PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

FILED
04/21/21
12:27 PM

April 21, 2021

TO PARTIES OF RECORD IN RULEMAKING 13-11-005:

This proceeding was filed on November 14, 2013 and is assigned to Commissioner Shiroma and Administrative Law Judges (ALJs) Fitch and Kao. This is the decision of the Presiding Officer, ALJ Kao.

Any party to this adjudicatory proceeding may file and serve an Appeal of the Presiding Officer's Decision within 30 days of the date of issuance (i.e., the date of mailing) of this decision. In addition, any Commissioner may request review of the Presiding Officer's Decision by filing and serving a Request for Review within 30 days of the date of issuance.

Appeals and Requests for Review must set forth specifically the grounds on which the appellant or requestor believes the Presiding Officer's Decision to be unlawful or erroneous. The purpose of an Appeal or Request for Review is to alert the Commission to a potential error, so that the error may be corrected expeditiously by the Commission. Vague assertions as to the record or the law, without citation, may be accorded little weight.

Appeals and Requests for Review must be served on all parties and accompanied by a certificate of service. Any party may file and serve a Response to an Appeal or Request for Review no later than 15 days after the date the Appeal or Request for Review was filed. In cases of multiple Appeals or Requests for Review, the Response may be to all such filings and may be filed 15 days after the last such Appeal or Request for Review was filed. Replies to Responses are not permitted. (*See*, generally, Rule 14.4 of the Commission's Rules of Practice and Procedure at www.cpuc.ca.gov.)

If no Appeal or Request for Review is filed within 30 days of the date of issuance of the Presiding Officer's Decision, the decision shall become the decision of the Commission. In this event, the Commission will designate a decision number and advise the parties by letter that the Presiding Officer's Decision has become the Commission's decision.

/s/ ANNE E. SIMON
Anne E. Simon
Chief Administrative Law Judge

AES:mph

Attachment

ALJ/POD-JF2-VUK/mph

Decision **PRESIDING OFFICER'S DECISION OF ALJ KAO**
(Mailed 4/21/2021)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Concerning Energy Efficiency Rolling Portfolios, Policies, Programs, Evaluation, and Related Issues.	Rulemaking 13-11-005

PRESIDING OFFICER'S DECISION ORDERING REMEDIES FOR SOUTHERN CALIFORNIA GAS COMPANY'S ACTIVITIES THAT MISALIGNED WITH COMMISSION INTENT FOR CODES AND STANDARDS ADVOCACY

Summary

This Presiding Officer's Decision finds that Southern California Gas Company spent ratepayer funds on activities that misaligned with the California Public Utilities Commission's intent for energy efficiency codes and standards advocacy. This decision does not order a financial penalty, but directs Southern California Gas Company to refund ratepayer expenditures and associated shareholder incentives, and orders remedies for appreciable harm to the regulatory process caused by Southern California Gas Company's conduct.

This proceeding remains open.

1. Background

1.1. Factual Background

In October 2015, the California Public Utilities Commission (Commission) adopted Decision (D.) 15-10-028, which established a "Rolling Portfolio" process for regularly reviewing and revising energy efficiency program administrators' portfolios. D.15-10-028 provided guidance to energy efficiency program administrators (PAs) regarding: the general schedule and required contents of business plans, implementation plans, annual budget advice letter (ABAL) submissions; the collaborative process for developing business and implementation plans through a stakeholder led coordinating committee; and other details regarding the structure of this new process.

In August 2016, the Commission adopted D.16-08-019, providing further guidance on rolling portfolio elements including regional energy network (REN) program proposals; baseline and meter-based measurement of energy savings; changes to statewide and third-party programs and their administration; and changes to the framework for evaluation, measurement, and verification and the energy savings performance incentive structure.

D.16-08-019 directed the investor owned utility (IOU) energy efficiency PAs,[1] Marin Clean Energy (MCE), and existing or new RENs to file business plan proposals for the 2018-2025 period by January 15, 2017. Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), Pacific Gas and Electric Company (PG&E), Southern California Gas Company (SoCalGas), and MCE all filed timely business plan applications; and the San Francisco Bay Area REN (BayREN), Southern California REN (SoCalREN),

[1] Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, and SoCalGas.

and Tri County REN (3C REN) filed timely motions for approval of their REN business plan proposals.

In D.18-05-041, concerning the energy efficiency program administrators' 2018-2025 business plans, the Commission addressed an issue raised by the Public Advocate's Office of the Public Utilities Commission (Cal Advocates) in its final comments on the business plans, wherein Cal Advocates alleged Southern California Gas Company (SoCalGas, or Respondent) had used ratepayer funds to advocate against adoption by the California Energy Commission (CEC) and the United States Department of Energy (DOE) of more stringent codes and standards. D.18-05-041 found no explicit prohibition against the use of ratepayer funds for "any activity that does not result in adoption of more stringent codes and standards," but observed that "our initial authorization of energy efficiency funding for codes and standards advocacy makes clear our intent for those funds: '[u]sing ratepayer dollars to work towards adoption of higher appliance and building standards may be one of the most cost-effective ways to tap the savings potential for EE and procure least-cost energy resources on behalf of all ratepayers.'" Noting that Cal Advocates "provides evidence of instances in which SoCalGas has not worked towards adoption of higher standards, using ratepayer funds, which SoCalGas concedes," D.18-05-041 concluded that the Commission is "convinced that there is a potential for SoCalGas to misuse ratepayer funds authorized for codes and standards advocacy," and thus prohibited SoCalGas from using ratepayer funds to participate in codes and standards advocacy, other than to transfer funds to the statewide codes and standards lead. D.18-05-041 declined to consider potential penalties for SoCalGas's past conduct, as the scope of that proceeding was whether to approve the 2018-2025 business plans, but specified that Cal

Advocates could renew its request for sanctions by filing a motion in this proceeding, Rulemaking (R.) 13-11-005, or its successor.

Pursuant to D.13-09-023, which established the Efficiency Savings and Performance Incentive (ESPI) mechanism, on November 26, 2018, the large IOUs submitted advice letters requesting shareholder awards for their 2016 and 2017 energy efficiency activities. In response to SoCalGas's advice letter, Cal Advocates renewed its arguments regarding SoCalGas's advocacy against more stringent codes and standards, and recommended that the Commission deny SoCalGas's ESPI request for its 2017 codes and standards advocacy programs, and true-up to zero its ESPI award for 2016 codes and standards advocacy programs.

Resolution E-5007 declined to consider SoCalGas's ESPI request for codes and standards advocacy, instead directing that the Commission issue an order to show cause (OSC) in this proceeding, and direct SoCalGas to "show cause why it is entitled to shareholder incentives for codes and standards advocacy in 2016 and 2017; whether its shareholders should bear the costs of its 2016 and 2017 codes and standards advocacy; and to address whether any other remedies are appropriate."[2]

1.2. OSC Procedural Background and Scope

On December 17, 2019, the assigned Commissioner issued a ruling initiating this OSC (OSC ruling). SoCalGas filed its response to the OSC ruling on January 3, 2020, and Sierra Club and Cal Advocates filed responses on January 17, 2020.

[2] Resolution E-5007 *approves, with adjustments, Energy Efficiency Savings and Performance Incentive awards for the four major California investor-owned utilities for program years 2016 and 2017*, issued October 11, 2019 (Res. E-5007), Ordering Paragraph 5.

The assigned Administrative Law Judge (ALJ) held a prehearing conference on February 4, 2020. In their responses to the OSC ruling and during the prehearing conference, Cal Advocates and Sierra Club advocated to include SoCalGas's advocacy against local governments' adoption of reach codes within scope of this OSC.

On February 21, 2020, SoCalGas filed a motion to strike certain attachments of Sierra Club's and Cal Advocates' January 3, 2020 responses, asserting those attachments were not within scope of the OSC.

The assigned Commissioner issued a scoping memo on March 2, 2020, and provided an opportunity to comment on the issues within scope of this OSC, which the scoping memo identified as:

> The factual questions to be addressed in this OSC are:
>
> 1. Whether Respondent used ratepayer funds that were authorized for energy efficiency to advocate against more stringent codes and standards during any period of time between 2014 and 2017 (inclusive); and
> 2. Whether Respondent ever used ratepayer funds that were authorized for energy efficiency to advocate against local governments' adoption of reach codes.
>
> If the above factual questions are true, the issues to be determined are:
>
> 1. Whether Respondent is entitled to shareholder incentives for codes and standards advocacy in 2014 through 2017;
> 2. Whether Respondent's shareholders should bear the costs of its 2014 through 2017 codes and standards advocacy; and
> 3. Whether any other remedies are appropriate.

Sierra Club and Cal Advocates filed comments on March 13, 2020, asserting the scoping memo should clarify that expenditures not tracked and

booked in SoCalGas's Demand Side Management Balancing Account (DSMBA) are in scope. SoCalGas filed reply comments on March 20, 2020, opposing Cal Advocates' and Sierra Club's interpretation of the scope and asserting that limiting the scope to expenditures booked to the DSMBA is not inconsistent with the scoping memo's reference to reach codes. On March 25, 2020, the assigned ALJ issued a ruling clarifying the factual issues within scope as follows:

1. Whether SoCalGas booked any expenditures to its Demand Side Management Balancing Account, and associated allocated overhead costs, to advocate against more stringent codes and standards during any period of time between 2014 and 2017 (inclusive); and
2. Whether SoCalGas ever used ratepayer funds, regardless of the balancing account or other accounting mechanism to which such funds were booked, to advocate against local governments' adoption of reach codes.

The March 25, 2020 ruling also confirmed the procedural schedule did not provide for written testimony, and that parties could seek admission of material facts via written motion or during evidentiary hearing.

Sierra Club and Cal Advocates filed a response to SoCalGas's February 21, 2020 motion to strike attachments to their responses, asserting those attachments were within scope of this OSC. SoCalGas filed a reply on April 13, 2020, again asserting the attachments were not within scope. On April 28, 2020, the assigned ALJ issued a ruling denying SoCalGas's February 21, 2020 motion.

On April 30, 2020, Cal Advocates and SoCalGas filed a joint status update, reporting they had initiated settlement discussions and, if negotiations were not fruitful, the parties were willing to utilize the Commission's Alternative Dispute Resolution (ADR) process and to seek a continuation of the proceeding schedule.

On May 13, 2020, Cal Advocates and SoCalGas filed a joint motion for continuation of the proceeding schedule, due to ongoing settlement discussions. The assigned ALJ granted the joint motion on May 19, 2020.

On July 16, 2020, Sierra Club filed a motion to compel SoCalGas to respond to certain data request questions. On August 7, 2020, based upon SoCalGas's July 27, 2020 response and Sierra Club's August 3, 2020 reply to SoCalGas's response, the assigned ALJ granted Sierra Club's July 16, 2020 motion.

On August 25, 2020 the parties filed a joint status update and proposal for an alternative procedural schedule, in which the parties would move to admit evidence without the need for evidentiary hearing. The assigned ALJ approved the proposed alternative schedule, thus removing evidentiary hearing in this OSC.

The parties moved to enter evidence and rebuttal evidence in September 2020. SoCalGas filed a response to Cal Advocates' and Sierra Club's motions to admit certain exhibits. On October 2, 2020, the parties filed a joint statement of stipulated facts.[3]

By ruling dated October 19, 2020, the assigned ALJ admitted into evidence all parties' exhibits except for Exhibit Cal Advocates / Sierra Club-71. On November 5, 2020, the parties filed briefs.[4] On December 4, 2020, the parties filed reply briefs, with Cal Advocates and Sierra Club jointly filing.

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[3] *Joint Statement of Stipulated Facts December 17, 2019 Order to Show Cause Against Southern California Gas Company (U 904 G)*, filed October 2, 2020 (Joint Statement of Stipulated Facts).

[4] *Opening Brief of Southern California Gas Company (U 904 G) to the Order to Show Cause Addressing Shareholder Incentives for Codes and Standards Advocacy Expenditures* (SoCalGas brief), *Opening Brief of the Public Advocates on the Order to Show Cause Directing SoCalGas to Address Shareholder Incentives for Codes and Standards Advocacy Expenditures* (Cal Advocates brief), and *Opening Brief of Sierra Club in the Order to Show Cause Issued December 17, 2019 Against Southern California Gas Company* (Sierra Club brief), filed November 5, 2020.

2. Jurisdiction and preliminary matters

SoCalGas operates as a public utility providing gas service in California. SoCalGas is a gas utility subject to the Commission's jurisdiction.

2.1. Rules for statutory interpretation

Because this decision will interpret a number of statutes that have been identified in parties' pleadings and will apply that interpretation to resolve the legal issues that are in dispute, it is necessary to set forth the rules for statutory interpretation that this decision must follow. The California Supreme Court has adopted a three-part test for statutory interpretation: first, the Commission must examine the plain language of the statute and their context and give the words their usual and ordinary meaning.[5] Second, if the language permits more than one reasonable interpretation, the Commission may consider other aids such as the statute's purpose, legislative history, and public policy.[6] Third, if these external aids fail to provide clear meaning, then the final step is to apply a construction that leads to the more reasonable result, bearing in mind the apparent purpose behind the legislation. In doing so, the Commission must avoid a construction that would lead to an unreasonable, impractical, or arbitrary result.[7]

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[5] *Beal Bank, SSB v. Arter & Hadden, LLP* (2007) 42 Cal. 4th 503, 507; and *Bernard v. City of Oakland* (2012) 202 Cal.App.4th 1553, 1560-1561.

[6] *Ailanto Properties, Inc. v. City of Half Moon Bay* (2006) 142 Cal.App.4th 572, 582-583.

[7] D.12-05-035, quoting from *Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal.4th 381, 387-388. *See also People v. Canty* (2004) 32 Cal.4th 1266, 1276; *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735; and *California Manufacturers Ass'n v. Public Utilities Commission* (1979) 24 Cal.3d 836, 844.

3. Issues before the Commission

The assigned Commissioner's March 2, 2020 scoping memo, as clarified by the assigned ALJ's March 25, 2020 ruling, identified the following issues to be addressed in this OSC:

1. Whether Respondent booked any expenditures to its Demand Side Management Balancing Account, and associated allocated overhead costs, to advocate against more stringent codes and standards during any period between 2014 and 2017 (inclusive); and
2. Whether Respondent ever used ratepayer funds, regardless of the balancing account or other accounting mechanism to which such funds were booked, to advocate against local governments' adoption of reach codes.

If the above factual questions are true, the issues to be determined are:

1. Whether Respondent is entitled to shareholder incentives for codes and standards advocacy in 2014 through 2017;
2. Whether Respondent's shareholders should bear the costs of its 2014 through 2017 codes and standards advocacy; and
3. Whether any other remedies are appropriate.

4. Factual issues

This decision first considers the factual questions within scope of this OSC, and on which the remaining issues within scope must be based. Although the factual questions, as posed in the scoping memo, ask whether SoCalGas used ratepayer funds to advocate against more stringent codes and standards and against local governments' adoption of reach codes, review of relevant Commission decisions makes clear that the appropriate factual question is whether SoCalGas used ratepayer funds for activities in misalignment with Commission intent, which has been that the large IOUs should advocate for

more stringent codes and standards and support local governments' adoption of reach codes.

Since at least 2005, the Commission has authorized the large IOUs to use ratepayer funds to advocate for more stringent codes and standards as part of their energy efficiency portfolios. D.05-09-043 adopted energy savings goals for 2006-2008, including for savings attributable to codes and standards programs, stating "these activities have been an essential and valuable component of the energy efficiency portfolio in the past, and continue to be recognized as such in our updated policy rules. In fact, using ratepayer dollars to work towards adoption of higher appliance and building standards may be one of the most cost-effective ways to tap the savings potential for energy efficiency and procure least-cost energy resources on behalf of all ratepayers."[8]

D.07-10-032 reaffirmed the Commission's "2005 goal that the utility programs should include efforts to encourage the adoption of more stringent C&S."[9]

Beginning with the 2010-2012 portfolios, the Commission expanded the range of IOU codes and standards activities to include a Reach Codes subprogram. D.09-09-047 described reach code ordinances as "typically codes adopted by local governments and provide a means to test new codes as well as testing the efficacy of increasing the stringency of existing codes at a local level prior to disseminating the code on a statewide basis."[10]

[8] D.05-09-043, at 90, 123 and Finding of Fact 40.

[9] D.07-10-032, at 119-121. D.07-10-032 also permitted the IOUs to expand the range of codes and standards activities to include compliance, along with the original sole focus on advocacy.

[10] D.09-09-047, at 202-203.

In providing guidance for the 2013-2014 portfolios, the Commission repeated its intent for IOU codes and standards activities. D.12-05-015 states: "[t]he Commission has supported funding for the IOU codes and standards program to: (a) advance the adoption of more stringent code and standards through the codes and standards program advocacy work; (b) improve code compliance through the Extension of Advocacy and Compliance Enhancement Program; and (c) promote adoption of Reach Codes among local jurisdictions."[11]

Most recently, in D.14-10-046, the Commission reiterated "[w]e have authorized utilities to spend EE dollars advancing more stringent codes and standards."

The Commission's intent for codes and standards advocacy has been consistent and unambiguous: the large IOUs should use ratepayer funds to advocate for more stringent codes and standards. Similarly, the Commission's intent for reach codes has clearly been that the large IOUs should use ratepayer funds to support local governments' adoption of reach codes. This decision thus considers activities that did not support more stringent codes and standards, or local governments' adoption of reach codes, as activities that misaligned with Commission intent. This decision finds that SoCalGas used ratepayer funds on activities in misalignment with Commission intent.

4.1. SoCalGas booked expenditures to its Demand Side Management Balancing Account on activities that did not support more stringent codes and standards

The parties' October 2, 2020 joint statement of stipulated facts states the parties do not dispute that SoCalGas charged expenses to its DSMBA for

[11] D.12-05-015, at 257.

activities associated with the items listed below. Although the parties' characterizations of these activities differs, SoCalGas does not generally dispute that these activities reflect instances in which it did not support a more stringent code or standard.[12]

1. SoCalGas sent a letter to the CEC on September 20, 2014 regarding the 2016 Residential Instantaneous Water Heaters (IWH) CASE Study.

   SoCalGas's September 20, 2014 letter to the CEC states "[w]e recommend moving this IWH recommendation to the 2019 Codes and Standards cycle..."[13]

2. SoCalGas filed public comments, also regarding adoption of IWH regulations, docketed November 24, 2014, in CEC Docket # 14-BSTD-01, 2016 California Title 24 Update Process, November 3 hearing.

   SoCalGas's November 24, 2014 letter to the CEC states "[w]e respectfully request that the CEC refrain from adopting further Title 24 regulations on IWH until this research is complete."[14]

3. SoCalGas filed public comments on the DOE's Notice of Proposed Rulemaking (NOPR), posted July 13, 2015, in DOE Docket # EERE-2014-BT-STD-0031, Energy Conservation Program for Consumer Products: Energy Conservation Standards for Residential Furnaces (Furnace Rule). SoCalGas included a report by Gas Technology Institute (GTI) (July 7, 2015, V2 Revision July 15, 2015) and a second report by Negawatt Consulting (June 26, 2015) and attached Life Cycle Cost (LCC) and Fuel Switching tables.

[12] See, e.g., SoCalGas brief, at 14.

[13] Exhibit Cal Advocates / Sierra Club-70.

[14] Exhibit Cal Advocates / Sierra Club-27.

SoCalGas's July 13, 2015 comments state "we must respectfully oppose the Notice of Proposed Rulemaking...SoCalGas opposes the advancement of Energy Conservation Standards for Residential Furnaces Docket No. EERE-2014-BT-STD-0031; RIN 1904-AD20 at this time and in its current form."[15]

4. SoCalGas filed public comments on the DOE's Notice of Data Availability regarding the NOPR, posted October 16, 2015 in the DOE's Furnace Rule docket. SoCalGas included a report by Gas Technology Institute (GTI) (July 7, 2015, V2 Revision July 15, 2015) and a second report by Negawatt Consulting (June 26, 2015).

   SoCalGas's October 16, 2015 comments reiterate its opposition to the new efficiency standards, stating "[a]lthough we are pleased that an effort is being made to find a compromise, we remain concerned that DOE did not address our original comments to the NOPR...this rulemaking is neither technically feasible nor economically justified. SoCalGas respectfully requests that the DOE address the flawed methodology in the NOPR as outlined in our July 10, 2015 comments."[16]

5. SoCalGas filed public comments on the DOE's Supplemental Notice of Proposed Rulemaking (SNOPR), posted January 9, 2017, in the DOE's Furnace Rule docket. SoCalGas included a report by Gas Technology Institute (GTI) (July 7, 2015, V2 Revision July 15, 2015) and a second report by Negawatt Consulting (December 20, 2016).

[15] Exhibit Cal Advocates / Sierra Club-2.

[16] Exhibit Cal Advocates / Sierra Club-4.

SoCalGas's January 9, 2017 comments describe further analysis that SoCalGas conducted, and states "SoCalGas respectfully requests the DOE review the summary of findings below and address all concerns with the [technical support document] and [life cycle cost] prior to issuing a final rulemaking."[17]

6. SoCalGas, San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE) filed joint public comments, posted November 3, 2016, in DOE Docket # EERE-2014-BT-STD-0005, 2016-09-02 Energy Conservation Program: Energy Conservation Standards for Residential Conventional Cooking Products; Supplemental notice of proposed rulemaking.

   SoCalGas, SDG&E and SCE's November 3, 2016 joint comments state "[w]e agree with DOE that EL 2 for gas cooking tops is not desirable because consumers should retain the ability to purchase gas cooking tops with all available commercial-style features. Therefore, we recommend [trial standard level] 2, with [efficiency level] 0 (baseline) for Product Class 3. This will yield only a fractional reduction in national energy savings of 0.06 quads."[18]

7. SoCalGas filed public comments, posted June 27, 2016, in DOE Docket # EERE-2013-BT-STD-0030, 2016-03-24 Energy Conservation Program: Energy Conservation Standards for Commercial Packaged Boilers; Notice of

[17] Exhibit Cal Advocates / Sierra Club-1 (Final Comments of the Office of Ratepayer Advocates on Energy Efficiency Program Administrators' Business Plan Applications), Appendix C, Exhibit 2, at C-007, C-008 (SoCalGas Comments on DOE Furnace Rule SNOPR, pp. 1-2); Joint Statement of Stipulated Facts, Paragraph II(5).

[18] SoCalGas, SDG&E and SCE Comments on SNOPR for Energy Conservation Standards for Residential Conventional Cooking Products, submitted November 2, 2016 in United States Department of Energy ("DOE") Docket EERE-2014-BT-STD-0005-0067, available at https://www.regulations.gov/document?D=EERE-2014-BT-STD-0005-0067 .

Proposed Rulemaking and announcement of public meeting.

SoCalGas's comments state "SoCalGas recommends the adoption of Trial Standard Level (TSL) 1 for this rule instead of TSL 2...SoCalGas feels the adoption of TSL 1 is a reasonable request that minimizes the uncertainties and risks associated with the introduction of the new test procedure, and the risk of negative economic impact to California customers."[19] TSL 1 is a less stringent standard than TSL 2.[20]

8. SoCalGas filed public comments, posted August 8, 2017, in DOE Docket # DOE-HQ-2017-0016-0054, DOE RFI on Regulatory Burden.[21]

   SoCalGas's July 14, 2017 letter to the DOE suggests that the DOE "consider deprioritizing efficiency regulations where above-code equipment has already proven to be successful in the marketplace for many applications and customers...In these situations, one can support the position that a standard is not needed, because the higher efficiencies are attractive enough to be adopted by utility customers without government intervention."[22]

This decision finds that Items 1 through 8 represent activities in which SoCalGas did not support more stringent codes and standards.

[19] Exhibit Cal Advocates / Sierra Club-6.

[20] Cal Advocates brief, at 17-18.

[21] DOE-HQ-2017-0016-0054: Reducing Regulation and Controlling Regulatory Costs/Multiple Submitters' Comments on DOE RFI on Regulatory Burden, accessed at https://www.regulations.gov/document?D=DOE-HQ-2017-0016-0054.

[22] Exhibit Cal Advocates/Sierra Club-1, Appendix C, Ex. 7, at C-074.

4.2. SoCalGas used ratepayer funds for activities that did not support local governments' adoption of reach codes

The parties' joint statement of stipulated facts also states the parties do not dispute the below listed items. As with the codes and standards activities listed in Section 4.1, the parties characterize the below activities differently. SoCalGas disputes that these activities constitute advocacy against more stringent codes or standards; rather, SoCalGas asserts, SoCalGas was providing information for local governments' consideration of proposed reach codes.

1. On August 9, 2019, SoCalGas sent a letter to the City of San Luis Obispo concerning proposed local amendments to the 2019 California Building Code.

   SoCalGas's August 9, 2019 letter addresses the cost-effectiveness analysis on which the city relied to propose amendments to its building reach code, and states:

   "…Overall, the cost-effectiveness analysis appears to be designed to reach a predetermined conclusion to support building electrification as the optimal pathway to decarbonize buildings...Large scale, economy-wide cost impacts to City residents and businesses should be based on robust and broad technical support and analysis, which...the current cost-effectiveness study does not do.

   "We support the city's goal to reduce its carbon emissions but do not believe an all-electric scenario achieves that and places unnecessary costs on residents."[23]

   2. On September 3, 2019, five SoCalGas employees attended the San Luis Obispo city council meeting, and one of these employees provided public comment on behalf of SoCalGas.[24] The employee's public comments state:

[23] Exhibit Cal Advocates/Sierra Club-37; Exhibit Cal Advocates/Sierra Club-32.

[24] Exhibit Cal Advocates/Sierra Club-33; Exhibit Cal Advocates/Sierra Club-36.

"I want to start as we talk about misinformation. I can't tell you how to vote, and I would never try to tell you how to vote. But I think as a councilman, you want the opportunity to have accurate information. And we started from a place where we got numbers from PG&E. It's nothing against PG&E, but that's not even, this is not even their service territory. And I think that was done in a way to show a difference in the numbers. Their numbers were almost eleven thousand, twelve thousand dollars, and our numbers were four thousand. So starting off, we have to use the company that provides the service to your residents.

"Secondly, I look on the projector here, and it talks about emissions. It says, forty percent from buildings. I would like to know where that information comes from because when I look at CARB's information, Air Resources Board, it says seven percent is residential, and five percent is commercial. Twelve percent is a lot less than forty percent.

"We also talked about natural gas stoves being harmful to people. You have to understand, that's like looking at a, when you look at a movie review and they give you the dot dot dot, where, it's a great movie, if you want to fall asleep. Think about that. What they left out was yes, it's peer reviewed, and in that peer review it said that the reason you have emissions from cooking is poor ventilation, or no ventilation. Has nothing to do with the stove. So I urge you, before you make your decision, really investigate this stuff. Everything I told you, I can provide the citation. I didn't see citations in their presentations. Thank you very much, I look forward to working with you."[25]

3. On September 10, 2019, three SoCalGas employees attended and provided public comment on behalf of

[25] Video recording of the September 3, 2019 meeting of the San Luis Obispo city council (part 3, starting at 133:03), accessed at https://www.slocity.org/government/department-directory/city-clerk/on-demand-meeting-videos.

SoCalGas at the Santa Monica city council meeting.[26] The public affairs manager's comments state:

"I ask that you make a slight change to your reach code, to include clean energy sources like renewable natural gas as a pathway. We know that consumers prefer a balanced choice in their energy decisions, so we know that renewable natural gas, and natural gas, is one of those items. Over 97 California cities have exemplified this by passing resolutions in favor of maintaining that diverse, resilient, and reliable energy policy. Approximately 90 percent of Californians enjoy using natural gas in their homes today. And thanks to polling done by the California Building Association, we know that only ten percent of homebuyers would choose to have an electric home, a home with electric appliances. Two thirds of voters oppose eliminating natural gas from their homes, and I'm sure some of them are in Santa Monica. And a separate CBIA study showed that the cost of retrofitting existing homes would be approximately seventy-three hundred dollars more than gas appliances.

"So at SoCalGas, we regularly work with builders to design balanced energy systems for new homes that result in net zero energy usage. And we've demonstrated that dual fuel homes can achieve carbon neutrality. We've helped homeowners save on their utility bills, a lot of them in Santa Monica, by installing energy efficient upgrades, as well as assisted builders and architects in developing environmentally friendly, energy efficient communities. So I just ask that you consider renewable natural gas as part of that pathway. And make it on an even keel with solar and electric. Thank you."[27]

[26] Exhibit Cal Advocates/Sierra Club-33.

[27] Video recording of the September 10, 2019 meeting of the Santa Monica city council (starting at 4:25:40), accessed at http://santamonica.granicus.com/ViewPublisher.php?view_id=2

4. On February 4, 2020, SoCalGas sent a letter to the Culver City Building Safety Division regarding reach code amendments. SoCalGas's February 4, 2020 letter states:

   "[W]hile we support the City's efforts to increase renewable energy and decrease citywide emissions, we are concerned about the lack of discussion around the use of renewable natural gas as a carbon negative fuel to help the City reduce its building emissions. We are further concerned about this discussion as city staff are commenting on the magnitude of building emissions..., yet, the City does not have an emissions inventory report that quantifies current levels of emissions."

   The letter lists and describes several studies that "convey the need for an 'all of the above' approach to California's renewable energy goals that balances our emissions reduction targets with the need to maintain a reliable, affordable, and resilient energy system," and concludes "SoCalGas would greatly appreciate the opportunity to discuss the information in these reports with the City and potential opportunities to collaborate on strategies to reduce city emissions."[28]

This decision finds that the above activities represent instances in which SoCalGas engaged in activities that did not support local governments' adoption of reach codes. The expenses for some of these activities were charged to ratepayer-funded accounts.[29] Regarding Items 2 and 3, this decision takes judicial notice of the public comments made by SoCalGas employees during the

[28] Exhibit Cal Advocates/Sierra Club-68.

[29] *See, e.g.,* Exhibit Cal Advocates/Sierra Club-33. As the scope of this OSC is limited to ratepayer-funded expenditures, this decision does not consider/address activities charged to shareholder-funded accounts.

September 3, 2019 meeting of the San Luis Obispo city council and the September 3, 2019 meeting of the Santa Monica city council.[30]

5. Ratepayers should not bear the costs of activities that misaligned with Commission intent

Cal Advocates and Sierra Club recommend numerous remedies, including refunds of ratepayer expenditures and shareholder incentives, significant penalties based on a finding that SoCalGas violated a Commission decision, and further limitations on SoCalGas's use of ratepayer funds for codes and standards advocacy. This decision determines that SoCalGas is not entitled to shareholder incentives for activities that did not align with Commission intent, and that SoCalGas should refund all expenditures associated with those activities. As described below in Section 6, this decision does not find it appropriate to impose a financial penalty. However, SoCalGas committed appreciable harm to the regulatory process; thus, the additional remedies recommended by Cal Advocates and Sierra Club merit consideration.

The remedies ordered in this decision address the activities undertaken by SoCalGas's Regional Public Affairs (RPA) group, related to activities that did not support local governments' adoption of reach codes. SoCalGas argues that, because these activities were funded through its general rate case (GRC) rather than the DSMBA, the Commission should defer consideration of the reach code activities to "a more appropriate proceeding," either their next GRC application

[30] *Email Ruling Providing Notice and Opportunity on Taking Judicial Notice*, issued February 12, 2021; *Response to email ruling providing notice and opportunity on taking judicial notice*, filed by Sierra Club on February 22, 2021; *Response to Administrative Law Judge Ruling Regarding Judicial Notice in the Order to Show Cause Issued December 17, 2019*, filed by Cal Advocates on February 22, 2021; and *Comments of Southern California Gas Company (U 904 G) on Administrative Law Judge's E-mail Ruling Providing Notice and Opportunity on Taking Judicial Notice,* filed by SoCalGas on February 22, 2021.

or a "statewide rulemaking, as requested in SoCalGas's July letter to President Batjer so that all utilities and parties can have clarity around the rules for funding such activities."[31] The thrust of SoCalGas's argument is that, because these activities were undertaken outside of SoCalGas's Reach subprogram, and indeed outside of its energy efficiency portfolio, it is inappropriate to consider these activities in this OSC. However, the scoping memo clearly identifies the issue of whether SoCalGas ever used ratepayer funds to advocate against local governments' adoption of reach codes, and appropriate remedies for such conduct, as within scope of this OSC. Thus it is appropriate to address remedies for SoCalGas's reach code activities in this decision.

5.1. Refund of ratepayer expenditures

California Public Utilities Code[32] Section 451 states:

> All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust and unreasonable charge demanded or received for such product or commodity or service is unlawful...

This decision concludes that expenditures on activities that misaligned with Commission intent are unjust and unreasonable; thus it would be unreasonable to allow SoCalGas to retain ratepayer funds for such expenditures.

SoCalGas must refund all expenditures booked to the DSMBA associated with the activities identified in Section 4.1 of this decision, except that we will not include activities associated with the joint comments submitted by SoCalGas,

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[31] *Reply Brief of Southern California Gas Company (U 904 G) to the Order to Show Cause Addressing Shareholder Incentives for Codes and Standards Advocacy Expenditures*, filed December 4, 2020, at 32-33.

[32] Unless otherwise specified, all further statutory references are to the California Public Utilities Code.

SDG&E and SCE to the DOE regarding standards for residential conventional cooking products (Item 6); as SoCalGas notes, Cal Advocates and Sierra Club do not appear to take issue with this particular activity. And SoCalGas must refund all ratepayer-funded expenditures associated with the activities identified in Section 4.2 of this decision.

Cal Advocates and Sierra Club would have the Commission base the refund amount, however, on the *total* amount of codes and standards advocacy expenditures, asserting SoCalGas developed widespread, systematic "internal strategies" to undermine efficiency standards – an assertion that SoCalGas disputes. This decision does not accept this line of reasoning. It is certainly possible SoCalGas engaged in other activities, at ratepayer expense, on other activities that did not support more stringent codes and standards or local governments' adoption of reach codes, and Cal Advocates and Sierra Club assert as much in their briefs. However, as SoCalGas points out, it has co-funded and led a number of Codes and Standards Enhancement (CASE) studies[33] that Cal Advocates and Sierra Club do not take issue with. Further, the scoping memo provided sufficient opportunity for discovery and stipulation of facts, and for evidentiary hearing of material disputed facts. The parties requested to remove evidentiary hearing. Given that the parties had an opportunity to try any contested facts, and waived that opportunity, this decision does not find it reasonable to order a refund of expenses other than those associated with the facts to which all parties stipulated.

[33] SoCalGas brief, at 11, footnote 37.

5.2. Shareholder incentives

D.13-09-023 did not provide staff discretion to determine the merits of an IOU's request for ESPI payments. Regarding codes and standards advocacy, D.13-09-023 provided only that staff award shareholder incentives as a "management fee" of 12 percent of approved program expenditures. D.13-09-023 explained, however, that program expenditures is a reasonable proxy for energy savings and utility effort, which are the actual criteria upon which ESPI awards should be based.[34] As this decision previously explained, the Commission's consistent and unambiguous intent for codes and standards advocacy was that the IOUs should use ratepayer funds to advocate in support of more stringent codes and standards. Having found that SoCalGas spent ratepayer funds on activities that did not align with this intent, and thus these expenditures are *not* a reasonably proxy for energy savings or utility effort, this decision does not find it reasonable that SoCalGas shareholders should have received, or should receive, ESPI payment for these expenditures.

SoCalGas must refund its ESPI management fee payment for all expenditures associated with the activities identified in Section 4.1, except for Item 6. SoCalGas's codes and standards management fee has been paid for 2014, 2015 and 2016; thus, SoCalGas must refund its ESPI management fee payment for all 2014, 2015 and 2016 expenditures associated with the activities identified in Section 4.1, except for Item 6. And any expenditures identified in Section 4.1 (except for Item 6), for which SoCalGas has not yet received ESPI payment, are ineligible for ESPI payment as of the issue date of this decision. Resolution E-5007 did not award a management fee payment to SoCalGas; Commission staff

[34] D.13-09-023, at 75-77.

should wait for the results of the audit ordered by this decision to determine the amount of ESPI management fee payment that SoCalGas should receive, consistent with this decision. Commission staff may dispose of SoCalGas's 2017 non-codes and standards ESPI earnings, as this decision does not address ESPI earnings other than the codes and standards management fee; with respect to the 2018 codes and standards management fee, Commission staff should wait until the Commission addresses the order to show cause initiated by ruling dated October 3, 2019.

5.3. Audit of past expenditures to determine refund amounts

This decision directs the Commission's Utility Audits Branch (UAB) to conduct an audit to determine the full amount of ratepayer funds that SoCalGas expended on the activities identified in Sections 4.1 (except for Item 6) and 4.2. As part of this audit, the UAB shall determine the amount of ESPI payments that SoCalGas received for the activities identified in Section 4.1 (except for Item 6). In the event that SoCalGas's records do not enable UAB to calculate the specific amounts that SoCalGas must refund, UAB is authorized to employ whatever method it deems appropriate, and to exercise judgment as it deems appropriate, to estimate the amounts that SoCalGas must refund. The results of UAB's audit will determine the amounts of ratepayer expenditures and ESPI management fee payments that SoCalGas must return to ratepayers, and any amount of ESPI payments for which SoCalGas has not yet received authorization and is now, as a result of this decision, ineligible to collect.

6. It is not reasonable to impose financial penalties for SoCalGas's conduct

As indicated in D.18-05-041, none of the statements referenced in Section 4 amount to an explicit order or directive by which to assess compliance; nor is

there any explicit prohibition against the activities identified as stipulated facts in Sections 4.1 and 4.2. No matter how questionable the Commission and this decision find the conduct that SoCalGas engaged in, no amount of evidence can overcome the fact that the Commission has not established clear standards or criteria for what constitutes compliance or non-compliance with its intent for codes and standards advocacy or for supporting local governments' adoption of reach codes. While the Commission is not necessarily required in every circumstance to specify its standards or criteria for compliance, the range of possible activities that could be found as misaligned with Commission intent, and the existence of possibly extenuating circumstances, strongly suggest the need for criteria or standards to determine whether and how each of SoCalGas's activities constitute compliance or non-compliance. Such standards or criteria were never developed, and were they established in this decision or otherwise, should not apply retrospectively. It would be inappropriate to presume what the Commission would have deemed as compliant or non-compliant activities, had the Commission addressed this question prior to any relevant activity being undertaken.

Further, to apply any determination reached in this decision retrospectively would subject SoCalGas to selective enforcement for conduct that other utilities might have also engaged in.[35] That SoCalGas's own actions contributed to this lack of standards or criteria does not make it any more appropriate to subject SoCalGas to after-the-fact determinations.

[35] For example, SoCalGas, SDG&E, and SCE submitted joint comments on proposed standards for residential conventional cooking products that recommended efficiency level 0 for Product Class 3 (Item 6 of Section 4.1). Also, Exhibit Cal Advocates/Sierra Club-25 includes reference to an instance in which SCE removed its logo from a CASE study regarding LEDs and took a "neutral position."

7. SoCalGas's conduct warrants additional remedy

Although this decision does not impose financial penalties, it is necessary to address SoCalGas's conduct and to dispel its claims of good faith compliance.

SoCalGas committed appreciable harm to the regulatory process by using ratepayer funds in misalignment with the Commission's intent for codes and standards advocacy, and by repeatedly failing to seek Commission direction in the face of supposed or alleged policy inconsistencies. Both of these offenses are harmful,[36] but the latter is especially disturbing and warrants a significant remedy. That SoCalGas allegedly believed it was in compliance, as SoCalGas would have the Commission conclude, does not excuse its conduct. Moreover, the record evidence demonstrates that SoCalGas was aware of, at minimum, the dubiousness of proceeding with certain activities without first seeking Commission guidance. This is evident with respect to the CEC's instantaneous water heating proposal in 2014, the earliest instance for which we find SoCalGas's activities in misalignment with Commission policy.[37] Of particular note is the fact that, in response to SoCalGas's disagreement over the CASE study and its request to retain the company logo on the CASE study, an SCE representative identified a conflict of interest and a negative impact to the codes and standards program, and a PG&E representative similarly expressed reservation with including SoCalGas's logo if it was going to oppose the standard, and offered instead to reimburse SoCalGas for its contribution to the CASE study.[38]

[36] Cal Advocates brief, at 35-36.[37] Cal Advocates brief, at 9-11, 38-39; Sierra Club brief, at 20-23

[37] Cal Advocates brief, at 9-11, 38-39; Sierra Club brief, at 20-23

[38] Exhibit Cal Advocates/Sierra Club-25.

SoCalGas was also aware that opposing a proposed standard could well result in "forfeiting attribution of the savings for that standard;" indeed, as Commission staff stated, a scenario where "one IOU does not support the standard or even opposes it...would be a first."[39] This response from Commission staff was clear indication that SoCalGas should have, at minimum, sought formal guidance from the Commission. Instead, SoCalGas continued its conduct with knowledge of the "dilemma" of having "to play nice in the sandbox here on Mars because we have mandates to move this stuff forward based on funding."[40]

SoCalGas grossly misconstrues D.18-05-041 to suggest its conduct was appropriate, asserting "there was no framework for determining whether SoCalGas had acted improperly and there is no Commission or statutory authority requiring an IOU to only reach for the highest or most stringent code or standard, and without factoring in other considerations such as cost-effectiveness."[41] It is illogical to infer that, because there was no "framework" or "guidance for evaluating and determining such asserted reasonableness," then utilities should on their own determine the reasonableness of not supporting, or arguing against, more stringent codes and standards, which is the conclusion SoCalGas would have the Commission reach.

It is plausible that the Commission might have deemed it reasonable, under certain circumstances, for a utility to use ratepayer funds to raise concerns about a proposed efficiency standard. However, having recognized the importance and value of utilities' advocacy to *support* more stringent codes and

[39] Exhibit Cal Advocates/Sierra Club-23.

[40] Exhibit Cal Advocates/Sierra Club-40; Cal Advocates brief, at 38; and Sierra Club brief, at 14.

[41] SoCalGas brief, at 10.

standards, the Commission would have needed to consider and identify the specific criteria by which utilities might reasonably use ratepayer funds to raise concerns over proposed stringent codes and standards. The Commission never engaged in such deliberation because it never conceived of a utility using ratepayer funds for activities that did not advocate for a more stringent code or standard, and because no party – including SoCalGas -- ever raised it. Indeed, the Commission had no reason to consider such a question until after the fact, when Cal Advocates first brought SoCalGas's conduct to the Commission's attention. This, and not SoCalGas's tortured reading of D.18-05-041, is what the Commission meant when it stated it had "no rules or guidance for determining whether and under what circumstances a utility may be 'justified' in arguing against more stringent codes and standards."[42]

SoCalGas also attempts to justify its conduct by pointing to Section 381(b)(1), which directs the Commission to allocate public purpose program funds to "*cost-effective* energy efficiency and conservation activities,"[43] to assert that its opposition to more stringent codes and standards was justified because its basis for opposition involved cost-effectiveness, affordability, and other similarly 'reasonable' concerns. This argument has no merit.

As Cal Advocates and Sierra Club correctly point out, Section 381(b) refers to the Commission's, not SoCalGas's, responsibility to allocate ratepayer funds. Determination of the potential bases, if any, on which a utility would be "justified" in using ratepayer funds to advocate against more stringent codes and standards (such as cost-effectiveness and affordability), is for the Commission to

[42] D.18-05-041, at 143.

[43] SoCalGas brief, at 17.

reach. SoCalGas's assertions of cost-effectiveness and customer harm are merely assertions. This decision cannot accept claims of cost-effectiveness or ratepayer harm without the Commission having first identified the criteria by which such claims may be assessed and then validated. Again, because the Commission never considered the permissibility of using ratepayer funds to advocate against more stringent codes and standards, any claims as to its justification are necessarily invalid. Even if SoCalGas could point to a relevant statute or other authority, the point remains that determining the reasonableness of utility activities is in the Commission's jurisdiction.

Further, this decision agrees with Cal Advocates and Sierra Club that the record evidence demonstrates SoCalGas's actions were driven at least in part by concerns over profitable throughput as well as for maintaining some basis for gas efficiency programs, such that SoCalGas's claims of concerns over cost-effectiveness or harm to ratepayers must be viewed with skepticism.[44]

In its reply brief, SoCalGas also refers to Section 454.56(b), which directs that a "gas corporation shall first meet its unmet resources through all available natural gas efficiency and demand reduction resources that are cost effective, reliable, and feasible." We similarly dismiss Section 454.56(b) as a valid defense, as Section 454.56(a) specifies that the Commission is responsible for identifying "all potentially achievable cost-effective natural gas efficiency savings and establish efficiency targets for the gas corporations to achieve." Further, there is no inconsistency between Section 454.56(a) and the Commission's intent for codes and standards advocacy. Until recently, Commission policy has been to incentivize energy savings beyond code requirements; thus, the Commission

[44] *See, e.g.*, Cal Advocates brief, at 31; Exhibit Cal Advocates/Sierra Club-1, Appendix C, Exhibit 10, C-166, C-171; Sierra Club brief, at 20-22, 26-27.

acknowledged the value of the IOUs' advocacy to advance more stringent codes and standards as "one of the most cost-effective ways to tap the savings potential for energy efficiency,"[45] so that ratepayer funds could be conserved or redirected toward even greater savings, *i.e.*, savings that were *not* required by codes or standards.

Although this decision rejects the notion, advanced by SoCalGas, that there was ambiguity or inconsistency between relevant statute and Commission decisions regarding codes and standards advocacy, any such inconsistency would not have justified SoCalGas's conduct. SoCalGas had an appropriate course of action if and when faced with a credible dilemma between advocating for a more stringent standard and concern over cost-effectiveness or customer harm. SoCalGas could have and should have chosen to use shareholder funds for any activities that would not support more stringent codes and standards, and it could have brought forth any policy inconsistency, perceived or alleged or otherwise, to the Commission for formal guidance in the energy efficiency rulemaking proceeding. SoCalGas's claim of "a lack of clear rules and guidance" is not a valid excuse for substituting its own judgment for the Commission's. SoCalGas's failure to take appropriate action requires consideration of additional appropriate remedies.

[45] D.05-09-043, Finding of Fact 40.

7.1. SoCalGas is prohibited from using ratepayer funds on codes and standards programs, pending an affirmative demonstration of sufficient and appropriate policies, practices and procedures to ensure adherence to Commission intent

Cal Advocates and Sierra Club recommend a number of additional remedies:

- Remove SoCalGas from any role in codes and standards programs (other than to transfer funds to the statewide codes and standards lead) through 2028, with readmission contingent on annual audits.[46]
- Permanently prohibit SoCalGas from recovering the costs of any future advocacy against stringent codes and standards, including local reach code adoption, either on its own behalf or through gas industry trade groups.[47]
- Remove SoCalGas from its current role as statewide lead for the gas Emerging Technology Program.[48]

Section 701 provides:

> The Commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.

Having found improper conduct with respect to fulfilling the Commission's intent for codes and standards advocacy, and resulting appreciable harm to the regulatory process, this decision finds reason to impose an indefinite prohibition on SoCalGas's cost recovery from ratepayer-funded

[46] Cal Advocates brief, at 41-42.

[47] Sierra Club brief, at 57-61.

[48] Cal Advocates brief, at 43.

accounts for participating in any codes and standards programs, other than to transfer funds to the statewide codes and standards lead.

To forestall claims of ambiguity, this decision specifies that "codes and standards programs" include all activities, regardless of which balancing account or other accounting mechanism to which their expenses are booked, that would be performed as part of any of the energy efficiency Codes and Standards sub-programs, *i.e.*, codes and standards advocacy, compliance improvement, reach codes, planning and coordination, code-readiness, and any subsequent sub-programs. Further, this decision specifies that "codes and standards advocacy" includes, at minimum, any activity in which a utility or any of its employees:

- discusses or conducts research or analysis of a proposed code or standard, including a proposed reach code;
- pays another individual or organization to discuss or conduct research or analysis of a proposed code or standard, including a proposed reach code;
- communicates (e.g., sends letters, provides comments, or makes public statements) with the CEC, DOE, or a local government regarding a proposed code or standard; or
- pays another individual or organization to communicate with the CEC, DOE, or a local government regarding a proposed code or standard.

SoCalGas may not seek recovery from ratepayer-funded accounts for the costs of labor and associated overhead for codes and standards programs. SoCalGas must implement appropriate tracking of employees' time so that the Commission can supervise compliance with this decision. SoCalGas may only seek recovery of funds transferred to the statewide codes and standards lead from ratepayer-funded accounts.

This decision directs UAB to include compliance with this decision's prohibition within scope of its annual energy efficiency audits for no fewer than five years. If membership dues to a particular organization provide(d) services or benefits in addition to codes and standards program activities, UAB shall determine what portion of those membership dues are subject to this decision's prohibition, using whatever method UAB deems appropriate.

The Commission may lift this decision's prohibition either on its own motion or upon finding that SoCalGas possesses sufficient and appropriate policies, practices and procedures to ensure adherence to Commission intent for codes and standards advocacy and for supporting local governments' adoption of reach codes. The Commission will issue a ruling in R.13-11-005 to invite comments on the specific criteria that SoCalGas must meet, and how SoCalGas must demonstrate that it meets those criteria, in order for the Commission to reach such finding. The assigned Commissioner or Administrative Law Judge may subsequently issue a ruling determining the criteria that SoCalGas must meet, and how SoCalGas must demonstrate that it meets those criteria.

As long as SoCalGas is prohibited from using ratepayer funds on codes and standards programs (other than to transfer funds), SoCalGas will not be eligible for ESPI awards for codes and standards programs, or any codes and standards-related shareholder incentives that the Commission may adopt in the future.

Regarding the recommendation to remove SoCalGas from its current role as the statewide lead for the gas Emerging Technology Program, it would be improper to adopt such a recommendation without direct evidence of misconduct, or questionable conduct, specific to their serving in this capacity. Although this decision agrees that SoCalGas's conduct was at least partially

motivated by a desire to maintain gas sales, both for profit and for its gas efficiency programs, we are not convinced that those motivations will negatively impact its role as the lead for the gas Emerging Technology Program.

8. Assignment of Proceeding

Genevieve Shiroma is the assigned Commissioner and Julie A. Fitch and Valerie U. Kao are the assigned Administrative Law Judges in this proceeding.

Findings of Fact

1. The items identified in Section 4.1 are activities that did not support more stringent codes and standards.
2. The items identified in Section 4.2 are activities that did not support local governments' adoption of reach codes.
3. The Commission's intent for codes and standards advocacy and for reach codes is clear and unambiguous: the large IOUs should use ratepayer funds to advocate for more stringent codes and standards, and to support local governments' adoption of reach codes.
4. SoCalGas used ratepayer funds on activities that misaligned with Commission intent for codes and standards advocacy and for reach codes.
5. SoCalGas's expenditures on the activities identified in Section 4.1, except for Item 6, and Section 4.2 are unjust and unreasonable.
6. SoCalGas is not entitled to shareholder incentives for activities that did not align with Commission intent.
7. The Commission did not establish standards or criteria for determining whether the activities SoCalGas engaged in warrant a financial penalty.
8. SoCalGas caused appreciable harm to the regulatory process, without justification, by using ratepayer funds on activities that misaligned with Commission intent and by repeatedly failing to take appropriate action on

perceived or alleged inconsistencies between Commission decisions and other applicable authorities.

Conclusions of Law

1. SoCalGas should refund expenditures on the activities identified in Section 4.1, except for Item 6, and Section 4.2.

2. SoCalGas should refund its ESPI management fee payment for all expenditures associated with the activities identified in Section 4.1, except for Item 6. Any expenditures associated with the activities identified in Section 4.1 (except for Item 6), for which SoCalGas has not yet received ESPI payment, should not be eligible for ESPI payment.

3. Commission staff should wait for the results of the audit ordered by this decision to determine the amount of management fee payment that SoCalGas should receive, consistent with this decision.

4. Commission staff should dispose of the 2017 non-codes and standards ESPI earnings, as this decision does not address ESPI earnings other than the codes and standards management fee.

5. With respect to the 2018 codes and standards management fee, Commission staff should wait until the Commission addresses the order to show cause initiated by ruling dated October 3, 2019.

6. SoCalGas should be prohibited from cost recovery, from ratepayer-funded accounts, for codes and standards programs, as described in this decision, except to transfer funds to the statewide codes and standards lead.

7. It is reasonable to maintain the prohibition ordered in this decision until the Commission lifts such prohibition or until the Commission finds that SoCalGas has sufficient and appropriate policies, practices and procedures to ensure adherence to Commission intent.

8. It is reasonable to assess SoCalGas's compliance with the prohibition ordered in this decision.

9. It is not reasonable to remove SoCalGas from its current role as the statewide gas Emerging Technology Program lead.

O R D E R

IT IS ORDERED that:

1. Southern California Gas Company must refund all expenditures associated with the activities identified in Section 4.1, except for Item 6, booked to its Demand Side Management Balancing Account.

2. Southern California Gas Company must refund all ratepayer-funded expenditures associated with the activities identified in Section 4.2.

3. Southern California Gas Company must refund its Efficiency Savings and Performance Incentive (ESPI) management fee payment for all expenditures associated with the activities identified in Section 4.1, except for Item 6. Any expenditures associated with the activities identified in Section 4.1 (except for Item 6), for which Southern California Gas Company has not yet received ESPI payment, are hereby ineligible for ESPI payment.

4. Commission staff is authorized to proceed with disposing of Southern California Gas Company's 2017 non-codes and standards Efficiency Savings and Performance Incentive earnings.

5. No later than August 1, 2022, the Commission's Utility Audits Branch shall complete an audit to determine the amount of ratepayer-funded expenditures associated with the activities identified in Section 4.1 (except for Item 6) and Section 4.2. This audit shall identify the amount of Efficiency Savings and Performance Incentive (ESPI) management fee payments, associated with the activities identified in Section 4.1 (except for Item 6), that Southern California

Gas Company must refund, and the amount of expenditures that are ineligible for ESPI payment.

6. Within 30 days after the completion of the audit ordered by Ordering Paragraph 5, Southern California Gas Company must submit a Tier 2 advice letter detailing the entries it will make to the Demand Side Management Balancing Account and any other accounting mechanisms identified by the results of the audit ordered by Ordering Paragraph 5, to effectuate the refund of all expenditures and Efficiency Savings and Performance Incentive management fee payments associated with the activities identified in Section 4.1 (except for Item 6), and all expenditures associated with the activities identified in Section 4.2, consistent with the findings of the audit ordered by Ordering Paragraph 5.

7. Southern California Gas Company is prohibited from cost recovery, from ratepayer-funded accounts, for codes and standards programs as described in this decision; this prohibition does not apply to the transfer of funds to the statewide codes and standards lead. Southern California Gas Company may not seek recovery from ratepayer-funded accounts for the costs of labor and associated overhead for codes and standards programs, as described in this decision.

8. Within 30 days after the issue date of this decision, Southern California Gas Company must implement appropriate tracking of employee time to ensure compliance with this decision. At minimum, Southern California Gas Company must identify and track the employee name, cost category, number of hours, and specific activity for all employee time spent on codes and standards programs.

9. The Commission's Utility Audits Branch shall include compliance with this decision within scope of its annual energy efficiency audits for no fewer than five years following the issue date of this decision.

10. Southern California Gas Company must implement every recommendation relating to tracking of employee time that the Utility Audits Branch includes in its annual energy efficiency audit reports, no later than 30 days after the publish date of each report.

11. The prohibition ordered in this decision shall remain in effect until the Commission lifts such prohibition, or until the Commission finds that Southern California Gas Company has sufficient and appropriate policies, practices and procedures to ensure adherence to Commission intent for codes and standards advocacy.

12. Unless and until the Commission lifts the prohibition ordered in this decision, Southern California Gas Company is not eligible to receive Efficiency Savings and Performance Incentive payments for codes and standards programs, or any codes and standards-related shareholder incentive payments that the Commission may adopt in the future.

13. Rulemaking 13-11-005 remains open.

This order is effective today.

Dated _____, at San Francisco, California.