with the labor of an employee whose salary the Company funded through the DSMBA.

In March 2017, APGA sent a letter to DOE Secretary Rick Perry, with the primary request that the Secretary address the need for "error correction" in energy efficiency standards for commercial packaged boilers, commercial water heaters, and residential furnaces that had been finalized toward the end of the Obama administration.[174] After the DOE relied on this legally flawed "error correction" theory to stop the stringent efficiency rules from taking effect, the State of California joined a broad coalition of states, consumer advocates, and environmental organizations to sue Secretary Perry and forced him to perform his duty to move forward with the rules.[175] The APGA letter also alerts Secretary Perry to various "ideologically driven" threats from within the DOE and other agencies. According to APGA, DOE, EPA and other

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[171] *Id.* (adding language to the directions to Mr. Epstein in the same font style Ms. Kristjansson uses in her March 21 email).
[172] Exhibit Cal Advocates/Sierra Club-14 at 1337 (emoji in original).
[173] Exhibit Cal Advocates/Sierra Club-57.
[174] *Id.*
[175] *Nat. Res. Def. Council, Inc. v. Perry*, 940 F.3d 1072 (9th Cir. 2019).

agencies use energy price forecasts that are "intentionally biased in a manner to support their ideologically driven regulatory agenda," and DOE should curtail its role in developing model codes because "the current process has seen DOE advocating for ideologically-driven and harmful measures."[176] Ms. Kristjansson edited and praised this "[e]xcellent letter" before APGA sent it.[177] During the time period in which she reviewed the letter, SoCalGas charged the costs of Ms. Kristjansson's labor across five codes and standards accounts.[178]

Similarly, in July 2017, Ms. Kristjansson reviewed APGA's comments—distinct from SoCalGas' comments discussed above—on the DOE's RFI on reducing regulation and controlling regulatory costs, which again presented novel theories for halting DOE's work on energy efficiency.[179] For example, APGA claimed "'mission creep' has been shown to be present in all federal bureaucracies" and recommended dealing with this problem with "sunset" reviews of all DOE offices, programs and major rules.[180] Questioning whether DOE's Office of Energy Efficiency and Renewable Energy should continue to exist is an extraordinarily aggressive position that—as far as Sierra Club is aware—SoCalGas has not taken when it speaks in public with its own voice. Nonetheless, SoCalGas did not hesitate to praise such ideas as "great input" when it works within trade groups.[181] During the time period in which she reviewed the letter, SoCalGas charged the costs of Ms. Kristjansson's labor across five codes and standards accounts.[182] SoCalGas did not produce Ms. Kristjansson's marked-up drafts of these APGA advocacy documents or other DOE filings in discovery.

It is impossible to know how much time Ms. Kristjansson and her staff spent advancing APGA and SoCalGas' shared interest in lax codes and standards. As SoCalGas repeatedly stated in discovery, its "salaried employees do not track their time each day with the intent of reporting out an hourly log of activities."[183] At a minimum, the record shows that SoCalGas used Ms. Kristjansson's DSMBA-funded labor on aggressive campaigns against stringent codes and standards that stretched beyond the confines of the C&S appliance and building subprograms.

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[176] Exhibit Cal Advocates/Sierra Club-57 (quotes taken from the second and third pages of the letter).
[177] Exhibit Cal Advocates/Sierra Club-56.
[178] Exhibit Cal Advocates/Sierra Club-52 (question 2).
[179] Exhibit Cal Advocates/Sierra Club-58.
[180] Exhibit Cal Advocates/Sierra Club-59 at 4.
[181] Exhibit Cal Advocates/Sierra Club-58 at 558 of 1335.
[182] Exhibit Cal Advocates/Sierra Club-52 (question 3).
[183] *Id.* (question 2).

B. SoCalGas Used Ratepayer Funds To Advocate Against Local Governments' Adoption Of Reach Codes.

SoCalGas improperly used ratepayer money to advocate against increased efficiency through reach code adoption because stringent local codes threaten its business interests. The Commission ordered SoCalGas and the other large investor-owned utilities to carry out a reach code advocacy program to increase the likelihood of reach code adoption, and to coordinate these activities with the CEC. While the Commission strives to promote reach codes because they are a stepping stone toward statewide codes that will achieve the State's climate goals, this policy poses an existential threat to SoCalGas. A statewide code that uses the superior efficiency an all-electric building as the baseline for Title 24 compliance would stymie SoCalGas' interest in expanding its distribution network and customer base. SoCalGas responded to this threat with a multifaceted campaign against reach code adoption, with the support of the highest levels of SoCalGas leadership. In parallel to its authorized program, SoCalGas carried out an improper reach code advocacy program that violated the Commission's clear direction that such activities must support reach code adoption and coordinate with the CEC. These efforts date back to at least 2017. In the past year, as reach codes have become a more popular tool among local governments for reducing carbon emissions, SoCalGas has intensified these efforts and relied on its government affairs staff to carry them out.

1. Before the Commission removed SoCalGas from an active role in the statewide energy efficiency advocacy, the Company attempted to undermine reach codes through the CASE team process.

In 2017, SoCalGas participated in a ratepayer-funded report on the cost effectiveness of all-electric local energy ordinances and advocated for changes that would deter the local governments from adopting stringent all-electric building codes.[184] For instance, SoCalGas disagreed with the draft's conclusion that in a package with rooftop solar, "[w]hen all onsite energy use is supplied by electricity, the approach to net zero energy is much simpler."[185] SoCalGas proposed revising the report's conclusion so that it would include the Company's specious legal argument that more stringent standards were preempted: "When all onsite energy use is supplied by electricity, ~~the approach to net energy is much simpler.~~excess annual generation is minimal. However, the resulting electric load on the grid at times of no PV

[184] Exhibit Cal Advocates/Sierra Club-53.
[185] *Id.* at 22.

generation is substantially higher and could be detrimental to the electric grid. Also, federal preemption issues preclude all-electric local ordinances when natural gas is available."[186] In its attempt to insert a legal conclusion for which it provided no supporting analysis and was wholly inappropriate for a report on cost-effectiveness, it was SoCalGas that sought to preempt all-electric reach code adoption by creating the a perception of legal risk.[187] SoCalGas charged the costs of this self-serving advocacy to the DSMBA.[188]

2. Under the oversight of SoCalGas President Maryam Brown, SoCalGas attempted to stop San Luis Obispo from adopting a reach code.

In 2019, the active participants in the Commission's statewide codes and standards program continued analyzing all-electric options in CASE team reports. An August 1, 2019 study found that all-electric new construction of single- and multi-family low-rise residential buildings was cost-effective in every climate zone where SoCalGas operates.[189] SoCalGas did not merely fail to support the work of the Commission's EE program in advancing reach codes. The Company aggressively undermined the efforts of the Commission-authorized CASE team by urging cities in their service territory to reject cost-effective reach codes that threatened the expansion of their gas distribution network.

The first city in SoCalGas' territory to consider using a reach code to encourage all-electric construction and reduce emissions from new buildings was San Luis Obispo, and SoCalGas used ratepayer funds in its efforts to block the city from adopting measures the

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[186] *Id.*

[187] Notably, the CEC has approved dozens of electric preferred or required reach codes because heat pumps and other electric appliances are much more efficient than gas alternatives and therefore further reach code requirements. *See* CEC Docket 19-BSTD-06, Local Ordinances Exceeding the 2019 Energy Code, https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=19-BSTD-06. Most recently, this docket includes the CEC resolution unanimously approving Burlingame's ordinance requiring all-electric new construction, with exemptions for single-family and commercial projects for gas cooking and fireplaces.

[188] *See* Exhibit Cal Advocates/Sierra Club-52. SoCalGas produced these comments on the draft 2017 cost-effectiveness report in response to Question 8 in Sierra Club's seventh set of data requests to SoCalGas in this proceeding, which requested the work product SoCalGas received from a contract with NegaWatt Consulting and information about how the costs of that contract were billed. In the narrative portion of its response, SoCalGas stated that $619,340 of the costs of the contract with NegaWatt were charged to the DSMBA.

[189] California Energy Codes & Standards, *2019 Cost-effectiveness Study: Low-Rise Residential New Construction*, at 24–29 (Aug. 1, 2019), https://localenergycodes.com/download/73/file_path/fieldList/2019%20Res%20NC%20Cost-eff%20Report.

Commission-authorized case team had identified as cost-effective. First, SoCalGas submitted public comments in opposition to San Luis Obispo's proposed building code amendments in August 2019.[190] The principal author of the letter, whose labor costs are funded as O&M costs, spent 36 hours preparing the letter.[191] SoCalGas employees also spent 37 hours on follow-up communications, and SoCalGas also books those employees' labor costs to ratepayer-funded accounts.[192] Thus, SoCalGas used ratepayer funds to violate the Commission's policy that reach code advocacy programs support reach code adoption and support other EE programs that hasten the adoption of more stringent codes and standards.

SoCalGas' advocacy against San Luis Obispo's reach code relies on untenable arguments that reflect the Company's failure to coordinate their reach code advocacy program with the CEC, as Commission policy requires. For instance, SoCalGas' opposition letter argues that San Luis Obispo should not adopt the proposal without considering the use of "renewable" gas as an alternative pathway for decarbonizing new buildings.[193] SoCalGas' position that it can rely on "renewable" gas to decarbonize an ever-expanding gas distribution system conflicts with the finding in a 2018 CEC report that California would face a shortfall of at least 600 TBTU of biomethane in 2050 if it attempted to decarbonize its buildings without electrification, absent technology breakthroughs in the production of climate-neutral methane.[194] Had SoCalGas followed the Commission's order to coordinate its reach code advocacy with the CEC, it would have recognized that building electrification is essential to reducing the costs of achieving California's climate goals. According to the CEC, the *most* expensive route to California's 2050 carbon target would be to forgo building electrification and pursue advanced power-to-gas technology to provide climate-neutral pipeline gas.[195] The letter also contains flat-out lies. For example, the letter states "SoCalGas would like to emphasize the flawed nature of E3's Deep

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[190] Exhibit Cal Advocates/Sierra Club-37.
[191] Exhibit Cal Advocates/Sierra Club-32 (question 7).
[192] *Id.*
[193] *Id.* at 6–7 (attachment to SoCalGas' comments).
[194] CEC, *Deep Decarbonization in a High Renewables Future*, CEC-500-2018-012, at 33 (June 2018) ("2018 CEC Report on Deep Decarbonization in a High Renewables Future") https://ww2.energy.ca.gov/2018publications/CEC-500-2018-012/CEC-500-2018-012.pdf. The existence of this report on the CEC website is subject to official notice for the purpose of demonstrating statements that are not subject to interpretation and that certain representations were made by the CEC's experts in the field of planning for a decarbonized energy system. D.16-01-014 at 21; D.07-04-049 at 12.
[195] 2018 CEC Report on Deep Decarbonization in a High Renewables Future at 58, Figure 27.

Decarbonization Study, which was largely funded and supported by the Building Decarbonization Coalition, an entity largely supported by electricity providers and equipment manufacturers."[196] In fact, the report E3 authored was prepared for the CEC with funding from the CEC's Electric Program Investment Charge program.[197] SoCalGas' shadow reach code advocacy program promoted its shareholders' interests without regard for facts or the CEC's expertise on cost-effective decarbonization. And, regardless of the veracity of SoCalGas' positions on pathways to decarbonization, SoCalGas violated the Commission's mandate that ratepayer funds be used to *promote* reach codes.

SoCalGas booked more costs to ratepayer-funded accounts to support its advocacy against San Luis Obispo's reach code at the September 3, 2019 city council meeting that considered the code update. Specifically, SoCalGas booked $10,000 in consulting costs associated with preparing for the meeting, which it booked to the cost center for Public Policy and Planning.[198] In addition, SoCalGas President Maryam Brown and multiple ratepayer-funded public affairs employees attended the council meeting.[199] Even though San Luis Obispo streams all its city council meetings online, SoCalGas' president traveled several hours to attend in person.[200] In statements to Cal Advocates, SoCalGas made the implausible claim that President Brown attended the meeting "for the purposes of observing any governmental actions that have the potential to impact SoCalGas' business or operations."[201] The simplest explanation for President Brown's in-person attendance is that her presence helped rally the numerous SoCalGas employees and allies who spoke against the reach code.[202] President Brown's personal involvement shows that SoCalGas' efforts to stop reach codes were orchestrated at the Company's highest levels. As far as Sierra Club is aware, SoCalGas' final act in its campaign to

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[196] Exhibit Cal Advocates/Sierra Club-37 at 4.
[197] 2018 CEC Report on Deep Decarbonization in a High Renewables Future at i.
[198] Exhibit Cal Advocates/Sierra Club-33 (questions 3(c) and 5(c)).
[199] *Id*. (questions 2–6).
[200] City of San Luis Obispo, City Council Meetings, https://www.slocity.org/government/mayor-and-city-council/agendas-and-minutes ("Can I watch the Council Meeting from home? City Council meetings can be watched live on Charter Cable Government Access Channel 20 or streamed via the City's YouTube Channel.").
[201] Exhibit Cal Advocates/Sierra Club-33 (question 2).
[202] *See id.* ("SoCalGas is also aware that several hourly employees of SoCalGas who live in and around the city of San Louis Obispo were in attendance at the meeting.").

stop San Luis Obispo's reach code was its Public Affairs Manager Tim Mahoney speaking against the adoption of the code update at the June 2020 city council meeting.[203]

3. SoCalGas opposed Santa Monica's reach code—a strategy the Company believes is a "silly" way "to achieve the ultimate goal of no carbon"—and booked the costs of this advocacy to ratepayer-funded accounts.

In September 2019, SoCalGas tried unsuccessfully to convince the City of Santa Monica not to adopt its proposed reach code. SoCalGas has long demonstrated disdain for Santa Monica's efforts to decarbonize its building stock through reach codes, with its C&S and ZNE Manager lamenting in 2016 that Santa Monica officials are "working toward a 'reach code' and think that is the best way to achieve the ultimate goal of no carbon. Silly silly folks."[204] In September 2019, when Santa Monica's "silly" ambition moved closer to reality, SoCalGas sent three employees to the city council meeting to speak against the code.[205] For instance, SoCalGas argued Santa Monica should not adopt a reach code without considering technologies that might allow SoCalGas to supply more biomethane in 2050, despite the City's finding that the code could reduce emissions through technologies that are available and cost-effective today.[206] The three employees who attended this 5-hour meeting spent 11 hours preparing for the meeting, and SoCalGas books their labor to O&M accounts that are funded by ratepayers in general rate cases.[207] Thus, SoCalGas used ratepayer-funded labor to fight Santa Monica's efforts to achieve "the ultimate goal of no carbon."[208]

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[203] Youtube Channel of City of San Luis Obispo, City Council Meeting – 06/16/2020 (starting at 3:06:35), https://www.youtube.com/watch?v=6h-0IOwsge0&list=PLYpkSlYaJwWR9hO8DSsIalX1nucOKClSx&index=2. SoCalGas responded in discovery that it booked the costs of this advocacy to a below-the-line account. Exhibit Sierra Club R-4 (question 4). Regardless, once SoCalGas began a reach code advocacy program with ratepayer funds, it had a duty to align that program with the other Commission-authorized EE programs, promote cost-effective reach codes, and coordinate with the CEC. Switching the campaign to shareholder funding does not cure SoCalGas' violations.
[204] Exhibit Sierra Club R-7.
[205] Exhibit Cal Advocates/Sierra Club-33 (questions 9–10).
[206] City of Santa Monica, City Council Meeting at 4:25:43 (Sept. 10, 2019), http://santamonica.granicus.com/MediaPlayer.php?view_id=2&clip_id=4390. Sierra Club requests that the Commission take official notice of this recording of the September 10, 2019 City Council Meeting; D.16-01-014, fn. 16 (listing precedents taking notice of government website).
[207] Exhibit Cal Advocates/Sierra Club-33 (questions 11, 13).
[208] *See* Exhibit Sierra Club R-7.

4. SoCalGas opposed Culver City's reach code using ratepayer money, bolstering the advocacy of its front group Californians for Balanced Energy Solutions.

SoCalGas took a different approach in its advocacy against Culver City's reach code, by using Californians for Balanced Energy Solutions ("C4BES") to serve as the public face of the opposition at first. In January 2020, SoCalGas Vice President George Minter reviewed social media ads proclaiming: "Culver City residents! Your voice is needed at the upcoming public meeting to fight against the adoption of REACH building code amendments."[209] Mr. Minter lauded these ads as "[g]reat campaign material, important effort," and expressed his hope that C4BES would receive support from all its Board members (which include SoCalGas).[210] SoCalGas moved the costs of founding the gas industry front group C4BES to shareholder-funded accounts after Cal Advocates began investigating these activities.[211] Nevertheless, SoCalGas continued using ratepayer funds to support the Company and C4BES' joint effort against Culver City's reach code by deploying its public affairs staff to draft a letter in opposition to the code update. As the City conducted public meetings on its proposed reach code, SoCalGas submitted a February 2020 comment letter expressing its "concern[] about the lack of discussion around the use of renewable natural gas."[212] SoCalGas booked the costs of preparing this letter to a ratepayer-funded account.[213]

5. In February 2020, SoCalGas opposed Ventura County's consideration of a reach code that threatened the expansion of its gas distribution network.

In February 2020, SoCalGas also submitted a letter to Ventura County opposing the provision in its Draft 2040 General Plan Update that would have prohibited the installation of gas infrastructure in new residential construction to support proposed reach codes.[214] SoCalGas argues that the County did not sufficiently study "the potential environmental effects from implementing a Reach Code that bans or restricts natural gas in residential and/or commercial

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[209] Exhibit Cal Advocates/Sierra Club-62.
[210] *Id.*
[211] Sammy Roth, *Is America's biggest gas utility abusing customer money? A California watchdog demands answers*, Los Angeles Times (July 23, 2020), https://www.latimes.com/environment/story/2020-07-23/is-americas-biggest-gas-utility-fighting-climate-action-california-demands-answers.
[212] Exhibit Cal Advocates/Sierra Club-68.
[213] Exhibit Sierra Club Exhibit R-4 (stating in response to question 3(e) in Sierra Club's sixth set of data requests that "associated costs were charged to FG9205702200, which is designated as an Above-the-Line account").
[214] Exhibit Cal Advocates/Sierra Club-61 at 1.

buildings."[215] These arguments ignore that the environmental benefits of electric buildings will increase as the grid continues to decarbonize; SoCalGas relies on studies that examined the carbon impacts of gas appliances with electric appliances that use the fuel mix on Maryland's power grid and California's grid in 2019.[216] As SoCalGas' C&S manager stated in an internal 2016 email, "As we inch closer to the RPS in California we ultimately become less efficient and desirable."[217]

SoCalGas refused to provide Sierra Club information regarding the labor costs of preparing its letter to Ventura County on the grounds that such information was outside the scope of this proceeding.[218] The letter's signatory is SoCalGas Director of Strategy and Environment Deanna Haines, who has testified in this proceeding that "I am a salaried employee and my labor is charged to accounts which are funded through the GRC."[219] Thus, at a minimum, the labor costs of Ms. Haines' time reviewing and approving this letter were booked to ratepayer-funded accounts.

6. SoCalGas' purportedly shareholder-funded advocacy against reach codes are part of its larger program of anti-reach code advocacy.

Unable to stop the adoption of reach codes at the local level, SoCalGas brought the fight against reach codes to the state level. SoCalGas was one of several signatories to a December 11, 2019 letter that asked the CEC not to consider *any* reach codes because a patchwork of local rules would supposedly be inconsistent with the intent of the CEC's authorizing statute.[220] This represented an escalation in SoCalGas' rhetoric; not only did the Company fail to coordinate with the CEC and fail to support the Commission's policy favoring reach code adoption, but SoCalGas urged the CEC to stop approving any reach codes. SoCalGas apparently did not want to be the public face of this aggressive and unsupported argument, as SoCalGas Vice President George Minter suggested that a union member be the one to read these comments into the record

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[215] *Id*. at 2.
[216] *Id.* at 4–6.
[217] Exhibit Cal Advocates/Sierra Club-39.
[218] Exhibit Sierra Club Exhibit R-4 (question 2).
[219] Prepared Direct Testimony of Deanna R. Haines on Behalf of Southern California Gas Company (Jan. 10, 2020), at 12:16–17.
[220] Exhibit Cal Advocates/Sierra Club-29. On the agenda for its December 11, 2019 meeting, the CEC was set to consider approving several reach codes that would have reduced emissions from gas appliances in new buildings, including Santa Monica's reach code. California Energy Commission, *Business Meeting Agenda* (Dec. 11, 2019), https://www.energy.ca.gov/sites/default/files/2020-01/2019-12-11_Agenda_ada.pdf.

at the CEC meeting.[221] Nonetheless, emails produced in discovery show that SoCalGas was the driving force behind this letter. On December 5, Mr. Minter emailed C4BES Executive Director Jon Switalski a draft letter, alerted Mr. Switalski of the CEC's upcoming vote on the reach codes, and suggested other groups that might be interested in signing on.[222] Later, Mr. Minter urged other entities to sign on.[223] Although Mr. Switalski uploaded the letter to the CEC, Mr. Minter was clear that Mr. Switalski did not need to wait for further edits because "we [SoCalGas] are taking lead."[224] Mr. Minter also emailed the Coalition for Renewable Natural Gas to request that it submit its own letter.[225] After the letters were submitted to the CEC, Mr. Minter emailed SoCalGas' joint letter to individuals at the City of Los Angeles and the County, bemoaning that "the CEC approved a few local jurisdictions' adoption of local codes that would eliminate the use of gas, prohibit gas line extensions to commercial and residential uses, essentially eliminating consumers' ability to choose natural gas, renewable gas or hydrogen in the future."[226] In January, Mr. Minter suggested C4BES open a new front in the battle against reach codes: following Arizona's lead with state legislation that would prevent municipalities from adopting electrification ordinances.[227]

SoCalGas stated in discovery that it charged the costs of developing the letter opposing the CEC's approval of reach codes to a "Below-the-Line" account for "Balanced Energy."[228] However, SoCalGas has a history of transferring some components of employees' compensation to shareholder-funded accounts without also transferring the overhead for the employees' time.[229] There is no third-party verification for SoCalGas booking to shareholder-funded accounts all the costs of its advocacy against reach codes in December 2019 and January 2020, including the overhead costs of Vice President Minter's labor, because SoCalGas has obstructed Cal Advocates' attempts to access the Company accounting databases that contain this

[221] Exhibit Cal Advocates/Sierra Club-67.
[222] *Id.*
[223] Exhibit Cal Advocates/Sierra Club-66.
[224] Exhibit Cal Advocates/Sierra Club-63.
[225] Exhibit Cal Advocates/Sierra Club-65.
[226] Exhibit Cal Advocates/Sierra Club-64.
[227] Exhibit Cal Advocates/Sierra Club-62.
[228] Exhibit Sierra Club R-4 (question 1(e)).
[229] Exhibit Sierra Club R-8 (initiating the process to transfer some overhead loading in a January 8, 2020 email because SoCalGas had testimony due in this proceeding).

information.[230] The Commission should sanction SoCalGas for all instances of charging ratepayer-funded accounts for the costs of advocacy against the adoption of reach codes. By charging shareholders for part of its advocacy against reach codes, SoCalGas appears to recognize that there is some self-interested advocacy that is unacceptable to conduct at the ratepayers' expense. Yet SoCalGas' purportedly shareholder-funded advocacy promotes the exact same policy goal as the advocacy it is booking to ratepayer-funded accounts: persuading decision makers not to adopt reach codes that would encourage new construction that is highly efficient and free of natural gas.

VI. REMEDIES FOR SOCALGAS' MISCONDUCT

To deter SoCalGas from continuing to use ratepayer money to undermine California's energy efficiency and climate policy, the Commission must impose tough remedies on the Company. SoCalGas' actions reflect its incentive to use ratepayer money to promote policies that will enrich its shareholders. If the Commission were to let SoCalGas off with a warning and additional guidance for the future, the logical conclusion for SoCalGas to draw will be that it makes financial sense to continue exploiting purported ambiguity in the Commission's policies to use ratepayer money to undermine local, state, and federal energy efficiency standards. As the Commission has long understood, "[e]ffective deterrence creates an incentive for public utilities to avoid violations."[231]

A. SoCalGas Is Not Entitled To Shareholder Incentives Or Costs For Its Code And Standards Advocacy From 2014 Through 2017.

SoCalGas is not entitled to shareholder incentives for codes and standards advocacy during program years 2014 through 2017, and shareholders should bear the costs of all SoCalGas' C&S expenditures during those years. SoCalGas has no claim to an incentive that the Commission designed to promote stringent energy efficiency codes and standards because it did not "spend EE dollars advancing more stringent codes and standards."[232] A refund of all C&S-

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[230] *See* 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) (May 22, 2020), https://www.publicadvocates.cpuc.ca.gov/uploadedFiles/Content/Press_Room/1%20-%20SoCalGas%20Substitute-Motion%20to%20Quash-pdfA%205-22-2020.pdf.
[231] D.98-12-075, *Final Opinion Adopting Enforcement Rules*, at 35 (Dec. 17, 1998) ("D.98-12-075").
[232] D.14-10-046 at 61.

related incentives is appropriate because SoCalGas used expenses booked to other C&S subprograms to advocate for its preferred policies, as discussed in Section V.A.5. Therefore, the Commission should order the Company to refund the $212,235 in shareholder incentives it received through the ESPI program for 2014 through 2017.[233]

SoCalGas' shareholders should bear the costs of its codes and standards expenditures because the company was advocating in the interests of its shareholders—contrary to California policy and the goals of the Commission's codes and standards program. Even without the Energy Savings Performance Incentive, the company has an incentive to use ratepayer funds for advocacy in its corporate interests. The Commission should forcefully end this practice. A disallowance of all C&S program expenses is appropriate because SoCalGas used expenses booked to other C&S subprograms to advocate for its preferred policies. Therefore, the Commission should order the Company to refund the $3.36 million it collected from ratepayers for its C&S program expenses from 2014 to 2017.[234]

B. SoCalGas Must Be Severely Sanctioned For Its Misconduct.

1. SoCalGas' abuse of ratepayer funds to block stringent energy efficiency standards meets the Commission's criteria for the highest possible fines.

The Commission's framework for assessing fines examines five factors: (1) severity of the offense, (2) conduct of the utility, (3) financial resources of the utility, (4) totality of the circumstances in furtherance of the public interest, and (5) role of precedent.[235] To the extent they apply, each of these factors militate toward severe penalties in this case.

The Commission should require SoCalGas to direct whatever fines the Commission assesses in this Order to Show Cause to programs that mitigate the harms of its advocacy against stringent codes and standards. Specifically, SoCalGas' fines should be directed to programs that

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[233] This amount is calculated based on SoCalGas' shareholder incentives through the ESPI program during 2014–2017, as reported in Commission Resolutions. For 2014, the value is $73,418, minus a $5,262 true-up, leaving $68,156. *See* Resolution G-3510 at 31 (Dec. 3, 2015). For 2015, the value is $59,009, minus a $5,880 true-up, leaving $53,129. *See* Resolution E-4807 at 34 (Dec. 15, 2016) for award and Resolution E-4897 at 31 (Dec. 14, 2017) for true-up. For 2016, the value is $91,293, minus $343 for a true-up, leaving $90,950. *See* Resolution E-4897 at 30 (Dec. 14, 2017) for award, Resolution E-5007 at 3 (Oct. 10, 2019) for true-up. In total, this is $212,235.

[234] This amount is calculated based on SoCalGas' reported expenditures within its C&S Programs for 2014–2017, as reported in the 2014, 2015, 2016, and 2017 ESPI Ex-Ante Expenditures Workbooks (Part 2) https://www.cpuc.ca.gov/General.aspx?id=4137.

[235] D.98-12-075 at 35–39.

assist low-income customers in adopting highly efficient appliances: the Building Initiative for Low-Emission Development and Technology for Equipment for Clean Heating programs and heat pump water heater incentives under the Self-Generation Incentive Program.

a. Severity of the offense

The Commission views offenses involving physical harm to people and property as the most severe.[236] SoCalGas' use of ratepayer funds to advocate against stringent energy efficiency rules threatened California's ability to avoid the most catastrophic effects of climate change, which include the type of physical harms that the Commission recognizes as warranting high fines.

California adopted the climate goals that SoCalGas identified as the policies driving electrification because failure to achieve those goals would contribute to physical devastation that harms all Californians.[237] In enacting AB 32, the Legislature recognized that aggressive climate action was necessary to protect public health:

> Global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California. The potential adverse impacts of global warming include the exacerbation of air quality problems, a reduction in the quality and supply of water to the state from the Sierra snowpack, a rise in sea levels resulting in the displacement of thousands of coastal businesses and residences, damage to marine ecosystems and the natural environment, and an increase in the incidences of infectious diseases, asthma, and other human health-related problems.[238]

When the Legislature adopted California's 2030 climate goals, it declared that reducing climate pollution is critical for all communities, but especially so for the "most disadvantaged communities [that] are disproportionately impacted by the deleterious effects of climate change on public health."[239]

Energy efficiency has long been central to California's climate strategy because it delivers economic savings for consumers, in addition to health and climate benefits—and the Commission has long recognized codes and standards as the most effective means of

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[236] *Id.* at 36.
[237] Exhibit Sierra Club R-6 at slide 9 (identifying the AB 32 goal of achieving 1990 levels by 2020; the goal of reducing emissions by 40% below 1990 levels by 2030; and the E.O. S-3-05 goal of reducing emissions 80% below 1990 levels by 3050).
[238] Assem. Bill No. 32 (2005–2006 Reg. Sess.) Ch. 2.
[239] SB 32 (2015–2016 Reg. Sess.) § 1(c).

implementing energy efficiency. In its 2008 energy efficiency Strategic Plan, the Commission stated: "There is no policy tool more essential for the widespread and persistent transformation of energy performance in California than energy codes and standards."[240] SoCalGas used ratepayer funds to sabotage the most essential tool for deploying energy efficiency. SoCalGas successfully derailed energy efficiency rules that would make it more likely and less costly for California to avoid catastrophic climate change. At least once—in delaying the CEC's adoption of stringent efficiency standards for water heaters—SoCalGas was responsible for orchestrating the campaign against the stringent code standard.

The Commission also applies substantial penalties for conduct that severely harms the regulatory process.[241] The Commission recognizes the severity of offenses "involv[ing] the abuse of an incentive mechanism" because incentive mechanisms "require a great deal of trust between the Commission and the utility's entire management."[242] Incentive mechanisms offer the potential "to achieve desirable policy outcomes in the most cost effective and least burdensome manner," but to rely on them the Commission "must be vigilant against abuse and appropriately penalize violations in order to safeguard the integrity of incentive mechanisms going forward for all utilities."[243] Here, SoCalGas' management has abused the Commission's trust by undermining the very policy outcomes—more stringent energy efficiency codes and standards—that the Commission sought to incentivize through the ESPI mechanism.

b. Conduct of the utility

Under this factor, the Commission considers any action the utility takes to prevent, detect, or disclose and rectify the violation. SoCalGas' behavior has been shameless on all accounts.

Prevention. SoCalGas did not take reasonable steps to ensure compliance with Commission energy efficiency decisions. SoCalGas was aware that the Commission's C&S program might not reward utilities for the energy savings from code updates that they did not support; SoCalGas raised this very question with CEC staff and failed to heed the guidance it received from CPUC Regulatory Analyst Paula Greundling that utilities forfeit savings from

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[240] D.08-09-040, Attach. A, at 67.
[241] D.08-09-038, *Decision Regarding Performance Based Ratemaking (PBR), Finding Violations of PBR Standards, Ordering Refunds, and Imposing a Fine*, at 102 (Sept. 18, 2008).
[242] *Id.*
[243] *Id.* at 102–103.

standards they oppose.[244] SoCalGas failed to seek further Commission guidance, likely because it knew the Commission would have reaffirmed that ratepayer funds cannot be used to fight energy efficiency codes and standards.

Detection. Under this factor, "[t]he Commission will … look at management's conduct during the period in which the violation occurred to ascertain particularly the level and extent of involvement in or tolerance of the offense by management personnel."[245] SoCalGas management actively supported the Company's ratepayer-funded advocacy against stringent energy standards. SoCalGas' Senior Management Team received a briefing on the Company's Action Plan to prevent the CEC from adopting stringent water heater standards—and approved and offered to assist those efforts.[246] SoCalGas' Vice President of Customer Solutions oversaw and directed the Company's advocacy against the proposed federal standards for residential furnaces.[247] The violations at issue in this proceeding are the result of deliberate decisions at the highest levels of the Company.

Company leadership is also heavily involved in SoCalGas' efforts to prevent the adoption of reach codes. SoCalGas President Brown attended a San Luis Obispo city council meeting where a public affairs employee spoke against a proposed reach code,[248] SoCalGas Vice President Sharon Tomkins signed the letter opposing that city's reach code,[249] and SoCalGas Director of Strategy and Environment Deanna Haines signed the letter opposing Ventura County's plan to pursue a reach code.[250]

Disclosure and rectification. SoCalGas has not disclosed any relevant violations to the Commission. Its annual reports to the Commission on its energy efficiency programs do not

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[244] Exhibit Cal Advocates/Sierra Club-23.
[245] D.98-12-075 at 38.
[246] Exhibit Cal Advocates/Sierra Club-20, Attach. B, Ex. 35; Exhibit Cal Advocates/Sierra Club-20, Attach. B, Ex. 47.
[247] Exhibit Cal Advocates/Sierra Club-2 (Vice President of Customer Solutions Rodger Schwecke signed the cover letter to SoCalGas' comments on the proposed furnace rules, stating in his letter that "SoCalGas opposed the advancement of Energy Conservation Standards for Residential Furnaces . . . at this time and in its current form"); Exhibit Cal Advocates/Sierra Club-1 at C-123, C-129, C-138 (Codes and Standards Manager briefing Vice President Schwecke); Exhibit Cal Advocates/Sierra Club-10 (Vice President Schwecke reviewing options for SoCalGas' response to the DOE notice of data availability); Exhibit Cal Advocates/Sierra Club-1 at C-007 (2016 comments of SoCalGas on supplemental notice of proposed rulemaking for federal furnace standards, signed by Vice President Lisa Alexander).
[248] Exhibit Cal Advocates/Sierra Club-33 (question 2).
[249] Exhibit Cal Advocates/Sierra Club-37.
[250] Exhibit Cal Advocates/Sierra Club-61.

mention its advocacy against stringent standards. For instance, the 2017 energy efficiency report does not mention SoCalGas' response to the DOE's request for information on reducing "regulatory burdens," even though SoCalGas charged the DSMBA for developing those comments.[251] SoCalGas told the Commission: "The current administration is working at a slower pace than in previous years which reduces our opportunity to update federal standards," conveniently failing to mention that in 2017, the Company had urged DOE to "consider deprioritizing" certain efficiency regulations.[252] Similarly, SoCalGas' annual report for 2016 fails to disclose that it was conducting advocacy on DOE's proposed furnace standards—let alone disclose that it was advocating *against* stringent standards.[253]

Contrary to SoCalGas' recent claims that the purpose of the C&S advocacy program was somehow unclear, its own reports to the Commission acknowledge that the purpose of the program was to *strengthen* energy efficiency rules. For instance, in its 2017 energy efficiency report, SoCalGas states: "The Statewide Codes and Standards (C&S) Program saves energy on behalf of ratepayers by influencing regulatory bodies such as the California Energy Commission and the U.S. Department of Energy (DOE) to strengthen energy efficiency regulations."[254] These reports omit any information about SoCalGas' efforts to undermine that goal.

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[251] Exhibit SCG-27, Attach. at 28–30; Joint Stipulation of Facts at 8.
[252] Exhibit SCG-27 Attach. at 31; Exhibit Cal Advocates/Sierra Club-1, App. C, Ex. 7 at 4.
[253] Exhibit SCG-26 at 32 (disclosing participation in rulemakings on battery chargers, boilers, dehumidifiers, miscellaneous refrigeration products, pre-rinse spray valves, vending machines and ceiling fan light kits).
[254] Exhibit SCG-27 at 28. The Company's description of the program in prior years is substantially the same. The 2016 report states: "The Statewide Codes and Standards (C&S) Program saves energy on behalf of ratepayers by influencing standards and code-setting bodies, such as the California Energy Commission (CEC) and the United States Department of Energy (DOE), to strengthen EE regulations." Exhibit SCG-26 at 29. The 2015 report states: "The Statewide Codes and Standards (C&S) Program saves energy on behalf of ratepayers by influencing standards and code-setting bodies, such as the California Energy Commission (CEC) and the Department of Energy (DOE), to strengthen EE regulations by improving compliance with existing C&S, assisting local governments to develop ordinances that exceed statewide minimum requirements, and coordinating with other programs and entities to support the State's ambitious policy goals." Exhibit SCG-25 at 2-26–2-27. The 2014 report states: "The Statewide Codes and Standards (C&S) Program saves energy on behalf of ratepayers by influencing standards and code-setting bodies, such as the California Energy Commission (CEC) and the US Department of Energy (USDOE), to strengthen energy efficiency regulations, by improving compliance with existing codes and standards, by assisting local governments to develop ordinances that exceed statewide minimum requirements, and by coordinating with other programs and entities to support the State's ambitious policy goals." Exhibit SCG-24 at 2-30.

SoCalGas' use of C&S funds to advocate against stringent energy efficiency standards was only uncovered due to the resource-intensive investigation of Cal Advocates. In D.18-05-041, the Commission prohibited SoCalGas from maintaining an active role in statewide C&S advocacy to avoid any improper use of statewide C&S advocacy funds in the current business plan. SoCalGas' failure to promptly comply with this remedial order is the subject of a separate Order to Show Cause in this proceeding.

Moreover, SoCalGas has not been forthcoming with the Commission about its ratepayer-funded advocacy against reach codes. In this proceeding, SoCalGas asked the Commission not to admit into evidence a letter asking Ventura County not to pursue a reach code, stating that this letter was "not related or material to SoCalGas's engagement on reach codes."[255] SoCalGas relies on tenuous arguments in an attempt to escape the Commission's scrutiny of its advocacy against reach codes.[256] SoCalGas' history of obfuscation should motivate both a substantial penalty and, as discussed below, a clear prohibition on using ratepayer funds in the future for advocacy against stringent efficiency rules.

c. Financial resources of the utility

SoCalGas can afford to pay a substantial fine, given its enormous financial resources. SoCalGas' operating revenues have increased every year for the past five years, reaching $4.525 billion in 2019.[257] The Company reported assets worth $17.077 billion in 2019.[258] SoCalGas had earnings of $641 million in 2019—up $216 million from the year before.[259] The Commission recognizes that it takes larger fines to achieve the objective of deterrence with large corporations than it would with more modest enterprises.[260]

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[255] R.13-11-005, *Response of Southern California Gas Company (U 904 G) to the September 15 and 25, 2020 Motions to Move Documentary Evidence into the Record*, at 4 (Oct 6, 2020) (stating objections to Exhibit Cal Advocates/Sierra Club-61).
[256] *Id.* at 8 (explaining that the reach code measure the Company was opposing was in Ventura County's general plan update, which itself does not constitute a reach code).
[257] Southern California Gas Company Form, *Annual Report 10-K*, at 57 (Feb. 27, 2020) ("SoCalGas Form 10-K") https://investor.sempra.com/static-files/68af0350-d99c-412c-af4f-aa8e6c8e2606. This SEC filing includes information for Sempra Energy Company and its subsidiaries, SoCalGas and San Diego Gas & Electric. The 10-K filings for the Sempra utilities are subject to official notice; D.16-06-054, *Decision Addressing the General Rate Cases of San Diego Gas & Electric Company and Southern California Gas Company and the Proposed Settlements*, at 118 (June 23, 2016).
[258] SoCalGas Form 10-K at 57.
[259] *Id.*
[260] D.98-12-075 at 38.

d. Totality of the circumstances in furtherance of the public interest

The Commission will tailor a package of sanctions by taking into account any facts that exacerbate the wrongdoing.[261] In this case, the Commission should account for the fact that SoCalGas has consistently been willing to sacrifice the health and safety of the public—including its ratepayers, who are unknowingly footing the bill—to prioritize its shareholders' ever-growing profits. As the catastrophic consequences of the climate crisis have torn through California, including the state's first "gigafire,"[262] SoCalGas has chosen again and again to spin a thread of innocent confusion and unsophisticated good faith. But the Commission has been unambiguous about its intent for IOUs' involvement in C&S advocacy, and the Company has acted duplicitously, with full knowledge that their actions undermined the goals of the State.[263] SoCalGas has derided the attempts of policy makers to address the existential threat of climate change,[264] and has had the audacity to hide behind the needs of low-income communities—those who are often most impacted by the effects of climate change—to disingenuously defend its self-interested behavior.[265] SoCalGas has continued this behavior for years, through changes of staff and leadership. Instead of course-correcting, it has repeatedly chosen not only to continue

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[261] *Id.* at 39.

[262] Hayley Smith & Rong-Gong Lin II, *The frightening implications of California's first million-acre fire*, Los Angeles Times (October 6, 2020), https://www.latimes.com/california/story/2020-10-06/the-frightening-implications-california-first-million-acre-wildfire.

[263] *See, e.g.*, Exhibit Cal Advocates/Sierra Club-40 (explaining that SoCalGas intended to support a lower standard than what DOE had proposed for commercial water heaters, but SoCalGas faces a dilemma because "we have mandates to move this stuff forward").

[264] *See, e.g.*, Exhibit Sierra Club R-7 (the City of Santa Monica is "working toward a 'reach code' and think that this is the best way to achieve the ultimate goal of no carbon. Silly silly folks").

[265] For instance, SoCalGas' 2015 comments against DOE's proposal for stringent furnace standards, SoCalGas cited its Negawatt study to support its claim that "low-income consumers may bear a larger burden than other consumers should this rule advance." Exhibit Cal Advocates/Sierra Club-2. SoCalGas' argument was directly at odds with the positions of both the CEC and consumer advocates. The CEC explained its concern that "keeping cheap, inefficient products on the market" harms low-income consumers because they spend more of their income on utility costs than other customers and because low-income tenants "pay the costs for the energy consumed by the cheaper, inefficient products selected by their landlords." Exhibit Cal Advocates/Sierra Club-3 at 5–6. In joint comments, four consumer advocate groups argued that "low income households will not be disproportionately harmed by raising the standards. If anything, they will benefit more than other groups." EERE-2014–BT–STD–0031, *Joint Comments of the Consumer Federation of America, National Consumer Law Center, Massachusetts Union of Public Housing Tenants and Texas Ratepayers' Organization to Save Energy*, at 26 (July 10, 2015) https://www.regulations.gov/document?D=EERE-2014-BT-STD-0031-0123 (proposing that the DOE finalize a 95% AFUE standard that is more stringent than the proposed 92% AFUE standard, but exempt units of 50,000 BTU capacity or less).

existing efforts to undermine energy efficiency codes and standards, but also to introduce and lead additional campaigns at every turn. SoCalGas' blatant, continuous efforts to undermine the State's goals reflect an ongoing assault on the public interest, and the Commission must take this opportunity to put an end to its behavior.

Moreover, SoCalGas coordinated with industry associations to amplify the impact of their ratepayer-funded efforts to undermine codes and standards. In its advocacy against stringent CEC standards for water heaters, SoCalGas "develop[ed] a coalition to counter the CASE recommendations" and relied on DSMBA-funded staff to get AGA engaged on the issue.[266] When SoCalGas and AGA worked together to advocate against the DOE's proposal for a stringent efficiency standard for residential furnaces, SoCalGas used DSMBA-funded labor to prepare briefing materials for the AGA board on the options for fighting the proposal, informed by SoCalGas' ratepayer-funded analysis of the proposal.[267] As another example, SoCalGas' DSMBA-funded Codes and Standards Manager organized the keynote speech on the Moral Case for Fossil Fuels at an APGA conference, explaining that in the best case scenario for this event is "[a]ttendees feel motivated and empowered with information (from overall policy conference) to 'bang the drum' of the industry."[268] By leveraging ratepayer funds to spur wider industry advocacy against codes and standards, SoCalGas turned its codes and standards program into a powerful weapon against stringent codes and standards.

e. Role of precedent

Sierra Club is unaware of how to apply this factor here because there appears to be no precedent in which the Commission confronted similar violations. In this case of first impression of a utility using customer funds to actively work to undermine achievement of California's climate and efficiency policies, the Commission should set a strong precedent to deter similar conduct in the future.

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[266] Exhibit Cal Advocates/Sierra Club-20, Attach. B, Ex. 24; Exhibit Cal Advocates/Sierra Club-20, Attach. B, Ex. 7 (thanking Sue Kristjansson for getting AGA engaged).
[267] Section V.B.2.b.
[268] Exhibit Sierra Club R-3 (adding language to the directions to Mr. Epstein in the same font style Ms. Kristjansson uses in her March 21 email).

2. Calculation of penalties.

Public Utilities Code § 2107 provides the range of penalties for each offense, and § 2108 provides that each day of a continuing violation is a separate and distinct offense. The Commission should fine SoCalGas a total of $255.3 million. This includes $230,625,000 in fines for using DSMBA funds to advocate against stringent state and federal energy efficiency codes and standards, reflecting a $37,500 daily fine for each such offense. Total recommended fines also include $24,675,000 in fines for using ratepayer funds to advocate against local reach codes, reflecting a $50,000 daily fine for each offense. Sierra Club supports Cal Advocates' calculation of these penalty amounts, which Cal Advocates explains in detail in its opening brief.

3. The Commission Should Direct Penalties to Electrification Programs to Remedy the Harm Caused by SoCalGas' Efforts to Stymie Electrification of Gas End Uses.

The objective of SoCalGas' relentless efforts to weaken or prevent adoption of proposed efficiency standards was to retain gas demand by preventing fuel switching from gas to electric end uses. Directing penalties to Commission programs that facilitate electrification is therefore appropriate and necessary restitution for the harms caused by SoCalGas' conduct. Accordingly, the Commission should direct penalties to provide additional funding to the Building Initiative for Low-Emissions Development ("BUILD") and Technology and Equipment for Clean Heating ("TECH") programs, as well as Self-Generation Incentive Program incentives for heat pump water heaters.

C. Prophylactic Measures To Protect Ratepayers From Bearing The Cost Of SoCalGas' Advocacy Against Stringent Efficiency Standards.

1. Permanently remove SoCalGas from an active role in the statewide C&S advocacy program.

SoCalGas' corporate interests are fundamentally at odds with the stringent energy efficiency standards that are necessary to meet California's climate goals.[269] Consistent with these business interests, the culture at SoCalGas is too toxic for it to engage in ratepayer-funded codes and standards advocacy and views the CEC as its adversary. For instance, when SoCalGas employees discovered that PG&E was cooperating with the CEC to support the DOE's proposal for more stringent furnace standards, they decried that "wagons have circled. . . . Looks like the

[269] *See* Section IV.

game is afoot!" and complained that PG&E and the CEC were "blighters."[270] Even when SoCalGas was not actively opposing an energy efficiency rule, the CASE team partners could not rely on the Company to perform work that it volunteered to do. SoCalGas signed up to be the statewide lead on the Tub Spout Diverters rule but was reluctant to actually draft comments on the rule, and instead developed comments only to avoid the risk of "loss of credibility."[271] Ratepayers would see no conceivable benefit from the Commission inviting SoCalGas back into an active role in statewide C&S advocacy, whereas the threat to the integrity of the program is obvious.

2. Prohibit SoCalGas from recovering the costs of any future advocacy against stringent codes and standards, including local reach code adoption, either on its own behalf or through gas industry trade groups.

SoCalGas continues to contribute to advocacy against strengthened energy efficiency rules through its participation in industry associations and by advocating against code updates in its own name. The Commission should order SoCalGas not to seek recovery from ratepayers for the costs of labor and associated overhead for advocacy on energy efficiency codes and standards at the local, state, and federal level and participation in industry groups that conduct codes and standards advocacy, or the costs of membership to such organizations.[272] The Commission should also require SoCalGas employees who work on these activities to track their time so that the Commission can supervise compliance with this directive.

Without this type of order, SoCalGas may tortuously interpret D.18-05-041 to allow it to continue using ratepayer funds to fight strong energy efficiency rules so long as it lodges the costs to a non-DSMBA account. Prohibiting SoCalGas from charging ratepayers for certain activities that promote its shareholders' business interests does not pre-judge its next general rate case—just as the consumer protection rules the Commission adopted in D.12-12-036 (prohibiting electric IOUs from recovering from ratepayers the costs of lobbying or marketing related to community choice aggregation) or that Congress adopted in 26 U.S.C. § 2623(b)(5) (prohibiting electric utilities from recovering the direct or indirect expenditures on promotional or political

[270] Exhibit Cal Advocates/Sierra Club-1, App. C, Ex. 9. Merriam-Webster.com defines "blighter" as "a disliked or contemptible person". *Blighter*, Merrriam-Webster Online Dictionary https://www.merriam-webster.com/dictionary/blighter (last visited Nov. 5, 2020).
[271] Exhibit Cal Advocates/Sierra Club-1, App. C, Ex. 23.
[272] Advocacy does not include provision of factual answers in answer to questions from a government agency or its representative.

advertising from any person other than its shareholders or other owners). The Commission must not allow this.

To prevent SoCalGas from exploiting loopholes in its orders, the Commission should explicitly prohibit SoCalGas from using ratepayer funds to participate in the energy efficiency advocacy of its trade associations, particularly APGA and AGA. SoCalGas is active in the APGA Direct Use Task Group, whose mission is to "[c]ounter the regulatory and legislative threats to the direct use of natural gas by advocating policies, regulations, & legislation that promote natural gas direct use."[273] DUTG members have "gratefully acknowledged the support of . . . SoCalGas that is critical to the success of the DUTG mission."[274] Its methods include "continuous involvement with codes and standards agencies and regulatory and legislative bodies to advocate for the direct use of natural gas,"[275] and its initiatives are self-described as "address[ing] key challenges to natural gas use related to environment, climate change, and deep decarbonization as well as appliance and building codes & standards."[276] The group's main strategies for achieving its mission are regulatory and legislative advocacy[277] and a consumer-facing promotional campaign.[278] SoCalGas currently books the costs of its travel and labor for attending DUTG meetings to accounts it recovers in its general rate cases.[279]

SoCalGas is also active in the AGA's counterpart to DUTG, which is the AGA BECS committee. As discussed in Section V, SoCalGas' relationship with AGA was fundamental to its strategy for fighting stringent energy efficiency standards at the CEC and at the federal level during the Obama administration. SoCalGas should not be allowed to collect any of its AGA dues from ratepayers unless it can demonstrate that some portion of its dues are not spent on administrative lobbying, promotional advertising, or other purposes that do not benefit

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[273] Exhibit Cal Advocates/Sierra Club-72 at 5.
[274] Exhibit Cal Advocates/Sierra Club-51 at 1832.
[275] *Id.* at 1827.
[276] *Id.* at 1832.
[277] Exhibit Cal Advocates/Sierra Club-72 at 6–7 (discussing advocacy before the DOE and in California regulatory and legislative proceedings); Exhibit Cal Advocates/Sierra Club-51 at 1827 ("APGA and DUTG members strive for continuous involvement with codes and standards agencies and regulatory and legislative bodies to advocate for the direct use of natural gas and provide supporting information to justify the advocacy positions.").
[278] Exhibit Cal Advocates/Sierra Club-72 at 6 (discussing development of a gas "Genius Campaign" targeting consumers); Exhibit Cal Advocates/Sierra Club-51 at 1830–1831 (discussing the DUTG's residential market messaging campaign).
[279] Cal Advocates/Sierra Club-73 (question 13).

ratepayers.[280] BECS is the committee within AGA that is responsible for advocacy on federal building, appliance, and equipment efficiency codes and standards—which is its top issue of focus.[281] SoCalGas employees attend BECS committee meetings,[282] and ratepayers should not bear the cost of this participation in the committee.

A Commission order prohibiting SoCalGas from funneling its advocacy on efficiency standards through other organizations and passing the costs on to ratepayers is necessary to end the game of cat-and-mouse that the Company is currently playing with its advocacy expenses. As discussed above, SoCalGas conducted its advocacy against reach codes in coordination with C4BES, a group that it founded and funded.[283] SoCalGas booked the costs of founding C4BES to a ratepayer funded account and only began moving those costs after Cal Advocates discovered the accounting treatment of those expenses.

To ensure that the prohibition on charging ratepayers for its energy efficiency advocacy activities is enforceable, the Commission should require all SoCalGas employees that are partly ratepayer funded and participate in this advocacy to keep contemporaneous records of their time. SoCalGas routinely stymied Sierra Club's attempts to discover the costs of the ratepayer-funded labor SoCalGas devoted to its codes and standards advocacy by stating that its salaried employees do not track their time. For instance, when Sierra Club asked for information about the labor costs of Ms. Kristjansson and Ms. Sim's travel to Washington, D.C., to participate in a meeting on DOE's proposed furnace rules, SoCalGas failed to provide the requested information

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[280] Federal law prohibits SoCalGas from charging any person other than its shareholders for the costs of promotional advertising. 26 U.S.C. § 2623(b)(5). Although AGA invoices to members designate a portion of dues that are spent on activities that meet the definition of "lobbying" under the Budget Reconciliation Act of 1993 Act, this statutory definition does not cover advocacy before the DOE (except for direct communications to the DOE Secretary and Deputies), CEC, or local governments or promotional advertisements. Budget Reconciliation Act, H.R. 2264 § 13222 (1993) (costs for lobbying include any amount paid or incurred in connection with influencing legislation, participation in any political campaign, any attempt to influence the general public with respect to elections, legislative matters, or referendums or direct communications with certain members of the executive branch, and making an exception for local legislation).

[281] Exhibit Cal Advocates/Sierra Club-75 at tab 6 (describing BECS' advocacy at the DOE and other fora on energy efficiency rulemakings from September 1, 2019 through January 3, 2020).

[282] Cal Advocates/Sierra Club-75 at tab 14 (listing Kevin Carney's attendance at the September 2019 meeting in St. Louis, MO); *id.* at tab 1 (listing Mr. Carney's attendance at the January 2020 meeting in New Orleans, LA).

[283] Section V.B.6 (discussing SoCalGas sending C4BES a draft letter asking the CEC not to approve reach codes so that C4BES could file the letter and find a union representative to read it into the record, and discussing SoCalGas reviewing C4BES' Facebook ads asking Culver City residents to speak out against a proposed reach code).

because "This employee is a salaried employee and does not track time each day with the intent of reporting an hourly log of activities. In addition, as a salaried employee, this employee would have been paid the same regardless of whether she attended the public meeting or not, and her normal workload did not go away as a result of attending the public meeting. Thus, SoCalGas does not have a calculation of labor costs associated with these activities."[284] SoCalGas used the same line of argument to evade Cal Advocates' request for information regarding the labor costs of attending industry group meetings on codes and standards.[285] Even if SoCalGas agreed to ask its employees to estimate the time spent on a particular activity many months or years later, after questions arise regarding its appropriateness, those employees may underestimate the time spent on the activity.[286] The Commission should require basic reforms to ensure ratepayers do not fund SoCalGas' advocacy against stringent energy efficiency standards.

The Commission must firmly reject any argument from SoCalGas that the potential to disallow these costs in a future rate case obviates the need to apply a substantial fine for SoCalGas' actions.[287] If the Commission merely disallows the costs of SoCalGas' advocacy or if SoCalGas decides to transfer those costs to shareholders as a result of getting caught, then SoCalGas will suffer no consequences for its violations of Commission policy. The Commission would accomplish nothing more than putting SoCalGas in the financial position it would have been in if it had not improperly spent ratepayer money. SoCalGas would retain a strong incentive to use customer money to advocate in its shareholder interests and gamble that it will not be caught. SoCalGas knows it may well win this gamble, given that its advocacy against

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[284] Exhibit Cal Advocates/Sierra Club-15 (providing the same statement for both employees in response to question 1(d)).

[285] Exhibit Cal Advocates/Sierra Club-31 (question 8) ("SoCalGas is unable to identify any labor costs that SoCalGas incurred associated with the meetings identified. The salaried employees would have been paid the same amount regardless of whether they attended the meetings or not and their normal workload did not go away during the timing of each meeting.").

[286] This scenario is unfolding in the Order to Show Cause against SoCalGas that the Commission issued in this proceeding on December 2, 2017. R.13-11-005, *Prepared Testimony of Sophie Babka and Stephen Costello*, at 17 (Apr. 24, 2020) ("the estimates SoCalGas provides for review of the above documents are questionable. For example, SoCalGas claims its contractor Negawatt spent 2.5 hours reviewing and suggesting comments on the Draft Dishwasher CASE Report while their employee only spent 5 minutes in reviewing the same document and considering whether or not [to] authorize SoCalGas to endorse it.").

[287] D.98-12-075 at 35. The Commission recognizes that fines and reparations serve distinct purposes; "[t]he purpose of a fine is to go beyond restitution to the victim and to effectively deter further violations by this perpetrator and others", whereas reparations return funds that were improperly collected to victims.

stringent energy efficiency standards in the C&S program went undiscovered for years. It would have remained undiscovered if not for the vigilance and time-consuming investigation of Cal Advocates.

VII. CONCLUSION

For these reasons, the Commission should adopt Sierra Club's recommendations for sanctioning SoCalGas for its years of misusing ratepayer funds to advocate stringent energy efficiency codes and standards at the federal, state, and local levels.

Respectfully submitted,

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