



**FILED**

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R1311005

**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

**ADMINISTRATIVE LAW JUDGE’S RULING  
ADDRESSING MOTION OF SOUTHERN CALIFORNIA  
GAS COMPANY FOR CLARIFICATION OF  
PRESIDING OFFICER’S DECISION**

This ruling addresses the March 7, 2022 *Motion of Southern California Gas Company (U904G) For Clarification Of Presiding Officer’s Decision Finding Southern California Gas Company In Contempt, In Violation Of Rule 1.1 Of The Commission’s Rules Of Practice And Procedure, And Ordering Remedies For Failure To Comply With Commission Decision 18-05-041* (Motion). The Public Advocate’s Office of the Public Utilities Commission (Cal Advocates) timely filed a response to the motion. With the permission of the assigned Administrative Law Judge, Southern California Gas Company (SoCalGas) timely filed a reply to Cal Advocates’ response.<sup>1</sup>

The Presiding Officer’s Decision, for which SoCalGas requests clarification, became the Decision of the California Public Utilities Commission (Commission), Decision (D.) 22-03-010, pursuant to California Public Utilities Code Section 1701.2 and Rule 15.5(a) of the Commission’s Rules of Practice and

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<sup>1</sup> On March 23, 2022, SoCalGas requested and was granted leave to file a reply to Cal Advocates’ response.

Procedure. As the Presiding Officer, I provide this ruling to be responsive to the Motion and to facilitate SoCalGas's compliance with D.22-03-010. This ruling must not in any way be construed as representing the Commission's intent or decree.

The Motion first requests Commission confirmation of the manner in which the Commission wishes to receive clarification requests. This ruling directs that any future requests for clarification of D.22-03-010 shall be made in the same manner that SoCalGas has employed, *i.e.*, via a Motion filed in this proceeding or a successor proceeding.

The Motion next requests confirmation that the prohibition ordered in D.22-03-010, against SoCalGas's use of ratepayer funds for codes and standards activities, does not apply to safety, operational or other codes and standards. The Motion states: "Absent further clarification, SoCalGas plans to exclude this from the scope of employee time tracking ordered in" Ordering Paragraph 7 of D.22-03-010.<sup>2</sup> Cal Advocates correctly notes that the parameters of the requirement to track employee time may not be identical to the parameters of the prohibition on SoCalGas's use of ratepayer funds for codes and standards programs.

Although D.22-03-010 does not distinguish between energy efficiency codes and standards and "safety, operational or other codes and standards," this ruling confirms that the specific activities identified in the motion, summarized below, are not within scope of D.22-03-010's prohibition on SoCalGas's use of ratepayer funds.

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<sup>2</sup> *Motion of Southern California Gas Company (U904G) For Clarification Of Presiding Officer's Decision Finding Southern California Gas Company In Contempt, In Violation Of Rule 1.1 Of The Commission's Rules Of Practice And Procedure, And Ordering Remedies For Failure To Comply With Commission Decision 18-05-041, filed March 7, 2022 (Motion), at 4.*

- Safe placement of customer-owned step-down regulators so that they may be accessed for leak testing;
- Monitoring changes in the National Fuel Gas Code to ensure safe, leak-free, and durable piping;
- Issues regarding locations of meters and necessary clearances around meters; and
- Supporting hardware requirements such as manifold pressure taps, sight glasses, and exhaust gas ports for Ultralow NO<sub>x</sub> furnaces so that SoCalGas employees can effectively service and adjust the furnaces.

SoCalGas must nevertheless include these activities within scope of D.22-03-010's requirement to track employee time. This ruling confirms that D.22-03-010's requirement to track employee time applies to all codes and standards programs, as defined by D.22-03-010. SoCalGas opposes the requirement to track employee time spent on safety and operational codes and standards that, it asserts, are not related to energy efficiency codes and standards; SoCalGas asserts this would "implicate SoCalGas's due process rights to read into the requirements of D.22-03-010 activity that was not part of the [Order to Show Cause, or OSC] and which SoCalGas did not present evidence or arguments on, given the scope set by the Commission for that proceeding."<sup>3</sup> SoCalGas fails to explain how its due process rights would be implicated, and this ruling does not identify any such implication from an order that, as D.22-03-010 explained, is necessary for the Commission to supervise compliance with the prohibition included in that decision. Commission staff must have the ability not only to review SoCalGas's tracking of activities prohibited by

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<sup>3</sup> *Reply of Southern California Gas Company (U904G) to Response of the Public Advocates Office to Motion of Southern California Gas Company for Clarification of Presiding Officer's Decision*, filed April 1, 2022 (SoCalGas reply), at 4.

D.22-03-010, but also to assess and determine whether SoCalGas is tracking employee time accurately for this purpose.

The intent of this ruling is not to restrict SoCalGas's work on or involvement in safety and operational codes and standards, but more information is required regarding how SoCalGas proposes to distinguish safety and operational codes and standards from other codes and standards. SoCalGas may propose such a definition at any time via a Motion in this proceeding or a successor proceeding.

The Motion next requests:

confirmation that the POD's prohibition on SoCalGas's ratepayer funded engagement on proposed energy efficiency codes and standards activities and proposed reach code activities applies to situations where SoCalGas is affirmatively seeking to obtain information about, discussing, researching, or analyzing a proposed energy efficiency code or standard or a proposed reach code for the purpose of participating in or influencing the process for the adoption of the proposed energy efficiency code or standard or the proposed reach code and not to other situations where SoCalGas may be obtaining information about, discussing, or analyzing a proposed energy efficiency code or standard or proposed reach code, but which are outside of the situations which were the subject of this OSC...<sup>4</sup>

Cal Advocates does not take issue with the examples identified in the Motion, but cautions against providing guidance beyond these specific examples, *i.e.*, that unidentified "similar situations" are outside the scope of D.22-03-010's prohibition. SoCalGas opposes a more limited clarification, as a more limited clarification would require SoCalGas to request formal guidance any time it

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<sup>4</sup> Motion, at 4.

seeks confirmation that a given example is outside the scope of D.22-03-010's prohibition.

Although D.22-03-010 does not distinguish activities based on "the purpose of participating in or influencing the process for the adoption of" a proposed code or standard or a proposed reach code, this ruling confirms that the specific activities identified in the motion, summarized below, are not within scope of D.22-03-010's prohibition on SoCalGas's use of ratepayer funds. SoCalGas must nevertheless include these activities within scope of D.22-03-010's requirement to track employee time, for the reason previously articulated regarding "safety and operational" codes and standards.

- Receiving/obtaining information about codes and standards as a respondent in the Commission's Building Decarbonization Order Instituting Rulemaking (OIR), R.19-01-011, and Gas System Planning OIR, R.20-01-007;
- Preparation of the California Gas Report, as directed by D.62260;
- SoCalGas's design and operation of non-codes and standards energy efficiency programs; and
- Facility/asset planning for Leadership in Energy and Environmental Design (LEED) certification.

While obligating SoCalGas to seek formal guidance regarding "similar situations" that SoCalGas has not yet identified, this approach is a reasonable means to discourage SoCalGas from substituting its judgment for the Commission's.

SoCalGas also requests clarification on whether the inclusion of "obtaining information about" a proposed energy efficiency code or standard or a proposed reach code is meant to apply to scenarios in which SoCalGas may receive information about codes and standards, but not "for the purpose of participating

in or influencing the process for the adoption of the proposed energy efficiency code or standard or the proposed reach code.”<sup>5</sup> Although this ruling is amenable to the distinction articulated by SoCalGas, discerning a specific purpose from a given activity should be subject to Commission review, again necessitating that SoCalGas track employee time for all codes and standards activities regardless of whether they are prohibited by D.22-03-010.

The Motion next requests clarification regarding the process SoCalGas or other regulated entities should follow for “non-proceeding” discovery disputes with Cal Advocates. The Motion suggests D.22-03-010 directs SoCalGas and presumably all regulated entities “to be the entity, instead of Cal Advocates, to affirmatively seek a decision from the assigned Commissioner or the President of the Commission in every instance where a regulated entity wishes to raise an objection to a data request propounded by Cal Advocates per California Pub. Util. Code § 309.5(e).”<sup>6</sup> The Motion goes on to state that such a direction “is a fundamental change to SoCalGas’s understanding” of this process.<sup>7</sup> D.22-03-010

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<sup>5</sup> Motion, at 11.

<sup>6</sup> Motion, at 12.

<sup>7</sup> The Motion references an email “ruling,” dated April 6, 2020, on a SoCalGas motion to file under seal and motion for a protective order, to support SoCalGas’s understanding that Cal Advocates should be the entity that brings a motion to the Commission in situations of a discovery dispute outside of a proceeding. The full text of this e-mail (rulings are formal documents, *i.e.*, may only be filed in a proceeding) does not support SoCalGas’s understanding: “Commission Staff, including California Public Advocates, has statutory rights to inspect the accounts, books, papers, and documents of any public utility at any time. Further, Public Utilities Code section 309.5(e) allows California Public Advocates Office to compel the production or disclosure of any information if there are any objections to any request for information. This code section does not provide such relief to regulated entities. SoCalGas’ Emergency Motion for a Protective Order Staying all Pending and Future Data Requests from California Public Office of Advocates is asking the Commission to act contrary to California law both in substance and form. No further consideration of SoCalGas’ motion is warranted.

*Footnote continued on next page.*

contains no such direction; D.22-03-010 only provides that “such objection must be brought to either the assigned Commissioner or the Commission’s president for a written resolution,” it does not identify who/which entity should bring the matter before the Commission.<sup>8</sup>

The Motion’s final request is for clarification of “an apparent inconsistency between Ordering Paragraph 1 and Ordering Paragraphs 4 and 5” of D.22-03-010.<sup>9</sup> There is no inconsistency or discrepancy between Ordering Paragraph 1, on the one hand, and Ordering Paragraphs 4 and 5 on the other hand. SoCalGas’s understanding of D.22-03-010 is generally accurate. To confirm: for any of the at-issue expenditures that have not, as of the date the Presiding Officer’s Decision became the Commission’s decision (March 7, 2022), been transferred to accounts identified for exclusion from SoCalGas’s recovery in rates, SoCalGas must refund such expenditures in accordance with Ordering Paragraphs 4 and 5.

**IT IS SO RULED.**

Dated April 19, 2022 at San Francisco, California.

/s/ VALERIE U. KAO  
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Valerie U. Kao  
Administrative Law Judge

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“However considering such extraordinary times, I ask the parties to work together to find a schedule that is mutually agreeable and accommodates the additional demands resulting from the COVID-19 shelter-in-place directive.”

<sup>8</sup> D.22-03-010 *Presiding Officer’s Decision Finding Southern California Gas Company in Contempt, in Violation of Rule 1.1 of the Commission’s Rules of Practice and Procedure, and Ordering Remedies for Failure to Comply With Commission Decision 18-05-041*, issued March 21, 2022, at 24.

<sup>9</sup> Motion, at 12.