

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Energy Efficiency Rolling Portfolios, Policies,
Programs, Evaluation, and Related Issues.

Rulemaking 13-11-005

**OPENING BRIEF OF THE PUBLIC ADVOCATES
ON THE COMMISSION'S OCTOBER 3, 2019 ORDER TO SHOW CAUSE**

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SUMMARY OF RECOMMENDATIONS

- The Commission should impose \$124 million in fines for Southern California Gas Company's (SoCalGas) failure to comply with Decision 18-05-041's prohibition that SoCalGas refrain from codes and standards advocacy, and the related violations of Rule 1, calculated as shown in Attachment B to this brief:
 - The Commission should order SoCalGas to refund shareholder incentive awards and program expenditures related to SoCalGas's 2018 building codes and appliance standards programs and its 2018-2020 reach codes program;
 - The Commission should prohibit SoCalGas from planning, administering, and implementing any codes and standards programs until independent audits, funded by SoCalGas's shareholders and assessed by the Commission and interested parties, demonstrate that SoCalGas is fit to administer energy efficiency codes and standards programs;
 - The Commission should remove SoCalGas as the statewide lead for the Emerging Technologies program as soon as practical, but not later than January 1, 2022.

I. INTRODUCTION

In accordance with Rule 13.11 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure and the procedural schedule established in the Administrative Law Judge (ALJ) Kao's October 6, 2020, *Email Ruling Revising Schedules for Orders to Show Cause*,¹ the Public Advocates Office at the Commission (Cal Advocates) submits this opening brief on the facts and issues presented in the December 2, 2019 *Assigned Commissioner's Amended Scoping Memo and Ruling for Order to Show Cause against Southern California Gas Company*, (December 2, 2019 Scoping Memo).

As explained in Section III below, Southern California Gas Company (SoCalGas) violated the Commission's order² prohibiting SoCalGas from engaging in ratepayer-funded codes and standards advocacy (Section III A 1) and misrepresented the extent of those activities in its responses to Cal Advocates' data requests (Section III B). SoCalGas, guided by its own interpretation of the order prohibiting its ratepayer-funded codes and standards advocacy, submitted comments to the California Energy Commission (CEC) as recently as October 2020. (Section III D).

The central issue in this Order to Show Cause proceeding is whether SoCalGas complied with the Commission's 2018 order clearly prohibiting SoCalGas from engaging in codes and standards advocacy through 2025.³ The facts and evidence demonstrate that SoCalGas willfully disregarded this order. The facts and evidence also demonstrate that SoCalGas's *modus operandi*, when faced with allegations of misconduct, is to blame other parties for its confusion,⁴ lack of clarity,⁵ or failure to apprise SoCalGas of its misconduct in a manner SoCalGas deems acceptable.⁶ The Commission should not condone this behavior. Instead, the Commission should impose remedies to disabuse SoCalGas of the notions that it need not promptly comply

¹ *Email Ruling Revising Schedules for Orders to Show Cause*, October 6, 2020.

² D.18-05-041, *Decision Addressing Energy Efficiency Business Plans*, adopted May 31, 2018, in Application (A.) 17-01-013 et al., p. 193, Ordering Paragraph 53.

³ D.18-05-041, p. 193, Ordering Paragraph 53.

⁴ See, e.g., fn. 44, (blaming Cal Advocates for its definition of communications related to codes and standards advocacy activities).

⁵ See, e.g., Section III A (1) (b) (blaming other "parties" for their lack of clarity regarding the whether the prohibition included federal codes and standards advocacy, when in fact it was SoCalGas that was unclear).

⁶ Section III C.

with the Commission's orders and that SoCalGas is free to rely on any perceived ambiguities in the Commission's orders without fear of consequences for flouting the rules.

II. BACKGROUND AND PROCEDURAL HISTORY

A. Decision (D.) 18-05-041 prohibited SoCalGas from engaging in ratepayer-funded codes and standards advocacy.

Decision (D.) 18-05-041 (Decision) approved the energy efficiency business plans of eight program administrators, including that of SoCalGas. Cal Advocates' comments on the energy efficiency business plans presented evidence that SoCalGas used ratepayer funds to oppose higher energy efficiency standards.⁷ Specifically, Cal Advocates observed that "since at least 2014 SoCalGas has engaged in a concerted effort to undermine the state's energy efficiency goals related to new energy efficiency codes and standards,"⁸ citing SoCalGas's opposition to the adoption of the United States' Department of Energy's (DOE) amended federal energy conservation standards for residential gas furnaces,⁹ SoCalGas's use of ratepayer-funded studies to undermine gas efficiency standards,¹⁰ and its refusal to collaborate with other utilities to develop a joint analysis of DOE's proposed revisions to strengthen residential furnace standards.¹¹ While these allegations all related to SoCalGas's conduct at the DOE, Cal Advocates' Business Plan Comments also cited SoCalGas's failure to provide the data requested by the CEC in a CEC rulemaking.¹²

Cal Advocates recommended that the Commission prohibit SoCalGas from participating in statewide codes and standards advocacy through the end of the business plan cycle.¹³

⁷ D.18-05-04, pp. 140-141; see also *Final Comments of the Office of Ratepayer Advocates on Energy Efficiency Program Administrators' Business Plan Applications*, filed September 25, 2017 in A.17-01-013 et al. (Cal Advocates Business Plan Comments), pp. 5-14.

⁸ Cal Advocates' Business Plan Comments, p. 5.

⁹ Cal Advocates' Business Plan Comments, pp. 7-8.

¹⁰ Cal Advocates' Business Plan Comments, pp. 8-10.

¹¹ Cal Advocates' Business Plan Comments, p. 10.

¹² Cal Advocates' Business Plan Comments, pp. 12-14.

¹³ D.18-05-041, p. 144; Cal Advocates' Business Plan Comments, p. 16. The Commission declined to grant Cal Advocates' request for further remedies for SoCalGas's misuse of ratepayer funds in the business plan proceeding but invited Cal Advocates to request such relief in this proceeding. D.18-05-041, p. 144. In fact, Resolution 5007-E, issued October 10, 2019, directed the issuance of an order to show cause in this proceeding requiring SoCalGas to explain whether it is entitled to recover the costs of its 2016-2017 codes and standards advocacy from ratepayers, as well as whether SoCalGas's

SoCalGas disputed Cal Advocates' allegations¹⁴ and filed a motion to strike, claiming that the allegations "had no merit whatsoever,"¹⁵ and that SoCalGas's opposition to the proposed DOE revisions to strengthen residential furnace standards was motivated by concerns for SoCalGas customers.¹⁶

The Commission agreed with Cal Advocates. Citing "serious allegations"¹⁷ supported by evidence of SoCalGas's misuse of energy efficiency funds,¹⁸ the Commission concluded that "there is a potential for SoCalGas to misuse ratepayer funds authorized for codes and standards advocacy."¹⁹ To address the risk of SoCalGas's continued misuse of ratepayer funds, the Decision "prohibited SoCalGas from participating in statewide codes and standards advocacy activities, other than to transfer ratepayer funds to the statewide lead for codes and standards, during this business plan period."²⁰

B. Cal Advocates filed a Motion for an Order to Show Cause after learning that SoCalGas continued its codes and standards advocacy activities in blatant disregard of the Decision.

Four weeks after the Commission ordered SoCalGas to cease energy efficiency codes and standards advocacy, Cal Advocates issued data requests to ascertain SoCalGas's compliance with that order.²¹ SoCalGas's responses included a preliminary statement claiming that

conduct warrants other remedies.

¹⁴ *Final Reply Comments of Southern California Gas Company*, A.17-01-013 et al, October 13, 2017, pp. 1-9.

¹⁵ *Southern California Gas Company Motion to Strike Portions of Office of Ratepayer Advocate's Final Comments on Energy Efficiency Program Administrators' Business Plan Applications*, filed October 13, 2017 in A.17-01-013 et al (SoCalGas Motion to Strike), p. 3.

¹⁶ SoCalGas Motion to Strike, pp. 2, 7. The ALJ denied the SoCalGas Motion to Strike. *E-Mail Ruling Denying October 13, 2017 Southern California Gas Company Motion to Strike Portions of Office of Ratepayer Advocates' Final Comments on Business Plan Application*, filed October 13, 2017 in A.17-01-013 et al.

¹⁷ D.18-05-041, p. 144.

¹⁸ D.18-05-041, p. 168, Finding of Fact 77.

¹⁹ D.18-05-041, pp. 140, 144.

²⁰ D.18-05-041, Ordering Paragraph 53, p. 193. The order was effective immediately upon the Commission's adoption of D.18-05-041 on May 31, 2018.

²¹ See *Motion of the Public Advocates Office for an Order to Show Cause Why Southern California Gas Company Should Not Be Sanctioned for Violating a Commission Order and Rule 1.1 of the Commission's Rules of Practice and Procedure*, July 15, 2019 (Motion for an Order to Show Cause), Appendix A

SoCalGas did not view the Decision as prohibiting codes and standards advocacy aimed at the DOE,²² as well as emails and documents that showed SoCalGas's engagement in ratepayer-funded codes and standards advocacy for weeks after the adoption of the Decision.²³ Moreover, SoCalGas's responses to questions about the specific activities related to codes and standards advocacy, and the hours, costs, number of employees involved in those activities, conflicted with emails and documents that revealed ongoing codes and standards advocacy and costs more extensive than described in SoCalGas's responses to those questions.²⁴ Cal Advocates sent four subsequent data requests to elicit the extent and costs of SoCalGas's ratepayer-funded codes and standards advocacy activities following the Decision, the latest in March 2019.²⁵ Though SoCalGas continued to assert its unreasonable view that the Decision did not prohibit codes and

(Public Advocates Office Data Request CalAdvocates-HB-SCG-2018-09, June 29, 2018). Cal Advocates issued data requests to other utilities regarding any communications with SoCalGas regarding codes and standards after adoption of the Decision. See e.g., Motion for an Order to Show Cause, Appendix B (Public Advocates Office Data Request ORA -HB-PGE-2018-14, June 29, 2018).

²² The preliminary statement claimed:

For the purposes of these responses, SoCalGas understands the phrase "energy efficiency codes and standards advocacy" to mean conduct directly concerning statewide energy efficiency codes & standards advocacy, as delineated in Decision 18-05-041. The activities therefore do not include activities for local programs, such as compliance, reach codes, and engagement with the Department of Energy ("DOE"). See Decision (D.) 18-05-041 at 12, 91; SoCalGas Business Plan at 298, PG&E Business Plan at 548, Southern California Edison Business Plan at 224. In addition, SoCalGas has continued to monitor and be passively involved with statewide energy efficiency Codes & Standards advocacy. Therefore, the time, work, and personnel identified in the below responses include instances where SoCalGas employees were, for example, not "participating" in energy efficiency codes and standards (EECS) advocacy but were merely present for a call. This understanding applies to all response below unless it is stated otherwise

²³ Motion for an Order to Show Cause, Appendix A, (SoCalGas July 16, 2018 response to Public Advocates Office Data Request CalAdvocates-HB-SCG-2018-09, pp.3-7/322.)

²⁴ The sole exclusion from D.18-05-041's prohibition was the requirement that SoCalGas transfer funds to the statewide lead for codes and standards activities.

²⁵ Motion for an Order to Show Cause, Appendix C (Public Advocates Office Data Request ORA-EF-SCG-2018-01, July 19, 29, 2018); Appendix D (Public Advocates Office Data Request CalAdvocates-HB-SCG-2018-13, December 10, 2018); Appendix E (Public Advocates Office Data Request Cal Advocates HB-SCG-2019-01, January 16, 2019); Appendix F (Public Advocates Office Data Request Cal Advocates, HB-SCG-2018-03, March 18, 2019).

standards advocacy at the DOE,²⁶ it responded to follow up data requests seeking information about SoCalGas's codes and standards advocacy after the adoption of the Decision. The information contained in those data request responses demonstrates that SoCalGas continued its ratepayer-funded codes and standards advocacy through June 26, 2018.²⁷

On July 15, 2019, Cal Advocates filed a Motion for an Order to Show Cause, alleging that SoCalGas failed to comply with (1) the Decision's order that SoCalGas refrain from ratepayer-funded codes and standards advocacy activities (other than the transfer of ratepayer funds to the statewide lead for such advocacy) and (2) Commission Rule 1.1, which requires that entities appearing before the Commission must never "mislead the Commission or its staff by an artifice or false statement of fact or law."²⁸

Cal Advocates identified \$6,059 in ratepayer-funded costs for SoCalGas's codes and standards advocacy activity after the Decision.²⁹ Cal Advocates then requested that the Commission direct SoCalGas to demonstrate compliance with the Decision's prohibition against continued ratepayer-funded codes and standards advocacy and require SoCalGas to remove any inappropriate charges from the demand-side management balancing account (DSMBA) and other accounts as needed to ensure compliance with the Decision.³⁰ Cal Advocates noted that its discovery also revealed codes and standards activities that were not recorded in the DSMBA, but in SoCalGas's general rate case (GRC) and operations and maintenance accounts.³¹

²⁶ Motion for an Order to Show Cause, Appendix D, p. 21/65 (SoCalGas Response to Public Advocates Office Data Request CalAdvocates-HB-SCG-2018-13, January 7, 2019, p. 1, fn 1.)

²⁷ Motion for an Order to Show Cause, Appendix D, p. 64/65.

²⁸ The full text of Rule 1.1 reads:

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

²⁹ Motion for an Order to Show Cause, p. 4.

³⁰ Motion for an Order to Show Cause, p. 1 (requesting that the Commission require SoCalGas to "demonstrate that all of its charges to ratepayers since June 1, 2018, including balancing account entries in the Demand Side Management Balancing Account (DSMBA) are in compliance" with the Decision); pp. 15-16, including fn. 88.

³¹ Motion for an Order to Show Cause, p. 16, fn. 88. Cal Advocates learned through discovery that a

Cal Advocates recommended that the Commission consider imposing penalties commensurate with SoCalGas's numerous ongoing violations of D.18-05-041 and Rule 1.1, including the company's failure to prevent, detect, disclose, or promptly rectify the violations.³²

C. SoCalGas's July 31, 2019, Response to the Motion for an Order to Show Cause.

SoCalGas's July 30, 2019 Response to the Motion for an Order to Show Cause ³³ admitted that SoCalGas continued to engage in codes and standards advocacy for over a month after the Commission's issuance of the Decision, and identified additional prohibited activities and their costs.³⁴ SoCalGas attempted to minimize those activities,³⁵ and defended them as either: 1) Related to federal codes and standards advocacy, which SoCalGas asserted were not prohibited by the Decision, 2) related to statewide activities that were "purely transitional in nature;" or 3) "a continuation and wrapping up of ongoing" statewide codes and standards advocacy activities to a "logical end date."³⁶ SoCalGas fails to explain the difference between "purely transitional" and wrapping up activities.

SoCalGas disclosed that it met with the Commission's Energy Division staff on July 31, 2018, to discuss whether the Decision should be construed as prohibiting federal codes and standards advocacy.³⁷ According to the Response to Motion for an Order to Show Cause:

The ED representatives recognized that it may be unclear whether the intent of D.18-05-041 was to include federal codes and standards advocacy in its prohibition of SoCalGas participating in statewide codes

SoCalGas employee participated in the federal Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC), and that related costs were charged to SoCalGas's Operations and Maintenance account. SoCalGas also charged the General Rate case for employee participation in a building decarbonization meeting.

³² Motion for an Order to Show Cause, pp. 1, 23.

³³ *Response of Southern California Gas Company (U 904 G) to the Motion of the Public Advocates Office for an Order to Show Cause Why Southern California Gas Company Should Not Be Sanctioned for Violating a Commission Order and Rule 1.1 of the Commission's Rules of Practice and Procedure*, July 30, 2019 (Response to Motion for an Order to Show Cause).

³⁴ Response to Motion for an Order to Show Cause, pp. 1, 2. While SoCalGas cited the June 5, 2019, issuance of the Decision, it did not deny the Decision was effective upon the Commission's May 31, 2019, adoption.

³⁵ Response to Motion for an Order to Show Cause, pp. 2, 3.

³⁶ Response to Motion for an Order to Show Cause, p. 5.

³⁷ Response to Motion for an Order to Show Cause, p. 8.

and standards advocacy, but recommended that SoCalGas take a cautious approach.³⁸

The Response to Motion for an Order to Show Cause stated that after the meeting, SoCalGas decided it would no longer engage in federal codes and standards advocacy, even though SoCalGas claims it continued to believe that it was unclear whether the Decision prohibited such advocacy.³⁹

SoCalGas stated that after receiving the Motion for an Order to Show Cause, it examined the entries recorded in its DSMBA.⁴⁰ SoCalGas asserted that it discovered previously undisclosed consultant activity that occurred not later than July 10, 2018,⁴¹ as well as an accounting error related to the default percentage used to allocate the time SoCalGas employees spend on codes and standards advocacy.⁴² SoCalGas claimed that it was working to correct those errors.⁴³

SoCalGas dismissed Cal Advocates' allegations that SoCalGas's data request responses were misleading and incomplete by characterizing the omitted information as "relatively minor to Motion for an Order to Show Cause and involv[ing] differences in interpretations and expectations."⁴⁴ For example, the Response to Motion for an Order to Show Cause attempted to minimize the fact that SoCalGas failed to disclose three codes and standards advocacy communications that Cal Advocates discovered only through data requests to Pacific Gas and Electric Company (PG&E).⁴⁵ SoCalGas attributed its failure to produce the additional documents on Cal Advocates not following up or requesting additional information from

³⁸ Response to Motion for an Order to Show Cause, p. 8. SoCalGas's representation of the meeting with Energy Division staff is not corroborated with an email confirming the discussion of the prohibition, either from SoCalGas or the Energy Division staff.

³⁹ Response to Motion for an Order to Show Cause, p. 8.

⁴⁰ Response to Motion for an Order to Show Cause, p. 2.

⁴¹ Response to Motion for an Order to Show Cause, pp. 1-2, 11.

⁴² Response to Motion for an Order to Show Cause, pp. 11-12.

⁴³ Response to Motion for an Order to Show Cause, pp. 11-12.

⁴⁴ Response to Motion for an Order to Show Cause, p. 15 ("Cal Advocates appears to take the position that all activity, no matter how nominally related to C&S advocacy was included in the meaning of 'involved in EECS advocacy activities.'").

⁴⁵ Response to Motion for an Order to Show Cause, pp. 2, 12-14.

SoCalGas⁴⁶ This, notwithstanding the fact that Cal Advocates had sent four subsequent data requests in an attempt to obtain details of the codes and standards advocacy undertaken by SoCalGas after the Decision.

SoCalGas disputed that it engaged in misconduct of any sort and disagreed with Cal Advocates' request for sanctions.⁴⁷ SoCalGas stated that it nevertheless would revise its incorrect data request responses "where appropriate" and "transfer the entire amount charged to [energy efficiency] balancing accounts for statewide [energy efficiency] Codes & Standards Advocacy during the period in question to shareholder funds."⁴⁸ SoCalGas characterized this "as a showing of good faith,"⁴⁹ notwithstanding the fact that SoCalGas acted only in response to the Motion for an Order to Show Cause.

D. Cal Advocates' Reply to SoCalGas's Response to the Motion for an Order to Show Cause.

On August 9, 2019, Cal Advocates filed a reply to SoCalGas's Response, recommending that the Commission reject SoCalGas's belated offer to refund the costs of prohibited codes and standards advocacy as an adequate remedy for its misconduct.⁵⁰ Cal Advocates also disputed SoCalGas's claim that the activities SoCalGas identified as transitional were in fact necessary to comply with the Decision.⁵¹ Finally, Cal Advocates pointed out the absurdity of SoCalGas's attempt to minimize the import of its inaccurate and incomplete data request responses with the assertion that Cal Advocates "could have followed up at any time with SoCalGas and request that it provide additional information or explanations," in light of Cal Advocates subsequent data requests attempting to do just that.

⁴⁶ Response to Motion for an Order to Show Cause, p. 16.

⁴⁷ Response to Motion for an Order to Show Cause, pp. 2, 16.

⁴⁸ Response to Motion for an Order to Show Cause, pp. 2, 16.

⁴⁹ Response to Motion for an Order to Show Cause, p. 2.

⁵⁰ *Reply of the Public Advocates Office to the Response of Southern California Gas Company to the Motion of the Public Advocates Office for an Order to Show Cause*, August 9, 2019, (Reply to Response to Motion for an Order to Show Cause) p. 2.

⁵¹ Reply to Response to Motion for an Order to Show Cause, p. 4.

E. SoCalGas amended data request responses on September 11, 2019.

On September 11, 2019, SoCalGas amended its prior data request responses, on claims that the amended responses “provide information on any EE [energy efficiency] federal codes and standards advocacy activity called for by Cal Advocates.”⁵² The amendments increased the total cost of SoCalGas’s codes and standards advocacy after the Decision to \$8731,⁵³ revised the time spent,⁵⁴ and listed additional codes and standards advocacy activities.⁵⁵ SoCalGas did not change the number of employees involved in codes and standards advocacy activities.⁵⁶

While the amended data request responses omitted SoCalGas’ prior claim that it did not view the Decision as prohibiting codes and standards advocacy aimed at the DOE, SoCalGas continued to assert that whether the Decision prohibited federal codes and standards advocacy was unclear:

While SoCalGas continues to believe that it is unclear whether D.18-05-041 covers federal advocacy activities, it has decided to take a cautious approach until there is further clarity provided by the Commission on the issue.⁵⁷

⁵² (Ex.) SoCalGas 01, p. 16.

⁵³ Ex. SoCalGas 01, p. 11:18; pp. 27-30.

⁵⁴ Ex. SoCalGas 01, pp. 17, 18.

⁵⁵ Ex. SoCalGas 01, pp. 21-26.

⁵⁶ SoCalGas insisted that the number of employees should not include SoCalGas employees “that may have spent very minimal time (usually less than five minutes), on activities related to transitioning off of energy efficiency funded EECS [energy efficiency codes and standards], they were not ‘advocacy activities’ and were de minimis.” Ex. SoCalGas 01, pp. 19-20.

For example, SoCalGas failed to identify Mr. Hanway, SoCalGas’s Manager of Energy Programs and Strategy in the Customer Programs and Assistance Department, who reviewed documents and made the determination that SoCalGas would sign comments on the DOE dishwasher petition, which were posted on the DOE website on June 22, 2018. Motion for an Order to Show Cause, Appendix D, p. 34/65. SoCalGas failed to identify its attorney, Elliot Henry, who was apparently involved in SoCalGas’s decision to pause its federal codes and standards advocacy. Motion for an Order to Show Cause, Appendix A, p.114/322. SoCalGas failed to identify three employees who participated in a June 26, 2018 meeting related to building decarbonization that included codes and standards as an agenda topic. Motion for an Order to Show Cause, Appendix D, p.64/65; see also SoCalGas Ex. 02, pp 9;14-10:5.

⁵⁷ Ex. SoCalGas 01, p. 16.

F. The ALJ's October 3, 2019 Order to Show Cause.

On October 3, 2019, ALJ Kao granted Cal Advocates' Motion for an Order to Show Cause⁵⁸ and scheduled a prehearing conference (PHC) for October 22, 2019.

During the PHC, Cal Advocates and SoCalGas identified a disagreement regarding the scope of this Order to Show Cause. According to Cal Advocates the scope should include any expenditures that failed to comply with D.18-05-041, including costs recorded in SoCalGas's GRC and operations and maintenance accounts.⁵⁹ In contrast, SoCalGas asserted that the scope of the Order to Show Cause should be limited to expenditures that SoCalGas recorded in its DSMBA. SoCalGas requested briefing on this issue prior to any other deadlines, because resolution of whether the scope of the proceeding includes costs other than those recorded in the DSMBA would impact discovery and testimony.⁶⁰ Sierra Club, another party to the proceeding, stated that the letter and spirit of the Decision prohibit the use of ratepayer funds to oppose or undermine higher codes and standards, regardless of where the funds were allocated.⁶¹

ALJ Kao declined to rule on the scope or schedule during the PHC and stated that the next step for the proceeding would be issuance of a scoping memo.⁶²

⁵⁸ *Administrative Law Judge Ruling Granting the Motion of the Public Advocate's Office of the Public Utilities Commission and Directing Southern California Gas Company to Show Cause Why It Should Not be Sanctioned by the Commission for Violation of California Public Utilities Code Sections 702, 2107 or 2108 or Rule 1.1 of the Commission's Rules of Practice and Procedure Order to Show Cause Why SoCalGas Should Not Be Sanctioned for Violating a Commission Order and Rule 1.1 of the Commission's Rules of Practice and Procedure*, October 3, 2019 (ALJ Ruling Granting Motion for an Order to Show Cause).

⁵⁹ Reporters Transcript (RT) PHC, October 22, 2019 (RT PHC), p. 258:11-21; see also pp. 265:25—266:23 (Cal Advocates attorney Diana Lee).

⁶⁰ RT PHC, p. 259:11-27; see also pp. 263:7-8, 15-18 (SoCalGas attorney Holly Jones).

⁶¹ RT PHC, p. 256:14-17; see also pp. 260:26-28--261:1-2; and see p. 265:4-15 (narrow reading of the Decision would create loopholes for SoCalGas to continue undermining codes and standards. (Sierra Club attorney Matthew Vespa).

⁶² RT PHC, pp. 268:25—269:1. After the PHC, ALJ Kao issued a ruling on November 13, 2019, directing SoCalGas to provide information about the balancing account that SoCalGas uses to track the costs of its current energy efficiency business plan. SoCalGas filed its *Response of Southern California Gas Company (U 904 G) to Administrative Law Judge's Email Ruling Dated 11/13/19 Confirming Balancing Account Information* on November 20, 2019, in which it confirmed that it used the DSMBA to records costs related to its energy efficiency business plan.

G. The December 2, 2019, Scoping Memo and hearings.

The December 2, 2019 Scoping Memo stated that this Order to Show Cause will consider the allegations that SoCalGas continued to charge ratepayers for codes and standards advocacy after the Commission ordered SoCalGas to cease such advocacy and that SoCalGas submitted misleading information regarding its continuing advocacy.⁶³ The Scoping Memo further noted that if the Commission determines that those allegations are accurate, then it will consider whether to impose sanctions, including fines pursuant to Sections 2107 and 2108 of the Public Utilities Code.⁶⁴

The Scoping Memo declined to order briefing at the start of the proceeding on the issue of whether costs outside the DSMBA are within scope and declined to exclude the codes and standards advocacy costs that Cal Advocates identified as recorded in accounts other than the DSMBA from the scope of this Order to Show Cause proceeding.⁶⁵

The Scoping Memo adopted a schedule⁶⁶ that provided time for settlement talks, followed by the filing of a joint stipulation of facts,⁶⁷ the submission of testimony, and hearings and briefs if parties were not able to reach a settlement. Cal Advocates⁶⁸ and SoCalGas⁶⁹ served testimony in accordance with the Scoping Memo, but the scheduled hearings were delayed to allow additional time for settlement talks (which ultimately proved unsuccessful), and due to issues related to the availability of resources for remote hearings.

⁶³December 2, 2019 Scoping Memo, pp. 2-3.

⁶⁴ December 2, 2019 Scoping Memo, p. 2.

⁶⁵ December 2, 2019 Scoping Memo, p. 2.

⁶⁶ December 2, 2019 Scoping Memo, pp. 3-4.

⁶⁷ *Joint Statement of Stipulated Facts October 3, 2019, Order to Show Cause Against Southern California Gas Company*, March 13, 2020.

⁶⁸ Consistent with the Scoping Memo, Cal Advocates served its prepared direct testimony on April 24, 2020. Cal Advocates served errata to that Testimony on October 26, 2020 (Ex. Cal Advocates 01E).

⁶⁹ Consistent with the Scoping Memo, on January 10, 2020 SoCalGas served testimony related to its codes and standards advocacy, verified by an officer, (SoCalGas Ex. 01 and SoCalGas Ex 02); on March 27, 2020, SoCalGas served testimony regarding its adherence to the Decision and Commission Rules (SoCalGas Ex 03); on May 15, 2020, SoCalGas served rebuttal testimony (SoCalGas Ex. 04).

In addition to serving the testimony as provided in the schedule, SoCalGas filed motions on August 24, 2020,⁷⁰ and October 23, 2020,⁷¹ requesting the acceptance of additional testimony from its witness Ms. Haines. Ms. Haines' testimony described SoCalGas's ongoing codes and standards advocacy in the CEC's proceeding related to California's requirements for new construction of, and additions and alterations to, residential and nonresidential buildings.⁷² Both the testimony⁷³ and the accompanying motions⁷⁴ contended that because SoCalGas uses GRC funds rather than energy efficiency funds for its ongoing codes and standards advocacy at the CEC, the Decision does not prohibit such advocacy.

On November 2 and 3, 2020, the Commission held remote hearings at which witnesses for Cal Advocates and SoCalGas were subject to cross examination. Sierra Club participated in the cross examination of the witnesses.

H. Cal Advocates and Sierra Club filed a Motion to Consolidate this proceeding's two Orders to Show Cause on October 22, 2020, which the ALJ denied on November 20, 2020.

On October 22, 2020, Cal Advocates and Sierra Club filed a motion to consolidate this Order to Show Cause with the other Order to Show Cause regarding SoCalGas' misconduct that is currently pending in this proceeding.⁷⁵ The Motion to Consolidate contended that there were

⁷⁰ *Motion of Southern California Gas Company (U 904 G) for Leave to Serve Supplemental Prepared Direct Testimony in the Order to Show Cause Why SoCalGas Should Not Be Sanctioned for Violating a Commission Order ad Rule 1.1 of the Commission's Rules of Practice and Procedure (Issued October 3, 2019)*, August 24, 2020 (Motion to Serve Supplemental Testimony). Cal Advocates and Sierra Club filed a response to SoCalGas's Motion to Serve Supplemental Testimony indicating that while they did not oppose the motion, they did not agree with SoCalGas's conclusion that the Decision allows SoCalGas to continue its ratepayer-funded codes and standards advocacy as long as the source of the funds is not energy efficiency funds. *Response of the Public Advocates Office and Sierra Club to the Motion of Southern California Gas Company (U 904 G) for Leave to Serve Supplemental Prepared Direct Testimony*, September 9, 2020, p. 3.

⁷¹ *Motion of Southern California Gas Company (U 904 G) for Leave to Serve Second Supplemental Prepared Direct Testimony in the Order to Show Cause Why SoCalGas Should Not Be Sanctioned for Violating a Commission Order ad Rule 1.1 of the Commission's Rules of Practice and Procedure (Issued October 3, 2019)*, October 23, 2020 (Motion to Serve Second Supplemental Testimony).

⁷² Ex. SoCalGas 05, p. 2. Ms. Haines' testimony states that the CEC opened a new docket, 19-BSTD-03, for the 2022 Energy Code Pre-Rulemaking.

⁷³ Ex. SoCalGas 05, p. 4:3-7; Ex. SoCalGas 06, p. 3:6-11.

⁷⁴ Motion to Serve Supplemental Testimony, pp. 4-8; Motion to Serve Second Supplemental Testimony, pp. 1, 3.

⁷⁵ *Motion of the Public Advocates Office and Sierra Club to Consolidate Orders to Show Cause Related*

common issues of fact and law and that it would be more efficient for the Commission to issue a single decision, especially because the conduct at issue in each of the Orders to Show Cause is relevant to consideration of fines in the other Order to Show Cause.⁷⁶ SoCalGas opposed the Motion to Consolidate. ALJ Kao denied the Motion to Consolidate on November 20, 2020, stating that the “issues of law and fact in each order to show cause are not sufficiently related to warrant consolidation.”⁷⁷

III. ARGUMENT

A. SoCalGas continued its codes and standards advocacy activities after the Commission ordered SoCalGas to stop.

1. SoCalGas continued to record costs of ratepayer-funded codes and standards advocacy in the DSMBA.

SoCalGas witness Darren Hanway testified that after the Commission’s adoption of the Decision,⁷⁸ SoCalGas “immediately” began to assess the programs and activities implicated by the Decision.⁷⁹ According to SoCalGas, it “was working to understand and implement the prohibition in D.18-05-041” for 40 days.⁸⁰ SoCalGas claims its 40 days of continued codes and standards consisted of: (1) activities related to federal codes and standards advocacy that SoCalGas asserts were not prohibited by the Decision,⁸¹ (2) statewide codes and standards activities that were “purely transitional,” and (3) “a wrapping up of ongoing [codes and standards] advocacy activities to a logical end date.”⁸² SoCalGas fails to explain the difference between “purely transitional” and “wrapping up” activities., but regardless of any purported

to Southern California Gas Company’s Compliance with Commission Orders, October 22, 2020 (Motion to Consolidate).

⁷⁶ Motion to Consolidate, pp. 4-5, 6.

⁷⁷ *E-Mail Ruling Denying Motion to Consolidate Orders to Show Cause*, November 20, 2020, p. 7.

⁷⁸ SoCalGas’s regulatory and policy team sent out summaries the of the Commission’s May 31, 2018 meeting at which the Commission adopted Decision within a day or two after the meeting. RT p.18:7-13, (SoCalGas witness Mr. Hanway).

⁷⁹ SoCalGas admits that it “understands” the prohibition to be limited to DSMBA-funded activities. Ex. 01 SoCalGas, pp. 6:16-5:1; Ex. SoCalGas 3, pp. 4: 19-5:6.

⁸⁰ Ex. SoCalGas 01, p. 9:5-6.

⁸¹ Ex. SoCalGas 03, pp. 6:20-7:1.

⁸² Ex. SoCalGas 01, p. 9:7-10.

distinction, SoCalGas’s activities exceeded those necessary to implement the Decision’s prohibition.

The Commission should reject SoCalGas’s excuses for its delayed compliance with the Decision’s clearly stated prohibition against ongoing codes and standards advocacy activities. SoCalGas’s ‘ignorance is an excuse’ explanation for its failure to cease its federal codes and standards advocacy relies on a reading of the Decision that simply is not credible, given the basis for the Decision’s prohibition. Even if one were to accept SoCalGas’s implausible interpretation of the Decision, there is no justification for SoCalGas’s unreasonable delay in seeking clarification of the Decision (See Section III A (1)(a) below) or its flagrant disregard of the prohibition against ratepayer-funded advocacy at the state level (as recorded in the DSMBA) for well over a month (See Section III A (1) (b) below).

**a) SoCalGas’s claim that the Decision could be
construed as allowing continued federal codes
and standards advocacy is not credible.**

SoCalGas asserts that the Decision only prohibited activities at the statewide level, rather than at the federal level.⁸³ SoCalGas’s tortured interpretation ignores the unambiguous language of the Decision, which prohibits SoCalGas from engaging in any ratepayer-funded codes and standards advocacy:

We are prohibiting SoCalGas from *using ratepayer funds* to conduct codes and standards advocacy, which we find reasonable based on the Commission’s clear policy intent for such funds and on evidence submitted by [the Public Advocates Office]⁸⁴ of SoCalGas’s past contravention of that policy intent.⁸⁵

The Decision does not distinguish codes and standards adopted at the state level from those adopted at the federal level, nor does it create an exception for federal-level advocacy.⁸⁶ To the contrary, because the Decision specifically cites Cal Advocates’ allegations of SoCalGas’s misconduct in the DOE’s residential furnace rulemaking⁸⁷ to conclude that the risk of additional

⁸³ Ex. SoCalGas 03, pp. 6:20—7:1.

⁸⁴ The Public Advocates Office was known as the Office of Ratepayer Advocates when the Decision was adopted.

⁸⁵ D.18-05-041, pp. 150-151 (emphasis in original).

⁸⁶ In fact, the word “federal” appears only once in the body of the Decision, citing allegations SoCalGas’s misconduct at the Department of Energy. D.18-05-041, p. 141.

⁸⁷ D.18-05-041, pp. 140-141.

misconduct justifies prohibiting SoCalGas from codes and standards advocacy through 2025, it can only reasonably be construed as prohibiting such advocacy at both the state and federal levels.⁸⁸

In light of the risk of ongoing SoCalGas misconduct, Ordering Paragraph 53 of the Decision “prohibited SoCalGas from participating in statewide codes and standards advocacy activities other than to transfer ratepayer funds to the statewide lead for codes and standards, during this business plan period.”⁸⁹ Consistent with that recognized risk, the only reasonable interpretation of the order’s use of “statewide” is that it refers to not to the government entity that adopts the codes and standards, but to the statewide program for funding codes and standards advocacy that existed at the time the Decision was adopted.⁹⁰ In its discussion of its rationale for the prohibition, the Decision cites extensively to Cal Advocates’ evidence of SoCalGas activities at the federal level,⁹¹ which clearly demonstrates that the Commission’s concern with SoCalGas’s codes and standards advocacy was not limited to its advocacy at the state level. Moreover, interpreting the Decision as allowing SoCalGas to continue its federal advocacy depends on the dubious premise that the Commission intended to impose a prohibition that would permit SoCalGas to continue advocating at the DOE, the very entity where SoCalGas engaged in the alleged misconduct cited in the Decision.

SoCalGas’s comments on the proposed decision⁹² are also at odds with its claim that the Decision prohibited activities at the statewide but not the federal level. In comments on the PD SoCalGas argued that:

The PD’s complete elimination of SoCalGas from SW [statewide] Codes & Standards Advocacy Programs should not stand.⁹³

⁸⁸ D.18-05-041, Ordering Paragraph 53, p. 193.

⁸⁹ D.18-05-041, Ordering Paragraph 53, p. 193.

⁹⁰ D.16-08-019, p. 61 "Statewide means: A program or subprogram that is designed to be delivered uniformly throughout the four large Investor-Owned Utility service territories."

⁹¹ D.18-05-041, pp. 140-141.

⁹² *Proposed Decision Addressing Energy Efficiency Business Plans*, mailed April 4, 2018 in A.17-01-013 et al (PD). The PD prohibited SoCalGas from codes and standards advocacy using language identical to that adopted in the Decision. See PD, p. Ordering Paragraph 52.

⁹³ *Comments of Southern California Gas Company (U 904 G) to Proposed Decision Addressing Energy Efficiency Business Plans*, filed April 24, 2018 in A.17-01-013 et al (SoCalGas Comments on PD), pp. 7-8.

[I]t is discriminatory to decide that because SoCalGas highlighted serious flaws with a proposed Department of Energy (“DOE”) standard, the company should be eliminated from SW [statewide] Codes & Standards Advocacy Programs.⁹⁴

In arguing against “complete elimination” from statewide codes and standards advocacy based on its advocacy at the DOE SoCalGas effectively acknowledged that the Decision’s prohibition included federal advocacy, SoCalGas’s comments on the PD did not seek to clarify whether, if adopted, SoCalGas would be prohibited from continuing its federal advocacy at the DOE. Even if SoCalGas believed that the Commission intended such an enormous loophole, SoCalGas’s failure to seek confirmation that the PD, if adopted as written, would allow SoCalGas to continue its federal advocacy reflects a reckless disregard of its obligation to comply with the Decision once adopted.

SoCalGas’s interpretation that it could continue federal codes and standards advocacy relied on the following sentence in SoCalGas’s January 17, 2017, Energy Efficiency Business Plan:

In the near-term, the statewide Building Code & State Appliance Standards subprograms will be separated from the National (and possibly International) Standards subprogram and activities will remain local.⁹⁵

SoCalGas claims that this sentence from its own 2017 business plan, coupled with the Decision’s statement that aspects of the business plans “not discussed or otherwise decided” should be treated as approved,⁹⁶ led SoCalGas to conclude that its proposed subprogram for national standards before the DOE was approved as a local program.⁹⁷

SoCalGas testified that it therefore “interpreted D.18-05-041’s prohibition of SoCalGas engaging in statewide C&S [codes and standards] advocacy as not including federal C&S advocacy given that the Decision approved the change to have federal C&S advocacy administered locally.”⁹⁸ Cal Advocates’ witness Mr. Castello testified that SoCalGas’s 2017 business plan statement that “the National standards subprogram and activities will remain local”

⁹⁴ SoCalGas Comments on PD, pp. 8-9.

⁹⁵ See Ex. SoCalGas 22, p. 6.

⁹⁶ D.18-05-041, p. 12.

⁹⁷ Ex. SoCalGas 03, p.7:8-11.

⁹⁸ RT, p.139:9-11. (Cal Advocates witness Stephen Castello).

is confusing because “[s]omething would have to be local in the first place to remain local.”⁹⁹ Moreover, contrary to SoCalGas’s claims,¹⁰⁰ the pages in the 2017 business plans of PG&E and Southern California Edison Company (SCE) cited by SoCalGas were silent on whether their new federal codes and standards programs would be administered locally.¹⁰¹ Thus, SoCalGas’s interpretation of the Decision as allowing SoCalGas’s continued federal advocacy at the DOE implausibly relies on a single sentence in its business plan that the Decision does not discuss and disregards the Commission’s clear intent that SoCalGas cease all codes and standards advocacy.

b) SoCalGas unreasonably delayed seeking clarification of D.18-05-041.

SoCalGas claims that it “initially interpreted federal C&S advocacy activity as not included in the prohibition,” and makes the unsupported claim that “the Decision’s language may not be clear to other parties, including Cal Advocates.”¹⁰² SoCalGas contends that given the purported lack of clarity and “apparent uncertainty” among parties about whether the Decision prohibited SoCalGas from engaging in federal advocacy,¹⁰³ SoCalGas “put a pause” on federal

⁹⁹ RT, p. 139:10-11 (Cal Advocates witness Stephen Castello). SoCalGas claims that the business plans of PG&E and Southern California Edison Company SCE also proposed that to establish a new federal level codes and standards advocacy program that would be “*administered locally rather than statewide.*” Ex. SoCalGas 4, p.4:2-4 (citations omitted.)

¹⁰⁰ Ex. SoCalGas 04, p. 4:2-4 “SoCalGas, Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SCE) all proposed in their Business Plans to establish a new federal level C&S [codes and standards] subprogram that would be *administered locally rather than statewide.*” (Emphasis in original).

¹⁰¹ While PG&E and SCE’s business plans on the pages cited by SoCalGas discuss separating statewide from national codes and standards, they do not mention whether the national codes and standards program would be administered at the local level. See SoCalGas Ex. 24, p.24 (page 224 of SCE’s January 17, 2017 Energy Efficiency Business Plan, describing SCE’s proposed “National and International Codes and Standards Subprogram” with no mention that the program would be administered locally); SoCalGas Ex. 23, p. 3 (excerpt from PG&E’s January 17, 2017 Energy Efficiency Business Plan, describing PG&E’s “Advocacy to Support Building Codes and Appliance Standards” proposal with no mention that the program would be administered locally).

¹⁰² Ex. SoCalGas 04, p. 5:14-16. SoCalGas cites Cal Advocates initial data request seeking information about SoCalGas’s compliance with the Decision as evidence that it “may not be clear”: to Cal Advocates whether the Decision prohibits federal codes and standards advocacy. Ex. SoCalGas 04, p. 5, fn. 14. However, during cross examination, SoCalGas admitted that the uncertainty of “other parties” regarding the scope of the Decision’s prohibition referred only to SoCalGas at the time it decided to “put a pause” on its federal advocacy around June 25, 2018. RT, p. 23:2—24 (“The uncertainty at the time was the internal decision around what the decision stated -- or, sorry, an internal assessment around what the decision stated versus what could have been the intent of the decision. And so it wasn’t in response to a particular set of feedback from a program administrator or from a party specifically at that time.”)

¹⁰³ Ex. SoCalGas 04, p. 5:15-16.

codes and standards advocacy, including deciding not to sign a DOE comment letter related to cooking top test procedures.¹⁰⁴

Prior to pausing its federal codes and standards advocacy, SoCalGas and its consultant attended meetings, edited documents,¹⁰⁵ and approved the submission of comments to the DOE that included SoCalGas's name and logo.¹⁰⁶ SoCalGas' consultants continued this work until July 10, 2018, well after SoCalGas claims that it put a "pause" on its federal codes and standards advocacy.¹⁰⁷

SoCalGas met with Energy Division Staff on July 31, 2018,¹⁰⁸ a full two months after the adoption of the Decision. Mr. Hanway claimed that the Energy Division staff was not even familiar with SoCalGas's proposal to change the administration of federal codes and standards advocacy to a local program,¹⁰⁹ which is the linchpin of SoCalGas's argument that the prohibition does not include federal codes and standards advocacy. SoCalGas contends that the Energy Division representatives:

... recognized that while the language may support SoCalGas' interpretation, the likely intent of D.18-05-041 was to include federal C&S in its prohibition of SoCalGas participating in statewide C & S [codes and standards] advocacy, as that was the basis of the issue brought forth by Cal Advocates.¹¹⁰

SoCalGas provided no written confirmation to support its claim regarding the Energy Division staff's interpretation of the Decision's prohibition or its recommendation to SoCalGas, so the record evidence on this issue is limited to SoCalGas's testimony and its Response to the Order to Show Cause. Moreover, speaking with Commission staff is not the same as obtaining clarification from the Commission in response to a petition for modification of the Decision.

¹⁰⁴ Ex. SoCalGas 04, p. 5:16-18.

¹⁰⁵ Timeline of SoCalGas's Emails, meetings, and calls related to Codes and Standard Advocacy after the Commission's adoption of Decision 18-05-041 on May 31, 2018 through June 28, 2018, appended to this Attachment A.

¹⁰⁶ Motion for an Order to Show Cause, Appendix A, p. 243/322.

¹⁰⁷ SoCalGas Ex. 1, p. 71.

¹⁰⁸ SoCalGas witness Mr. Hanway testified that SoCalGas can request meetings with the Energy Division staff, and that SoCalGas uses those meetings to seek clarification from Energy Division staff. RT, p. 17:6-10.

¹⁰⁹ RT, p.60:13-18 (SoCalGas witness Mr. Hanway).

¹¹⁰ Ex. SoCalGas 04, p. 5:22-24.

SoCalGas contends that it decided to refrain from federal codes and standards advocacy shortly after meeting with the Energy Division staff,¹¹¹ but refused to relinquish its assertion that it was unclear whether the Decision prohibited federal codes and standards advocacy.¹¹²

SoCalGas's lackadaisical attitude regarding clarifying the prohibition in the Decision is diametrically opposed to the alacrity with which it sought clarification of the Commission decision that implemented the energy efficiency risk-reward incentive mechanism.¹¹³ SoCalGas, along with other program administrators, filed a petition for modification of D.07-09-043 seeking to "clarify and modify" the implementation of the energy efficiency shareholder incentive mechanism that the Commission had adopted six weeks earlier.¹¹⁴ In contrast, it took SoCalGas two months before it even met with the Energy Division staff to discuss the prohibition in D.18-05-041. SoCalGas claims that it left the meeting with the Energy Division staff unconvinced that the Decision prohibited SoCalGas from engaging in federal codes and standards advocacy,¹¹⁵ but SoCalGas never filed a petition to modify seeking the Commission's clarification of its order.

Notwithstanding SoCalGas's claim that it adopted a "cautious approach" after meeting with the Energy Division staff, SoCalGas took no action to revise its data request responses to Cal Advocates or begin the process of removing improper charges from the DSMBA until after Cal Advocates filed its Motion for an Order to Show Cause.¹¹⁶ Thus, SoCalGas's approach was far from cautious. Instead, SoCalGas's conduct demonstrated that it did not treat the prohibition as an order that SoCalGas must obey or face the risk of penalties.

¹¹¹Ex. SoCalGas 04, 6:1-3.

¹¹² Response to Motion to Order to Show Cause, p. 8. Ex. SoCalGas 04, p. 16.

¹¹³ D.07-09-043 *Interim Opinion on Phase 1 Issues: Shareholder Risk/Reward Incentive Mechanism for Energy Efficiency Programs*, adopted in Rulemaking (R.) 06-04-010 on September 20, 2007 and issued September 25, 2007.

¹¹⁴ *Petition for Modification of Decision 07-09-043 by Pacific Gas and Electric Company (U 39 M), Southern California Edison Company (U 338 E), San Diego Gas & Electric Company (U 902 M), and Southern California Gas Company (U 904 G)*, filed October 31, 2007, in R. 06-04-010.

¹¹⁵ Ex. SoCalGas 01, p. 16.

¹¹⁶ Mr. Hanway, SoCalGas's Manager of Energy Programs and Strategy in the Customer Programs and Assistance Department, testified that he was not aware of any discussions regarding revising SoCalGas's data request responses or moving the costs of its post-Decision codes and standards advocacy from the DSMBA to shareholder-funded accounts in the timeframe shortly after the July 31, 2018, meeting with the Energy Division staff. RT, p.30:7—12; pp. 30:18—31:1.

c) SoCalGas’s statewide codes and standards advocacy activities funded through its DSMBA exceeded those needed to comply with the Decision.

Separate and apart from its ongoing federal codes and standards advocacy activities, which SoCalGas unpersuasively argues it thought were not prohibited by the Decision, SoCalGas acknowledges that it continued to engage in statewide codes and standards advocacy after adoption of the Decision. SoCalGas falsely claims that these activities were both brief and necessary. SoCalGas testified that after the issuance of the Decision, it began “to transition off of the activities impacted [energy efficiency] EE [codes and standards] C&S advocacy activity” and was “wrapping up ongoing projects which had started prior to the issuance of the Decision.”¹¹⁷ However, the Decision prohibiting SoCalGas from codes and standards advocacy contains no exception for “wrapping up” ongoing projects.¹¹⁸

SoCalGas states that on June 1 and June 8, 2018, it notified the Los Angeles Department of Water and Power (LADWP) that going forward, PG&E would lead statewide lighting codes and standards efforts.¹¹⁹ Cal Advocates recognized that these communications, which reflect SoCalGas’s disengagement from codes and standards advocacy, were transition activities necessary to implement the Decision’s prohibition.¹²⁰ However, SoCalGas’s emails and documents show that its activities far exceeded those necessary to transition out of codes and standards advocacy. Among other things, between June 1, 2018 and June 26, 2018 SoCalGas engaged in the following:¹²¹

¹¹⁷ Ex SoCalGas 03, p.5:21-22.

¹¹⁸ D.18-05-041, Ordering Paragraph 53, p. 193. The sole exclusion to the Decision’s order prohibiting SoCalGas from codes and standards advocacy is transferring ratepayer funds to the statewide lead for codes and standards.

¹¹⁹ Response to Motion for an Order to Show Cause, Appendix A Timeline of Activities Pertaining to Energy Efficiency Codes & Standards Program Advocacy, see also Motion for an Order to Show Cause, Appendix a, pp. 13, 14.

¹²⁰ Motion for an Order to Show Cause, p. 3, fn. 8.

¹²¹ The activities listed above do not include federal codes and standards advocacy.

- SoCalGas's Customer Programs Advisor attended a meeting regarding CEC's electric pool pump standards.¹²²
- SoCalGas's Customer Programs Advisor reviewed and edited the 14-page scope of work of a Request for Proposals (RFP) for a consultant to develop energy efficient standards for non-residential buildings.¹²³
- SoCalGas's Customer Programs Advisor reviewed and edited the 40-page draft Codes and Standards Enhancement (CASE) report on hearth products,¹²⁴ which recommended revisions to California's Title 20, ¹²⁵ which was posted on the California Energy Commission's web site, with SoCalGas's name and logo on the report, on June 11, 2018.¹²⁶
- SoCalGas's Customer Programs Advisor reviewed and edited a draft Commercial Dryer Reproducibility Memo intended for the CEC.¹²⁷
- SoCalGas's Customer Programs Advisor emailed their interest in attending a conference call to learn about San Diego Gas & Electric Company's integration study of the 2019 Title 20 and Title 24 impacts of reported 2017 customer programs measures.¹²⁸
- SoCalGas's Customer programs Advisor participated in a 30-minute call regarding Title 20 electric fan standards.¹²⁹

Thus, the record makes clear that SoCalGas continued to attend codes and standards advocacy meetings, edit codes and standards advocacy documents, authorized the publication of a CASE report with SoCalGas's name and logo on the CEC web site, and engaged in other non-

¹²² Motion for an Order to Show Cause, Appendix A, pp.116/322 (PG&E email summarizing the meeting, sent to the SoCalGas Customer Programs Advisor, among others).

¹²³ Motion for an Order to Show Cause, Appendix A, pp.122-135/322 (2020 Non Res SOW RFP); p.136/322 (June 7, 2018 transmittal email from SoCalGas Customer Programs Advisor to PG&E employee.)

¹²⁴ Motion for an Order to Show Cause, Appendix A, pp. 48-88/322 (Draft CASE Report on Hearth Products/SoCalGas).

¹²⁵ Motion for an Order to Show Cause, Appendix A.

¹²⁶ Motion for an Order to Show Cause, Appendix A, p.163/322 consultant sent June 11.2018 email stating that the Statewide CASE Report on Hearth Products had been submitted to the CEC. The June 11. 2018 CASE Hearth Products report is available at: <https://efiling.energy.ca.gov/GetDocument.aspx?tn=223782&DocumentContentId=53971>.

¹²⁷ Motion for an Order to Show Cause, Appendix A, p. 36/322.

¹²⁸ Motion for an Order to Show Cause, Appendix A, p.274 /322.

¹²⁹ Motion for an Order to Show Cause, Appendix A, p. 303/322 (June 26, 2018 email from consultant to the SoCalGas Customer Programs Advisor and other IOU employees summarizing the 30-minute call re Title 20 electric fans); Appendix D, p. 64/65.

transition activities well after the Commission ordered SoCalGas to stop its ratepayer-funded codes and standards advocacy.

To fully comply with the Decision, SoCalGas simply needed to notify other parties that it would no longer engage in codes and standards advocacy as it claims to have done with LADWP. Instead, SoCalGas opted to continue its codes and standards advocacy.

c. SoCalGas failed to treat disengaging from codes and standards advocacy as a high priority.

SoCalGas witness Mr. Hanway testified that after the Commission's adoption of the Decision,¹³⁰ SoCalGas "immediately" began to assess the programs and activities implicated by the Decision.¹³¹ In contrast to these claims, the facts show that SoCalGas delayed seeking clarification from Energy Division staff and failed to treat disengaging from codes and standards advocacy as a high priority.

SoCalGas's Customer Programs Advisor received more than 70 emails regarding codes and standards advocacy between June 1 and June 26, 2018.¹³² None of the SoCalGas's Customer Programs Advisor's emails reflect an attempt to disengage from codes and standards activity until June 25, 2018. By that date, there had been three communications between PG&E employees and SoCalGas employees related to SoCalGas's participation in codes and standards advocacy.¹³³ Even after the June 25, 2018 emails requesting the removal of SoCalGas's name from DOE comments on cooking top test procedures¹³⁴ and electric vehicle service equipment,¹³⁵ the SoCalGas Customer Programs Advisor participated in a CEC Title 20 standards discussion.¹³⁶

¹³⁰ SoCalGas's regulatory and policy team sent out summaries the of the Commission's May 31, 2018 meeting at which the Commission adopted Decision within a day or two after the meeting. RT, p.18:7-13, SoCalGas witness Darren Hanway.

¹³¹ SoCalGas admits that it "understands" the prohibition to be limited to DSMBA funded activities. Ex. 01 SoCalGas, pp.6:16-5:1; Ex. SoCalGas 03, pp.4: 19-5:6. See also Ex. SoCalGas 04, p.5:13.

¹³² See Attachment A.

¹³³ The three communications were a June 15, 2018 text message from a PG&E employee to Erin Brooks, SoCalGas's regulatory policy manager, a June 22, 2018 phone call from a PG&E attorney to Elliot Henry, a SoCalGas attorney (Motion for an Order to Show Cause, Appendix B, p. 9/9) and a June 25 email from a PG&E attorney to Elliot Henry (Motion for an Order to Show Cause, Appendix A, p..114/322.

¹³⁴ Motion for an Order to Show Cause, Appendix A, p. 283/322.

¹³⁵ Motion for an Order to Show Cause, Appendix A, p. 286/322.

¹³⁶ Motion for an Order to Show Cause, Appendix B, p. 9/9.

Indeed, there is nothing in the documents SoCalGas provided that shows either effort or intent to curtail its codes and advocacy efforts prior to June 25, 2018. For example, SoCalGas's Manager of Energy Programs and Strategy in the Customer Programs and Assistance Department, Mr. Hanway, received an email on June 12, 2018, regarding future codes and standards meetings with other utilities,¹³⁷ but there is no email response from Mr. Hanway indicating that SoCalGas will not participate going forward. Similarly, on June 19, 2018, Mr. Hanway and SoCalGas's Customer Program Advisor received an email inviting SoCalGas, along with other program administrators, to a presentation on the impacts of statewide codes and standards programs.¹³⁸ Rather than using the invitation as an opportunity to disengage from codes and standards advocacy, on June 21, 2018, the Customer Programs Advisor expressed interest in attending.¹³⁹

SoCalGas touts as evidence of its efforts to disengage from codes and standards advocacy a June 8, 2018 email in which its Customer Programs Advisor "respectfully declines" a request from a PG&E employee to serve on a panel scoring responses to an RFP.¹⁴⁰ However, the email is silent on the reason why the Customer Programs Advisor declined to serve and comes only a day after the SoCalGas Customer Programs Advisor sent an email with comments on a document to the same PG&E employee. Thus, on its face, the June 8, 2018 email provides no indication that SoCalGas was "disengaging" from codes and standards advocacy activities, which continued through June 26, 2018 for statewide activities recorded in the DSMBA, and until July 10, 2018 for federal codes and standards advocacy.

Even after SoCalGas asserts that it became aware of the need to pause its federal codes and standards advocacy, it failed to treat the matter as a high priority. On June 22, 2018, PG&E's attorney and SoCalGas attorney Elliot Henry discussed "natural gas cooktop test procedure comments."¹⁴¹ While SoCalGas claims that its attorney confirmed that SoCalGas would not be signing those comments during the call,¹⁴² three days later, when the comments

¹³⁷ Motion for an Order to Show Cause, Appendix A, p. 172/322.

¹³⁸ Motion for an Order to Show Cause, Appendix A, pp.221, 274/322.

¹³⁹ Motion for an Order to Show Cause, Appendix A, p. 247/322.

¹⁴⁰ Ex. SoCalGas 21, p. 8.

¹⁴¹ Motion for an Order to Show Cause, Appendix B, p. 9.

¹⁴² Response to Motion for an Order to Show Cause, p. 13.

were due, the PG&E attorney noted their understanding that SoCalGas was still involved in advocacy on the issue:

Following up on our conversation from Friday, my team just informed me that SoCalGas remains a signatory for the natural gas cooktop test procedures comments that are going to be sent momentarily. [Customer Program Advisor] has been the contact person in your shop. Do you know if SoCalGas would still like to be a signatory to the comments?¹⁴³

A Cal Advocates' data request to PG&E seeking codes and standards advocacy communications between PG&E and SoCalGas after adoption of the Decision also revealed a June 28, 2018 phone call between a PG&E director and a SoCalGas director to discuss the roles of PG&E and SoCalGas in codes and standards.¹⁴⁴ SoCalGas did not contest that the call occurred, but claimed to have no evidence of the call:

SoCalGas has no evidence that this phone call occurred. This meeting was not on the calendar of SoCalGas' Director, SoCalGas has no associated emails confirming the call, and the SoCalGas Director has no recollection of this particular call. Although SoCalGas does not contest that a phone call may have occurred, it has not included it in the activities identified above since it has no evidence of the call.¹⁴⁵

SoCalGas's lack of any evidence or recollection regarding a phone call to discuss its role in codes and standards advocacy after the Decision raises questions about its record keeping and forthrightness. Nonetheless, it is clear that prior to the June 22, 2018 conversation and follow up email from a PG&E attorney on June 25, 2018, SoCalGas remained engaged in federal codes and standards advocacy. Only after the exchange above did SoCalGas's belatedly decide to pause its federal codes and standards advocacy. SoCalGas has presented no evidence in this proceeding showing that its "pause" was in effect prior to June 22, 2018. At best SoCalGas' claims show that SoCalGas did not treat the Decision's prohibition seriously, but rather, as something it could adhere to if and when it chose to do so.

¹⁴³ Motion for an Order to Show Cause, Appendix A, p. 114/322 (emphasis added).

¹⁴⁴ Motion for an Order to Show Cause, Appendix B, p. 9/9.9

¹⁴⁵ Ex. SoCalGas 01, p. 24.

d) SoCalGas used ratepayer funds for codes and standards advocacy until the Order to Show Cause issued.

SoCalGas testified that “in an abundance of caution and as a showing of good faith,” it transferred the costs of its post-Decision codes and standards advocacy from the DSMBA to shareholder funded accounts.¹⁴⁶ Cal Advocates issued a data request seeking information about when SoCalGas transferred those costs, including the amounts and dates of the transfers, the accounts from which the costs were transferred, the accounts to which the costs were transferred and the journal entries¹⁴⁷ for the transfers.¹⁴⁸ SoCalGas’ response to that data request included a spreadsheet indicating that while certain transfers occurred as early as August 16, 2019, the transfers of all the costs to accounts that would automatically be excluded from ratepayer funding were not finalized until January 23, 2020.¹⁴⁹

SoCalGas testified that for accounting purposes, it assigned an internal order (IO) number to activities within its codes and standards advocacy subprograms, including digits to identify whether the subprogram activity was administration, direct implementation, or marketing.¹⁵⁰ Those internal order numbers were used to record codes and standards advocacy costs in SoCalGas’s Systems, Applications and Products (SAP) financial system. From the SAP system, the costs were transferred to the DSMBA.¹⁵¹

SoCalGas witness Mr. Hanway confirmed that on August 16, 2019 SoCalGas credited the costs of codes and standards advocacy to the SAP accounts in which it records the costs of ratepayer-funded codes and standards advocacy, and debited an account that can be manually

¹⁴⁶ Ex. SoCalGas 01, p. 9:11-13.

¹⁴⁷ A journal entry is a record of a transaction in accounting. It should minimally contain a unique reference number, the date the transaction occurred, the accounts debited and credited, the amounts debited and credited, and a description of the transaction.

¹⁴⁸ Ex. Cal Advocates 02E, p. 6 (Public Advocates Office Data Request No. Cal Advocates-EP-SCG-2020-01, February 7, 2020).

¹⁴⁹ Ex. Cal Advocates 02E, p. 11 (SoCalGas February 21, 2020 Response to Public Advocates Office Data Request No. Cal Advocates-EP-SCG-2020-01, February 7, 2020). The final transfer date of January 23, 2019 is consistent with emails between various SoCalGas employees cited in Ex. Cal Advocates 01, p. 19.

¹⁵⁰ Ex. SoCalGas 01, p. 7:13-16; p. 8, Table 1; RT pp.35:35-36:12 (SoCalGas witness Mr. Hanway).

¹⁵¹ Ex. SoCalGas 01, p. 7:18-20.

excluded from SoCalGas's next GRC.¹⁵² Mr. Hanway also confirmed that it wasn't until December 20, 2019, that SoCalGas transferred its direct codes and standards advocacy costs to an account that will be automatically excluded from SoCalGas's next GRC.¹⁵³

SoCalGas dismisses the importance of transferring the funds from an account that can be manually excluded from its next GRC to an account that will automatically be excluded from its next GRC. According to SoCalGas "[t]he only difference is that SoCalGas decided that instead of using the initial manual process it had planned to use, it would be better to have the amounts automatically excluded."¹⁵⁴ However, the difference identified is significant in at least two respects.

First, SoCalGas has failed to adequately explain why these funds weren't moved immediately or provide an email, memo, directive or other written evidence of a plan to manually move the funds at a future date. Second, ratepayers should not need to rely on the good faith and memory of individuals at SoCalGas to ensure that they are not saddled with the costs for prohibited codes and standards advocacy after SoCalGas's next GRC. SoCalGas should have clear mechanisms and accounting instructions in place to ensure ratepayer funds are appropriately booked in a timely fashion.

Notably, SoCalGas does not explain why it did not take the final steps to move those costs to an account that will be automatically excluded from its next GRC until after the Commission issued its December 2, 2019, Scoping Memo. However, it was only after the December 2, 2019 Scoping Memo directed SoCalGas to submit testimony explaining how it accounts for the costs of codes and standards advocacy that this change was made.¹⁵⁵

B. SoCalGas continued to record costs of ratepayer-funded codes and standards advocacy in GRC accounts after the Commission ordered it to cease ratepayer funded codes and standards advocacy.

In addition to learning that SoCalGas recorded the costs of post-Decision codes and standards advocacy in the DSMBA, Cal Advocates also discovered that SoCalGas record the

¹⁵² RT, p. 48:23-49 (SoCalGas witness Mr. Hanway).

¹⁵³ RT, p. 50:1-22.

¹⁵⁴ Ex. SoCalGas 05, p.13:21-25.

¹⁵⁵ December 2, 2019 Scoping Memo, p. 4.

costs of codes and standards advocacy in its GRC and Operations and Maintenance accounts.¹⁵⁶ Those charges include costs for a SoCalGas employee's participation in the federal Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC),¹⁵⁷ and the costs of three employee's participation in a meeting related to building decarbonization.¹⁵⁸ The Commission should require SoCalGas to move the costs of those activities to accounts that will be automatically excluded from the next GRC and impose a fine for SoCalGas's failure to comply with the Decision.

SoCalGas argues that the employee's participation in ASRAC was somehow not in their capacity as a SoCalGas employee and did not amount to codes and standards advocacy.¹⁵⁹ SoCalGas admits that the purpose of the ASRAC is to provide advice and recommendations related to the "development of minimum efficiency standards appliances and equipment" and related issues of concern to the DOE.¹⁶⁰ SoCalGas further acknowledges that it incurred labor costs for the employee's participation in ASRAC after the adoption of the Decision.¹⁶¹ The Commission should reject SoCalGas's attempt to claim that the employee's participation on a committee whose purpose was to provide advice on minimum efficiency standards for appliances and equipment' did not amount to codes and standards advocacy was not codes and standards advocacy prohibited by the Decision.

SoCalGas likewise argues that the attendance of three employees at a June 26, 2018, meeting related to building decarbonization does not amount to codes and standards advocacy. SoCalGas claims that the employees who attended this meeting "do not recall the specific discussion related to the codes and standards agenda item and only recall that time spent on the

¹⁵⁶ Cal Advocates learned through discovery that a SoCalGas employee participated in the federal Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC), and that related costs were recorded in SoCalGas's Operations and Maintenance account. SoCalGas also recorded costs in the General Rate Case for employee participation in a building decarbonization meeting. Motion for an OSC, p. 16, fn. 88.

¹⁵⁷ Ex. SoCalGas 02, pp. 6-9.

¹⁵⁸ Ex. SoCalGas 02, pp. 9-10.

¹⁵⁹ Ex. SoCalGas 02, p. 7:21-19.

¹⁶⁰ Ex. SoCalGas 02, p. 7:6-10, citing Appliance Standards and Rulemaking Federal Advisory Committee, available at <https://www.energy.gov/eere/buildings/appliance-standards-and-rulemaking-federal-advisory-committee>.

¹⁶¹ Ex. SoCalGas 02, p. 7:1-2.

subject was very brief.”¹⁶² SoCalGas incurred labor costs for these three employees’ participation in the meeting. As with the employee’s participation in ASRAC, the Commission should reject SoCalGas’s attempt to claim that participation in a meeting that included codes and standards as a topic did not amount to codes and standards advocacy.

SoCalGas admits that the Scoping Memo “did not address whether the prohibition in D.18-05-041 covers activity that takes places outside of SoCalGas’s EE portfolio and is not funded by EE funds.”¹⁶³ Notwithstanding its purported uncertainty as to whether the Decision prohibits SoCalGas’s GRC-funded codes and standards advocacy, SoCalGas has not filed a petition to modify the Decision to clarify this point but has instead elected to continue such advocacy. SoCalGas argues that because the Decision arose in an energy efficiency proceeding, and that because Cal Advocates’ allegations of SoCalGas misconduct related to activity funded through the DSMBA, the Decision’s prohibition is limited to DSMBA funds.¹⁶⁴ This claim ignores the reality that allowing SoCalGas to use funds other than those authorized in an energy efficiency proceeding would create an enormous loophole for SoCalGas to continue its codes and standards advocacy to undermine the state’s energy efficiency and climate goals.

SoCalGas argues that deciding the issue in this case would “prematurely litigate” a GRC issue in contravention of the GRC rate case plan.¹⁶⁵ SoCalGas also argues that it would implicate its due process rights to litigate this issue now, since it is unclear what issues would be decided in this proceeding, and what evidentiary standard and burden should apply. Neither of these claims should prevent the Commission from reaffirming its Decision that SoCalGas is prohibited from engaging in ratepayer-funded codes and standards advocacy for the duration of its current energy efficiency business plan. The issues in this proceeding include whether SoCalGas continued to engage in ratepayer-funded codes and standards advocacy after the Decision.¹⁶⁶ The burden of proof is the same as for the other issues in this Order to Show Cause

¹⁶² Ex. SoCalGas 02, pp. 9:14-10:5:

¹⁶³ Motion to Serve Supplemental Testimony, p. 3.

¹⁶⁴ Motion to Serve Supplemental Testimony, pp. 4-6.

¹⁶⁵ Motion to Serve Supplemental Testimony, p. 7.

¹⁶⁶ December 2, 2017 Scoping Memo, p. 2.

Proceeding, for which SoCalGas has the burden of showing why the Commission should not take the proposed legal action.¹⁶⁷

Finally, SoCalGas argues that its First Amendment rights are implicated by the restrictions on its ability to use ratepayer funding for advocacy on issues facing its customers.¹⁶⁸ This argument fails to recognize that as a regulated utility, SoCalGas is subject to the Commission's requirements regarding how it spends ratepayer funds. The Decision spoke only to ratepayer-funded codes and standards advocacy and did not purport to limit SoCalGas's expenditures of shareholder funds.¹⁶⁹

The Commission should reject SoCalGas's claim that it is free to circumvent the Decision's prohibition against ratepayer funded codes and standards advocacy by using GRC funds. Instead, the Commission should reaffirm that when the Decision prohibited SoCalGas from all "ratepayer-funded" codes and standards advocacy until 2025, that is exactly what it meant.

Despite admitting its uncertainty as to whether the Commission will agree with SoCalGas's interpretation that the Decision allows SoCalGas to continue its GRC-funded codes and standards advocacy,¹⁷⁰ SoCalGas has deliberately continued its codes and standards advocacy in the CECs docket 19-BSTD-03, for the 2022 Energy Code Pre-Rulemaking, related to California's requirements for new construction, additions and alterations to residential and nonresidential buildings. As explained in the Sierra Club's opening brief, SoCalGas presents information related to indoor air quality standards that was developed with the goal of protecting SoCalGas shareholders, but not the health of California citizens. SoCalGas opts to continue the prohibited codes and standards advocacy, even while facing potential penalties for following its own interpretation of the Decision's prohibition as allowing federal codes and standards advocacy. SoCalGas continues follow its own reading of the Commission Decision., with no apparent concern for the potential consequences.

¹⁶⁷ See D.16-12-003, pp. 81-91.

¹⁶⁸ Motion to Serve Supplemental Testimony, p. 8 ("("SoCalGas appears to be the only Investor Owned Utility ("IOU") in California facing restrictions on its use of ratepayer funding for rulemaking advocacy before its regulators on issues affecting its customers."))

¹⁶⁹ D.18-04-051, p. 150.

¹⁷⁰ Motion to Serve Supplemental Testimony, p. 3.

C. SoCalGas misrepresented the extent of its ratepayer-funded codes and standards advocacy:

The evidence shows that SoCalGas's data request responses did not provide truthful and accurate information to Commission staff.¹⁷¹ Once again, SoCalGas blames others for its deliberate deficiencies - this time accusing Cal Advocates of being "misleading and at times inaccurate."¹⁷² As shown below, SoCalGas's attempt to shift the blame for its misleading and inaccurate data request responses to Cal Advocates is unfounded and must be rejected.

Cal Advocates requested information about any "energy efficiency codes and standards advocacy activities" that SoCalGas undertook after the Decision's adoption, including "specific activities related to" energy efficiency codes and standards advocacy, the number of employees involved, the amount of time and costs of those activities, and "any and all final or draft work products" of codes and standards advocacy.¹⁷³ SoCalGas's misleading and inaccurate responses failed to disclose:

- Numerous activities (listed in Table 5 of Cal Advocates' testimony) related to codes and standards advocacy on or after June 1, 2018, including participation in phone calls, and the submission of comments on codes and standards documents.¹⁷⁴
- Communications with other utilities related to or regarding codes and standards advocacy;¹⁷⁵
- A final copy of a CASE hearth report, which was submitted to the CEC on June 11, 2018 with SoCalGas's name and logo included;
- A final copy of comments on a DOE dishwasher petition, which was submitted to the DOE on June 22, 2018 with SoCalGas's name and logo included;¹⁷⁶
- SoCalGas employees who spent time on codes and standards advocacy after adoption of the Decision; and

¹⁷¹ Ex. Cal Advocates 01E, pp. 15-16; see also Motion for an Order to Show Cause, Appendices A and D.

¹⁷² Ex. SoCalGas 4, p.6:12.

¹⁷³ Motion for Order to Show Cause, Appendix A, pp. 3-7 (ORA Data Request HB-SCG-2018-09, June 29, 2018).

¹⁷⁴ Ex. Cal Advocates 01E, p, 15, Table 5.

¹⁷⁵ Ex. Cal Advocates 01E, p, 15, Table 5.

¹⁷⁶ The comments are posted on the DOE website and available at <https://www.regulations.gov/document?D=EERE-2018-BT-STD-0005-1800>

- Total time and cost to ratepayers of codes and standards advocacy after adoption of the Decision.

SoCalGas asserts a two-prong defense in its attempt to deflect the blame for its inaccurate and misleading responses to Cal Advocates' data requests. First, SoCalGas points to the preliminary statement provided in its July 16, 2018 data request responses:

SoCalGas' response provided employee time spent on statewide EE [energy efficiency] C&S advocacy activities. SoCalGas' preliminary statement indicated its understanding of "energy efficiency codes and standards advocacy" as used in Cal Advocates' request to mean conduct directly concerning statewide energy efficiency C&S advocacy, as delineated in Decision 18-05-041. The activities therefore did not include activities for local programs, such as compliance, and reach codes, and engagement with the Department of Energy ("DOE"). While Cal Advocates' may have disagreed with this approach, SoCalGas was clear about what it was and was not providing.¹⁷⁷

According to SoCalGas, it did not need to provide a complete response to Cal Advocates data requests because "statewide energy efficiency C&S advocacy, as delineated in Decision 18-05-041" did not include "activities for local programs, such as compliance, and reach codes, and engagement with the Department of Energy ("DOE")."¹⁷⁸ As an initial matter, SoCalGas effectively admits that it determined to withhold information and answer only a part of the question. Moreover, the veracity of that statement was questionable, even at the time SoCalGas responded to Cal Advocates' data requests on July 16, 2018. SoCalGas had already "put a pause" on its engagement with the DOE, following communications with PG&E's attorney.¹⁷⁹ After meeting with the Energy Division staff on July 31, 2018, and failing to seek clarification from the Commission by filing a petition to modify the Decision, SoCalGas could no longer claim that "statewide energy efficiency C&S advocacy, as delineated in Decision 18-05-041" excluded "activities for local programs, such as compliance, and reach codes, and engagement with the Department of Energy ("DOE")."¹⁸⁰

¹⁷⁷ Ex. SoCalGas 04, pp. 6-11. Despite asserting that the Decision did not prohibit federal codes and standards advocacy, SoCalGas never filed a petition for modification seeking clarification of that claim.

¹⁷⁸ Ex. SoCalGas 04, pp. 6-11.

¹⁷⁹ Ex. SoCalGas 04, p. 5:17; Motion for an Order to Show Cause, Appendix A 114/322; Appendix B, 9/9.

¹⁸⁰ Ex. SoCalGas 04, pp. 6-12.

SoCalGas’s inaccurate statement about the scope of statewide energy efficiency codes and standards advocacy and its inaccurate data request responses that purport to rely on that statement are violations of Rule 1.1, beginning not later than August 1, 2018, the day after SoCalGas met with staff of the Energy Division.

The second prong of SoCalGas’s attempt to refute the evidence of its misleading data request responses is SoCalGas’s assertion that its production of documents in response to some questions from which responses to other questions could be extracted, means that “the information was not omitted.”¹⁸¹ SoCalGas’s second defense is as meritless as its first.

SoCalGas is obligated to provide accurate information in response to each of Cal Advocates’ discovery requests.¹⁸² Merely attaching documents in response to some questions does not excuse SoCalGas from its obligation to accurately respond to separate questions about total hours, costs, number of employees, and the specific codes and standards activities undertaken by SoCalGas after adoption of the Decision.

Failing to provide accurate responses to some questions, then claiming the information is in another response, falls short of SoCalGas’s obligation to provide accurate and truthful information to the Commission and its staff.¹⁸³ Moreover, while SoCalGas produced documents that allowed Cal Advocates to piece together some information about the number of hours and costs of SoCalGas’s post-Decision codes and standards advocacy, critical information was not provided until after Cal Advocates filed its Motion for an Order to Show Cause. For example, where Cal Advocates identified \$6,059 in codes and standards advocacy improperly charged to ratepayers after adoption of the Decision, SoCalGas ultimately identified \$8,731 in costs.¹⁸⁴

D. Cal Advocates was not required to meet and confer with SoCalGas prior to filing its Motion for an Order to Show Cause.

SoCalGas attempts to characterize its failure to produce accurate and complete information as a discovery dispute and faults Cal Advocates for not meeting and conferring with

¹⁸¹ Ex. SoCalGas 04, pp. 5-10.

¹⁸² Cal Advocates is entitled to seek “any information it deems necessary to perform its duties from any entity regulated by the Commission...” Public Utilities Code Section 309.5(e).

¹⁸³ Commission Rule 1.1,

¹⁸⁴ Ex. SoCalGas 04, p. 19:13.

SoCalGas prior to filing its Motion for an Order to Show Cause.¹⁸⁵ Discovery disputes typically involve issues such as relevance, privileges, and burden. In contrast, SoCalGas’s failure to produce accurate response to questions related to its codes and standards advocacy after the Decision stemmed largely from its disagreement that the Decision prohibited SoCalGas from engaging in federal codes and standards advocacy.¹⁸⁶

SoCalGas also suggested, through its cross examination of Cal Advocates’ witness Mr. Castello that Public Utilities Code Section 309.5(h)¹⁸⁷ required that Cal Advocates meet and confer with SoCalGas prior to filing its Motion for an Order to Show Cause. By its own terms, Section 309.5(h) applies to allegations made in a complaint or in a complaint proceeding. This is not a complaint or a complaint proceeding. Instead the Cal Advocates’ Motion for an Order to Show Cause was filed in this rulemaking, and the Commission designated this as the appropriate proceeding to consider the allegations of SoCalGas’s misconduct that Cal Advocates raised in A.17-01-013.¹⁸⁸ The fact that ALJ Kao granted the Motion for an Order to Show Cause, and that the Commission issued a the December 2, 2020 Scoping Memo indicate that the Commission views this proceeding as also appropriate for considering allegations that SoCalGas failed to comply with the Decision.

E. The Commission should impose fines designed to ensure SoCalGas’s compliance with Commission orders and rule.

As set forth above, SoCalGas has violated the Commission’s Decision prohibiting SoCalGas’s ongoing ratepayer-funded codes and standards advocacy. SoCalGas’s violations

¹⁸⁵ Ex. SoCalGas 03, p. 13:6-9; Ex. SoCalGas 04, p. 13:27—p. 14:6.

¹⁸⁶ Ex. SoCalGas 01, p. 16 (“At the time of serving its original responses (July 16, 2018), SoCalGas reasonably interpreted D.18-05-041 as not prohibiting federal advocacy activities.... Based on this interpretation, SoCalGas did not include information on federal advocacy activities in some of its initial responses, although it did provide all documents related to federal advocacy activities that were requested by Cal Advocates in response to Cal Advocates’ Questions 13-16.”).

¹⁸⁷ Public Utilities Code Section 309.5 (h) states:

The office shall meet and confer in an informal setting with a regulated entity prior to issuing a report or pleading to the commission regarding alleged misconduct, or a violation of a law or a commission rule or order, raised by the office in a complaint. The meet and confer process shall be utilized in good faith to reach agreement on issues raised by the office regarding any regulated entity in the complaint proceeding.

¹⁸⁸ D.18-05-041, p. 144.

include the improper activity recorded in the DSMBA, as well as in its GRC accounts.¹⁸⁹ The Commission should reaffirm that the Decision's prohibition against codes and standards advocacy through 2025 does not permit SoCalGas to spend DSNBA funds, GRC funds or any other ratepayer funds for codes and standards advocacy. The Commission should fine SoCalGas for its violations of the Decision and for SoCalGas's failure to provide accurate and truthful data request responses as required by Rule 1.1. Cal Advocates recommends that the Commission fine SoCalGas \$124 million for these violations, calculated as shown in Attachment B to this brief.

In addition, Cal Advocates reiterates its recommendations from the other Order to Show Cause that the Commission scale back SoCalGas's role in its administration of energy efficiency programs.¹⁹⁰ The allegations in this Order to Show Cause, which demonstrate SoCalGas's lack of good faith and willingness to circumvent Commission oversight and regulation, warrant a significantly diminished role in administering energy efficiency programs.

Public Utilities Code Sections 2107¹⁹¹ and 2108¹⁹² authorize the Commission to impose fines for public utility misconduct.¹⁹³ D.98-12-075 articulated the rationale for imposing fines:

The purpose of a fine is to go beyond restitution to the victim and to effectively deter further violations by this perpetrator or others. For this reason, fines are paid to the State of California, rather than to victims. Effective deterrence creates an incentive for public utilities to avoid violations. Deterrence is particularly important against violations

¹⁸⁹Ex. SoCalGas 05, pp.5:24-p.6:20; Ex. SoCalGas 06, pp. 4:24-5:03; p.5:6-17.

¹⁹⁰ *Opening Brief of the Public Advocates on the Order to Show Cause Directing SoCalGas to Address Shareholder Incentives for Codes and Standards Advocacy Expenditures*, November 6, 2020.

¹⁹¹ Section 2107 states:

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

¹⁹² Section 2108 states:

Every violation of the provisions of this part or of any part of any order, decision, decree, rule, direction, demand, or requirement of the commission, by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be a separate and distinct offense."

¹⁹³ D.16-01-025, p. 15.

which could result in public harm, and particularly against those where severe consequences could result.¹⁹⁴

In D.98-12-075, the Commission articulated the considerations for determining the appropriate size of penalties for misconduct. These considerations, which the Commission has applied in numerous penalty cases since 1998, are:

- 1) Severity of the offenses;
- 2) Conduct of the utility;
- 3) Financial resources of the utility;
- 4) Totality of the circumstances in furtherance of the public interest; and
- 5) The role of precedent.¹⁹⁵

1. Severity of the Offenses

The size of a fine should be proportionate to the severity of the offenses.¹⁹⁶ To determine the severity of the offense, the Commission considers the following: (1) physical harm; (2) economic harm; (3) harm to the regulatory process; and (4) the number of violations.¹⁹⁷

Economic harm consists of the amount of expense imposed on victims and any unlawful benefits gained by the utility.¹⁹⁸ The Commission generally orders the greater of these two amounts in setting the fine.¹⁹⁹ Even when economic harm is hard to quantify, this fact does not diminish the severity of the offense or the need for sanctions.²⁰⁰

Harm to the regulatory process can be a significant factor in the Commission's determination to impose penalties.²⁰¹ Public utilities are required to comply with Commission's

¹⁹⁴ D.98-12-075, p. 35.

¹⁹⁵ D.98-12-075, pp. 35, 38-39.

¹⁹⁶ D.09-09-005, p. 29.

¹⁹⁷ D.98-12-075, p. 36.

¹⁹⁸ D.98-12-075, p. 36.

¹⁹⁹ D.98-12-075, p. 36.

²⁰⁰ D.98-12-075, p. 36.

²⁰¹ See D.17-03-017, p. 8 (finding that in the totality of the circumstances analysis that the "principal harm threatened here is to the regulatory process" and issuing a \$10,000 fine for a single violation); see *id.* at p. 5 ("Applicants' violation of §854(a) did not result in physical or economic harm to their customers or consumers generally, there is no evidence that Applicants significantly benefited from the violation and the violation had no widespread impact. However, there was harm to the regulatory process because this is a statutory violation.").

rules and regulations.²⁰² Such compliance is “absolutely necessary to the proper functioning of the regulatory process.”²⁰³ Accordingly, a violation of “a statute or Commission directive, regardless of the effects on the public, will be accorded a high level of severity.”²⁰⁴

A single violation may be less severe than multiple offenses, whereas a widespread violation that affects a large number of consumers can be a more severe offense than one that is limited in scope.²⁰⁵

SoCalGas’s failure to comply with the Decision’s prohibition and its failure to respond accurately to Cal Advocates’ data requests harmed the regulatory process and is therefore “accorded a high level of severity.”²⁰⁶ SoCalGas acknowledges that Order to Show Cause proceedings require Commission resources,²⁰⁷ but fails to acknowledge its own role in initiating these proceeding: after meeting with the Energy Division staff, SoCalGas could have reversed the charges to ratepayers and corrected its data request responses or, if it disagreed with the Energy Division staff, SoCalGas should have filed a petition for modification to obtain clarification. Instead, it continued to use ratepayer funds in contravention of the Decision until after Cal Advocates filed its Motion for an Order to Show Cause.

SoCalGas’s failure to comply with the Decision, as it relates to charges in the DSMBA, spanned a period of 40 days, if measured by the last DSMBA-funded codes and standards advocacy disclosed by SoCalGas. However, SoCalGas’s advocacy at the CEC continued through at least October 23, 2020, which increases the number and duration of violations.

The economic harm of SoCalGas’s misconduct appears relatively small when only measured by the improper charges to the DSMBA. SoCalGas’s ongoing codes and standards advocacy at the CEC is part of a broader business strategy in which SoCalGas values the interest

²⁰² D.98-12-075, p. 36; Public Utilities Code Section 702.

²⁰³ D.98-12-075.

²⁰⁴ D.98-12-075, p. 36.

²⁰⁵ See D.98-12-075, p. 37.

²⁰⁶ D.98-12-075, p. 36.

²⁰⁷ Ex. SoCalGas 04, p. 14:6.

of its shareholders in maintaining throughput over the state’s environmental goals.²⁰⁸ Conduct of the Utility

The size of a fine should reflect the conduct of the utility.²⁰⁹ The Commission considers the utility’s actions to prevent, detect, disclose and rectify a violation.²¹⁰ In order to prevent violations, “[p]rudent practice requires that all public utilities take reasonable steps to ensure compliance with Commission directives,” including that the utility become “familiar with applicable laws and regulations, and most critically, reviewing its own operations regularly to ensure full compliance.”²¹¹ The Commission considers the utility’s past record of compliance with Commission directives when evaluating its efforts to ensure compliance.²¹²

In addition to preventing future violations, utilities are expected to diligently monitor their activities to detect existing violations.²¹³ Deliberate, as opposed to inadvertent wrongdoing, will be considered an aggravating factor.²¹⁴ The level and extent of management’s involvement in or tolerance of, the offense will be considered in determining the amount of any penalty.²¹⁵

Detecting and rectifying violations require the utilities to promptly bring a violation to the Commission’s attention.²¹⁶ Steps taken by a utility to promptly and cooperatively report and correct violations may be considered in assessing any penalty.²¹⁷

SoCalGas’s conduct in preventing, detecting, and rectifying violations is abysmal; rather, SoCalGas has put its efforts into a public relations driven legal strategy that denies responsibility, withholds damaging evidence, and asserts that its disagreement with the Commission is a valid defense. For example, though the Decision cited evidence of SoCalGas’s past misuse of ratepayer funds that was sufficiently compelling to remove SoCalGas from “all

²⁰⁸ See *Opening Brief of Sierra Club in the Order to Show Cause Issued December 2, 2019 against Southern California Gas Company*, December 11, 2020, pp. 7-8.

²⁰⁹ D.09-09-005, p. 31.

²¹⁰ D.98-12-075, pp. 37-38.

²¹¹ D.98-12-075, pp. 37.

²¹² D.98-12-075, pp. 37.

²¹³ D.98-12-075, pp. 37.

²¹⁴ D.98-12-075, pp. 38.

²¹⁵ D.98-12-075, pp. 38.

²¹⁶ D.98-12-075, pp. 38.

²¹⁷ D.98-12-075, pp. 38.

future codes and standards activities” until 2025, SoCalGas continued its DSMBA-funded codes and standards advocacy for another 40 days based on its implausible interpretation of the Decision’s prohibition and continues to assert that it has done nothing wrong. Even after obtaining clarification from Energy Division staff and receiving advice that did not support its interpretation of the Decision, SoCalGas did nothing to rectify its prior impermissible codes and standards activity until Cal Advocates filed its Motion for an Order to Show Cause. SoCalGas has ample familiarity with Commission rules. Even after the filing of the Motion to an Order to Show Cause, SoCalGas did not finalize the transfer of those funds to an account that would be automatically excluded from SoCalGas’s next GRC until after the Commission issued the December 2, 2019 Scoping Memo and directed SoCalGas to provide accounting information.

The Commission should assume that SoCalGas determined not to file a petition to clarify the meaning of the Decision - since in such a request SoCalGas would have been forced to indicate that in the intervening period it had been in violation of the Decision.

Similarly, SoCalGas did not revise its data request responses or begin the process of reversing the charges to ratepayers or for at least another 15 months, SoCalGas has not stopped its codes and standards advocacy at the CEC, and SoCalGas continues to assert that federal codes and standards advocacy is allowed under the Decision’s prohibition. Substantial penalties are warranted here because, in addition to asserting an implausible interpretation of the Decision, SoCalGas has acted on that theory while refusing to avail itself of the opportunity to obtain clarity, in the face of disagreement with its theory (from Energy Division staff), wrongly withheld information about its responses to the Decision, and waited until threatened with investigation and Commission action to take even the most superficial steps (such as moving to an account that must be manually shifted to shareholders) to address the problem.

2. The deterrent effect on future violations

The Commission must evaluate the financial resources of the utility in order to set a fine that balances the need for deterrence with constitutional limits on excessive fines.²¹⁸ According to its website, SoCalGas is largest natural gas distribution utility in the United States.²¹⁹ SoCalGas’s most recent GRC application stated that SoCalGas has total assets and other debits

²¹⁸ D.98-12-075, pp. 38-39.

²¹⁹ [Company Profile | SoCalGas](#)

in excess of \$15 trillion, a net operating income of almost \$300 million, and retained earnings in excess of \$2.9 trillion.²²⁰ At less than 1% of SoCalGas' total assets, the \$124 million fine recommended by Cal Advocates is necessary in order to deter future violations. This is especially true in light of SoCalGas's long history of undermining efficiency standards without regard for state and Commission energy efficiency and climate policies.

3. The Role of Precedent

Any decision that imposes a fine should address previous decisions that involve reasonably comparable factual circumstances and explain any substantial differences in outcome.²²¹ The Commission adjudicates a wide range of cases that involve sanctions, many of which are cases of first impression, accordingly, the outcomes of cases are not usually directly comparable.²²²

D.16-01-014 considered the appropriate penalty for the failure of Rasier-CA, LLC (Rasier) to comply with a Commission decision setting forth reporting requirements for rideshare companies and for Rule 1 violations.²²³ In considering the severity of the offense, the Commission found that Rasier's conduct harmed the regulatory process because it impeded the Safety and Enforcement Division's (SED) ability to analyze data to determine the impact of rideshare operations in the state.²²⁴ The Commission found the Raiser's legal to be specious and unsubstantiated.²²⁵ The Commission imposed a daily fine of \$5,000 per day for the duration of five violations for a total of \$7,626,000.²²⁶

²²⁰ A.17-10-008 (Application for Authority to Update Marginal Costs, Cost Allocation, and Electric Rate Design) (filed October 6, 2017), Appendix B (Balance Sheet, Income Statement, and Financial Statement), available at <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M196/K814/196814925.PDF>. SoCalGas criticized Cal Advocates use of these numbers to justify its penalty recommendation in the other Order to Show Cause proceeding but fails to demonstrate that SoCalGas could not pay the recommended penalty. *Reply Brief of Southern California Gas Company (U 904 G) to the Order to Show Cause Addressing Shareholder Incentives for Codes and Standards Advocacy Expenditure*, December 4, 2020, pp. 68-71.

²²¹ D.98-12-075, p. 39.

²²² D.98-12-075, p. 39.

²²³ D.16-01-014, pp. 59-61.

²²⁴ D.16-01-014, p. 36.

²²⁵ D.16-01-014, p. 145.

²²⁶ D.16-01-014, pp. 82-83.

In D.08-09-038 the Commission considered SCE's manipulation of a performance based ratemaking mechanism by submitting false and misleading data to support SCE's receipt of incentives.²²⁷ SCE violated Commission requirements, including Rule 1.²²⁸ Some of the violations had potential safety impacts.²²⁹ In contrast to SoCalGas's conduct in this proceeding, SCE brought the information to the Commission's attention without the need for a Motion for an Order to Show Cause.²³⁰ The Commission fined SCE \$12,000 per day for a total of \$30 million. That this fine was reduced from a higher amount because of SCE's mitigating efforts makes clear that, given SoCalGas' denial of wrongdoing and continuing efforts to conceal and frustrate the investigation, Cal Advocates proposed penalties, of between \$1,000 and \$10,000 are more than reasonable.²³¹

SoCalGas's ongoing violation of the Decision by its continued codes and standards advocacy at the CEC appears unprecedented. While litigating an Order to Show Cause for its failure to comply with the Decision's prohibition, SoCalGas has put its efforts into a public relations driven legal strategy that denies responsibility, withholds damaging evidence, and asserts that its disagreement with the Commission is a valid defense. Indeed, SoCalGas continues its codes and standards advocacy to date, based on another uncorroborated interpretation of the exact same prohibition.

4. Totality of the Circumstances

A fine should be tailored to the unique facts of each case.²³² The Commission evaluates facts that both mitigate and exacerbate that utility's degree of wrongdoing, always from the perspective of the public interest.

The only factor mitigating the magnitude of the fine that Commission should impose for SoCalGas's violations of Decision's prohibition and Rule 1 is the lack of physical harm revealed to date. On the other hand, SoCalGas's violations were ongoing and continuous. Its egregious

²²⁷ D.08-09-038, p. 2.

²²⁸ D.08-09-038, p. 98.

²²⁹ D.08-09-038, p. 111.

²³⁰ D.08-09-038, pp. 6-8.

²³¹ January 23, 2020 is when SoCalGas finalized the transfers to shareholder funded accounts that would be automatically excluded from its next GRC.

²³² D.98-12-075, p. 39.

conduct reflects an absolute failure to prevent, detect, disclose, or rectify its violations. In fact, its ratepayer-funded advocacy at the CEC has not stopped. Thus, in the totality of the circumstances at issue, the fine recommended by Cal Advocates is warranted.

IV. CONCLUSION

For the reasons stated in this opening brief, the Commission should fine SoCalGas \$124 million. order SoCalGas to refund ESPI awards and program expenditures associated with its building, appliance, and reach codes programs, prohibit SoCalGas from playing any role in codes and standards programs other than transferring ratepayer funds to the statewide lead for a period no less than seven years, and remove SoCalGas as the statewide lead for the Emerging Technologies program.

Respectfully submitted,

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