

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Application of Southern California Gas Company (U904G) for Authority, Among Other Things, to Update its Gas Revenue Requirement and Base Rates Effective on January 1, 2024.

Application 22-05-015

And Related Matter.

Application 22-05-016

**PUBLIC ADVOCATES OFFICE
RESPONSE TO SOUTHERN CALIFORNIA GAS COMPANY AND
SAN DIEGO GAS & ELECTRIC COMPANY MOTION FOR
OFFICIAL NOTICE OF THE COURT OF APPEAL,
FOURTH APPELLATE DISTRICT, DIVISION ONE DECISION D081883**

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I. INTRODUCTION

Pursuant to Rule 11.1(e) of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission), the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) hereby responds to the Motion¹ of Southern California Gas Company and San Diego Gas & Electric Company (collectively, Sempra) for official notice of an unpublished decision of the California Court of Appeal, Fourth Appellate District (Decision D081883).

Cal Advocates opposes the Motion to the extent Sempra relies on Decision D081883 as legal authority for its request to establish Litigated Project Costs Memorandum Accounts (LPCMA's).

II. DISCUSSION

Sempra requests official notice of Decision D081883 pursuant to the

¹ Application (A.) 22-05-015 and A.22-05-016 (consolidated), *Southern California Gas Company and San Diego Gas & Electric Company Motion for Official Notice of the Court of Appeal, Fourth Appellate District, Division One Decision D081883* (Motion), August 20, 2024.

Commission’s Rule 13.10² and Evidence Code section 452.³ Sempra claims that Decision D081883 “resolved an issue raised in Cal Advocates’ testimony” and “supports the overall reasonableness” of Sempra’s LPCMA requests.⁴ However, while Cal Advocates agrees that Section 452 permits judicial notice of unpublished court decisions such as Decision D081883, Cal Advocates opposes treating this decision as dispositive of any issue or as legal authority to grant Sempra’s LPCMA requests.

This approach is consistent with the well-settled “no-citation rule” expressed in California Rules of Court Rule 8.1115(a), which provides, with a few exceptions not applicable here:⁵ “[A]n opinion of a California Court of Appeal or superior court appellate division that is not certified for publication or ordered published must not be cited or relied on by a court or a party in any other action.”⁶ While many courts have nevertheless permitted judicial notice of unpublished decisions, at least some appear to have done so for purposes other than citation or reliance as legal authority.⁷ And a recent California Supreme Court decision suggests some movement towards consistency with the no-citation rule. In *Hernandez v. Restoration Hardware, Inc.*, 4 Cal.5th 260, 269, n. 2 (2018), the Court declined to judicially notice several unpublished Court of Appeal

² Rule 13.10 Official Notice of Facts. Official notice may be taken of such matters as may be judicially notice by the courts of the State of California pursuant to Evidence Code section 450 et seq.

³ Motion at 2. Sempra cites to Evidence Code sections 452(a), 452(c) and 452(h).

⁴ Motion at 1, 4.

⁵ Cal. Rules of Court, Rule 8.1115(b):

An unpublished opinion may be cited or relied on:

- (1) When the opinion is relevant under the doctrines of law of the case, res judicata, or collateral estoppel; or
- (2) When the opinion is relevant to a criminal or disciplinary action because it states reasons for a decision affecting the same defendant or respondent in another such action.

⁶ Cal. Rules of Court, Rule 8.1115(a).

⁷ See e.g., *People v. Hill*, 17 Cal.4th 800, 847 n. 9 (1998) (“Because we do not cite or rely on that opinion, judicial notice does not in this circumstance run afoul of [Rule of Court 8.1115].”); *Mangini v. J.G. Durant Int’l*, 31 Cal.App.4th 214, 219 (1994) (unpublished opinions show a “recurring issue remains unresolved”).

opinions because of the no-citation rule: “With certain exceptions, not applicable here, the Rules of Court generally prohibit us from noticing unpublished opinions.” Cal Advocates recommends a similar approach here.

III. CONCLUSION

For the reasons set forth above, Cal Advocates recommends that the Commission decline to take official notice of Decision D081883.

Respectfully submitted,

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