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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 (Filed November 14, 2013)

SIERRA CLUB COMMENTS ON DECISION DIFFERENT OF COMMISSIONER RECHTSCHAFFEN

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On Behalf of Sierra Club

Dated: February 22, 2022

Summary of Recommendations

- The Commission should impose a penalty on SoCalGas that is sufficient to deter future misconduct.
- The Commission has discretion to calculate appropriate penalties for SoCalGas' continuing violations using multiple different approaches, including:
  (A) Fining SoCalGas $255 million, consistent with Cal Advocates' recommendation; or
  (B) Fining SoCalGas a total penalty of $41.7 million by treating each of SoCalGas' campaigns against a particular rule as a distinct continuing offense, imposing maximum fines when the Company successfully contributed to weakening or delaying a rule; or

Violation	Daily Penalty	Number of Days	Total
Opposition to San Luis Obispo Reach Code (Campaign supporting PAO Violation 1)	$60,000 (Moderate post-2019 penalty)	25	$1,500,000
Opposition to Santa Monica Reach Code (PAO Violation 2)	$60,000 (Moderate post-2019 penalty)	1	$60,000
Successful Opposition to Culver City Reach Code (PAO Violation 3)	$100,000 (Max post-2019 penalty)	1	$100,000
Successful Opposition to CEC Water Heating Standard (Campaign supporting PAO Violations 4-5)	$50,000 (Max pre-2019 penalty)	152	$7,600,000
Successful Opposition to DOE Furnace Rule (Campaign supporting PAO Violations 6-8)	$50,000 (Max pre-2019 penalty)	635	$31,750,000
Packaged Boiler Standards (PAO Violation 9)	$30,000 (Moderate pre-2019 penalty)	1	$30,000
DOE RFI Comments (Campaign supporting PAO Violation 10)	$30,000 (Moderate pre-2019 penalty)	22	$660,000
TOTAL			$41,700,000

(C) Fining SoCalGas a total penalty of $41.58 million by treating SoCalGas' broad campaign against stringent rules in its energy efficiency program and its campaign against reach codes as two distinct continuing offenses, imposing moderate fines for each.

Violation	Daily Penalty	Number of Days	Total
Opposition to reach codes (Campaign supporting PAO Violations 1-3)	$60,000 (Moderate post-2019 penalty)	179	$10,740,000
Opposition to stringent codes and standards within energy efficiency program (Campaign supporting PAO Violations 4-10)	$30,000 (Moderate pre-2019 penalty)	1,028	$30,840,000
TOTAL			$41,580,000

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Pursuant to the opportunity for comment announced in Chief Administrative Law Judge Simon's cover letter for the Decision Different of Commissioner Rechtschaffen ("DD") filed February 9, 2022, Sierra Club hereby files these timely comments.

I. INTRODUCTION

The DD correctly finds that a financial penalty is appropriate for the misconduct at issue in this Order to Show Cause ("OSC") because Southern California Gas Company ("SoCalGas") brazenly disregarded the Commission's energy efficiency policies: the Commission "told utilities to use ratepayer money to advocate for stricter codes and standards, and SoCalGas did the opposite."[1] However, the decision to impose a fine of just $150,000 would fail to achieve the basic purpose of imposing a financial penalty. Specifically, the Commission has long recognized that "[t]he purpose of a fine is to go beyond restitution to the victim and to effectively deter further violations by this perpetrator or others."[2] The DD further errs in considering what it properly identifies as "a deliberate and years-long pattern on misconduct" as constituting 10 single day violations for the purpose of assessing penalties.[3] Commission precedent strongly supports finding SoCalGas' conduct as a continuing violation. Indeed, the DD's approach is not only inconsistent with past Commission decisions that consider similar misconduct as continuing but sets a troubling new precedent that the Commission now views multi-year campaigns to undermine regulations as single incidents.

Sierra Club appreciates the Commissioner allowing comment on the DD so that we can

[1] Decision Different of Commissioner Rechtschaffen, at 37 (Feb. 9, 2022) ("DD").
[2] D.98-12-075 at 35.
[3] *Compare* DD at 43 *with* DD at 37–38.

assist in calculating fines that will deter future violations, consistent with precedent on continuing violations. Given the Commission's broad discretion over penalty calculations, it has many options beyond adopting the $255 million fine that Cal Advocates reasonably proposed. For instance, the Commission can also impose fines totaling $41.7 million by treating each of SoCalGas' campaigns against a particular rule as a distinct continuing offense, imposing maximum fines when the Company successfully contributed to weakening or delaying a rule. The Commission can also impose total fines of $41.58 million by treating SoCalGas' broad campaign against stringent rules in its energy efficiency program and its campaign against reach codes as two distinct continuing offenses, imposing moderate fines for each. Penalties of at least this range are necessary to serve as a deterrent and hold SoCalGas accountable for years of continuing actions to undermine adoption of strong efficiency standards and keep California from transitioning away from gas appliances.

II. DISCUSSION

A. A $150,000 Fine for SoCalGas' Years of Misconduct is Inconsistent with Commission Policy Because It Would Not Deter Future Violations.

The purpose of fining a utility for misconduct is effective deterrence, which "creates an incentive for public utilities to avoid violations."[4] The DD's proposed fine would not create an incentive to comply with Commission orders because it would recoup a tiny fraction of the benefit SoCalGas received from its ratepayer-funded advocacy against strong efficiency rules.

For perspective, consider SoCalGas' financial interest in derailing a single energy efficiency standard: the update to residential water heating standards in the California Energy Commission's 2016 update to the state building code. In 2014, SoCalGas' codes and standards team reported to Company executives on the "significant" business impact of a proposal to (1) transition from a standard based on the performance of a gas-fired storage tank water heater to a standard based on the performance of a gas-fired tankless water heater and (2) allow customers to install electric heat pump water heaters even when gas service is available.[5] SoCalGas determined that by 2020, the impact of the proposed standard would be "Up to $17m in lost revenues and opportunity cost annually," primarily because of market share lost to electric water

[4] D.98-12-075 at 35.
[5] Exhibit Cal Advocates/Sierra Club-20, Attach. B, Ex. 35.

heaters.[6] SoCalGas' ratepayer-funded campaign caused a three-year delay in the transition to efficiency standards for water heating in new homes based on the performance of tankless units.[7] For three more years, gas water heaters with efficiencies as low as .67 persisted in the new-construction market (provided they were paired the water heaters with quality insulation), and SoCalGas offered rebates to lower the cost of the tankless water heaters that would otherwise have been standard. This opportunity to suppress the cost of tankless gas water heaters helped stave off competition from electric heat pump water heaters in the new construction market. It is unclear exactly how much of the $17 million dollar *annual* threat SoCalGas was able to avoid through its advocacy against the proposed updates to the 2016 residential water heating standard, as the Company did not secure all of its desired outcomes in the rulemaking.[8] Nonetheless, given the scale of the sales opportunity for the Company, it is almost certain that SoCalGas' ratepayer-funded advocacy against this single energy efficiency standard enriched the Company by far more than the penalty in the DD.

To a multi-billion-dollar company like SoCalGas, $150,000 is a trivial amount of money that would not motivate any change in behavior or culture. SoCalGas earned $641 million for its shareholders in 2019, reporting assets worth $17.077 billion that year.[9] The DD's proposed fine is a vanishingly small slice of SoCalGas' 2019 earnings—0.023%. It would be folly to assume that a fine of this order of magnitude would affect SoCalGas' decision-making.

Indeed, Sierra Club is concerned that the DD could have the unintended consequence of creating an incentive structure that encourages more misconduct. The decision signals that utilities will not face meaningful consequences *even if* the Commission discovers their wrongdoing, invests years of effort into an adjudicatory process, and determines that it

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[6] *Id.*

[7] For a detailed discussion of SoCalGas' successful advocacy against stringent standards for residential water heating in the 2016 update to Title 24, *see* Opening Brief of Sierra Club in the Order to Show Cause Issued December 17, 2019 Against SoCalGas, at 15–22 (Nov. 5, 2020) ("Sierra Club OSC 2 Brief").

[8] In addition to retaining the option of storage water heaters with quality insulation installation ("QII"), SoCalGas also sought to exclude heat pump water heaters as an option and to retain the language requiring natural gas water heating where available. Exhibit Cal Advocates/Sierra Club-20, Attach. B, Ex. 54 (December 18, 2014 email from SoCalGas Vice President Lisa Alexander RE: Title 24 IWH).

[9] SoCalGas, *Annual Report 10-K*, at 57 (Feb. 27, 2020), https://investor.sempra.com/static-files/68af0350-d99c-412c-af4f-aa8e6c8e2606. This SEC filing includes information for Sempra Energy Company and its subsidiaries, SoCalGas and San Diego Gas & Electric. The 10-K filings for the Sempra utilities are subject to official notice; D.16-06-054 at 118.

"committed appreciable harm to the regulatory process and violated clear legal principles."[10] At least the Presiding Officer's Decision left open the possibility that a utility could face meaningful penalties if there were "criteria or standards to determine whether and how each of SoCalGas's activities constitute compliance or non-compliance."[11] Under the DD, utilities can anticipate negligible fines and rationally accept them as a cost of doing business.

B. The Commission Should Penalize SoCalGas for Continuing Violations to Effectively Deter Misconduct.

Under Section 2108, "each day's continuance" of any continuing violation "shall be a separate and distinct offense." The statute places no limits on the types of offenses that are subject to penalties for continuing violations. It would be imprudent for the Commission to adopt any such limit here, as there is no statutory language or governing precedent that would limit the Commission to imposing fines for continuing violations that feel akin to equipment maintenance problems.[12] As the California Court of Appeals has recognized, the Commission has the discretion to assess penalties for continuing violations and can reject a utility's narrow interpretation of Commission authority that would "virtually destroy[] the Commission's power to sanction noncompliance" and "gut the PUC's vital deterrent power of enforcing compliance with its orders . . . by rewriting the statute to make the maximum penalty $50,000" for violations prior to 2019.[13] SoCalGas' offenses here would be readily cognizable as continuing offenses even under the legal theory that the Court of Appeals rejected as too restrictive of Commission authority: that "[a] continuing violation occurs . . . only when a party has engaged in a continuing course of unlawful conduct over a period of time."[14] Yet the DD would "virtually destroy" the Commission's power to deter utilities from misusing ratepayer funds. The Commission would needlessly "gut [its] vital deterrent power" if it limited itself to fining a utility $50,000 or $100,000 each time a utility waged a prolonged, ratepayer-funded campaign against climate policies that threaten its shareholders' interests.

SoCalGas' violations of Commission orders are "continuing" violations under the plain meaning of the statutory language. The ordinary meaning of the word "continuing" is

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[10] DD at 23.
[11] Presiding Officer's Decision, at 28 (Apr. 21, 2021).
[12] *Cf.*, DD at 38.
[13] *Pac. Gas & Elec. Co. v. Pub. Utilities Com.,* 237 Cal. App. 4th 812, 857 (2015).
[14] *Id.* at 855 (quoting PG&E's arguments) (internal quotations omitted).

"happening for a period of time without interruption."[15] Here, SoCalGas "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."[16] While the DD's penalty calculation appears to rest on the assumption that SoCalGas only improperly spent ratepayer funds on ten isolated days, the record shows that SoCalGas improperly spent ratepayer funds on ongoing campaigns against improved efficiency rules. Several of these rules posed significant threats to SoCalGas' bottom line and, accordingly, received sustained attention from both DSMBA-funded staff and corporate leadership. Each comment letter and public comment was the culmination of ratepayer-funded labor over some time. SoCalGas' opposition to strong standards often relied on outside consultants, with whom it executed contracts in advance of deadlines and often collaborated to refine drafts.[17] In some cases, even after the submission of comment letters, SoCalGas' DSMBA-funded staff continued to press regulators to weaken proposed standards or strategized with the American Gas Association ("AGA") on negotiating toward the industry's preferred outcome.[18] These campaigns against stringent standards happened over a period of time without interruption.

Moreover, the Commission's precedents support finding a continued violation here. Commission precedents recognize continuing violations for a utility's continuing course of misconduct. In one instructive case, the Commission found that SCE's actions and omissions after an undisclosed ex parte communication constituted a continuing violation of Commission Rule 1.1 because they "resulted in (i) a failure to correct the record; and (ii) false and misleading statements made in other documents subsequently filed with the Commission."[19] Under the Commission's broad discretion, it could have fined SCE for each filing that contained false and misleading statements. But imposing the statutory maximum penalty for each of the three instances in which SCE repeated its employee's false or misleading statements to the

[15] Macmillan dictionary, https://www.macmillandictionary.com/us/dictionary/american/continuing.
[16] DD at 2.
[17] Exhibit Cal Advocates/Sierra Club-1, App. C, Ex. 26 (GTI contract for work on federal furnace rule); Exhibit Cal Advocates/Sierra Club-60 (NegaWatt contract for C&S support); Exhibit Cal Advocates/Sierra Club-33 (SoCalGas response to Question 3, disclosing consultant fees related to San Luis Obispo reach code).
[18] *See* discussion of SoCalGas' campaigns against state water heater standards and federal furnace standards in Section II.D.2, *infra*.
[19] D.15-12-016 at 28.

Commission would have yielded a penalty of just $150,000 if they were viewed as isolated offenses.[20] That approach would not have deterred a utility of SCE's financial resources from future misconduct.[21] SoCalGas quotes that decision for the Commission's observation that it had "previously found continuing violations where there was an ongoing duty such as maintaining equipment safely."[22] The Company neglects to mention the Commission's ultimate conclusion in that case: rejecting SCE's arguments that the Commission should not find a continuing violation of Rule 1.1.[23]

The factors that led the Commission to determine that Rule 1.1 violations can be continuing offenses both have analogues here. First, SoCalGas failed to take any corrective action. Once SoCalGas began using ratepayer-funded labor to fight an energy efficiency rule, the Company had a duty to move the costs of its fight against a stringent rule to a shareholder-funded account. Second, just as the Commission found that one of SCE's representations led to more misrepresentations, SoCalGas' use of ratepayer-funded labor to develop an action plan for fighting a stringent efficiency rule led the Company to devote more ratepayer-funded labor to opposing the rule. In some instances, SoCalGas developed one specious set of arguments against a regulatory threat and repeated them in multiple filings.

Another analogous case is D.08-09-038, in which the Commission penalized SCE for the continuing violations of using improper means to increase customer satisfaction survey results.[24] SCE manipulated and falsified data in customer surveys that determined the incentive payments its shareholders would receive under a performance-based ratemaking mechanism.[25] The Commission's conclusion that SCE committed continuing violation did not require a finding that employees improperly skewed survey data each and every day during a years' long period. Rather, the Commission found that misconduct was "pervasive."[26] Here, the Commission is

[20] *See id.* at 56 (Findings of Fact #12) (identifying three occasions of false or misleading statements).
[21] *See id.* at 47 ("we observe that the primary deterrence value is when financial penalties are sufficiently large that the utility must report them to investors"). A fine of $150,000 would not warrant filing a Form 8-K with the Securities and Exchange Commission to report an unscheduled material event.
[22] Reply Brief of SoCalGas to the Order to Show Cause at 63, n. 308 (Dec. 5, 2020).
[23] D.15-12-016 at 38 (rejecting arguments that the Commission should not fine SCE for a continuing violation because it had never before found that a failure to file an ex parte notice was a continuing violation and the violation is complete when notice is not filed).
[24] D.08-09-038 at 103.
[25] *Id.* at 3–4 (explaining incentive mechanism), 15–24 (explaining conduct to manipulate and falsify data).
[26] *Id.* at 24.

examining SoCalGas' pervasive misconduct to exploit a different shareholder incentive program.

Consistent with its discretion in calculating penalties, the Commission has determined whether a violation is continuing based on whether a fine for a single day's violation would achieve effective deterrence. For instance, the Commission's precedents on assessing penalties for the exact same violation—operating under new ownership or control without the Commission's authorization, in violation of Section 854—illustrate how the objective of deterrence properly drives its penalty calculations.[27] Although the Commission had previously imposed a single day's fine for violations of Section 854, the Commission imposed penalty for a continuing violation of Section 854 in D.03-06-069, where the financial resources of the utility and its parent corporations were "substantial."[28] Similarly, in D.14-06-004, the Commission imposed a fine greater than the statutory maximum for a single violation of Section 854 to deter future misconduct by a utility that deliberately committed violations and had sufficient financial resources to pay the fine.[29] Ultimately, the Commission's calculation of appropriate penalties under Section 2107 and 2108 is not "mechanical," but rather aims to "ensure that a penalty is sufficient to deter future violations and is reasonable under the circumstances."[30]

C. The DD Should Be Revised to Increase the $15,000 Daily Penalty Given the DD's Findings on SoCalGas' Misconduct and Set Fines at the Maximum Level for Offenses that Contributed to Delaying or Weakening Proposed Efficiency Rules.

The DD's proposed fines are inconsistent with its own application of the Commission's criteria for assessing penalties. As the DD notes, offenses before January 1, 2019 have a maximum daily penalty of $50,000 and those occurring thereafter have a $100,000 maximum penalty.[31] Yet despite finding clear violations of multiple factors used to determine financial penalties, the DD imposes the low penalty of $15,000 per offense, regardless of whether the offense occurred before or after January 1, 2019. The DD errs in claiming $15,000 per offense is a "moderate penalty."[32] It is less than a third of the maximum penalty for offense before January

[27] *See, e.g.*, D.15-10-024 at 6–7 (explaining and distinguishing D.03-06-069 and D.14-06-004 to justify a fine for a single day's misconduct).
[28] D.03-06-069 at 17. In that case, the CPUC imposed a fine at the low end of the statutory range because the violation did not cause economic harm to customers and the utility's compliance efforts. *Id.* at 19.
[29] D.14-06-004 at 11–12, 16–17.
[30] D.16-05-001 at 6.
[31] DD at 37.
[32] *Id.* at 45.

1, 2019 and less than a sixth for subsequent offenses. Several of the PD's findings weigh in favor of high fines: SoCalGas' conduct resulted in economic and regulatory harm (Criterion 1); its behavior "is clearly blameworthy" (Criterion 2); "the goal of effective deterrence argues in favor of levying a sizable penalty" (Criterion 3); and "SoCalGas's conduct was not an inadvertent slip or a one-off incident, but instead reflected a deliberate and years-long pattern of conduct" (Criterion 4).[33] Another key factor militates toward heavy fines: senior management's awareness and approval of the misconduct.[34] Even if the Commission adopts the finding that a "moderate penalty" is appropriate because one factor counsels in favor of a lower fine (physical harm), the Commission should adopt daily penalties at a level within the statutory range that is commensurate with those findings. At a minimum, daily penalties should be increased to $30,000 for those occurring before January 1, 2019 and $60,000 for those occurring after.

Violations that contributed to the delay or weakening of efficiency rules warrant the maximum daily penalty. The DD errs in suggesting that SoCalGas' misconduct did not change the outcome of rulemakings.[35] In the California Energy Commission ("CEC") 2016 update to the Title 24 building code, SoCalGas achieved its campaign objective of delaying the adoption of stringent standards for water residential heaters until a future code update.[36] The initial proposal was to set standards based on the efficiency of a tankless gas water heater, which a gas water heater with a storage tank can only match if it is paired with solar water heating.[37] In internal emails, SoCalGas explicitly takes credit for weakening the standards to allow gas storage water heaters if they are merely paired with quality insulation.[38] At the federal level, SoCalGas participated in a coordinated campaign with the gas industry that persuaded the DOE not to adopt a proposed rule that would have applied stringent efficiency standards to residential

[33] *Id.* at 39–43.
[34] Sierra Club Appeal of Presiding Officer's Decision, at 24–25 (May 21, 2021); D.98-12-075, App. A at 9 ("The Commission will also look at the management's conduct during the period in which the violation occurred to ascertain particularly the level and extent of involvement in or tolerance of the offense by management personnel.").
[35] DD at 40. Sierra Club has explained SoCalGas' success in weakening the residential water heating standards in the Sierra Club OSC 2 Brief (20–22, 50) and in Sierra Club Appeal of Presiding Officer's Decision (27–29).
[36] *See* Sierra Club OSC 2 Brief at 20–22.
[37] Exhibit Cal Advocates/Sierra Club-20, Attach. B, Ex. 20.
[38] *Id.* Attach. B, Ex. 55 (Jan. 6, 2015 email stating: "Martha was successful in getting the inclusion of the storage water tank with QII + compact design (which we find an acceptable alternative to the solar thermal option)").

furnaces of all sizes, frustrating the CEC's recommendation that the Department of Energy ("DOE") approve a standard even more stringent than what it proposed.[39] At the local level, following SoCalGas' opposition, Culver City did not move forward with its proposed Reach Code.[40] The DD's suggestion that SoCalGas can only be held accountable for offenses that increase emissions if parties prove it was the "but for" cause of specific physical harm would set a standard that makes it impossible to impose high penalties for climate obstruction.

Maximum penalties are appropriate for actions that successfully delay climate action because they cause severe physical harm. First, weaker or delayed efficiency standards have physical consequences by increasing greenhouse gases, the atmospheric concentration of which correlates with the severity of the climate crisis and consequent physical harms California has and will increasingly experience.[41] This causal relationship is sufficient to show physical harm. Because a utility's misuse of ratepayer money to undermine climate policy is an issue of first impression, the failure to find physical harm because no Commission precedent has "found such harm in a comparable scenario" is fundamentally flawed and fails to deter future misconduct.

Second, SoCalGas' misconduct is no less condemnable because it was not the only one opposing stronger rules. Climate and energy rules with major consequences will always be opposed by a number of fossil fuel and related interests. The DD's refusal to hold SoCalGas accountable for its part in thwarting stronger rules because it was not "the only voice"[42] inadvertently rewards SoCalGas for recruiting its allies to fight stronger Title 24 standards,[43] advising AGA on its advocacy against the federal furnace rules,[44] and coordinating a front group's campaign against Culver City's reach code.[45] To deter, rather than encourage, utilities

[39] Sierra Club OSC 2 Brief at 26–28.
[40] *See, e.g.,* Sierra Club, *California's Cities Lead the Way to a Gas-Free Future* (updated Feb. 2, 2022) (Culver City not among list of cities and counties to adopt building electrification codes).
[41] *See, e.g.,* EPA, *Climate Change Indicators: Greenhouse Gases*, https://www.epa.gov/climate-indicators/greenhouse-gases (last visited Feb. 22, 2022).
[42] DD at 40.
[43] *See, e.g.*, Exhibit Cal Advocates/Sierra Club-20, Attach. B, Ex. 22 (Phase 1 of the Advocacy Strategy in SoCalGas *Title 24 Code Change Campaign* includes "Establish a coalition of partners to secure support" and later phases list opportunities for coalition members to advocate to the CEC).
[44] Exhibit Cal Advocates/Sierra Club-54; Exhibit Cal Advocates/Sierra Club-1, App. C at C-132 (SoCalGas C&S Manager explaining that her team worked with another team to develop the materials for SoCalGas' presentation to the AGA Board of Directors).
[45] Exhibit Cal Advocates/Sierra Club-62 (after reviewing social media ads proclaiming: "Culver City residents! Your voice is needed at the upcoming public meeting to fight against the adoption of REACH

from undermining climate policies, the Commission should impose the maximum daily penalty in instances where SoCalGas' conduct contributed to weakened or delayed efficiency standards.

D. The Commission Has Multiple Reasonable Options for Assessing Penalties.

1. The Commission Can Fine SoCalGas $255 Million, as Cal Advocates Recommended.

Sierra Club continues to support Cal Advocates' penalty calculations as appropriate for deterring egregious misconduct by a utility with vast financial resources.

2. The Commission Can Fine SoCalGas $41.7 Million for Campaigns Against Individual Rule Updates in the Codes and Standards Program and its Campaign Against Reach Codes.

One alternative reasonable approach for calculating fines is to treat each targeted campaign against a proposed rule as a separate continuing violation, basing its duration on when SoCalGas started and stopped devoting ratepayer-funded resources to fighting the rule.

Opposition to stringent residential water heating standards in 2016 Title 24 Update

The Commission can fine SoCalGas $7.6 million for the months' long successful effort to derail the CEC's update to residential water heating standards.[46] That is, the Commission can mark the start of this continuing offense on August 7, 2014, when one of SoCalGas' DSMBA-funded employees first emailed management an "action plan" for weakening the standards[47] and deem the end of this continuing offense on January 6, 2015, the last date that the record shows SoCalGas' DSMBA-funded advocates meeting with the CEC about this rule and advising management on negotiations.[48] Halting the CEC's momentum on the water heating rules was a high-priority, integrated effort that ratepayer-funded staff focused on throughout this period, as evidenced by the carefully sequenced strategies presented to and approved by senior

building code amendments," SoCalGas Vice President George Minter them as "[g]reat campaign material, important effort," and expressed his hope that C4BES would receive support from all its Board members (which include SoCalGas).).

[46] $50,000 each day for the 152 days from Aug. 7, 2014–Jan. 6, 2015 totals to $7.6 million.

[47] Exhibit Cal Advocates/Sierra Club-20, Attach B., Ex. 40.

[48] *Id*., Attach. B, Ex. 55 (1/6/15 email from Sue Kristjansson).

management,[49] the "campaign" documents that outlined SoCalGas' plans in greater detail,[50] and the steady drumbeat of emails in which SoCalGas developed and implemented its plans.[51] Treating the continuing violation as ending on January 6, 2015, is lenient because SoCalGas' internal campaign plans call for the Company to continue advocacy through April 2015, which likely relied on the talking points and analysis its DSMBA-funded staff developed.[52]

Opposition to stringent federal furnace standards

The Commission can fine SoCalGas $31.75 million for its years of concerted, ratepayer-funded advocacy against stringent federal standards for residential furnaces.[53] The Commission can conservatively determine the beginning of this continuing violation to be April 15, 2015, when SoCalGas commenced its contract with GTI for "a continuation of technical work conducted under separate contract with American Gas Association,"[54] and determine the end of the violation to be January 9, 2017, when SoCalGas filed its last set of comments opposing strong residential furnace standards.[55] In this period, SoCalGas filed three sets of comments in the same DOE rulemaking docket on residential furnaces.[56] These comments were the fruits of months' of internal and contracted labor,[57] and just one part of SoCalGas' multifaceted, DSMBA-funded campaign against stringent furnace rules.[58] Like in D.15-12-016, where SCE repeating a misrepresentation three times was the basis of the Company's 826-day continuing violation,[59] SoCalGas' three filings to the DOE in its furnace rulemaking include the same

[49] *Id.*, Attach. B, Ex. 35 (presentation to senior management); *id.* at Ex. 48 (Sept. 22, 2014 email from Lisa Alexander reporting that based on the presentation CEO Dennis Arriola and Chief Operating Officer Bret Lane provided "validation that Title 24 represents a significant risk to our business and have both their support to execute the action plan").
[50] *Id*., Attach. B, Ex. 22.
[51] *Id*., Attach. B, Ex. 41 through 82; Exhibit Cal Advocates/Sierra Club-21 through 26.
[52] Exhibit Cal Advocates/Sierra Club-20, Attach. B, Ex. 22 (planning for meetings with CEC Commissioners and executive staff).
[53] $50,000 each day for the 635 days from Apr. 15, 2015–Jan. 9, 2017 totals to $31.75 million.
[54] Exhibit Cal Advocates/Sierra Club-1, App. C, Ex. 26 (SoCalGas Standard Services Agreement).
[55] DD at 14–15 (describing SoCalGas' January 9, 2015, comments and attachments).
[56] *Id.* at 13–15 (items 3, 5, and 6 on the DD's list of activities that did not support stringent standards).
[57] For instance, SoCalGas and GTI commenced their contract for technical work on April 15, 2015, to support comments that were due July 13, 2015. Exhibit Cal Advocates/Sierra Club-1, App. C, Ex. 26.
[58] SoCalGas used DSMBA-funded resources to advise AGA's Board of Directors on strategies for negotiating with DOE to weaken the rule or challenging it in court the rule and flew DSMBA-funded employees to Washington, DC, for public meetings in 2016. Sierra Club OSC 2 Brief at 26–18.
[59] D.15-12-016 at 46.

improper representations to officials.[60] SoCalGas never corrected course to align itself with the CEC's position that DOE should quickly adopt even stronger standards than its initial proposal.[61] The Commission should harshly punish SoCalGas for its continuing advocacy in contravention of California state policy. This failure is especially galling because SoCalGas was willing to adjust its positions when AGA instructed the Company: "don't sell our position short."[62]

Opposition to stringent federal standards for commercial packaged boilers

The Commission can conservatively fine SoCalGas $30,000 for filing comments opposing stringent standards on June 22, 2016.[63] The record does not reveal whether SoCalGas' opposition to this standard successfully weakened or delayed the final rule. Nor does the record include information regarding when SoCalGas' ratepayer-funded employees began working on these comments, leading to an artificially low fine for an effort to block stronger federal rules that SoCalGas was unlikely to complete in a single day. The Commission could find SoCalGas in continuing violation for its ongoing commitment of ratepayer funds to fight this energy efficiency rule, based on SoCalGas' reliance on NegaWatt Consulting to prepare these comments, but it is unclear when NegaWatt began work on this particular project.[64]

Opposition to stringent federal standards in response to the RFI

The Commission can fine SoCalGas $660,000 for the 22 days it spent working on its response to the Trump Administration's RFI on reducing regulatory burdens.[65] The first evidence of SoCalGas' internal codes and standards staff and outside contractors work on these comments is a June 22, 2017 email exchange between SoCalGas Building Codes and Appliance Standards Project Manager Daniela Garcia and NegaWatt Consulting about responding to the RFI, in which Ms. Garcia states her intention to investigate "if AGA, APGA has anything else we can piggy back off of."[66] Twenty-two days later, on July 14, SoCalGas files comments in

[60] DD at 13–14 (indicating that filings attached the same ratepayer-funded reports SoCalGas used to justify its positions, sometimes in updated form).
[61] Exhibit Cal Advocates/Sierra Club-3 at 4–5.
[62] Exhibit Cal Advocates/Sierra Club-12 (Oct. 13, 2015 emails between D. Arriola and D. Rendler).
[63] Exhibit Cal Advocates/Sierra Club-6.
[64] *Id.* (noting NegaWatt's assistance on the comments' cover page).
[65] $30,000 each day for 22 days from June 22, 2017–July 14, 2017 totals to $0.66 million.
[66] Exhibit Cal Advocates/Sierra Club-13; *see also* Exhibit Cal Advocates/Sierra Club-1, App. C, Ex. 15, at C-221 (June 22, 2017, email from SoCalGas Codes and Standards Manager responding to Ms. Garcia

response to the RFI.[67] In the interim, SoCalGas and its contractors at NegaWatt regularly sent emails about the RFI response and SoCalGas Codes and Standards Manager Sue Kristjansson contributed to the American Public Gas Association's comments on the RFI.[68] Sierra Club calculated the daily fines for this continuing offense at the moderate level of $30,000 because the record does not reveal the Trump Administration acting on SoCalGas' recommendations.

It would be a conservative approach to consider the RFI comments a separate continuing offense from SoCalGas' efforts to undermine the Obama Administration's furnace standards because they reprise SoCalGas' attacks on the furnace rules.[69] These standards were in the industry's crosshairs because the Obama administration did not finalize them, leaving them unprotected by anti-backsliding provisions in federal statute.[70] By asking the DOE to further delay and weaken the furnace rule,[71] SoCalGas directly undercut California policy.[72]

Opposition to reach codes

Conservatively, the Commission can fine SoCalGas $60,000 per day for the period it attempted to convince San Luis Obispo not to adopt its reach code proposal. This period stretched at least 25 days, from SoCalGas' first letter to the city on August 9, 2019, to its comments at a city council meeting on September 3, 2019—for a total of $1.5 million.[73] This does not represent the full period of time that SoCalGas worked on its campaign against San Luis Obispo's reach code because the Company also incurred approximately $10,000 in consultant charges to prepare for the meeting,[74] but the record does not establish when SoCalGas

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by explaining: "Yes I believe that both AGA and APGA have responded and actually fed the DOE the information to launch the RFI. I'll reach out and figure out what we want to do."). On June 26, 2017, Ms. Garcia also emailed her supervisor a draft of PG&E's draft comments "for review and possible alignment with AGA, APGA," noting that SoCalGas may look to provide a separate letter. Exhibit Cal Advocates/Sierra Club-1, App. C, Ex. 15, at C-224.

[67] Exhibit Cal Advocates/Sierra Club-1, App. C, Ex. 7, SoCalGas, Comment on the Department of Energy Proposed Rule: Reducing Regulation and Controlling Regulatory Costs (July 14, 2017)).

[68] Exhibit Cal Advocates/Sierra Club-1, App. C, Ex. 21, at C-239–241; Exhibit Cal Advocates/Sierra Club 1, App. C, Ex. 22; Exhibit Cal Advocates/Sierra Club-48; Exhibit Cal Advocates/Sierra Club-58.

[69] Exhibit Cal Advocates/Sierra Club-1, App. C, Ex. 7, at 5–6.

[70] *See* 42 U.S.C. § 6295(o)(1).

[71] Exhibit Cal Advocates/Sierra Club-1, App. C, Ex. 7 at 5, at C-075.

[72] The CEC had explained in 2015 that "[a]ny further delay in adopting stringent federal furnace standards threatens to set California back in its efforts" to achieve its 2030 energy efficiency goals. Exhibit Cal Advocates/Sierra Club-3 at 3.

[73] DD at 19.

[74] Exhibit Cal Advocates/Sierra Club-33 (SoCalGas response to Question 3).

commenced that ratepayer-funded contract.

The Commission can also reasonably fine SoCalGas at least $60,000 for filing its unsuccessful opposition letter to Santa Monica's reach code on September 10, 2019.[75]

The Commission should fine SoCalGas at least $100,000 for filing its letter in opposition to Culver City's reach code because SoCalGas' campaign succeeded in preventing Culver City from adopting a reach code. This penalty is inadequate to cover the range of time that SoCalGas spent fighting this reach code, as its February 4, 2020 opposition letter references attending "several meetings" about them.[76] Still, the Commission may find it reasonable to adopt a lenient fine of only $100,000 for this offense if it is paired with stiff penalties for other misconduct.

3. The Commission Can Fine SoCalGas $41.58 Million for Its Continuing Campaigns Against Stringent Standards in the Energy Efficiency Program and Against Reach Codes.

Another potential approach is to deem all SoCalGas' misconduct in the codes and standards program to be part of a single continuing violation and all use of ratepayer-funded labor to oppose reach codes as a separate continuing violation. This approach recognizes that SoCalGas' campaigns against strong rules were parts of a sustained course of conduct.

Misconduct in the energy efficiency program 2014-2017

The most conservative and straightforward approach for identifying the duration of SoCalGas' DSMBA-funded campaign against stronger energy efficiency rules is by beginning the continuing violation on the date of the first DSMBA-funded comments that the DD identifies as misaligned with the Commission's intent and ending the continuing violation on the date of the last such letter. That is, the continuing violation would begin on September 20, 2014, when SoCalGas filed its first letter opposing stringent water heating standards in the Title 24 update.[77] The continuing violation would end on July 14, 2017, when SoCalGas filed its comments on the DOE's Request for Information ("RFI") on reducing regulatory burdens.[78] This approach also recognizes that SoCalGas' DSMBA-funded misconduct stretched far beyond the advocacy on specific regulatory proposals it performed in its own name.[79] SoCalGas had a continuing duty

[75] DD at 20–21.
[76] Exhibit Cal Advocates/Sierra Club-68.
[77] DD at 13.
[78] *Id.* at 16.
[79] Sierra Club OSC 2 Brief at 32–38.

during this period to align its advocacy with the Commission's instructions to use ratepayer funds to support more stringent standards, but failed to correct course. At $30,000 each day, the total fine for a continuing violation over this 1,028-day period would be $30.84 million.

Misconduct in advocacy against reach codes

Similarly, the most straightforward approach for marking the duration of a continuing violation for conducting a ratepayer-funded campaign against reach codes is by marking the start of the violation on the first day that SoCalGas used ratepayer-funded labor to speak against a reach code and mark the end of the violation on the last day that SoCalGas used ratepayer-funded labor to advocate against a reach code. The continuing violation would begin on August 9, 2019, when SoCalGas sent a letter opposing a reach code in San Luis Obispo.[80] To be as conservative as possible, the Commission can determine this continuing offense to end on February 4, 2020, when SoCalGas used ratepayer-funded labor to submit a comment opposing a reach code in Culver City.[81] At $60,000 each day, the total fine for a continuing violation over this 179-day period would be $10.74 million. This 179-day period does not represent the true length of SoCalGas' ratepayer-funded advocacy against reach codes because it excludes SoCalGas' use of ratepayer-funded resources to prepare its first comments to San Luis Obispo or to submit a comment opposing a reach code in Ventura County on February 20, 2020.[82] Still, the Commission might reasonably use the truncated 179-day period to avoid litigation risk. This approach also rewards SoCalGas for eventually correcting course and allegedly funding its final comments against San Luis Obispo's reach codes with shareholder dollars.[83]

III. CONCLUSION

Sierra Club thanks Commissioner Rechtschaffen for the opportunity to comment on his DD. The Commission should adopt a revised version of the DD that levies penalties on SoCalGas that are sufficient to deter future misconduct.

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[80] DD at 19.
[81] *Id.* at 20.
[82] Exhibit Cal Advocates/Sierra Club-61. Although SoCalGas refused to admit in discovery that the Ventura County comments relied on ratepayer-funded labor, it admitted that the signatory books her time to ratepayer-funded accounts in testimony filed after the parties submitted evidence for this OSC. Exhibit Sierra Club Exhibit R-4 (Question 2); Prepared Direct Testimony of Deanna R. Haines on Behalf of Southern California Gas Company, at 12:16–17 (Jan. 10, 2020).
[83] Sierra Club Exhibit R-4 (Response to Question 4) (claiming that SoCalGas booked the costs of comments opposing San Luis Obispo's reach code on June 16, 2020 to a below-the-line account).

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Respectfully submitted,

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