

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**02/09/22
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February 9, 2022

TO PARTIES OF RECORD IN RULEMAKING (R.) 13-11-005:

Rulemaking 13-11-005 was filed on November 14, 2013 and is assigned to Commissioner Genevieve Shiroma and Administrative Law Judges Julie A. Fitch and Valerie U. Kao.

This is the Decision Different of Commissioner Rechtschaffen concerning the penalties and other remedies that should be imposed on Southern California Gas Company for codes and standards advocacy activities. A Presiding Officer's Decision (POD) in this proceeding was issued on April 21, 2021. The opportunity to file an appeal of the POD has passed. Appeals to the POD were timely filed on May 21, 2021.

Pursuant to Public Utilities Code Section 1701.2(e) and Rule 14.7 of the Commission's Rules of Practice and Procedure, Commissioner Rechtschaffen's Decision Different need not be served on the parties, nor are comments required. However, in this instance, Commissioner Rechtschaffen is giving parties the opportunity to comment on his Decision Different. Opening comments are due within 10 days of the issuance of the Decision Different. Reply comments are due within 5 days of the comments. Because parties have already had an opportunity to file appeals of the POD, and respond to other parties' appeals, comments on Commissioner Rechtschaffen's proposed Decision Different will be limited to differences between the POD and the proposed Decision Different. To the extent that any comments exceed that scope, they will not be considered.

Except as otherwise specified in this letter, parties shall adhere to the rules for filing comments on a proposed decision, as delineated in Rule 14.3 of the Commission's Rules of Practice and Procedure. These Rules are accessible on the Commission's website at www.cpuc.ca.gov. Consistent with these rules, the comments may not exceed 15 pages in length.

The POD and any decision different from the POD may be considered at the Commission's March 17, 2022 Business Meeting or other future Commission Agenda. To confirm when the item will be heard, please see the Business Meeting Agenda, which is published on the Commission Website 10 days before each Commission Business Meeting.

When the Commission considers the POD and any decision different from the POD, the Commission may act by adopting all or part of the decisions as written, amend or modify the decisions, or set aside and prepare its own decision, so long as the Commission's decision is based on the record developed in the order to show cause, and if the decision differs from the POD, has a written explanation of the differences. (See Public Utilities Code Section 1701.2(e).) Only when the Commission acts does the decision become binding on the parties.

/s/ ANNE E. SIMON

Anne E. Simon

Chief Administrative Law Judge

AES:lil

Attachment

**DIGEST OF DIFFERENCES BETWEEN
ADMINISTRATIVE LAW JUDGE KAO'S PRESIDING OFFICER'S
DECISION AND THE DECISION DIFFERENT
OF COMMISSIONER RECHTSCHAFFEN**

Pursuant to Public Utilities Code Section 1701.2(e), this is the digest of the substantive differences between the presiding officer's decision of Administrative Law Judge Kao and the decision different of Commissioner Rechtschaffen.

This is the decision different of Commissioner Rechtschaffen. Whereas the presiding officer's decision finds it is not reasonable to impose financial penalties for Southern California Gas Company's conduct, the decision different finds the evidence of record and the public interest support a fine of \$150,000, in accordance with Public Utilities Code Sections 451 and 2107.

Decision **DECISION DIFFERENT OF COMMISSIONER RECHTSCHAFFEN**
(Mailed 2/9/2022)

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

DECISION DIFFERENT OF COMMISSIONER RECHTSCHAFFEN

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DECISION DIFFERENT OF COMMISSIONER RECHTSCHAFFEN

Summary

This Decision Different finds that Southern California Gas Company spent ratepayer funds on activities that misaligned with the California Public Utilities Commission's directions for energy efficiency codes and standards advocacy with respect to 2014-2017 energy codes and standards advocacy activities and activities involving local governments' adoption of reach codes in violation of Public Utilities Code, Section 451. This Decision Different directs Southern California Gas Company to refund ratepayer expenditures and associated shareholder incentives, orders equitable remedies for appreciable harm to the regulatory process caused by Southern California Gas Company's conduct, and imposes financial penalties against Southern California Gas Company in the amount of \$150,000.

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 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, Southern California REN, and Tri County 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

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

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.

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:

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.

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 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.

On April 21, 2021, the assigned ALJ issued a Presiding Officer's Decision (POD). Cal Advocates and Sierra Club timely appealed, and SoCalGas timely responded to the appeal.

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

³ *Joint Statement of Stipulated Facts December 17, 2019 Order to Show Cause Against Southern California Gas Company (U904G)*, filed October 2, 2020 (Joint Statement of Stipulated Facts).

⁴ *Opening Brief of Southern California Gas Company (U904G) 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.

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

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

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.

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 In D.05-09-043, the Commission also found: “[t]he utilities propose substantial increases in statewide efforts to *support more aggressive codes and standards* in the future” (emphasis added)⁹

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.”¹⁰

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.”¹¹

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

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

⁹ *Id.*, Finding of Fact 17.

¹⁰ 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.

¹¹ D.09-09-047, at 202-203.

Program; and (c) promote adoption of Reach Codes among local jurisdictions.”¹² In D.12-05-015, the Commission found that “[t]he purpose of codes and standards goals is to give the IOUs credit for their specific contributions to *new energy savings* via their Codes and Standards advocacy work, which should not include naturally occurring savings of the advocacy work of other entities.” (emphasis added).¹³

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.”¹⁴ Moreover, the Commission has set annual energy reduction goals for each IOU to achieve through its codes and standards advocacy.¹⁵

The Commission’s intent for codes and standards advocacy has been consistent and unambiguous: the large IOUs may 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 may use ratepayer funds to support local governments’ adoption of reach codes. The Commission did not authorized use of the ratepayer funds at issue here to *oppose* more stringent codes and standards. 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, and were outside the scope of the Commission’s authorization for expenditure of ratepayer funds. This decision finds that SoCalGas used ratepayer funds on activities in misalignment with Commission intent and that using such funds violated Public

¹² D.12-05-015, at 257.

¹³ *Id.*, Finding of Fact 23.

¹⁴ D.14-10-046 at 61.

¹⁵ *See* D.05-09-043 and D. 12-05-015 at 96 and Ordering Paragraphs 17 and 19.

Utilities Code, Section 451 by charging ratepayers for activities that were not just and reasonable.

4.1. SoCalGas Booked Expenditures to Its DSMBA 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 activities associated with the items listed below. Although the parties' characterizations of these activities differ, SoCalGas does not generally dispute that these activities reflect instances in which it did not support a more stringent code or standard.¹⁶

1. SoCalGas sent a letter to the CEC on September 20, 2014 regarding the 2016 Residential Instantaneous Water Heaters (IWH) Codes and Standards Enhancement (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" ¹⁷

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." ¹⁸

3. SoCalGas filed public comments on the DOE's Notice of Proposed Rulemaking (NOPR), posted July 13, 2015, in

¹⁶ See, e.g., SoCalGas brief, at 14.

¹⁷ Exhibit Cal Advocates/Sierra Club-70.

¹⁸ Exhibit Cal Advocates/Sierra Club-27.

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.

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."¹⁹

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 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."²⁰

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 GTI

¹⁹ Exhibit Cal Advocates/Sierra Club-2.

²⁰ Exhibit Cal Advocates/Sierra Club-4.

(July 7, 2015, V2 Revision July 15, 2015) and a second report by Negawatt Consulting (December 20, 2016).

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."²¹

The second report by Negawatt Consulting states "[t]he analysis showed that most of the initial concerns noted in the NOPR still exist in the LCC inputs, assumptions, and methods...Notwithstanding these (compounding) concerns, recalculating payback period and LCC savings for California and Southern California without any other changes to the DOE LCC . . . further illustrates the major detrimental impact this rule would have to SoCalGas customers"²²

6. SoCalGas, SDG&E, and 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

²¹ 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).

²² Exhibit Cal Advocates/Sierra Club-5.

only a fractional reduction in national energy savings of 0.06 quads.”²³

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 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.”²⁴ TSL 1 is a less stringent standard than TSL 2.²⁵

8. SoCalGas filed public comments, posted August 8, 2017, in DOE Docket # DOE-HQ-2017-0016-0054, DOE RFI on Regulatory Burden.²⁶

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

²³ SoCalGas, SDG&E and SCE Comments on SNO PR 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>.

²⁴ Exhibit Cal Advocates/Sierra Club-6.

²⁵ Cal Advocates brief, at 17-18.

²⁶ 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>.

by utility customers without government intervention.”²⁷

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

In addition to the above items, this decision also finds that the following exhibits represent activities that did not support more stringent codes and standards:

9. Exhibits Cal Advocates/Sierra Club-9 through Cal Advocates/Sierra Club-19, inclusive: emails and other documentation of communications regarding the DOE Furnace Rule.
10. Exhibits Cal Advocates/Sierra Club-20 through Cal Advocates/Sierra Club-26, inclusive: emails regarding the CEC’s proposed water heating standards.
11. Exhibit Cal Advocates/Sierra Club-28: April 22, 2016 comments in CEC Docket #16-BTSD-03 by Negawatt Consulting on behalf of SoCalGas regarding 2016 Residential Alternative Calculation Manual Reference Manual and Software.
12. Exhibits Cal Advocates/Sierra Club-40 and Cal Advocates/Sierra Club-41: emails between SoCalGas and APGA regarding the DOE Furnace Rule.
13. Exhibit Cal Advocates/Sierra Club-48: email between SoCalGas and APGA regarding DOE RFI on Regulatory Burden.
14. Exhibits Cal Advocates/Sierra Club-50 and Cal Advocates/Sierra Club-51: emails between SoCalGas and APGA regarding membership fee, and paper titled “A Balanced Energy Strategy for Economic, Environmental, and Social Equity: Continue to Value the Option for Natural Gas End Use?”

²⁷ Exhibit Cal Advocates/Sierra Club-1, Appendix C, Ex. 7, at C-074.

15. Exhibit Cal Advocates/Sierra Club-54: email and meeting notes from October 13, 2015 American Gas Association annual corporate meeting.
16. Exhibits Cal Advocates/Sierra Club-56 and Cal Advocates/Sierra Club-57: March 7, 2017 American Public Gas Association letter to U.S. Department of Energy Secretary Perry, and email from SoCalGas related to drafting the letter.
17. Exhibits Cal Advocates/Sierra Club-58 and Cal Advocates/Sierra Club-59: July 14, 2017 Comments of the American Public Gas Association on Reducing Regulation and Controlling Regulatory Costs, and email from SoCalGas related to drafting the comments.
18. Exhibit Cal Advocates/Sierra Club-60: Negawatt Scopes of Work for “Title 20 and Title 24 Advocacy Support” project.
19. Exhibits Cal Advocates/Sierra Club-72: presentation that describes the APGA Direct Use Task Group’s mission, goals, strategic priorities, 2018 accomplishments.

The costs for some of the above activities are documented in Exhibits Cal Advocates/Sierra Club-43, -52, -73, -74, and -76 (and -76C); thus, Exhibits Cal Advocates/Sierra Club-43, -52, -73, -74, and -76 (and -76C) shall also be within scope of the audit ordered in Section 5.3 of this decision.

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.²⁸

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.²⁹ The employee's public comments state:

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.

²⁸ Exhibit Cal Advocates/Sierra Club-37; Exhibit Cal Advocates/Sierra Club-32.

²⁹ Exhibit Cal Advocates/Sierra Club-33; Exhibit Cal Advocates/Sierra Club-36.

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.³⁰

3. On September 10, 2019, three SoCalGas employees attended and provided public comment on behalf of SoCalGas at the Santa Monica city council meeting.³¹ 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

³⁰ 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/departments-directory/city-clerk/on-demand-meeting-videos>.

³¹ Exhibit Cal Advocates/Sierra Club-33.

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 California Building Industry Association 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.³²

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.

³² 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.

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.”³³

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.³⁴ Regarding Items 2 and 3, this decision takes judicial notice of the public comments made by SoCalGas employees during the September 3, 2019 meeting of the San Luis Obispo city council and the September 3, 2019 meeting of the Santa Monica city council.³⁵

In addition to the above items, this decision also finds that the following exhibits represent activities that did not support local governments’ adoption of reach codes:

³³ Exhibit Cal Advocates/Sierra Club-68.

³⁴ 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.

³⁵ *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.

5. Cal Advocates/Sierra Club-29: December 11, 2019 joint letter to the CEC regarding Docket No. 19-BTSD-06, REACH Codes.
6. Exhibit Cal Advocates/Sierra Club-61: February 28, 2020 letter to Ventura County Resource Management Agency regarding Draft 2040 General Plan Update EIR.
7. Exhibits Cal Advocates/Sierra Club 62 through Cal Advocates/Sierra Club-67, inclusive: emails between and among SoCalGas, C4BES and others regarding Culver City reach codes.

Items 1 through 7 of this section (4.2) shall all be within scope of the audit ordered in Section 5.3 of this decision.

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. SoCalGas also committed appreciable harm to the regulatory process and violated clear legal principles; 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 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.”³⁶ 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.

We also note that the separately pending Order to Show Cause proceeding initiated by the Ruling issued in this proceeding on October 3, 2019 does not address the SoCalGas advocacy regarding local government reach codes discussed above. The Scoping Memo and Ruling on that OSC identifies the scope as activities that occurred in the month following the effective date of D.18-05-041, i.e. in 2018, as well as potential misleading and/or inaccurate statements about those activities.³⁷ An Assigned Commissioner’s Amended

³⁶ *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.

³⁷ See Assigned Commissioner’s Amended Scoping Memo and Ruling For Order to Show Cause Against Southern California Gas Company issued December 2, 2019, at p.2, which identifies the scope as addressing if the following allegations are correct and warrant any remedies:

1. Respondent continued to charge ratepayers for energy efficiency codes and standards advocacy for nearly a month after the Commission ordered Respondent to cease such advocacy; and

Footnote continued on next page.

Scoping Ruling was issued regarding the October 2019 OSC, which states: "... this Amended Scoping Memo amends the scope of this OSC to include the activities addressed in SoCalGas's August 24, 2020 and October 23, 2020 supplemental testimony." SoCalGas's August 24 and October 23, 2020 supplemental testimony does not identify the specific activities related to reach codes that are identified in Section 4.2 above.

5.1. Refund of Ratepayer Expenditures

California Public Utilities Code³⁸ 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 or other accounts associated with the activities identified in Section 4.1 of this decision with interest, except that we will not include activities associated with the joint comments submitted by SoCalGas, 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

2. Respondent submitted misleading and inaccurate information that minimized the full extent of its codes and standards advocacy after the Commission ordered Respondent to cease its ratepayer-funded advocacy.

³⁸ Unless otherwise specified, all further statutory references are to the California Public Utilities Code.

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 Cal Advocates’ and Sierra Club’s 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 CASE studies³⁹ that Cal Advocates and Sierra Club do not take issue with.

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.⁴⁰ As this decision previously explained, the Commission’s consistent and unambiguous intent for codes and standards

³⁹ SoCalGas brief, at 11, footnote 37.

⁴⁰ D.13-09-023, at 75-77.

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 finds it unreasonable 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 with interest, 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 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 OSC 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). The audit shall also examine and identify any other financial benefits that accrued to SoCalGas or any SoCalGas employee, such as performance bonuses, resulting from these activities.

The UAB's annual energy efficiency audits address SoCalGas's recording, reporting, and compliance with accrual policy and procedures, and the effects of the policy and procedures on ESPI. Given this limited scope, the annual energy efficiency audits do not address alignment with Commission intent regarding the use of ratepayer funds to support more stringent codes and standards or local governments' adoption of reach codes. As such, prior UAB audits do not include review of the types of documentation needed to address the specific objective of the audit ordered herein.

SoCalGas is expected to respond as expeditiously as possible and to provide accurate and complete documentation as specified within the timeframe outlined by the UAB with no delays, but not later than five business days after receipt of instructions. Documentation may include but is not limited to interviews, meetings, data, supporting documents, and other materials as the UAB deems necessary. 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, to estimate the amounts that

SoCalGas must refund. The UAB's audit will identify 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. The UAB's audit report will be subject to comment and Commission review and approval.

6. SoCalGas's Conduct Warrants Additional Remedies

It is necessary to address SoCalGas's conduct and to dispel its claims of good faith compliance. As an experienced utility, SoCalGas should have known that its billing of lobbying against reach codes implicates several basic legal principles that are central to its duties to the Commission and to customers. Rule 1.1 provides that any person who signs a pleading or transacts business with the Commission 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.*" Thus, aside from billing ratepayers for lobbying contrary to the intent of the Commission, SoCalGas appears on the face of the record to have misled staff about the direction of its lobbying, as only charges for lobbying *in favor* of reach codes may be billed to ratepayers, not *against* reach codes

Additionally, SoCalGas' actions implicate Public Utilities Code, Section 451, which provides that charges demanded by a public utility for any commodity or service must be just and reasonable. Because the Commission had explicitly approved of using ratepayer funds *in favor* of reach codes, and did not approve of using ratepayer funds to lobby *against* reach codes, SoCalGas' having

billed ratepayers for lobbying against reach codes was “unlawful” as described under Section 451.⁴¹

Further, 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,⁴² 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 authorization for use of ratepayer funds.⁴³ 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

⁴¹ See *Pac. Bell Wireless, LLC v. Pub. Util. Com.* (2006) 140 Cal.App.4th 718, 739-740 (upholding imposition of fine against utility under Section 451 where utility “could be charged with knowledge that its actions were unjust and unreasonable” despite no statute or Commission order specifically prohibiting those actions).

⁴² Cal Advocates brief, at 35-36.

⁴³ Cal Advocates brief, at 9-11, 38-39; Sierra Club brief, at 20-23.

it was going to oppose the standard, and offered instead to reimburse SoCalGas for its contribution to the CASE study.⁴⁴

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.”⁴⁵ 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.”⁴⁶

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.”⁴⁷ It is illogical to infer that, because there was no “framework” or “guidance for evaluating and determining such asserted reasonableness,” then utilities are justified in concluding that it is reasonable to use ratepayer funds to argue against more stringent codes and standards, which is the conclusion SoCalGas would have the Commission reach.

⁴⁴ Exhibit Cal Advocates/Sierra Club-25.

⁴⁵ Exhibit Cal Advocates/Sierra Club-23.

⁴⁶ Exhibit Cal Advocates/Sierra Club-40; Cal Advocates brief, at 38; and Sierra Club brief, at 14.

⁴⁷ SoCalGas brief, at 10.

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. Having recognized the importance and value of utilities' advocacy to *support* more stringent codes and standards, however, 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 did not engage 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-- 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."⁴⁸

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,"⁴⁹ 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.

⁴⁸ D.18-05-041, at 143.

⁴⁹ SoCalGas brief, at 17.

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 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 did not consider 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 given that the Commission had only authorized use of ratepayer funds to support stricter codes and standards, regardless of its motivation for opposing stricter codes or standards, SoCalGas' activities were not reasonable. Further, we agree 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.⁵⁰

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,

⁵⁰ 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.

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 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,”⁵¹ 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 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 conduct in this case requires consideration of additional appropriate remedies.

⁵¹ D.05-09-043, Finding of Fact 40.

6.1. SoCalGas' Conduct Warrants a Financial Penalty in the Amount of \$150,000

In their briefs, and again in their appeals of the POD, Cal Advocates and Sierra Club ask the Commission to impose a financial penalty on SoCalGas. Cal Advocates identifies ten violations that, it asserts, warrant penalties.⁵² SoCalGas, for its part, argues that penalties are inappropriate because “there is a lack of Commission or statutory authority providing that SoCalGas may *never* critique a proposed code or standard, even where it is not cost effective.”⁵³ And because, even if the Commission finds that SoCalGas violated the codes and standards rules, “SoCalGas will have operated according to a good faith but mistaken interpretation” of those rules.⁵⁴ As to the threshold question – whether penalties are warranted – Cal Advocates and Sierra Club have the better argument.

⁵² See Cal Advocates brief filed November 5, 2020, under “Description” at Table 3. Sierra Club did not submit its own list of proposed penalties, but “supports Cal Advocates’ calculation of these penalty amounts” Sierra Club brief, at 56. On appeal, Cal Advocates and Sierra Club continue to assert that these ten violations are those that warrant financial penalties. See Cal Advocates appeal, at 20 (citing penalty recommendation in brief); Sierra Club appeal, at 20 (“Sierra Club supports Cal Advocates’ penalty calculations”). The following list is excerpted from Cal Advocates’ Table 3:

San Luis Obispo opposition letter, 8/9/2019
Santa Monica Electrification meeting and comments, 9/10/2019
Culver City Letter, 2/4/2020
CEC letter re: IWH, 9/20/2014
Public Comments to CEC re: IWH, 11/24/2014
DOE NORP comments, 7/13/2015
DOE NODA comments, 10/16/2015
DOE SNOPR comments, 1/9/2017
DOE Packaged Boiler comments, 6/27/2016
DOE RFI Comments, 8/8/2017

⁵³ SoCalGas reply brief, at 64.

⁵⁴ SoCalGas reply brief, at 62. The Commission has already disposed of SoCalGas’ “good faith” argument and will not rehash the point. See *supra*, at 28-32.

As already explained, while it is true that prior to issuance of D.18-05-041, the Commission never expressly told SoCalGas not to bill its customers for lobbying against stricter codes and standards, that is because the point seemed so obvious that it need not be made.⁵⁵ The codes and standards program represents a straightforward – and generous – deal: if utilities spend *ratepayer* money advocating for stricter codes and standards, their shareholders receive *ratepayer* payments as a reward. It goes entirely counter to the program’s purpose to allow a utility to use ratepayer money arguing *against* stricter codes and standards, and reward its shareholders for doing so, and it strains credulity to believe that anyone – let alone a sophisticated utility – could seriously think otherwise. As explained above, at a minimum, SoCalGas’s use of ratepayer money to argue against stricter codes and standards is unlawful under Section 451 of the Public Utilities Code.⁵⁶

Section 2107 of the Public Utilities Code provides for monetary penalties for a public utility that “fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission” It is well settled “that the Legislature left it to the Commission to decide what amounts to a violation of ‘any order, decision, decree, rule, direction, demand, or requirement of the commission’” and that such decisions are entitled to “considerable deference”⁵⁷ This is a commonsense rule: to require the Commission, in every instance, to explain in advance and

⁵⁵ See *supra*, at 30 (stating that the Commission “never conceived of a utility using ratepayer funds for activities that did not advocate for a more stringent code or standard.”).

⁵⁶ See *supra*, at 28.

⁵⁷ *Pacific Gas & Elec. Co. v. Pub. Util. Com.* (2015) 237 Cal.App.4th 812, 857 (quoting Pub. Util. Code, § 2108).

with particularity what conduct will or will not violate our rules would hamstring our ability to regulate. As noted in *Pacific Bell Wireless, LLC v. Public Utilities Com.* (2006) 140 Cal.App.4th 718, 744) objections based on lack of notice regarding what conduct is just and reasonable “may be overcome in any specific case where reasonable persons would know that their conduct is at risk.”⁵⁸

There are, surely, cases in which a regulatory scheme is sufficiently complex and compliance sufficiently nuanced that it makes sense to spell out what is required. And there may be times when it would be unfair to penalize a utility without first laying that groundwork. But this situation – where our order told utilities to use ratepayer money to advocate for stricter codes and standards, and SoCalGas did the opposite – is not one of them. A financial penalty is appropriate. We therefore turn to the amount of the penalty.

Before January 1, 2019, Section 2107 set a statutory range of \$500 to \$50,000 per offense. After that date, the maximum penalty became \$100,000 per offense.⁵⁹ Of the ten violations identified by Cal Advocates, seven occurred before 2019 and three after. Cal Advocates asserts that the proper penalty for each violation is 75% of the statutory maximum – *i.e.*, \$37,500 each for the seven pre-2019 violations and \$75,000 each for the three post-2019 violations.

Cal Advocates then asserts without explanation that all ten identified penalties were continuing offences, most continuing for years.⁶⁰ If that were true, under Section 2108, each day that the offense continued would be a separate

⁵⁸ *Pacific Bell Wireless, LLC v. Pub. Util. Com.* (2006) 140 Cal.App.4th 718, 744, citing, *Maynard v. Cartwright* (1988) 486 U.S. 356, 361. See also *People v. Superior Court (J.C. Penney Corp., Inc.)*, (2019) 34 Cal. App. 5th 376, 385-386.)

⁵⁹ See Senate Bill 901 (2018).

⁶⁰ Cal Advocates brief, at 28.

violation, which is how Cal Advocates reaches its total proposed penalty of over \$255 million.⁶¹ We disagree, however, that these were continuing offenses. As SoCalGas notes, none of the ten identified violations – sending letters, filing comments, making public statements – are akin to the situations (long-term equipment maintenance problems, for example) in which we have previously deemed a violation continuing.⁶² Neither Cal Advocates nor Sierra Club ever seems to address this point. Without further evidence, we are unable to find that these violations amount to continuing offenses within the meaning of Section 2108. Thus, the statutory maximum for these ten offenses is \$650,000.⁶³

D.98-12-075 provides guidance on the application of fines.⁶⁴ Two general factors are considered in setting fines: (1) the severity of the offense and (2) the conduct of the entity. The Commission Enforcement Policy, adopted on November 6, 2020 (Resolution M-4846), likewise identifies these factors. In addition, the Commission considers the financial resources of the entity, the totality of the circumstances in furtherance of the public interest, and the role of precedent.⁶⁵ The section below discusses the specific criteria and their applicability to SoCalGas' conduct.

⁶¹ *Ibid.*

⁶² SoCalGas reply brief, at 63.

⁶³ \$300,000 (100,000 x 3) for the three post-2019 violations, and \$350,000 (50,000 x 7) for the seven pre-2019 violations.

⁶⁴ D.98-12-075 indicates that the principles therein distill the essence of numerous Commission decisions concerning penalties in a wide range of cases, and the Commission expects to look to these principles as precedent in determining the level of penalty in a full range of Commission enforcement proceedings. (*Mimeo* at 34-35.)

⁶⁵ D.98-12-075, *mimeo*, at 34-39; Enforcement Policy, at 16-21.

Criterion 1: Severity of the Offense

In D.98-12-075, the Commission held that the size of a fine should be proportionate to the severity of the offense. To determine the severity of the offense, the Commission stated that it would consider the following factors.⁶⁶

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

Cal Advocates and Sierra Club both argue that, by advocating against stricter codes and standards, SoCalGas made it more likely that greenhouse gases and other pollutants would be emitted in California, causing physical and economic harm to the people of California.⁶⁷ As to physical harm, however, neither party has identified any Commission precedent in which we have found such harm in a comparable scenario.

⁶⁶ 1998 Cal. PUC LEXIS 1016 at 71-73.

⁶⁷ Cal Advocates brief, at 30-34; Sierra Club brief, at 49-50.

Here, the conduct complained of was statements made to a decision-making body – the Department of Energy, for example, or the City of San Luis Obispo – which then chose whether to act on them. Neither Cal Advocates nor Sierra Club argue that SoCalGas was the only voice that these decision-making bodies heard, nor that the outcome would have been different but for SoCalGas’s advocacy. Given the record before us, we cannot link SoCalGas’s actions to any physical harm to Californians.

There was, however, an economic harm to SoCalGas’s ratepayers, who paid for SoCalGas’s communications, and a corresponding reward reaped by SoCalGas’s shareholders, which again was paid by ratepayers. We have already found that SoCalGas’s actions caused appreciable harm to the regulatory process, to which we accord a high degree of severity.⁶⁸ Moreover, there are at least ten violations at issue, taking place over years. Taken as a whole, we find that, while the lack of physical harm mitigates the severity of the offense, the economic and regulatory harms render the harm from the offense moderate.

Criterion 2: Conduct of the Penalized Entity

In D.98-12-075, the Commission held that the size of a fine should reflect the penalized entity’s conduct. When assessing the conduct, the Commission stated that it would consider the following factors:⁶⁹

- **The Entity’s Actions to Prevent a Violation:** Entities are expected to take reasonable steps to ensure compliance with applicable laws and regulations. The entity’s past record of compliance may be considered in assessing any penalty.

⁶⁸ See supra at 28.

⁶⁹ 1998 Cal. PUC LEXIS 1016 at 73-75.

- The Entity's Actions to Detect a Violation: Entities are expected to diligently monitor their activities. Deliberate, as opposed to inadvertent wrongdoing, will be considered an aggravating factor. The level and extent of management's involvement in, or tolerance of, the offense will be considered in determining the amount of any penalty.
- The Entity's Actions to Disclose and Rectify a Violation: Entities are expected to promptly bring a violation to the Commission's attention. What constitutes "prompt" will depend on circumstances. Steps taken by an entity to promptly and cooperatively report and correct violations may be considered in assessing any penalty.

SoCalGas's behavior here was clearly blameworthy. Far from proceeding cautiously to prevent violations, SoCalGas knew that its conduct at least arguably violated the Commission's rules and went ahead nonetheless.⁷⁰ It failed to consult with the Commission prior to claiming ratepayer funding for these contested actions and did not make a reasonable effort to avoid a violation.

In addition, SoCalGas misled Commission Staff by charging its advocacy against reach codes to ratepayers for several years when such charges were clearly only available when lobbying weighed in favor of reach codes. The reach code advocacy at issue here occurred in 2019 and 2020, after the Commission indicated in D.18-05-041 that ratepayer expenditures for reach code advocacy are intended to support adoption of more stringent codes.⁷¹ D.18-05-041 also prohibited SoCalGas from participating in statewide codes and standards advocacy at all using

⁷⁰ See supra at 28.

⁷¹ D.18-05-041, at pp. 143-44 and Finding of Fact 78.

ratepayer funds, whether for or against adoption.⁷² It was amply clear that use of any ratepayer funds to advocate against adoption of reach codes in 2019 and 2020 was not just and reasonable. Accordingly, we do not agree with SoCalGas's assertion that its use of ratepayer funds for advocacy against reach codes was merely a good-faith misunderstanding.

Criterion 3: Financial Resources of the Entity

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

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

The parties differ as to the true level of SoCalGas's financial resources. We need not settle the difference. In its Reply Brief, SoCalGas asserted that the "\$255 million requested by Sierra Club and Cal Advocates represents 40% of SoCalGas's 2019 earnings."⁷⁴ Taking that to be true, that means that even the statutory maximum available here – \$650,000 – amounts to about 0.1% of those 2019 earnings, which SoCalGas clearly has the ability to pay. Given the disparity between the maximum

⁷² *Id.*, Ordering Paragraph 53. D.18-05-041 did not have any impact on the ability of SoCalGas to participate in reach code advocacy using shareholder funds.

⁷³ 1998 Cal. PUC LEXIS 1016 at 75-76.

⁷⁴ SoCalGas reply brief, at 68.

penalty and what SoCalGas could bear, the goal of effective deterrence argues in favor of levying a sizable penalty. With respect to deterrence, we also note that the Commission has already barred SoCalGas from participating in the utilities' codes and standards advocacy work.

Criterion 4: The Totality of the Circumstances in Furtherance of the Public Interest

In D.98-12-075, the Commission held that a fine should be tailored to the unique facts of each case. When assessing the unique facts of each case, the Commission stated that it would consider the following factors:⁷⁵

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

In mitigation, it is true, as SoCalGas avers, that the Commission never expressly said not to spend ratepayer funds arguing against stricter codes and standards. For the reasons stated throughout this Decision Different, that is not a defense nor a strong mitigating factor, but we must still consider it. In aggravation, SoCalGas's conduct was not an inadvertent slip or a one-off incident, but instead reflected a deliberate and years-long pattern of conduct. These factors support a higher penalty, as does the public interest: As Cal Advocates and Sierra Club correctly note, the unambiguous policy of this State is to decarbonize California's economy as quickly as is practicable, and SoCalGas's conduct tended to work against that.

⁷⁵ 1998 Cal. PUC LEXIS 1016, 76.

Criterion 5: The Role of Precedent

In D.98-12-075, the Commission held that any decision that imposes a fine or penalty should: (1) address previous decisions that involve reasonably comparable factual circumstances, and (2) explain any substantial differences in outcome.⁷⁶

Neither Cal Advocates nor Sierra Club have identified any reasonably comparable decisions.⁷⁷ SoCalGas claims it has identified one, D.07-09-041, which it cites for the proposition that its claim of subjective good faith mitigates its behavior.⁷⁸

In that decision, we found that PG&E violated two of its tariff rules by failing to issue bills at regular intervals, and then backbilling for those periods when no bills issued.⁷⁹ At least some of the delay in billing was caused by a switch from PG&E's legacy Customer Information System to more modern software,⁸⁰ and Commission staff initially agreed with PG&E that this delay-plus-backbilling practice was permissible, leaving "ample evidence that PG&E's continued violations were made in reliance upon the knowledge that Commission staff was aware of PG&E's practice and did not object to it."⁸¹ Thus we found "no evidence that PG&E knew that its billing violations were in fact violations or that it acted with the intent to violate the law."⁸²

⁷⁶ 1998 Cal. PUC LEXIS 1016, 77.

⁷⁷ Cal Advocates brief, at 40; Sierra Club brief, at 55.

⁷⁸ SoCalGas reply brief, at 72.

⁷⁹ 2007 Cal. PUC LEXIS 448, at *1.

⁸⁰ *Id.* at **2-3.

⁸¹ *Id.* at *65.

⁸² *Id.* at *66.

The situation here is materially different. Whereas in the PG&E backbilling decision it was undisputed that PG&E's wrongdoing was predicated on Commission staff's ongoing acquiescence, here, there are no similar statements from staff endorsing SoCalGas's actions. To the contrary, statements from Commission staff here should have given SoCalGas more reason to question whether its behavior was proper, and even its fellow utilities expressed their discomfort with that behavior.⁸³ Under the circumstances, we find SoCalGas's defense unconvincing, and thus reject SoCalGas's assertion that the PG&E backbilling decision as applicable is on point. And though it is not material to the outcome here, we further note that, contrary to how SoCalGas portrays that decision, PG&E's subjective good faith was not the only reason we declined to assess fines for the backbilling; rather, it was only one of a number of mitigating factors which, taken together, militated against a fine.⁸⁴ Given that none of the parties have identified legal precedent that involved a reasonably comparable circumstance, we conclude that such precedent does not play a meaningful role here.

To briefly summarize: we find that SoCalGas's behavior was clearly blameworthy. We find that, while SoCalGas's behavior caused harm to ratepayers and harm to the regulatory process, it did not cause a cognizable physical harm. Also, with respect to the direct economic impact of SoCalGas' actions, this Decision requires SoCalGas to refund ratepayer expenditures and associated shareholder incentives. We find that deterrence and the public interest would be best served by a moderate penalty for each separate offense.

⁸³ Supra at 28-29.

⁸⁴ 2007 Cal. PUC LEXIS 448, at 72-73.

Taken as a whole, the evidence of record and the public interest lead us to conclude that an appropriate penalty would be \$15,000 per offense – a significant amount but still considerably below the statutory maximum, for a total of \$150,000.

6.2. 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.⁸⁵
- 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.⁸⁶
- Remove SoCalGas from its current role as statewide lead for the gas Emerging Technology Program.⁸⁷

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.

⁸⁵ Cal Advocates brief, at 41-42.

⁸⁶ Sierra Club brief, at 57-61.

⁸⁷ Cal Advocates brief, at 43.

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 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 reach code advocacy. SoCalGas must implement appropriate tracking of all employees' time so that the Commission

can supervise compliance with this decision. The only expenditures related to codes and standards and reach code advocacy that SoCalGas may seek to recover from ratepayers are funds transferred to the energy efficiency 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 or another relevant proceeding 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 ALJ 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.

7. Appeals of Presiding Officer's Decision

The Presiding Officer's Decision (POD) was filed and served on April 21, 2021. Pursuant to Rule 14.4 of the Commission's Rules of Practice and Procedure, any party may file an appeal of the POD within 30 days of the date the decision is served. In addition, any commissioner may request review of the POD by filing a request for review within 30 days of the date the decision is served. Appeals and requests for review must specifically identify the grounds on which the appellant or requestor believes the POD to be unlawful or erroneous. Vague assertions as to the record or the law, without citation, may be accorded little weight.

On May 21, 2021, Cal Advocates and Sierra Club filed appeals. On June 7, 2021, SoCalGas filed a response to Cal Advocates' and Sierra Club's appeals.

This section addresses two issues raised on appeal: (1) alleged error in declining to consider admitted exhibits other than those referenced in the joint statement of stipulated facts, and (2) alleged error in declining to impose financial penalties. In response to the first issue, this decision modifies the POD by acknowledging, and including within scope of the UAB's audit, admitted

exhibits that demonstrate SoCalGas did not support more stringent energy efficiency codes and standards or local governments' adoption of reach codes; we elaborate on this issue in Section 8. On the second issue, this Decision Different determines that it is reasonable under Public Utilities Code Section 451 and 2107 to penalize SoCalGas for unjustly and unreasonably charging customers for its codes and standards advocacy and efforts against reach codes. We further specify that SoCalGas must include, in the required refund amount, interest and any other financial benefits that accrued to SoCalGas or its employees as a result of the codes and standards advocacy that is at issue in this OSC.

8. Consideration of the Whole Evidentiary Record and Modification to Scope of Audit

We agree with Cal Advocates and Sierra Club that the POD erred in its determination not to consider activities included in the evidentiary record other than those included in the joint statement of stipulated facts. This decision modifies Section 4 of the POD to identify all activities in the evidentiary record that reflect instances in which SoCalGas did not support more stringent codes and standards or local governments' adoption of reach codes.

We further agree with Cal Advocates that any ratepayer-funded expenditures on activities that did not support more stringent codes and standards, or local governments' adoption of reach codes, should be returned to ratepayers. Thus, this decision expands the scope of the audit ordered by the POD to include all codes and standards advocacy activities from 2014 through 2017, and all activities related to local governments' adoption of reach codes. At minimum, the UAB shall specifically include all activities and exhibits identified in Section 4 within scope of its audit. This decision does not find it

reasonable to direct the UAB to determine, as part of its audit, whether activities other than those identified in this decision did not support more stringent codes and standards, as such determination is more than a ministerial task. However, the UAB is authorized to identify, as a result of the audit ordered by this decision, additional activities (if any) that warrant Commission consideration for a determination of whether those activities did not support more stringent codes and standards or local governments' adoption of reach codes.

9. Assignment of Proceeding

Genevieve Shiroma is the assigned Commissioner and Julie A. Fitch and Valerie U. Kao are the assigned ALJs 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 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' advocacy in 2019 and 2020 against adoption of reach codes, occurred after the Commission indicated in D.18-05-041 that ratepayer expenditures for reach code advocacy are intended to support adoption of more stringent codes.

5. D.18-05-041 prohibited SoCalGas from participating in statewide codes and advocacy and reach codes advocacy using ratepayer funds at all, whether for or against adoption.

6. The pending Order to Show Cause proceeding initiated by the Ruling issued in this proceeding on October 3, 2019 does not address the SoCalGas advocacy regarding local government reach codes that is the subject of financial penalties imposed by this decision.

7. State law, Rule 1.1 of our Rules of Practice and Procedure and various decisions discussed above provide sufficient guidance to determine that the activities SoCalGas engaged in warrant a financial penalty.

8. The UAB's past and current annual energy efficiency audits do not address alignment with Commission intent regarding the use of ratepayer funds to support more stringent codes and standards or local governments' adoption of reach codes. As such, prior UAB audits do not include review of the types of documentation needed to address the specific objective of the audit ordered by this decision.

Conclusions of Law

1. SoCalGas used ratepayer funds to oppose more stringent codes and standards and adoption of reach codes without Commission authorization.

2. SoCalGas used ratepayer funds on activities that misaligned with Commission intent for codes and standards advocacy and for reach codes.

3. SoCalGas's expenditures on the activities identified in Section 4.1, except for Item 6, and Section 4.2 are unjust and unreasonable under Section 451 and the decisions cited herein.

4. SoCalGas should not be entitled to shareholder incentives for its advocacy opposing more stringent codes and standards and/or adoption of reach codes because such advocacy was not authorized by the Commission.

5. SoCalGas should not be entitled to shareholder incentives for activities that did not align with Commission intent.

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

7. SoCalGas should refund its ESPI management fee payment for all ratepayer-funded 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.

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

9. 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.

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

11. It is reasonable to conclude that SoCalGas caused appreciable harm to the regulatory process, without justification, by using ratepayer funds on activities that were not authorized by the Commission and 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.

12. It is reasonable to conclude that SoCalGas did know, or should have known, that charging customers for arguments against efforts to adopt more stringent codes and standards or adopt reach codes, that the Commission had

determined were beneficial to ratepayer interests was unlawful under a number of clear legal principles.

13. Taking into consideration the record as a whole and the public interest, it is reasonable to order SoCalGas to pay a fine of \$15,000 each for ten violations listed under “Description” in Table 3 in CalAdvocates’ Brief filed November 5, 2020, and also identified as activities in Section 4 above, for a total fine of \$150,000, under Section 451 and 2107.

14. SoCalGas should be prohibited from cost recovery, from ratepayer-funded accounts, for codes and standards programs, as described in this decision, and SoCalGas should be prohibited from participating in any current or future codes and standards programs or subprograms, except to transfer funds to the statewide codes and standards lead.

15. 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.

16. It is reasonable to assess SoCalGas’s compliance with the prohibition ordered in this decision. It is not reasonable to remove SoCalGas from its current role as the statewide gas Emerging Technology Program lead.

17. This Decision does not consider or apply to cases in which a regulated entity uses shareholder funds to advocate positions that are contrary to Commission-supported efforts.

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 December 31, 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. Southern California Gas Company must respond as expeditiously as possible and provide accurate and complete documentation as

specified within the timeframe outlined by the Utility Audits Branch with no delays, but not later than five business days after receipt of instructions.

6. Within 30 days after the Commission approves 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. Southern California Gas Company must include interest, consistent with the operation of the Demand Side Management Balancing Account and of any other accounting mechanisms identified by the results of the audit ordered by Ordering Paragraph 5, on these refund amounts. Southern California Gas Company must propose to effectuate this refund as part of its next gas Public Purpose Programs surcharge change.

7. Southern California Gas Company is prohibited from cost recovery, from ratepayer-funded accounts, for codes and standards programs as described in this decision; Southern California Gas Company is prohibited from participating in any current or future codes and standards subprograms; this prohibition does not apply to the transfer of funds to the statewide codes and standards lead nor its functions as statewide gas Emerging Technology Program 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. Within 30 days of the effective date of this decision, Southern California Gas Company shall remit to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, California 94102, a check for \$150,000 made

payable to the State of California's General Fund. The number of this decision shall be shown on the face of the check.

14. Rulemaking 13-11-005 remains open.

This order is effective today.

Dated _____, at Sacramento, California.