



PUBLIC UTILITIES COMMISSION505 VAN NESS AVENUE
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September 13, 2024

Agenda ID #22924
Ratesetting

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

This is the proposed decision of Administrative Law Judge Valerie U. Kao. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's October 17, 2024 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, *ex parte* communications are prohibited pursuant to Rule 8.2(c)(4).

/s/ MICHELLE COOKE

Michelle Cooke

Chief Administrative Law Judge

MLC:smt

Attachment

Decision PROPOSED DECISION OF ALJ KAO (Mailed 9/13 /2024)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

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

**DECISION ADDRESSING AUDIT OF SOUTHERN CALIFORNIA
GAS COMPANY'S CODES AND STANDARDS EXPENDITURES****Summary**

This decision approves the recommendations of the audit completed by the California Public Utilities Commission's Utility Audits Branch pursuant to Decisions (D.) 22-03-010 and D.22-04-034. Southern California Gas Company must refund \$3,989,377 to ratepayers for expenditures on codes and standards activities.

This proceeding remains open.

1. Background**1.1. Procedural Background**

Decision (D.) 18-05-041 affirmed the intent of codes and standards advocacy is to "work towards adoption of higher appliance and building standards," and found that Southern California Gas Company (SoCalGas) "has not worked towards adoption of more stringent codes and standards."¹ Upon

¹ D.18-05-041 *Decision Addressing Energy Efficiency Business Plans*, issued June 5, 2018 Findings of Fact 77 and 78.

these findings, D.18-05-041 prohibited SoCalGas from participating in codes and standards advocacy activities (other than to transfer funds to the statewide lead for codes and standards) during the 2018-2025 business plan period.² D.18-05-041 declined to consider sanctions for alleged misconduct in codes and standards advocacy, but specified that such a motion may be filed in this proceeding or its successor.³

On July 15, 2019, the Public Advocate's Office of the Public Utilities Commission (Cal Advocates) filed a motion alleging that SoCalGas continued to charge ratepayers for codes and standards advocacy after the Commission adopted D.18-05-041, and further that SoCalGas submitted misleading and inaccurate information in response to Cal Advocates' data requests regarding these activities. On October 3, 2019, the assigned Administrative Law Judge (ALJ) granted Cal Advocates' motion and issued an Order to Show Cause (OSC) directing SoCalGas to demonstrate why it should not be sanctioned for violations of D.18-05-041 and Rule 1.1 of the Commission's Rules of Practice and Procedure (post-decision OSC).

Separately, on October 10, 2019, Resolution E-5007 directed that the Commission issue an order directing SoCalGas to explain 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. On December 17, 2019, the assigned Commissioner issued an order to show cause in accordance with Resolution E-5007 (pre-decision OSC).

² *Id.* Ordering Paragraph 53.

³ *Id.* at 144.

D.22-03-010 resolved the post-decision OSC and found SoCalGas in contempt of the Commission for violation of D.18-05-041. D.22-03-010 directed the Commission's Utility Audits Branch (UAB) to conduct an audit to:

- Determine the amount of ratepayer-funded expenditures associated with the activities found to be in violation of D.18-05-041;
- Identify the amount of expenditures that are ineligible for Efficiency Savings and Performance Incentive (ESPI) payment;⁴
- Examine and identify any other financial benefits that accrued to SoCalGas or any SoCalGas employee, such as performance bonuses, resulting from the activities found to be in violation of D.18-05-041.⁵

D.22-04-034 resolved the pre-decision OSC and found that SoCalGas had conducted activities during 2014-2017 that did not support more stringent codes and standards and that did not support local governments' adoption of reach codes. D.22-04-034 directed UAB to conduct an audit to:

- Determine the amount of ratepayer-funded expenditures associated with the activities through which SoCalGas did not support more stringent codes and standards or did not support local governments' adoption of reach codes;
- Identify the amount of ESPI management fee payments associated with certain activities, and the amount of expenditures that are ineligible for ESPI payment.⁶

⁴ D.13-09-023 *Decision Adopting Efficiency Savings and Performance Incentive Mechanism*, issued September 11, 2013.

⁵ 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 (D.22-03-010) Ordering Paragraph 4.

⁶ D.22-04-034 *Decision Different of Commissioner Rechtschaffen*, issued April 18, 2022 (D.22-04-034) Ordering Paragraph 5.

Both D.22-03-010 and D.22-04-034 provide that “UAB is authorized to employ whatever method it deems appropriate, to estimate the amounts that SoCalGas must refund” if SoCalGas’ records do not enable UAB to calculate the specific amounts.⁷ Both decisions specify that within 30 days after the Commission approves the audit ordered by each decision, SoCalGas “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...[SoCalGas] 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...on these refund amounts. [SoCalGas] must propose to effectuate this refund as part of its next gas Public Purpose Programs surcharge change.”⁸

On April 2, 2024, UAB published its audit in response to both decisions. The audit confirms its objectives were to determine:

- The amount of expenditures SoCalGas incurred within the codes and standards program related to unallowable advocacy activities;
- The amount of ESPI management fee payments SoCalGas received that resulted from unallowable advocacy and other ineligible activities;
- Any other financial benefits to SoCalGas related to unallowable advocacy activities; and
- Whether SoCalGas has implemented time tracking mechanisms to track employee time spent on codes and standards programs.

⁷ D.22-03-010 at 29 and D.22-04-034 at 28-29.

⁸ D.22-03-010 Ordering Paragraph 5 and D.22-04-034 Ordering Paragraph 6.

The audit report recommends that SoCalGas should:

- Refund/remit \$4,046,733 in questioned costs, consisting of:
 - \$3,582,856 for energy efficiency codes and standards related activities for program years 2014 through 2022,
 - \$215,802 in related ESPI management fee payments to SoCalGas for program years 2014, 2015 and 2016, and
 - \$248,075 in related associated interest;
- Develop and implement staff training to provide a thorough understanding of codes and standards program requirements and policies;
- Develop and implement monitoring procedures that check program expenditure compliance against established program guidance and requirements; and
- Continue implementing its newly established Above the Line (ATL) time tracking mechanism to demonstrate what specific activities SoCalGas engaged in to support specific costs incurred.

The audit explains that UAB determined that certain costs “could not be reasonably dissociated from the unallowable advocacy activities outlined” in D.22-03-010 and D.22-04-034. Specifically, the audit states that “SoCalGas did not provide sufficient and appropriate evidence to show that expenditures incurred and recorded...with the exception of allowable transfers and co-funding agreements, resulted from allowable activities, or the unallowable advocacy activities outlined in D.22-03-010 and D.22-04-034.”⁹ The audit did not find

⁹ *Administrative Law Judge’s Ruling Providing Notice of Audit Completed Pursuant to Decisions (D.) 22-03-010 and D.22-04-034*, filed April 3, 2024 at Attachment A *Energy Efficiency Codes & Standards Program Performance Audit; Southern California Gas Company January 1, 2014 through December 31, 2022* (audit report) at 1. The audit report refers to “C&S” as an abbreviation for codes and standards.

evidence to support any other financial benefits to SoCalGas related to unallowable advocacy activities, and it confirmed SoCalGas has developed an employee time tracking mechanism to track employee time spent on energy efficiency codes and standards programs, though this mechanism was not implemented until May 2022. The audit also notes that UAB issued a draft report on March 6, 2024, to which SoCalGas submitted a response with comments regarding the draft report. The audit includes both SoCalGas' response and UAB's evaluation of the response.

On April 3, 2024, the assigned ALJ provided notice of the UAB audit and the opportunity to comment on whether the Commission should approve the UAB audit.

Cal Advocates and SoCalGas timely filed comments to the April 3, 2024 ruling. Cal Advocates, SoCalGas and Sierra Club timely filed reply comments to the April 3, 2024 ruling. SoCalGas recommends that the Commission adopt a refund amount of \$482,903, which is the amount SoCalGas states is associated with unallowable activities. SoCalGas makes several arguments against adoption of the audit's recommended refund amount. SoCalGas asserts the audit reflects an approach that the Commission previously rejected when it determined that SoCalGas should refund expenditures associated with specific identified unallowable activities. Relatedly, SoCalGas asserts UAB did not use the information that SoCalGas provided during the audit to distinguish between spending on unallowable versus allowable activities. SoCalGas also asserts the audit report fails to acknowledge and account for allowable activities, such as co-funding CASE studies, planning and coordination, and compliance improvement. And SoCalGas argues that requiring documentation to support specific expenditures by specific activities constitutes ex post facto rule making,

implying SoCalGas should not be held to a higher or different standard than the one in place during program years 2014-2022 for tracking energy efficiency program expenditures. SoCalGas recommends the Commission adopt SoCalGas' own estimate of unallowable expenditures, \$482,903, or alternatively to limit the amount subject to refund to SoCalGas' two codes and standards advocacy subprograms, which would amount to \$1,301,222.

Cal Advocates and Sierra Club recommend that the Commission adopt the audit's recommended amount. Cal Advocates and Sierra Club assert that SoCalGas mischaracterizes the audit's approach as one that the Commission previously rejected, arguing instead that UAB engaged in a detailed investigation and found SoCalGas did not provide sufficient and appropriate documentation to support claims that certain expenditures were for allowable activities. Cal Advocates and Sierra Club thus argue that UAB reasonably concluded that SoCalGas' estimates could not be verified or corroborated.¹⁰ In response to SoCalGas' argument that the audit failed to acknowledge allowable activities, Sierra Club points out that the audit did identify approximately \$4.2 million associated with transfer payments and co-funding agreements that were allowable, and that the audit explains SoCalGas did not provide sufficient documentation to verify the remaining expenditures.¹¹ Cal Advocates and Sierra Club also reject SoCalGas' claim that the audit amounts to ex post facto rule making; Cal Advocates distinguishes between basic reporting requirements and the level of detail needed for adequate recordkeeping procedures to capture supporting documentation, and Sierra Club similarly distinguishes between the

¹⁰ Cal Advocates reply comments at 2-5 and Sierra Club reply comments at 3-4.

¹¹ Sierra Club reply comments at 3-4.

refund amount recommended by the audit and sanctions for a lack of records using a retroactive standard.¹² Sierra Club argues that SoCalGas' suggestion to limit the amount subject to refund, to SoCalGas' two codes and standards advocacy subprograms, is not reasonable given UAB's findings of insufficient records and the lack of clarity regarding SoCalGas' categorization of activities.¹³

1.2. Submission Date

This matter was submitted on May 22, 2024 upon parties' filing of reply comments to the April 3, 2024 ruling.

2. Amount to be Refunded to SoCalGas Ratepayers

This decision is limited to consideration of the audit's recommended amount that SoCalGas must refund to ratepayers.¹⁴ We find that the audit report complies with both decisions' directives to identify the amount that SoCalGas must refund to ratepayers. D.22-03-010 and D.22-04-034 authorize UAB to employ whatever method it deemed reasonable if SoCalGas' records did not enable UAB to calculate the specific refund amount; the audit confirms SoCalGas did not provide sufficient and appropriate documentation to show that expenditures resulted from allowable activities as distinguished from unallowable activities. The audit describes the methods UAB employed to address the audit objectives and confirms UAB conducted the audit in

¹² Cal Advocates reply comments at 5-7 and Sierra Club reply comments at 3-4.

¹³ Sierra Club reply comments at 5.

¹⁴ Both D.22-03-010 and D.22-04-034 order SoCalGas to implement appropriate tracking of employee time to ensure compliance with each decision; D.22-03-010 Ordering Paragraph 8 and D.22-04-034 Ordering Paragraph 7. Similarly, we do not address the parties' arguments regarding whether to continue prohibiting SoCalGas from participation in codes and standards advocacy; both D.22-03-010 and D.22-04-034 make clear that this prohibition remains effective unless and until the Commission affirmatively lifts the prohibition or finds that SoCalGas has sufficient and appropriate policies, practices and procedures to ensure adherence to Commission intent for codes and standards advocacy.

accordance with generally accepted government auditing standards, which ensures that the evidence obtained provides a reasonable basis for the audit findings and conclusions.¹⁵

We acknowledge SoCalGas' argument that it expended additional time and effort with the UAB auditors to help them obtain information. We agree, however, with the audit's evaluation that "good faith estimates cannot substitute actual records to demonstrate how costs were attributed to the unallowable activities, especially when estimates are not corroborated by source documents."

The audit report goes on to explain:

An estimate could be acceptable if it were based on historical data points that can be corroborated and support the estimated information. However, using staff's recollection to guess time attributed to activities spanning back nearly 10 years without having any historical data points to support these guesses, makes such estimates unreliable. Because amounts proposed by SoCalGas were based on guesses and lacked corroborating historical data, we could not independently verify, validate, or corroborate the amount SoCalGas has estimated.¹⁶

We confirm, as Cal Advocates and Sierra Club argue, that the "approach" the Commission previously rejected in D.22-04-034 is separate and distinct from the detailed analysis that UAB conducted to arrive at its recommended refund amount. D.22-03-010 and D.22-04-034 ordered an audit to afford SoCalGas an opportunity to demonstrate which expenditures were associated with allowable activities. The audit afforded that opportunity and concluded that SoCalGas' documentation was inadequate to verify expenditures associated with allowable

¹⁵ Audit report at 6-9.

¹⁶ *Id.* at Appendix B

activities. This is clearly distinct from an upfront order for SoCalGas to refund all codes and standards expenditures. We further confirm that approving a refund amount, based on documentation that UAB deemed inadequate to verify expenditures associated with allowable activities, is separate and distinct from retroactively applying a higher or different standard to SoCalGas's tracking of energy efficiency expenditures; this decision only addresses the appropriate refund amount.

This decision adopts the audit's recommended refund amounts, with one modification noted by SoCalGas: in its response to the draft audit report and comments to the final audit report, SoCalGas notes that the \$215,802 in related ESPI management fee payments does not omit amounts related to transfers and co-funding payments made to Pacific Gas and Electric Company and Southern California Edison Company, and that accounting for these payments should reduce the recommended amount to \$158,446.¹⁷ We agree with SoCalGas' reasoning, that D.13-09-023 directs that the codes and standards program management fee be calculated as an award equal to 12 percent of codes and standards program expenditures, and does not distinguish transfers and co-funding payments from program expenditures; the appropriate refund amount for ESPI management fee payments should not include payments SoCalGas received that resulted from transfers and co-funding payments.

¹⁷ Audit report Appendix A and SoCalGas comments at 23-24.

The following table summarizes the refund amount adopted by this decision:

Refund component	Amount
Energy efficiency codes and standards-related activities for program years 2014 through 2022	\$3,582,856
Related ESPI management fee payments to SoCalGas for program years 2014, 2015 and 2016	\$158,446
Associated interest	\$248,075
Total refund	\$3,989,377

3. Summary of Public Comment

Rule 1.18 allows any member of the public to submit written comment in any Commission proceeding using the “Public Comment” tab of the online Docket Card for that proceeding on the Commission’s website. Rule 1.18(b) requires that relevant written comment submitted in a proceeding be summarized in the final decision issued in that proceeding.

As of August 15, 2024, no public comments submitted to the Docket Card for this proceeding address the substance of this decision.

4. Comments on Proposed Decision

The proposed decision of ALJ Valerie U. Kao in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission’s Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

5. Assignment of Proceeding

Alice Reynolds is the assigned Commissioner and Julie A. Fitch and Valerie U. Kao are the assigned ALJs in this proceeding.

Findings of Fact

1. The audit confirms that SoCalGas did not provide sufficient and appropriate documentation to show that expenditures resulted from allowable activities as distinguished from unallowable activities.
2. D.22-03-010 and D.22-04-034 authorized UAB to employ whatever method it deemed reasonable if SoCalGas' records did not enable UAB to calculate the specific refund amount.
3. The audit recommends that SoCalGas refund \$3,582,856 for energy efficiency codes and standards related activities for program years 2014 through 2022; \$215,802 in related ESPI management fee payments to SoCalGas for program years 2014, 2015 and 2016; and \$248,075 in related interest.
4. D.13-09-023 directs that the codes and standards program management fee be calculated as an award equal to 12 percent of codes and standards program expenditures and does not distinguish transfers and co-funding payments from program expenditures.
5. UAB conducted the audit in accordance with generally accepted government auditing standards, which ensures that the evidence obtained provides a reasonable basis for the audit findings and conclusions.

Conclusions of Law

1. It is reasonable to approve the audit report, with one modification to the recommended ESPI amount for allowable transfers and co-funding payments made to Pacific Gas and Electric Company and Southern California Edison Company.
2. It is reasonable to direct SoCalGas to refund \$3,989,377 to its ratepayers based on the audit report.

O R D E R

IT IS ORDERED that:

1. The final report of the Utilities Audit Branch's audit conducted pursuant to Decision 22-03-010 and Decision 22-04-034 is approved, with one modification to account for allowable transfers and co-funding payments. Southern California Gas Company shall refund \$3,989,377 to its ratepayers in accordance with Ordering Paragraph 5 of Decision 22-03-010 and Ordering Paragraph 6 of Decision 22-04-034.

2. Within 30 days after the issuance date of this decision, Southern California Gas Company shall 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 Utilities Audit Branch's audit report, to effectuate the refund of \$3,989,377. Southern California Gas Company must propose to effectuate this refund as part of its next gas Public Purpose Programs surcharge change.

3. Rulemaking 13-11-005 remains open.

This order is effective today.

Dated _____, at Sacramento, California.