BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking to Evaluate the Mobilehome Park Pilot Program and to Adopt Programmatic Modifications.	R.18-04-018 (Filed on April 26, 2018)

APPLICATION OF SOUTHERN CALIFORNIA GAS COMPANY (U 904 G) FOR REHEARING OF DECISION 25-11-009

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Pursuant to Section 1731 of the Public Utilities Code[1] and Rule 16.1 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), Southern California Gas Company ("SoCalGas") submits this Application for Rehearing of Decision ("D.") 25-11-009, *Decision Establishing an Electrification Pilot Initiative for Mobilehome Parks* ("Decision") in Rulemaking 18-04-018 ("Rulemaking") of which SoCalGas is a respondent.[2] The Decision was issued on November 24, 2025. This Application for Rehearing ("Application") is timely filed.

Pursuant to Rule 16.3, SoCalGas hereby requests oral argument.

I. INTRODUCTION

According to Rule 16.1(c), "[t]he purpose of an application for rehearing is to alert the Commission to a legal error, so that the Commission may correct it expeditiously." Here, constitutional, jurisdictional, and statutory limitations on the Commission's authority require the Decision to be reheard and modified to correct the mistakes of law described herein.

The Decision was the latest of a series in the two-phase Rulemaking through which the Commission sought to "evaluate the Mobilehome Park (MHP) Pilot Program (MHP Pilot Program)" established four years earlier "to incentivize MHPs with master-metered natural gas

[1] All statutory references herein are to the California Public Utilities Code unless otherwise indicated.

[2] D.25-11-009 at 22 (Ordering Paragraph (OP) 6).

and electricity systems to convert to direct utility service."[3] The purpose of the second phase of this proceeding, as set forth in the *Assigned Commissioner's Phase 2 Scoping Memo and Ruling*,[4] was to determine a uniform electric service standard for, and address consumer protection issues relating to, mobilehome parks ("MHPs") participating in the Mobilehome Park Utility Conversion Program ("MHP UCP"). Notwithstanding this restricted scope, the Decision orders:

1. An electrification pilot within the MHP UCP ("Electrification Initiative");
2. Retirement of gas utility assets providing direct-metered service ("Decommissioning Order");
3. Participating MHPs to record a "restrictive covenant on the land"[5] imposing a prospective ban on gas infrastructure for the later of the life of the new electric equipment incentivized by the program or 20 years ("Gas Ban"); and
4. Gas ratepayers to pay for a portion of costs to evaluate the Electrification Initiative ("Cross-Subsidization Order").

In particular, where a MHP with a direct-metered gas system owned and operated by the gas investor-owned utility ("IOU") opts to participate in the Electrification Initiative, the gas IOU's assets would be required to be decommissioned and the MHP property would be restricted from having piped gas service for at least 20 years. This outcome lies, from a legal as well as policy perspective, far from the goal initially described by the Commission. From the outset of the Rulemaking, the Commission stated that "the central issue" was "improving safety through *conversion of master-metered natural gas and electricity to direct utility service*."[6] The Decommissioning Order, however, would terminate gas service that is already directly provided to each mobilehome and individually metered by the gas IOU. Moreover, the flat ban on all forms of existing gas service is a sudden and unexplained departure from the considered approach being pursued in the *Order Instituting Rulemaking to Establish Policies, Processes, and Rules to Ensure Safe and Reliable Gas Systems in California and Perform Long-Term Gas*

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[3] *Id.* at 1.

[4] As discussed below, the Phase 2 Scoping Memo was amended three months prior to issuance of the Decision to add the issue of when the mid-program evaluation should occur.

[5] D.25-11-009 at 54 (Finding of Fact ("FOF") 13).

[6] Order Instituting Rulemaking at 11 (emphasis added).

System Planning, R.24-09-012, where the Commission is carefully evaluating strategies for the orderly and legally compliant decommissioning of gas utility infrastructure, balancing reliability, safety, and affordability considerations while aligning with statutory decarbonization mandates under Senate Bill (SB) 100 and related legislation. The Gas Ban ignores both core customers' statutory rights to gas service—deemed by the Legislature to be an essential service—and gas IOUs' statutory obligation to serve. Not only is the Decision arbitrary and capricious because many of the items ordered were never considered in the proceeding and are not supported by substantial evidence; the Decision additionally runs afoul of statutes enacted by the Legislature as well as the gas IOUs' constitutionally protected rights to due process and against confiscatory takings.

The Decision never explains why the Decommissioning Order or Gas Ban are essential to the proceeding's primary goal of "improving safety through conversion of master-metered natural gas and electricity to direct utility service."[7, 8] The absence of such an explanation is not surprising. Almost eight years into the Rulemaking, the Decision imposes requirements that were never advanced by any party to the proceeding nor in the Staff Proposal. The comments of the parties over the preceding years of the Rulemaking are devoid of any reference to, or analysis of, the Decommissioning Order, Gas Ban, or Cross-Subsidization Order—these all originated in the PD. None of the three scoping memos in the Rulemaking indicated that such proposals would be among "the issues to be considered."[9] Moreover, no Commission precedent or readily-apparent statutory directive or authority exists that might suggest that the Commission must, or even may, direct land use through modification of interests in real property. Because there was no opportunity during the Rulemaking to brief the issues leading to the legal infirmities in the Decision, that process begins now, with this application for rehearing.[10]

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7 *Id.* at 11.

8 Nor does the Decision consider associated impacts of the Decommissioning Order or Gas Ban on reliability, resiliency, affordability, and equity, which are critical factors to consider in energy system planning.

9 Pub. Util. Code § 1701.1(b)(1).

10 The Decision is also rife with confusion and a lack of clarity because there was no opportunity for parties to provide input. For example, Ordering Paragraph 20 provides that the gas IOUs should "count all conversions completed through this Electrification Initiative toward their total annual conversions." Although it would be nonsensical to do so, the Decision purports to require the gas

II. SPECIFICATIONS OF ERROR

1. Section 1757(a)(2):[11] The Commission failed to proceed in the manner required by law because the Scoping Memo failed to provide notice that the Rulemaking would consider imposing the Electrification Initiative, Gas Ban, Decommissioning Order, or Cross-Subsidization Order.

2. Section 1757(a)(1): The Commission is without jurisdiction to order MHPs participating in the Electrification Initiative to record a restrictive covenant prospectively banning gas utility service for at least 20 years.

3. Section 1757(a)(1): By imposing the Gas Ban on MHPs that participate in the Electrification Initiative, and imposing the Decommissioning Order on gas IOUs, the Commission has exceeded the jurisdiction vested in it by the Legislature.

4. Sections 1757(a)(1) and 1757(a)(6): Imposition of the Gas Ban on MHPs that participate in the Electrification Initiative is preempted by the Energy Policy and Conservation Act of 1975 ("EPCA").

5. Section 1757(a)(2): The Commission failed to proceed in the manner required by law by ignoring or misconstruing statutes that vest residential customers with a right "to receive safe basic gas service" and obligate gas IOUs' to serve.

6. Section 1757(a)(3): Imposing a Gas Ban on MHPs that participate in the Electrification Initiative is not supported by the findings in the Decision.

7. Section 1757(a)(4): Many "Conclusions of Law" in the Decision (that are actually findings of fact) are not supported by substantial evidence.

IOUs to count MHPs they have decommissioned from direct utility service (i.e., MHPs that were never included in the gas IOUs' space counts) towards their space count goals ordered in D.20-04-004.

[11] The Commission proceeding was directed to eight IOUs specifically named as respondents. The proceeding was subject to the Commission's rules restricting *ex parte* communications. The Commission categorized the proceeding as ratesetting and, accordingly, it is appropriate to proceed under Section 1757. Even if Section 1757.1 were deemed to apply, it provides the basis for the same legal challenges. The only material difference is that Section 1757 includes an explicit ground for challenging a decision based on the lack of "substantial evidence." Pub. Util. Code § 1757(a)(4). Because a decision that deviates from substantial evidence is an abuse of discretion, the result under either statute is the same. Section 1757.1(a)(1); *see Woodbury v. Brown-Dempsey*, 108 Cal.App.4th 421, 438 (2003) (arbitrary and capricious actions constitute an "abuse of discretion"); *see also Zuehlsdorf v. Simi Valley Unified Sch. Dist.,* 148 Cal.App.4th 249, 256 (2007) (actions that are "not supported by a fair or substantial reason" are also arbitrary and capricious).

8. Section 1757(a)(6): The Decision results in a taking of SoCalGas's property and violation of SoCalGas's due process rights in contravention of the United States and California Constitutions.

III. PROCEDURAL BACKGROUND

A. The Mobilehome Park Utility Conversion Program

This Rulemaking[12] was opened to comprehensively evaluate the Mobilehome Park Utility Conversion Pilot Program ("MHP Pilot Program") ordered in D.14-03-021 to determine whether adopting a permanent conversion program was warranted and, if so, whether any programmatic modifications were appropriate.[13] The MHP Pilot Program aimed to promote safety and reliability at pre-1997 mobilehome parks and manufactured housing communities (collectively, "MHPs")[14] by converting master-metered utility service (where the MHP owner/operator is the utility customer who maintains its own submeter infrastructure to distribute electricity, natural gas, or both to individual coaches or homes) to direct utility service provided by utility-owned and operated infrastructure.[15] At the time it considered the MHP Pilot Program, the Commission observed that the OIR called for "a collaborative approach… to advance existing legislative policy favoring direct utility service"[16] and noted further that any program adopted "must be fair and reasonable to all ratepayers, including MHP tenants, to utilities, and to MHP owners."[17] In adopting the MHP Pilot Program, the Commission emphasized that the

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[12] The Assigned Commissioner's Scoping Memo and Ruling determined the category of the proceeding was ratesetting. Assigned Commissioner's Scoping Memo and Ruling at 18.

[13] The only opportunity the parties had to address the Gas Ban was through comments on the Proposed Decision, a document that—by definition—is not issued until "after submission." Pub. Util. Code § 311(d), Rule 14.2(a). Comments are limited in both length and scope and rely on the record; they are not in lieu of a record. *See* Rule 14.3 (b)-(c).

[14] Effective January 1, 1997, state law required the direct metering of electric and/or natural gas service in MHPs constructed within electric or gas corporation franchises. D.25-11-009 at 4.

[15] D.14-03-021. Among safety concerns noted at the time were that the submeter system was not maintained by investor-owned utilities (IOUs) regulated by the Commission as well as the lack of data on the age of submeter systems in use at MHPs. Petition 10-08-016, *Decision Granting Petition in Part and Instituting Rulemaking into Issues Concerning Transfer or Electric and Natural Gas Master-Metered Service at Mobilehome Parks and Manufactured Housing Communities to Direct Service by Electric and/or Natural Gas Corporations* ("Decision Granting Petition") at 7-10.

[16] D.14-03-021 at 6.

[17] Decision Granting Petition at 17.

"[c]riteria for conversion must focus on safety first," and, accordingly, determined "[t]he first priority of the pilot must be to maximize conversion of higher risk MHP master-meter / submeter systems that supply natural gas."[18]

The Order Instituting Rulemaking opening this proceeding stated clearly that the scope of this proceeding was not to reopen for litigation "the fundamental policy and legal determinations of D.14-03-021."[19] The Assigned Commissioner's Scoping Memo and Ruling ("Phase 1 Scoping Memo") identified among the many issues to be considered in the proceeding:

> *2.5 Electrification*
> *a. Should the Commission promote electrification as an option for MHPs participating in the program?*
> *b. What factors should the Commission evaluate when considering whether to promote electrification?*
> *c. What criteria will help determine the reasonableness of converting an MHP with gas and electric (or gas-only) service to "electric-only" service?*[20]

Following evaluation of the Pilot Program, D.20-04-004 ("Phase 1 Decision") established a 10-year Mobilehome Park Utility Conversion Program ("MHP UCP") to run from 2021 through 2030.[21] Among other things, the Phase 1 Decision: (1) requires mid-program evaluation (from 2021-2024) of the MHP UCP by the Commission in 2025; (2) determines it is premature to direct an MHP electrification pilot at the time due to the relatively early stage of the Commission's building decarbonization initiatives, the unique and diverse housing stock within

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[18] D.14-03-021 at 3, 43. At the same time, the decision also provided: "No party argues that MHP master-meter/submeter distribution systems, as a group, are so unsafe or unreliable that they pose an imminent danger. All parties recognize that various kinds of problems are not uncommon, given the aging infrastructure at most MHPs." *Id.* at 61 (FOF 4). *See also*, Assigned Commissioner's Phase 2 Scoping Memo and Ruling ("Phase 2 Scoping Memo") at 1; D.20-04-004 at 150 (FOF 17) ("…MHPs as an electric-only upgrade are accomplished only in limited circumstances and in consultation with HCD.").

[19] Order Instituting Rulemaking at 12. Among legal and policy determinations made in D.14-03-021 is the determination that broad allocation of the costs of the MHP Pilot Program are appropriate notwithstanding cost causation principles. D.14-03-021 at 77 (OP 8). Given the fundamental shift between the Electrification Initiative (appearing to be aimed at decreasing reliance on fossil fuels) and the MHP UCP (explicitly established to promote safety and reliability), the Decision additionally appears to alter fundamental legal and policy decisions from D.14-03-021 without explanation or support.

[20] Assigned Commissioner's Scoping Memo and Ruling at 6.

[21] D.20-04-004 at 3.

MHPs, and the uncertain impacts on the most volatile customers; and (3) orders the Commission's Energy Division, in cooperation with the Commission's Safety and Enforcement Division, the California Department of Housing and Community Development, the utilities, and industry stakeholders to convene a workshop to discuss MHP electrification topics within 180 days.[22]

B. Phase 2 Scoping Memo and Activities

While Phase 1 concluded with the issuance of the Phase 1 Decision, the proceeding was kept open to address standardizing a 200-ampere electric service system for electric upgrades in the MHP UCP program and outstanding consumer protections.[23] On December 23, 2020, the *Assigned Commissioner's Phase 2 Scoping Memo and Ruling* ("Phase 2 Scoping Memo") was issued, determining the issues in scope for Phase 2 were "to explore the narrow issue of standardizing MHP 200-amp electric service system upgrades… from a cost, technical, legal, and public policy perspective; and to address consumer protection issues," and further noting, "[o]nce sufficient record is developed on these two primary issues, *we will determine whether to initiate an additional track in Phase 2 to consider development of a MHP Electrification Pilot*."[24] Assigned Commissioner Rechtschaffen explains in the Phase 2 Scoping Memo, "it is premature to determine whether this proceeding is the appropriate venue for development of a pilot of full electrification of MHPs. *** For this reason, we find it is premature to develop an electrification pilot at this time, but we leave open the possibility of developing such a pilot in a separate track within Phase 2, depending on the timing and results of the Phase 2 issues."[25] The Phase 2 Scoping Memo also confirmed the categorization of the proceeding would remain ratesetting.[26]

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[22] *Id.* and at 175 (Ordering Paragraph ("OP") 15).

[23] *Id*. at 5-6; 170 (Conclusion of Law (COL) 18) ("It is reasonable to keep this proceeding open to explore the narrow issue of standardizing MHP 200 amp electric system upgrades 'to the meter' and potentially 'beyond the meter' from a cost, technical, legal, and public policy perspective; and to address consumer protection issues.")

[24] Assigned Commissioner's Phase 2 Scoping Memo and Ruling at 4 (emphasis added; internal quotations and citations omitted).

[25] *Id.* at 8.

[26] *Id.* at 11.

On February 12, 2021, the *Administrative Law Judge's Ruling Distributing Staff Proposal and Setting Schedule for Further Activities on Consumer Protections* was issued, and consumer protections were adopted by the Commission in D.21-08-025. Thereafter, on July 20, 2021, the *Administrative Law Judge's Ruling Seeking Comment on an Electrification Service Standard for the Mobilehome Park Utility Conversion Program* was issued, posing multiple questions regarding an electrification-ready service standard and calling for a staff proposal on the topic to be issued in the first quarter of 2022.[27] Another ruling followed on April 19, 2022 seeking information on costs of converting or upgrading MHPs to different potential electrification-ready standards.[28]

On July 31, 2023, the *Administrative Law Judge's Ruling Distributing Staff Proposal and Setting a Schedule for Further Activities on Electric Service Standards* was issued, distributing a Staff Proposal dated July 25, 2023 ("Staff Proposal") and announcing:

> *This ruling distributes a Staff Proposal that recommends the adoption of a 200-amp electric standard for mobilehome parks (MHPs) treated through the MHP Utility Conversion Program (MHP Conversion Program).* ***The Staff Proposal also recommends the creation of an initiative to assess the costs, feasibility, and impacts of full electrification of a sample of MHPs located throughout the state.***[29]

The Staff Proposal recommends the Commission modify the MHP UCP to:

1. Mandate installation of to-the-meter (TTM) infrastructure to accommodate 200-amp electrical service;
2. Mandate installation of behind-the-meter (BTM) infrastructure, up to the external junction box of each MHP coach, to accommodate 200-amp electrical service; and
3. Initiate a limited full-home electrification initiative for MHPs within the existing program, wherein all coaches are fully electrified at no cost to residents, no new gas infrastructure is installed, and existing gas infrastructure is permanently retired.[30]

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[27] Administrative Law Judge's Ruling Seeking Comment on an Electrification Service Standard for the Mobilehome Park Utility Conversion Program at 6.

[28] Administrative Law Judge's Ruling Seeking Information on Estimated Mobilehome Park Conversion and Upgrade Costs.

[29] Administrative Law Judge's Ruling Distributing Staff Proposal and Setting a Schedule for Further Activities on Electric Service Standards at 1 (emphasis added).

[30] R.18-04-018 Phase 2 B Staff Proposal (July 25, 2023) ("Staff Proposal") at 2.

In explaining the impact of the proposed electrification initiative on gas infrastructure at participating MHPs, the Staff Proposal states, "[f]ully electrified MHPs should receive updated, direct-metered electrical systems *only*, and since these homes will no longer rely on gas appliances *there should be no replacement of gas infrastructure*."[31] Because direct-metered service would not be subject to replacement in the MHP UCP, it is evident the Staff Proposal contemplates inclusion of MHPs that have master-metered gas systems, not MHPs that already have direct-metered systems. This also makes logical sense given the Electrification Initiative is a component of the MHP UCP, and the purpose of the MHP UCP is to incentivize conversion of master-metered utility systems *to direct-metered service*. The Staff Proposal further demonstrates its intention to remain consistent with the MHP UCP, advising that mixed gas and electric MHPs should be prioritized for the Electrification Initiative because "[t]his is also consistent with the prioritization criteria of the current proceeding, which directs utilities to *prioritize MHPs with sub-metered gas and electric systems, or just gas sub-metered systems*."[32] The Staff Proposal further identifies just one area of difference between the Electrification Initiative and the MHP UCP, stating that the Electrification Initiative "should keep most elements of the current MHP Program, but it should eliminate gas system *installations*…."[33] The ruling issuing the Staff Proposal invited comment, and no party advanced the Gas Ban, Decommissioning Order, or Cross-Subsidization Order.

D.24-12-037 was issued on December 24, 2024 and adopted a 200-amp electrical service standard and evaluation criteria for the mid-cycle evaluation of the MHP UCP.[34] With respect to the Staff Proposal's recommendation that an electrification initiative proposal be adopted, the decision states, "The Commission will consider a MHP electrification pilot in a future decision while it explores and establishes funding sources."[35]

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[31] *Id*. at 55-56 (emphasis added).

[32] Staff Proposal at 57 (emphasis added).

[33] *Id.* at 59 (emphasis added). The use of the term "installations" further demonstrates the intent of the Staff Proposal that direct-metered gas utility service—which would not need to be replaced with new installations—would not be impacted by the Electrification Initiative. A different intent would have required different language in the Staff Proposal: for example, the Electrification Initiative "should keep most elements of the current MHP Program, but it should eliminate gas systems" rather than "gas system installations."

[34] D.24-12-037 at 42 (OPs 1-2).

[35] *Id*. at 40.

On September 15, 2025, the *Amended Assigned Commissioner's Phase 2 Scoping Memo and Ruling* ("Amended Phase 2 Scoping Memo") was issued, reciting, "On December 23, 2020, the Commission issued a Scoping Memo for Phase 2 of R.18-04-018 to (1) address consumer protections, (2) establish an electric service standard for electrification readiness, and (3) develop a pilot exploring the full electrification of selected MHPs."[36] With respect to item 3, the Amended Phase 2 Scoping Memo is wrong—to the contrary, the Phase 2 Scoping Memo determined an electrification pilot should *not* be developed in this track of the proceeding. The Amended Phase 2 Scoping Memo goes on to add one additional issue to the scope of the proceeding: "This amended scoping ruling adds to the scope of issues for Phase 2 whether the Commission should modify the direction set forth in D.20-04-004 regarding the [MHP UCP] mid-cycle evaluation. *This amended scoping ruling makes no other changes to the Phase 2 issues in scope.*"[37]

C. The Proposed Decision

A Proposed Decision ("PD") was issued on October 17, 2025 to adopt an Electrification Initiative. Among other things, the PD provided that MHPs participating in the Electrification Initiative "shall not receive any new natural gas infrastructure and shall cease to use natural gas in perpetuity"[38]—a proposal no party had advanced during the seven-year history of the Rulemaking. The PD also provided that evaluation of the Electrification Initiative should be conducted jointly with the MHP UCP no later than December 31, 2029, and that the costs (up to $250,000) should be borne by SoCalGas, San Diego Gas & Electric Company, Pacific Gas and Electric Company, and Southern California Edison Company proportionate to their share of completed MHP projects through the end of 2024.[39] While the proceeding is categorized as ratesetting, there was never any previous notice—in the Staff Proposal or otherwise—that the Commission might consider having the costs of evaluating the Electrification Initiative subsidized by gas IOU ratepayers.

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[36] Amended Assigned Commissioner's Phase 2 Scoping Memo and Ruling ("Phase 2 Scoping Memo") at 1.

[37] *Id.* at 2 (emphasis added).

[38] Proposed Decision Establishing an Electrification Pilot Initiative for Mobilehome Parks (PD) at 25.

[39] *Id.* at 41-42.

SoCalGas submitted opening comments on the PD, *inter alia* arguing with respect to the perpetual gas ban that contracts (i.e., covenants) that purport to bind only one party in perpetuity are often found to be unconscionable or unenforceable; that the language used in the PD purports to be a covenant that runs with the land; that SoCalGas is not aware that the Commission has previously imposed such onerous conditions on ratepayers seeking to participate in decarbonization initiatives; and that the language purports to unilaterally sever the gas utilities' obligation to serve their customers.[40]

D. The Decision

The PD was revised on November 19, 2025 ("Revised PD") and voted out by the Commission the next day, becoming the Decision.

The Decision identifies the issues before the Commission as: "(a) Whether to establish a statewide pilot initiative to explore the full electrification of selected MHPs; and, (b) Whether to modify the direction set forth in D.20-04-004 regarding the MHP UCP mid-cycle evaluation."[41] It points to the December 23, 2020 Phase 2 Scoping Memo for support, stating that memo was issued, among other things, to "develop a pilot exploring the full electrification of selected MHPs."[42] The Phase 2 Scoping Memo did no such thing; in fact, it did the opposite by ruling it was premature to develop an electrification pilot.[43] Nevertheless, the Decision adopts an Electrification Initiative.

1. The Decommissioning Order

In adopting the Electrification Initiative, the Decision changes the qualifying criteria from both the Staff Proposal and the umbrella MHP UCP program itself—which pertains to upgrading master-metered systems to direct-metered service—to allow participation from MHPs with individual direct-metered gas service from a gas IOU.[44] The Decision provides that the gas

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40 SoCalGas Opening Comments at 3-4.

41 D.25-11-009 at 6.

42 *Id.* at 5.

43 Phase 2 Scoping Memo at 7-8.

44 D.25-11-009 at 17 ("The selected MHPs must have existing piped natural gas (either master-metered or individually metered), grid-connected electrical systems, and must receive electric service from PG&E, SCE or SDG&E and gas service from PG&E, SDG&E, SoCalGas, or SWG. However, only the electrical system of the MHP needs to be master-metered to qualify. This is because in this

service provider—whether the MHP owner, owner's agent, the gas IOU, or both—should be responsible for removal, permitting, decommissioning, and environmental remediation related to the legacy system.[45]

2. The Gas Ban

The Decision further specifies the Electrification Initiative participation requirement that "[t]he MHP owner(s) and/or the owner(s) of the land on which the mobilehome(s) are installed must agree to file a restrictive covenant with the local Authority Having Jurisdiction (AHJ) restricting the land from building new gas infrastructure for at least 20 years from the date that the existing gas system is fully decommissioned."[46] The Decision later expands this requirement: "these MHPs will not receive any new natural gas infrastructure and must agree to not receive any piped gas until the natural end of life of the equipment incentivized by the [Equitable Building Decarbonization] program, or 20 years, whichever is later."[47] Moreover, it requires that the "gas utility shall adhere to the restrictive covenant on the land(s) and ensure that no new gas infrastructure is constructed on it until after the date specified in the covenant."[48] As for replacements for gas appliances that would be defunct without gas service, the Decision provides that, "the Electrification Initiative [shall] install new, efficient electric appliances to replace existing natural gas or inefficient, electric resistance electric appliances."[49]

3. The Cross-Subsidization Order

With respect to the costs of evaluating the Electrification Initiative, the Decision concludes that "[c]ombining evaluation of the MHP UCP program with the evaluation of the Electrification Initiative is efficient and reasonable" and, accordingly, specifies that "[f]ollowing customary practices for evaluation consultant services, it is reasonable for the large electric and

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Electrification Initiative, only the electrical system would need to be converted through the MHP UCP. The existing gas system, regardless of whether it is master-metered or not, would be required to be abandoned in place, and the gas service provider (i.e. the MHP owner, owner's agent, the gas IOU, or both, whichever the case may be) would be responsible for removal, permitting, decommissioning, and environmental remediation related to the legacy system.").

45 *Id*.

46 *Id.* at 18-19.

47 *Id*. at 26.

48 *Id.* at 58 (OP 16).

49 *Id.* at 28.

gas IOUs to reimburse the Commission proportionately using the rate recovery mechanism," with "proportionately" referring to the IOUs' "proportional share of completed projects through the end of Calendar Year 2024."[50] This time period precedes implementation of the Electrification Initiative and thus bears no relation to the Electrification Initiative, let alone reflects the impacts the Electrification Initiative will have on the gas IOUs' MHP UCP work.

IV. LEGAL ARGUMENT

A. The Commission Failed to Proceed in the Manner Required by Law because the Scoping Memos Failed to Provide Notice that the OIR Would Consider Adopting the Electrification Initiative or Imposing the Gas Ban, Decommissioning Order, or Cross-Subsidization Order.

Sections 1701.1(b)(1) and 1701(c) provide in relevant part that "[t]he assigned commissioner shall schedule a prehearing conference and shall prepare and issue by order or ruling a scoping memo that describes the issues to be considered…."[51, 52]

Just last year, the California Supreme Court held:

> *At the outset of a quasi-legislative proceeding, the Public Utilities Code and Commission rules alike require the assigned commissioner to issue a scoping memo that identifies the issues under consideration. (See Pub. Util. Code, § 1701.1, subds. (c) [requiring, in quasi-legislative proceedings, that "[t]he assigned commissioner shall ... issue ... a scoping memo that describes the issues to be considered"], (b) [same for adjudication and ratesetting proceedings]; Cal. Code Regs., tit. 20, § 7.3 ["The assigned Commissioner shall issue the scoping memo for the proceeding, which shall determine the ... issues to be addressed"].)* ***Identifying the issues under consideration facilitates informed participation—including presentation of arguments and evidence—by those who may have a stake in the resolution of those issues.***[53]

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[50] *Id.* at 45, 54 (COLs 5, 8).

[51] With regard to the need for "a scoping memo that describes the issues to be considered…," the requirements governing quasi-legislative proceedings are the same as those governing adjudications and ratesetting proceedings.

[52] Rule 7.3 accordingly requires, "The assigned Commissioner shall issue the scoping memo for the proceeding, which shall determine the schedule (with projected submission date), issues to be addressed, and need for hearing."

[53] *Golden State Water Co. v. Pub. Utilities Com.*, 16 Cal.5th 380, 394-395 (2024) (emphasis added) ("*Golden State*"). Because the matter under review in *Golden State* was a rulemaking, the relevant requirements for the Scoping Memo are found in Section 1701.1(c). The Legislature employed identical text in Section 1701.1(b)(1) requiring Scoping Memos in ratesetting proceedings.

The Supreme Court's decision in *Golden State* follows two earlier decisions of the Court of Appeals reaching the same result: *City of Huntington Beach v. Pub. Utilities Comm'n*, 214 Cal.App.4th 566, 593 (2013) ("[C]ommission violated the procedural rights of the City and thereby abused its discretion by purporting to 'preempt' City ordinances" where preemption issue was not included in scoping memo) and *Southern California Edison Co. v. Pub. Utilities Comm'n*, 140 Cal.App.4th 1085, 1106 (2006) ("*Edison*") ("By considering a… proposal… beyond the scope of issues identified in the scoping memo, the PUC violated its own rules by considering the new issue… the PUC failed to proceed in the manner required by law…").[54]

Here, too, the Commission has not "complied with the statutory scoping memo requirement" and thereby failed to proceed in the manner required by law. The Phase 1 Scoping Memo contemplated consideration of certain specific questions regarding whether and how the Commission should *consider* electrification—but it did not call for the development of an electrification pilot. The Commission ultimately determined in the Phase 1 Decision that it was "premature" to make decisions regarding electrification.[55] The Phase 2 Scoping Memo, consistent with the directive of the Phase 1 Decision,[56] identified two narrow issues for the proceeding: consumer protections for MHPs participating in the MHP UCP and selection of an electric service standard.[57] The Phase 2 Scoping Memo declares unambiguously: "it is premature to determine whether this proceeding is the appropriate venue for development of a pilot of full electrification of MHPs. *** For this reason, we find it is premature to develop an electrification pilot at this time, but we leave open the possibility of developing such a pilot in a separate track within Phase 2, depending on the timing and results of the Phase 2 issues."[58] No separate track to develop "a pilot of full electrification of MHPs" was ever commenced. And

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[54] Pub. Util. Code § 1757(a)(2).

[55] D.20-04-004 at 160 (FOF 88). In fact, the Phase 1 Decision dismissed the notion of exploring an electrification pilot in a future phase of the Rulemaking at all: "To SCE's request that a full electrification pilot be explored in a separate phase of this proceeding, we find it not consistent with the original objectives of the MHP Pilot. A separate phase may be perceived as being contradictory to the record, program development, and could confuse stakeholders, especially MHP owners and contractors. As the original OIR in this proceeding stated, the goals of this proceeding were intended to be narrow and limited in scope." *Id.* at 92 (citations omitted).

[56] *Id.* at 170 (COL 18).

[57] Phase 2 Scoping Memo at 3-4.

[58] *Id.* at 8.

even though an Amended Phase 2 Scoping Memo was issued in the proceeding, it did not add development of an electrification pilot as a new issue in the proceeding.[59] As the Staff Proposal recognizes, while "[t]he Phase 2 Scoping Memo also left open the possibility of considering a potential full-electrification pilot program within the MHP Program,"[60] the issue was never actually scoped into the proceeding.[61]

Nevertheless, even if the mistaken and belated reference in the Amended Phase 2 Scoping Memo could be deemed to provide the requisite notice that an electrification pilot would be considered, there certainly was never any notice that the Gas Ban, Decommissioning Order, or Cross-Subsidization Order were being considered by the Commission. They were announced *for the first time in the PD*. The Staff Proposal recommended none of them,[62] nor did any party in the proceeding.

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[59] While the Amended Phase 2 Scoping Memo did not identify consideration of an electrification pilot as a new issue, it mistakenly identifies it as an issue already scoped into the proceeding.

[60] Staff Proposal at 1.

[61] If prejudice were deemed to be required—which it is not—the prejudice here is the same as in *Golden State*: the gas IOUs were deprived of an adequate opportunity to present a case against the Gas Ban, Decommissioning Order, and Cross-Subsidization Order. Moreover, also consistent with *Golden State*, the issuance of the Staff Proposal recommending an electrification pilot and the ALJ's subsequent rulings regarding it also do not cure the failure to scope the matter into the proceeding, particularly ("Finally, the Commission argues that even if the scoping memos were deficient, the Water Companies have failed to show that they were prejudiced by the deficiency. Assuming a showing of prejudice is in fact required, we disagree; the lack of notice prejudiced the Water Companies by depriving them of an adequate opportunity to present their case for preserving the use of decoupling mechanisms. It is true that once the Public Advocates Office first raised the issue of eliminating use of the WRAM/MCBA, the ALJ posed certain questions on that subject. But the ALJ's questions, posed years into this proceeding, could not and did not cure the lack of notice provided by the scoping memos. There is no argument that the ALJ could expand the scope of the proceeding, and the most relevant questions posed — 'should the Commission consider converting to [a] Monterey-style WRAM ...? Should this consideration occur in the context of each utility's GRC?' — are reasonably understood to contemplate a separate, future proceeding. Finally, the record indicates that the lack of notice hampered the Water Companies' efforts to submit and contest evidence relevant to whether the mechanisms at issue should be maintained. The Commission was not required to agree with the Water Companies, but its failure to issue an adequate scoping memo frustrated the Water Companies' ability to advocate effectively for their position.") *Golden State*, 16 Cal. 5th 380 at 398–399.

[62] While the Staff Proposal contemplates "no replacement of gas infrastructure" for the sub-metered systems that are eligible to participate in the MHP UCP, it does not contemplate decommissioning direct-metered gas IOU infrastructure. Staff Proposal at 56-57.

Accordingly, stakeholders were deprived not only of fair notice that these issues impacting the gas IOUs' and their customers' statutory and constitutional rights and obligations would be considered, but also a process to be heard on the matter (as discussed further *infra*). It is irrelevant that the Commission may only have considered the Electrification Initiative, Gas Ban, Decommissioning Order, and Cross-Subsidization Order belatedly because Sections 1701.1(a), 1701.1(b)(1), and 1701(c) preclude such afterthoughts. In *Edison*, the late addition of a "prevailing wage" issue required reversal of the decision even though the parties were given an opportunity, albeit very limited, to comment on it.[63] Similarly, the late addition of a proposed proscription on a particular form of cost recovery that was not placed at issue in the scoping memo resulted in the California Supreme Court overturning that portion of the Commission decision in *Golden State*.[64] And just this month the Commission addressed SoCalGas's *Application for Rehearing of Decision 25-01-031* by vacating portions of that decision on the basis that "the Decision erroneously made cost recovery determinations because this issue was beyond the scope of the proceeding."[65]

The prejudice to Joint IOUs here is compounded by the arbitrary and capricious nature of the Gas Ban, Decommissioning Order, and Cross-Subsidization Order. The Decision adds a new finding of fact, without any citation to the source of that fact, that was not in the PD but results in altering the scope of both the MHP UCP and Electrification Initiative: "Certain MHPs have master-metered electrical infrastructure owned by the MHP owner but individually-metered gas through the gas IOU."[66] And cross-subsidization by gas ratepayers is ordered to evaluate the Electrification Initiative simply because the Commission concluded, without any explanation (in the form of a required finding of fact or otherwise), that the cross-subsidization by gas ratepayers is "efficient and reasonable."[67] The lack of meaningful deliberation of these orders is evident in the lack of clarity in how the Decision would be enforced. For example, the Decision imposes a Gas Ban for the later of 20 years or the life of the equipment installed pursuant to the Electrification Initiative, but does not specify how it arrived at that duration or what would

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63 *Edison*, 140 Cal.App.4th at 1106-1107.

64 *Golden State*, 16 Cal.5th at 395-399.

65 D.25-12-016 at 2-3.

66 *Id.* at 54 (FOF 12).

67 *Id.* at 54 (COL 5).

happen if the equipment malfunctioned or otherwise needed to be retired before 20 years had lapsed. Similarly, the gas IOUs are charged with abiding by the restrictive covenant for the later of 20 years or the life of the equipment incentivized—introducing questions of fact (i.e., the life of the equipment incentivized) that the gas IOUs have no reasonable way of knowing or confirming, particularly for the entirety of a mobilehome park.[68]

B. The Commission Is Without Jurisdiction to Order Program Participants to Record a Restrictive Covenant Prospectively Banning Gas Utility Service.

While the Legislature may confer upon the Commission broad authority to regulate public utilities under the California Constitution and the Public Utilities Code, the powers so conferred are limited to actions that are cognate and germane to the regulation of public utilities.[69] The powers the Legislature has conferred on the Commission, however, do not extend to imposition of deed restrictions on private landowners that are not public utilities. The Commission previously considered adoption of specific deed restrictions in connection with the Multifamily Affordable Solar Housing (MASH) program.[70] The Commission declined to adopt any specific deed restriction or provide guidance regarding the form of deed restrictions that were statutorily required for the MASH program under Public Utilities Code section 2852,[71] explaining that "the specific nature of the deed restrictions referenced in Section 2852 generally falls within the expertise of other state and local agencies."[72] In other words, even where the legislature has mandated restrictive covenants in connection with Commission programs, the Commission has recognized that they fall outside its jurisdictional purview. In contrast, the restrictive covenants required by the Decision in connection with the Gas Ban have no basis in the Public Utilities Code and were entirely invented by the Commission.

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[68] The Phase 1 Decision acknowledged the challenges of gaining access to individual MHPs. D.20-04-004 at 159 (FOF 87) (challenges to electrification of MHPs include the "feasibility of entering homes to complete work (residents denying access, not reachable, etc.").

[69] Cal. Const. art. XII, § 5 ("The Legislature may confer additional authority and jurisdiction upon the commission … limited only by the requirement that the granted powers be cognate and germane to the regulation of public utilities.").

[70] D.15-07-010, 2015 Cal. PUC LEXIS 425.

[71] *Id.*

[72] *Id.* at 11.

Even assuming the Commission has the jurisdiction to impose such a restrictive covenant, had it been proposed prior to the Revised PD/Decision, allowing a more fulsome examination and comment from stakeholders, the Commission may have acquired the expertise to develop a solution that meets the Commission's objective legally (and the Decision might have avoided terms such as the "local Authority Having Jurisdiction").[73] But even directing the MHP to the local recorder's office (where deed restrictions are required to be recorded) may not have sufficed given the legal infirmities inherent in the restrictive covenant ordered to be recorded in connection with the Gas Ban which cause it to be void, voidable, and unenforceable.

1. The Restrictive Covenant Ordered in the Decision Would Be Void.

a) A Restrictive Covenant Must Pertain to At Least Two Parcels of Land.

Under California law, two parcels of land—both a burdened land (that of the covenantor) and a benefited land (that of the covenantee)—are required for a valid restrictive covenant that runs with the land. Civil Code section 1468 establishes that covenants must be "made by an owner of land *with the owner of other land*" and must benefit "the land of the covenantee."[74] Absent an exception (discussed *infra*), the two-parcel requirement of Section 1468 renders the restrictive covenant ordered in the Decision void as it affects only a single parcel—the MHP property.

McCaffrey v. Preston demonstrates the vulnerability of single parcel restrictions.[75] The court held that residential use restrictions imposed by a grantor were personal covenants rather than covenants running with the land because "none of the Hoffman deeds specified what land was to be benefited by the restrictions" and the grantor "did not promise to similarly burden the land he retained or conveyed."[76] The court emphasized that "determination of whether a covenant is personal, runs with the land, or is enforceable as an equitable servitude rests upon the resolution of factual matters such as intent, notice and equitable factors."[77]

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[73] D.25-11-009 at 51 ("[U]ncertainty about how long customers will not receive gas service does not serve the goals of the Electrification Initiative.").

[74] Cal. Civ. Code § 1468 (emphasis added).

[75] *McCaffrey v. Preston* 154 Cal.App.3d 422 (1984).

[76] *Id.* at 437.

[77] *Id.* at 436.

As a single parcel restriction, the restrictive covenant ordered in the Decision also suffers from fatal standing and enforcement defects because no party has been identified with authority to enforce the restrictions, and the covenants fail to identify any benefitted land or party with standing to seek enforcement.[78] (In fact, the Decision makes clear that the restrictive covenant serves the interests of the Electrification Initiative, not any covenantee: "…uncertainty about how long customers will not receive gas service does not serve the goals of the Electrification Initiative."[79]) In *La Mancha Development Corp. v. Sheegog*, the court held that a grantor lacked standing to enforce a land use restriction because, after "having conveyed all its interest in both the corner parcel and the commercial parcel, [it] retains no interest in any property benefited by the land use restriction."[80] That standing issue is amplified here where the Commission has not and will not own any interest in the land being restricted, thus leaving no party capable of enforcing the restriction.

While Civil Code section 1471 creates an exception to the two-parcel requirement for environmental covenants, that exception does not apply here. Section 1471 permits enforcement of covenants "regardless of whether or not it is for the benefit of land owned by the covenantee," provided the restriction is "reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials."[81] However, that exception does not apply to the restrictive covenant ordered by the Decision as the Decision specifies it is ordered for the general goal of reducing reliance on fossil fuels and decarbonization,[82] and thus does not satisfy the requirement at Section 1471(a)(3) that the restriction be "*reasonably necessary* to protect present and future human health and safety or the environment as a result of the presence *on the land* of hazardous materials…."[83] Nor does the

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78 *See B.C.E. Dev., Inc. v. Smith,* 215 Cal. App. 3d 1142 (1989); *also Farber v. Bay View Terrace Homeowners Ass'n,* 141 Cal. App. 4th 1007, 1011 (2006) (one who no longer owns land in a development subject to reciprocal restrictions cannot enforce them, absent a showing that the original covenanting parties intended to allow enforcement by one who is not a landowner).

79 D.25-11-009 at 51.

80 *La Mancha Development Corp. v. Sheegog*, 78 Cal.App.3d 9, 14 (1978).

81 Cal. Civ. Code § 1471.

82 D.25-11-009 at 9.

83 Cal. Civ. Code § 1471(a)(3) (emphasis added).

Decision require that the restrictive covenant include in its title "Environmental Restriction"—which is another express requirement of the exception provided at Section 1471.[84]

Civil Code section 1462[85] and related case law also do not alter the analysis that the restrictive covenant ordered by the Decision is void. *Self v. Sharafi* provides important clarification that Civil Code section 1462 can apply to single-parcel situations where the covenant *benefits* the conveyed property.[86] Therefore, under Civil Code section 1462, a covenant will be enforced as a covenant running with the land if it is made "for the direct benefit of the property."[87] Here, however, there is not—and cannot be—a showing of direct benefit to the burdened properties as, to the contrary, the restrictive covenant ordered by the Decision actually seeks to *limit* the available services to, and uses made of, the burdened properties—services which have been deemed by the Legislature to be essential, as discussed *infra*. While this may serve the Decision's intended general purpose of purportedly reducing reliance on fossil fuels, it necessarily requires a sacrifice on the part of the owner as to uses of and their conduct at the property—not a benefit.[88]

b) The Restriction Is Void As An Unreasonable Restraint on Alienation.

Civil Code section 711 provides that "conditions restraining alienation, when repugnant to the interest created, are void."[89] California courts have developed a nuanced approach that permits reasonable restraints while prohibiting unreasonable ones. The analysis employs a fact-based approach and determinations are made on a case-by-case basis. The California Supreme

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84 Cal. Civ. Code § 1471(a)(4).

85 Cal. Civ. Code § 1462 provides: "Every covenant contained in a grant of an estate in real property, which is made for the direct benefit of the property, or some part of it then in existence, runs with the land."

86 *Self v. Sharafi*, 220 Cal. App. 4th 483, 489-493 (2013). *See Marra v Aetna Constr. Co.,* 15 C2d 375, 378 (1940); *see also S. California School of Theology v. Claremont Graduate University*, 60 Cal. App. 5th 1 (2021) (reaffirming the continued viability of equitable servitudes for single parcel restrictions).

87 Cal. Civ. Code § 1462.

88 *See, e.g., Scaringe v. J.C.C. Enterprises,* 205 Cal. App.3d 1536, 1543 (1988) ("The California Supreme Court has narrowly applied section 1462, however, by holding that a covenant which burdens property does not run with the land") (citing *Marra v. Aetna Construction Co.,* 15 Cal.2d 375, 378 (1940)).

89 Cal. Civ. Code § 711; *see also Godoy v. Linzner*, 106 Cal. App. 5th 765 (2024).

Court in *Kendall v. Ernest Pestana, Inc*. established that "reasonableness is determined by comparing the justification for a particular restraint on alienation with the quantum of restraint actually imposed by it."[90] This balancing test requires examining both the degree of restriction and the justification supporting it. As the Court explained, "the greater the quantum of restraint that results from enforcement of a given clause, the greater must be the justification for that enforcement."[91] In this case, gas service is essential utility infrastructure that significantly affects property value, habitability, and economic viability of mobilehome parks,[92] and the Decision seeks to impose a substantial and enduring restraint on the property without a justification that matches that significance. The Gas Ban represents a substantial quantum of restraint, particularly because it fails to account for changing circumstances, technological advancements, or economic conditions, creating inflexible burdens that, while burdensome to start, may become increasingly burdensome over time.[93]

Such unreasonable restraints on alienation are invalid.[94] The restrictive covenant ordered in the Decision does not just reduce property values or limit activities—it deprives the impacted property owners of a valuable safe, reliable, and affordable energy source that in no way protects the covenantee's interests.[95] Accordingly, the restrictive covenant ordered in the Decision creates a condition that is void under Section 711.

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[90] *Kendall v. Ernest Pestana, Inc*., 40 Cal.3d 488, 498 (1985); *see also Gutzi Associates v. Switzer,*215 Cal.App.3d 1636 (1989).

[91] *Id.* (citing *Wellenkamp v. Bank of America*, 21 Cal.3d 943, 949 (1978)).

[92] *See, e.g.,* Pub. Util. Code §§ 739.5, 2791(c).

[93] Moreover, the restrictive covenant leaves no room for public policy changes to benefit program participants who, as tenants in MHPs, are some of California's most vulnerable residents. In the not-too-distant past, the Commission declared, "We reconfirm at this time the policy conclusion, enunciated in Decision No. 89177 in the Liquified Natural Gas Terminal proceeding, *that on both economic and environmental grounds, natural gas is the preferred fuel for residential energy needs*." D.91328 at 8 (*In Re Gas & Elec. Extensions*, 3 CPUC 2d 280 (Feb. 13, 1980) (emphasis added)). And given the pending affordability crisis, the state's current views on natural gas are nuanced. Just two months ago, Governor Newsom vetoed SB 613, which required state agencies to prioritize "certified low-methane natural gas" from imported sources, because, among other things, it would "risk increasing costs for gas customers in the near term" and could jeopardize reliability. *See* Gavin Newsom, Governor, Veto Message—Senate Bill No. 613 (Oct. 3, 2025), *available at* https://www.gov.ca.gov/wp-content/uploads/2025/10/SB-613-Veto.pdf.

[94] *City of Oceanside v. McKenna,* 215 Cal.App.3d 1420, 1427-1430 (1989).

[95] *Id*.

c) The Restriction Contravenes Public Policy to the Extent It Eliminates Customer Choice and Protections.

While the Commission is a constitutionally[96] created body, its authority over energy utilities is limited to that delegated to it by the Legislature, in which "control" over energy utilities is conferred by that Constitution.[97] Even the Commission's broad authority under Section 701 is limited by express (or even implied) legislative directives.[98]

The Gas Ban ordered by the Decision would contravene the Legislature's well-established public policy granting customers the right to receive gas service and imposing on gas IOUs the obligation to provide this service. The Legislature has declared repeatedly that gas service is an essential service and it has directed that core customers be guaranteed a right to gas service. For example, in 1999, following various proposals to restructure the natural gas industry, the Legislature intervened and passed Assembly Bill (AB) 1421, reenacting Section 328 of the Public Utilities Code.[99] The Legislature directed the Commission to preserve indefinitely the availability of bundled basic gas service for core customers, declaring:

> *The Legislature finds and declares . . . [i]n order to ensure that all core customers of a gas corporation continue to receive safe basic gas service in a competitive market, each existing gas corporation should continue to provide this essential service.*[100]

The Legislature reaffirmed and fortified core customers' right to gas service in 2011 when it added Section 963 to the Public Utilities Code.[101] The Legislature again declared customers' right to receive safe basic gas service as an essential service, and it described gas utilities' obligation to serve in even more forceful terms. Instead of again merely admonishing and encouraging gas corporations to continue to provide this essential service, the Legislature

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96 Cal. Const. art. XII, § 1.

97 *Id.* at § 3.

98 *Assembly of the State of California v. Public Utilities Commission*, 12 Cal. 4th 87 (1995); *California Manufacturers Association v. Public Utilities Commission*, 24 Cal. 3d 836 (1979). *Southern California Gas Company v. Public Utilities Commission*, 24 Cal. 3d 653 (1979) (implied legislative directive).

99 1999 Cal. Legis. Serv. Ch. 909 (A.B. 1421) at § 2, codified at Cal. Pub. Util. Code § 328.

100 Cal. Pub. Util. Code § 328(a).

101 2011 Cal. Legis. Serv. Ch. 522 (S.B. 705), at § 2, codified at Cal. Pub. Util. Code § 963.

declared that "to ensure that all core customers of a gas corporation continue to receive safe basic gas service," each existing gas corporation "*shall continue to provide this essential service*."[102]

In furtherance of the State's public policy and guarantee that core customers have access to natural gas service as an essential service, the Legislature also has directed the Commission to "require each gas corporation to provide bundled basic gas service to all core customers in its service territory unless the customer chooses or contracts to have natural gas purchased and supplied by another entity."[103] California thus has guaranteed core customers the right to receive gas service, and the Commission's task is to enforce gas utilities' obligation to provide that service. In other words, the obligation to serve functions as a codified customer protection.

The Decision's requirement that MHP owners and/or owners of land where the mobilehome is located file a restrictive covenant constraining the land from having gas infrastructure for at least 20 years from the date the existing gas system is fully decommissioned[104] materially interferes with and eliminates core gas customers' fundamental right to receive gas service.[105] Such an outcome is contrary to the state's public policy that customers have the right to receive gas service if they so choose. While the Electrification Initiative is voluntary, a participant has no option to change their mind if circumstances change in the coming decades. For example, if electricity prices dramatically increase due to unprecedented demand growth, the customer would be unable to obtain gas service—a service the Legislature has deemed essential. Further, to the extent future landowners (and MHP residents) are bound by the restrictive covenant, they would be deprived of their statutory right to receive gas service *without* their consent. Put simply, the Decision goes to great lengths to prevent residential customers from changing their mind. It withdraws the unique opportunity offered by a multi-family setting such as a MHP, where the absence of common walls facilitates the ease of offering individual customers a choice in the selection of energy supply.

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[102] Cal. Pub. Util. Code § 963(b)(1).

[103] Cal. Pub. Util. Code § 963(c)(1); *see also* Cal. Pub. Util. Code § 328.2.

[104] D.25-11-009 at 18-19; *see also id*. at 58 (OPs 12-13).

[105] Both MHP owners and MHP residents are core customers.

2. It Is in Excess of the Commission's Authority to Void Customer Rights and Gas Utility Obligations Prescribed by Statute.

California law specifically guarantees customers the right to receive natural gas service and obligates gas utilities to provide this essential service.[106] The Gas Ban would void these statutory rights and obligations for participating MHPs and their MHP residents on a prospective basis, in excess of the Commission's authority. But the Commission does not have the authority to abrogate these statutory rights and obligations. Although the Commission has broad rulemaking authority, that authority does not extend to abrogating rights and obligations enacted by the Legislature.

a) Customers Have a Statutory Right to Obtain Gas Service, and Gas Utilities Have a Statutory Obligation to Serve.

Multiple provisions in the Public Utilities Code create the statutory right for customers to receive gas service and mandate that gas utilities provide gas service to core customers. These statutory provisions also direct the Commission to ensure that gas utilities comply with their statutory mandate to provide this service.

Courts and the Commission have pointed to Section 451 as establishing a general obligation to serve on the part of public utilities.[107] Section 451 requires public utilities to provide safe and reliable service to customers in exchange for reasonable rates:

> *Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities… as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.*[108]

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[106] *See* Cal. Pub. Util. Code §§ 451, 328, 328.1, 382.2, 963.

[107] *See*, *e.g., Citizens Utils. Co. of Cal. v. Super. Ct. of Santa Cruz Cnty.*, 59 Cal. 2d 805, 811 (1963) (observing in the context of water service that pursuant to Section 451, a "public utility in the nature of a water company is obligated by law to maintain and extend an adequate water service to all users in the district"); *see also In re S. Cal. Edison Co. Rate Stabilization Plan*, D.01-01-046 at 1-2, 16 (Jan. 19, 2001) ("We affirm that regulated California utilities must serve their customers. This requirement, known as the 'obligation to serve' is mandated by state law… The public's safety, and the economy's health will be impaired if utilities avoid their obligation to serve" and pointing to Section 451 to ground that obligation), *reh'g denied*, D.01-07-033 (July 16, 2001).

[108] Cal. Pub. Util. Code § 451.

Two gas-specific provisions of the Public Utilities Code—Section 328.2 and Section 963—also establish a specific obligation for gas utilities to provide gas service to core customers. Section 328.2 and Section 963(c)(1) are identical and state in unequivocal terms:

> *The commission shall require each gas corporation to provide bundled basic gas service to all core customers in its service territory unless the customer chooses or contracts to have natural gas purchased and supplied by another entity.*[109]

Section 963(c)(1) follows from the State's legislative policy that, to assure all core customers of a gas corporation continue to receive safe basic gas service, "each existing gas corporation shall continue to provide this essential service."[110]

Through these provisions, the Legislature has unambiguously directed the Commission to ensure gas utilities fulfill their obligation to provide gas service to customers within their service territories. In the absence of clear legislative direction otherwise, the Commission's task thus is to enforce the gas utilities' obligation to provide gas service to core customers—not to eliminate it.[111]

b) The Commission Does Not Have Authority to Contravene the Expressed Will of the Legislature.

As a state agency of constitutional origin, the Commission has certain enumerated powers and authority, such as the power to fix rates.[112] However, in other areas, the Commission's authority comes from the Legislature, and the Commission may not use its rulemaking authority to contradict statutory directives. Both the Court of Appeal and the Supreme Court have ruled that "however broad the scope of the commission's authority" may

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[109] Cal. Pub. Util. Code §§ 328.2, 963(c)(1).

[110] Cal. Pub. Util. Code § 963(b)(1).

[111] Moreover, the obligation to serve at just and reasonable rates is a foundational component of the regulatory compact: the obligation to serve the public, and the public's right to be served at regulated rates. A well-managed transition of the gas system must consider the obligation to serve in this context, which the Decision does not do. *See also* D.20-04-004 at

[112] *See S.D. Gas & Elec. Co. v. Super. Ct. (Covalt)*, 13 Cal. 4th 893, 914 (1996); *S. Cal. Edison Co. v. Pub. Utils. Comm'n*, 227 Cal. App. 4th 172, 185 (2014) ("*SCE*") ("the PUC 'is not an ordinary administrative agency but a constitutional body with broad legislative and judicial powers" (citation omitted)).

be" to supervise and regulate public utilities within the State, the Commission "does not have the authority to contravene the expressed will of the Legislature."[113]

For example, the California Constitution empowers the Commission to "fix rates, establish rules, examine records, issue subpoenas, administer oaths, take testimony, punish for contempt, and prescribe a uniform system of accounts for all public utilities subject to its jurisdiction."[114] But beyond these powers, the Legislature must confer any additional authority and jurisdiction upon the Commission.[115]

Here, the Legislature has not conferred upon the Commission specific authority for the Gas Ban. It has not provided the Commission authority to modify a customer's statutory right to receive gas service or to relieve gas IOUs from their statutory obligation to provide gas service. The Decision implicitly relies on the Commission's general regulatory authority, not on any specific directive from the Legislature.

c) The Decision's Gas Ban Contravenes the Legislature's Express Directive.

The Decision requires the MHP owners and tenants to give up their own, and their successors', right to receive natural gas service for at least 20 years in order to participate in the Electrification Initiative.[116] The MHP owner(s) and/or the owner(s) of the land on which the mobilehome(s) are installed also must file a restrictive covenant on the land to that effect.[117] The Decision further requires that the gas utility "must adhere to the restrictive covenant on the land(s) and ensure that no new gas infrastructure is constructed on it until after the date specified in the covenant,"[118] and it directs gas utilities to "decommission those gas services and systems

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[113] *BNSF Ry. Co. v. Pub. Utils. Comm'n*, 218 Cal. App. 4th 778, 784-85 (2013) (explaining interaction of Cal. Pub. Util. Code §§ 701, 7604); *see also Assembly of State v. Pub. Utils. Comm'n*, 12 Cal. 4th 87, 103 (1995) ("Past decisions of this court have rejected a construction of section 701 that would confer upon the Commission powers contrary to other legislative directives") (citing *Pac. Tel. & Tel. Co. v. Pub. Utils. Comm'n*, 62 Cal. 2d 634, 653 (1965)).

[114] Cal. Const. art. XII, § 6.

[115] *Id*. at § 5.

[116] D.25-11-009 at 58 (OP 12).

[117] *Id*. at 18-19; *see also id*. at 58 (OP 13).

[118] *Id*. at 52.

that are under their purview in support of the Electrification Initiative"[119]—including those providing direct-metered service. As a result of these directives, current and future landowners, MHP owner/operators, and MHP residents would not have the right to receive gas service, and gas utilities would not be obligated to serve such customers for a period of at least 20 years. The Decision's 20-year ban on gas service for participating MHPs directly contravenes the Legislature's directive to the Commission that the Commission ensure customers receive this essential service and gas utilities provide it. Instead of carrying out the Legislature's directive, the Decision purports to abrogate customers' statutory right to receive gas service and relieve gas utilities of their statutory obligation to serve. However, only the Legislature can modify these statutory rights and obligations. The Commission has thus exceeded its authority.[120]

The Decision attempts to frame the Gas Ban as a customer choice: "A customer may choose to participate in a voluntary program such as the Electrification Initiative. When a gas customer makes that choice the customer is deciding not to receive gas service."[121] But this framing is insufficient to overcome the conflict between the 20-year Gas Ban, a customer's statutory right to receive gas service, and the gas utility's statutory obligation to serve for several reasons.

First, participation in the Electrification Initiative is binding for at least 20 years. Because of the Gas Ban, the customer has no option to change their mind if material circumstances change in the coming decades and the customer decides they want to receive gas service. This is markedly different from a customer opting not to have gas service today, knowing they could acquire gas service in the future. By virtue of the Gas Ban, the customer cannot exercise their statutory right to obtain gas service in the future. Continued participation thus is no longer voluntary (and would certainly not be voluntary for a future landowner subject to a restrictive covenant, if such a covenant were enforceable).

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[119] *Id*. at 59.

[120] The California Supreme Court recently held that where "the primary question is whether a state agency has acted in a manner consistent with the statute it purports to implement," a court "may, in appropriate circumstances, afford [an agency's interpretation of a statute it administers] great weight." *Ctr. for Biological Diversity, Inc. v. Pub. Utils. Comm'n*, 18 Cal. 5th 293, 305 (2025) (internal quotations omitted). However, the court must "independently judge the text of the statute" and "cannot abdicate 'a quintessential judicial duty—applying its independent judgment de novo to the merits of the legal issue before it.'" *Id.* (internal citations omitted).

[121] D.25-11-009 at 51.

Second, a customer's right to receive safe basic gas service and a gas utility's obligation to provide this service are intended by the Legislature to promote safety and reliability and thus cannot be waived. The Commission has recognized that the "public's safety, and the economy's health will be impaired if utilities avoid their obligation to serve."[122] Although an individual may waive the advantage of a law solely for their benefit, where, as here, a law is "established for a public reason," it cannot be waived or contravened by a private agreement.[123] The Commission has recognized that "a waiver is unenforceable where it would 'seriously compromise any public purpose that [the statute was] intended to serve."[124] The Commission also has agreed "it would be impermissible to allow a waiver which could put at risk, or waive a customer's right, to receive electric service or power" as that would "frustrate the overall purpose of the legislation and deprive individuals of the benefits and protection served by the broad statutory scheme."[125] A customer may choose not to exercise their right to receive gas service today, but they cannot bindingly waive that right prospectively either on behalf of themselves or for future customers.

Finally, the language of the Decision is unclear on precisely who is binding whom. In some scenarios, the individual MHP residents may not be given any choice at all. For instance, one criterion for participation in the Electrification Initiative requires agreement of "Mobilehome

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[122] *In re S. Cal. Edison Co. Rate Stabilization Plan*, D.01-01-046 at 2; *see also* Cal. Pub. Util. Code § 451 ("Every public utility shall furnish and maintain such *adequate, efficient*, just, and reasonable service… as are necessary to promote the *safety*, health, comfort, and convenience of… the public." (emphasis added)); Cal. Pub. Util. Code § 328 ("to ensure that all core customers of a gas corporation continue to receive safe basic gas service in a competitive market, each existing gas corporation shall continue to provide this essential service"); *Order Instituting Rulemaking to Establish Policies, Processes, and Rules to Ensure Safe and Reliable Gas Sys. in Cal. and Long-Term Gas Sys. Plan.*, R.24-09-012, Attachment A: 2024 Joint Agency Staff Paper: Progress Towards a Gas Transition at 33 (Sep. 26, 2024) ("the obligation to serve is understood to be a requirement to provide and maintain gas service to any customer who requests and pays for such gas service. This requirement is grounded in statute and CPUC precedents that require utilities to provide safe, reliable, and affordable energy services without discrimination."); *In re S. Cal. Gas and San Diego Gas & Elec. Co. Pipeline Safety Enhancement Plan*, D.16-12-009 at 10 (Dec. 1, 2016) ("we continue to hold [SoCalGas and SDG&E] responsible for meeting their obligation to provide service in a safe and reliable manner").

[123] *See* Cal. Civ. Code § 3513.

[124] *In re Pac. Gas and Elec. Co. Advanced Metering Infrastructure*, Order Denying Rehearing, D.06-10-051 at 7 (Oct. 19, 2006) (citing *Azteca Constr., Inc. v. ADR Consulting, Inc.,* 121 Cal. App. 4th 1156, 1166 (2004)).

[125] *Id.* at 8.

Park owner(s), and/or the customer(s) of record" to not receive gas service.[126] Elsewhere, the same requirement is phrased as requiring the agreement of "MHP owner(s) and/or MHP residents."[127] Another criterion requires agreement of "MHP owner(s) and/or the owner(s) of the land on which the mobilehome(s) are installed" to file a restrictive covenant on the land.[128] Read literally, the "and/or" included in these criteria would allow a MHP resident who is not the customer of record and does not own the land on which the mobilehomes are installed to unilaterally terminate the statutory right to gas service of both the customer and the landowner. Such an outcome would clearly conflict with the customer's right to obtain gas service and the gas utility's obligation to serve. The Commission does not have the authority to mandate this outcome.

It is unclear whether the construction of the requirements set forth above is (1) what the Commission intended or (2) remotely practical. Any uncertainty, however, stems from the absence of any vetting of the Gas Ban and Decommissioning Order proposals during the Rulemaking. The record of Phase 2 of the Rulemaking, at submission, is devoid of any such consideration and discourse—an absence that is a direct consequence of the failure to include the propriety of such actions as an issue or issues in the scoping memos. The outcome here—adoption of proposals first posited in a PD—is precisely what the Legislature proscribed when it enacted Section 1701.1 thirty years ago.[129]

d) In Enacting SB 1221, the Legislature Demonstrated Its Unique Authority to Modify A Customer's Right to Receive Gas Service and the Obligation to Serve.

The recent passage of SB 1221[130] demonstrates the Legislature's awareness that only the Legislature can modify a customer's statutory right to receive gas service and relieve a gas utility of its statutory obligation to serve. The Electrification Initiative that the Decision creates is distinct from the pilot projects SB 1221 contemplates (which are being implemented in a

[126] *Id.* at 58 (OP 12).

[127] *Id*. at 18.

[128] *Id*.

[129] Stats 1996, c. 856, Sect. 7.

[130] 2024 Cal. Legis. Serv. Ch. 602 (S.B. 1221), eff. Jan. 1, 2025.

separate proceeding).[131] In contrast to the Legislative authority conveyed in SB 1221 to expressly relieve gas utilities of their obligation to serve under certain conditions for those particular pilots, here, the Commission is vested with no express statutory authority to relieve gas utilities of their obligation to serve in connection with the Electrification Initiative. And the Commission may not vest itself with such authority in a rulemaking proceeding; only the Legislature may do so.[132]

SB 1221 addressed the obligation to serve directly and explicitly authorized gas utilities to cease providing gas service under specific circumstances for those pilots. It added Section 451.9 of the Public Utilities Code, which states:

> *Notwithstanding Section 451, a gas corporation may cease providing service in an area within its service territory where a pilot project has been implemented pursuant to Section 663 if the commission determines that adequate substitute energy service is reasonably available to support the energy end uses of affected gas corporation customers.*[133]

SB 1221 also specifically directed the Commission to relieve a gas utility of its obligation to provide service within the pilot project boundary if the Commission approved a pilot project.[134] The Electrification Initiative is not a pilot project being implemented pursuant to Section 663.

Perhaps most significantly, nothing in Section 451.9 or any comparable provision of the Public Utilities Code, permits the Commission to require a gas corporation to prospectively or permanently deny service to a customer or property. At a fundamental level, the Commission has no statutory authority to void a customer's right to receive gas service by directing a gas utility not to provide it. Obviously the Commission may take steps to promote the safe provision of gas service. The Gas Ban and Decommissioning Order adopted by the Decision, however, are

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131 *See Order Instituting Rulemaking to Establish Policies, Processes, and Rules to Ensure Safe and Reliable Gas Sys. in Cal. and Perform Long-Term Gas Sys. Plan.*, R.24-09-012.

132 Cal. Const. art. XII, § 5. "The Legislature has plenary power, unlimited by the other provisions of this constitution but consistent with this article, to confer additional authority and jurisdiction upon the commission."

133 2024 Cal. Legis. Serv. Ch. 602 § 2 (S.B. 1221), adding Cal. Pub. Util. Code § 451.9(a).

134 2024 Cal. Legis. Serv. Ch. 602 § 3 (S.B. 1221), adding Cal. Pub. Util. Code § 663(c). Moreover, SB 1221 provides a framework to assess Zero Emission Alternatives that may be developed as part of the pilot program including what constitutes "adequate substitute energy service" and consideration of factors and requirements such as cost-effectiveness, equity, and affordability.

not grounded in "safety" (even though "the central issue" in the Rulemaking was "improving safety through conversion of master-metered natural gas and electricity to direct utility service"[135]). The Gas Ban and Decommissioning Order require removing presumptively safe, direct individually metered IOU gas systems from MHPs and ban presumptively safe direct individually metered IOU gas systems from serving customers in those MHPs for decades.

3. The Energy Policy and Conservation Act (EPCA) Preempts the Decision's Gas Ban.

The Decision's Gas Ban is further vulnerable to challenge on the grounds that it is preempted by the Energy Policy and Conservation Act of 1975 ("EPCA").[136]

EPCA expressly preempts state and local regulations concerning the energy use of certain consumer appliances, including natural gas appliances such as furnaces, water heaters, kitchen ranges and ovens, clothes dryers, and others.[137] The Court of Appeals for the Ninth Circuit recently found a Berkeley building code prohibiting the installation of gas infrastructure in new buildings was preempted by the EPCA.[138] Though the court of course limited its holding to the case before it, much of the Ninth Circuit's reasoning applies here.[139] For example, the court noted: "EPCA preempts regulations . . . that relate to 'the quantity of [natural gas] directly consumed by' certain consumer appliances at the place where those products are used."[140] The court further stated: "States and localities can't skirt the text of broad preemption provisions by doing indirectly what Congress says they can't do directly."[141]

Here, the Decision provides that the Electrification Initiative will "install new, efficient electric appliances to replace existing natural gas . . . appliances"[142] and will require participants to "agree not to receive any piped gas until the natural end of life of the equipment incentivized

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135 Order Instituting Rulemaking at 11.

136 42 U.S.C. §§6201-6422.

137 *See* 42 U.S.C. §§ 6292, 6297(c). The statute includes several exceptions to preemption, none of which apply here. *See* 42 U.S.C.S. §§ 6297(c)(1) through (9).

138 *Cal. Rest. Ass'n v. City of Berkeley*, 89 F.4th 1094 (9th Cir. 2024) ("*Berkeley*").

139 *Id.* at 1103.

140 *Id*. at 1101.

141 *Id*. at 1107 (emphasis in *Berkeley*).

142 D.25-11-009 at 28.

by the [Equitable Building Decarbonization] program, or 20 years, whichever is later."[143] This equipment includes the electric appliances that will be installed pursuant to the Electrification Initiative.[144] The Decision further requires that the gas IOU "must adhere to the restrictive covenant on the land(s) and ensure that no new gas infrastructure is constructed on it" for the length of the covenant,[145] and it directs gas utilities to "decommission those gas services and systems that are under their purview in support of the Electrification Initiative."[146]

The Decision is a regulation that relates to the quantity of natural gas consumed by appliances within the participating MHPs, and it limits that quantity to zero—just like the ordinance in Berkeley. The Decision is even more in the heartland of EPCA preemption because it regulates not just gas infrastructure, like Berkeley did, but also gas appliances.[147] And while an owner may voluntarily agree to replace gas appliances with electric in the first instance, the same cannot be said of subsequent owners or renters, or of the continuing bar on gas appliances and infrastructure. Accordingly, just as EPCA preempted the ordinance in Berkeley, EPCA preempts a requirement prohibiting the use of gas appliances and the installation of new gas infrastructure for at least 20 years.[148]

C. The Commission Failed to Proceed in the Manner Required by Law by Imposing the Gas Ban and Decommissioning Order.

The Decision purports to require MHPs participating in the Electrification Initiative to file a restrictive covenant constraining that land from the use of natural gas for at least 20 years. "(T)he requirement that a landowner record a restrictive covenant…as a condition of receiving a

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143 *Id*. at 58.

144 *Id*. at 4.

145 *Id*. at 52.

146 *Id*. at 59.

147 *Berkeley*, 89 F.4th at 1107 ("EPCA would no doubt preempt an ordinance that directly prohibits the use of covered natural gas appliances in new buildings. So Berkeley can't evade preemption by merely moving up one step in the energy chain and banning natural gas piping within those buildings.").

148 Finding that the Gas Ban and Decommissioning Order are preempted by the EPCA would not contravene Cal. Const. art. III, Section 3.5, which only bars the Commission from finding that a statute is "unenforceable, or refus[ing] to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute…." The Commission has the authority to find that one of its own orders is preempted.

permit constitutes the exaction of an identifiable property interest."[149] But the Commission does not have the authority to impose such an "exaction" on a non-IOU, even where the program is voluntary. While the Commission has the authority to proscribe the sale of property used and useful in the provision of utility service,[150] the Legislature has not authorized the Commission to require a non-public utility/customer to transfer a property interest to anyone else to receive assistance from the Commission.[151] It is true that, in unique circumstances, the Commission may determine a utility's interest in certain property when the utility's ownership of the property (or lack thereof) is relevant to determining the costs of the utility for ratesetting purposes; but that determination, however, is of no effect for any other purpose, and certainly not to impose such an onerous requirement on a utility customer.[152]

D. The Decision Results in an Unconstitutional Taking of Utility Property and Violates SoCalGas's Procedural Due Process Rights.

The Decommissioning Order and the Gas Ban result in an unconstitutional taking of SoCalGas's property and a violation of procedural due process requirements. In particular, the Decommissioning Order would require SoCalGas to decommission infrastructure currently used to deliver gas services to MHP customers and would prohibit SoCalGas from providing gas services to current and potential future customers for at least 20 years.[153] Moreover, the Gas Ban requires gas IOUs to "adhere to the restrictive covenant on the land(s) and ensure that no new gas infrastructure is constructed on it until after the date specified in the covenant."[154] Together these restrictions constitute an unconstitutional taking of SoCalGas's

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[149] *Benedetti v. Cnty. of Marin*, 113 Cal. App. 5th 1185, 1199, 336 Cal. Rptr. 3d 571, 582 (2025), review denied (Dec. 10, 2025).

[150] Pub. Util. Code § 851.

[151] Indeed, even the eminent domain provisions of Sections 610 *et seq*. are pursued in the civil courts except under certain circumstances under which the Commission determines the just compensation to be paid. Pub. Util. Code § 1401 *et seq.*

[152] *Camp Meeker Water System, Inc. v. Pub. Util. Comm'n* 51 Cal.3d 845, 852 n.3. *Camp Meeker* was ostensibly overruled by the Legislature when it enacted SB 779 (Calderon-Peace-MacBride Judicial Review Act of 1998). Stats 1998, c. 866, Sections 1-1.5. A fair reading of the legislative history of SB 779, however, shows that the Legislature only took issue with *Camp Meeker's* application of the version of Section 1757 that was repealed and replaced by the current version in 1998. Stats 1998, c. 886, Sections 11-12.

[153] D.25-11-009 at 26.

[154] *Id.* at 58 (OP 16).

property rights without due process of law. Pursuant to their Certificates of Public Convenience and Necessity granted under Public Utilities Code § 1001, SoCalGas has a statutory right to serve MHP customers and a concomitant obligation to do so.[155] It is well established that constitutionally-enforceable property rights exist as to statutory entitlements where, as here, requirements for the benefits are met. "[A] statute will create an entitlement to a governmental benefit either if the statute sets out conditions under which the benefit *must* be granted or if the statute sets out the *only* conditions under which the benefit may be denied."[156] For example, "an entitlement to a government permit exists when a state law or regulation requires that the permit be issued once certain requirements are satisfied."[157] California courts have widely acknowledged the same principles.[158]

Accordingly, the Decommissioning Order and Gas Ban result in a taking of SoCalGas's constitutionally protected property rights. A *per se* taking results when a regulation results in a "complete[] depriv[ation] … of all economically beneficial use of … property."[159] Here, the Decommissioning Order and Gas Ban constitute a *per se* taking because the orders completely deprive the gas IOUs of the opportunity to serve, as authorized by the Commission in approval of each gas IOU's respective Certificate of Public Convenience and

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155 *Richfield Oil Corp. v. Pub. Util. Comm'n*, 54 Cal. 2d 419 (1960); *San Pablo Bay Pipeline v. Pub. Util. Comm'n* 221 Cal. App. 4th 1436 (2013).

156 *City of Santa Clara v. Andrus* ((9th Cir. 1978) 572 F.2d 660, 676 (quotation omitted, emphasis in original), *cert. denied*, 439 U.S. 859.

157 *Gerhart v. Lake County Mont.* (9th Cir. 2011) 637 F.3d 1013, 1019-1020; *see also Goldberg v. Kelly*, 397 U.S. 254, 262 (1970) (certain government benefits are "statutory entitlements for persons qualified to receive them" and "their termination involves state action that adjudicates important rights."); *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 161(1980) (recognizing a plaintiff's property rights in proceeds from a state-mandated interpleader fund).

158 *See, e.g.*, *Am. Fed'n of Labor v. Employment Dev. Dept.* (1979) 88 Cal.App.3d 811, 819 (Property rights are not limited to property physically possessed by a party, but also include the '"legally enforceable right to receive a government benefit.'"), *quoting Goldberg*, *supra*, 397 U.S. at 261-262; *Schultz v. Regents of University of California* (1984) 160 Cal. App. 3d 768, 775 (1984) ('"[W]hen a person has a legally enforceable right to receive a government benefit provided certain facts exist, this right constitutes a property interest protected by due process.'"), quoting *Goldberg*, *supra*, 397 U.S. at 261-262; *Pacifica Management Co. v. Green* (2012) 205 Cal.App.4th 232, 245 (confirming that a "low-income tenant receiving subsidized housing benefits has a property interest in her continued tenancy" at subsidized rates).

159 *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 1019; *Dryden Oaks, LLC v. San Diego County Regional Airport Authority* (2017) 16 Cal. App. 5th 383, 395.

Necessity, and related economic benefits. The Decision would result in a *per se* taking by mandating retirement of property through which gas IOUs are lawfully entitled (and in almost all cases, required) to serve customers.

The Decommissioning Order and Gas Ban further and independently violate the gas IOUs' constitutional due process rights to fair notice.[160] As discussed in Section IV.A. above, the Commission's unlawful process in issuing these orders deprived SoCalGas of its constitutional right to procedural due process and a reasonable opportunity to be heard before suffering a loss of property rights. While the California Constitution establishes the Commission and empowers it to "establish its own procedures," it expressly provides that such procedures must comport with statute and due process.[161] Procedural due process imposes constraints on governmental decision-making that deprives parties of "property" interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendments to the United States Constitution.[162] The California Constitution contains a similar prohibition against the deprivation of property rights absent due process.[163] The fundamental requisite of due process is the opportunity to be heard and to be heard "at a meaningful time and in a meaningful manner."[164] Governmental notice is an essential prerequisite to procedural due process.[165]

The United States Supreme Court has stated that "[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."[166] Applying this principle to proceedings before the Commission, the Court has likewise explained that

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160 Pub. Util. Code § 1757.1 (a)(6); *see also* U.S. Const., 14th Amend.; Cal. Const. art. I, § 7(a).

161 Cal. Const., art. XII, § 2.

162 *See* U.S. Const. 5th Amend. ("No person shall be . . . deprived of life, liberty, or property, without due process of law….").

163 Cal. Const. art.. I § 7(a) ("A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws.").

164 *Goldberg v. Kelly*, 397 U.S. at 267–68 (citing *Grannis v. Ordean* (1914) 234 U.S. 385, 394), *Armstrong v. Manzo* (1965) 380 U.S. 545, 552.

165 *Fuentes v. Shevin* (1970) 407 U.S. 67, 80 ("For more than a century the central meaning of procedural due process has been clear: Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.") (internal quotations omitted).

166 *Mullane v. Central Hanover Tr. Co.,* 339 U.S. 306, 314 (1950).

"[d]ue process as to the commission's initial action is provided by the requirement of adequate notice to a party affected and an opportunity to be heard before a valid order can be made."[167] Section 761 further requires that the Commission first conduct a hearing before it modifies "the rules, practices, equipment, appliances, facilities, service, or methods to be observed, furnished, constructed, enforced, or employed" of a public utility.

As explained above, the Decision was adopted in a procedurally deficient manner in manifest disregard for bedrock procedural provisions of the Commission's own rules and statutory requirements designed to protect against the infringement of a utility's constitutional due process rights. SoCalGas was deprived of any notice that the Decommissioning Order and Gas Ban were being considered by the Commission and thus were denied a reasonable opportunity to present evidence on these issues impacting their property rights. The Decision would require the confiscation of SoCalGas's property and put SoCalGas in "jeopardy of a serious loss," but SoCalGas was not given "notice of the case against [it] and opportunity to meet it."[168] This process deprived SoCalGas of its constitutional due process right to be provided with adequate notice and to be heard in a "meaningful manner" and at a "meaningful time."[169]

Although the dollar amount associated with the Decision's impact on near-term opportunities to earn a return may seem small, the Decision's impact is significant to the extent it directs gas IOUs to cease serving all customers in their service area for at least 20 years both without legislative direction and in contravention of the basic tenet of ratemaking grounded in constitutional law.

E. The Decision Makes No Findings to Justify the Cross-Subsidization Order.

Since the enactment of the Public Utilities Act[170] over a century ago, it has required that Commission decisions "shall contain, separately stated, findings of fact and conclusions of law

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[167] *People v. Western Air Lines, Inc.,* 42 Cal.2d 621, 632 (1954).

[168] *Today's Fresh Start v. Los Angeles County Office of Education* (2015) 57 Cal.4th 197, 212 (citing *Mathews v. Eldridge* (1976) 424 U.S. 319, 348).

[169] Pub. Util. Code §§ 1757.1(a)(1) (2), (6); *Goldberg v. Kelly*, *supra*, 397 U.S. at 267–68; *Edward W. v. Lamkins*, 99 Cal.App.4th 516, 539 (2002) ("Without notice to the person affected by governmental action, that action can be viewed as 'arbitrary' and 'unfair.'") (internal quotations omitted).

[170] Now codified as Chapter 1 of Division 1 of the Public Utilities Code.

by the commission on all issues material to the order or decision."[171] In the recodification in 1951, the requirement appears in Section 1705. In the leading case construing Section 1705, the California Supreme Court stated that:

> *Such findings afford a rational basis for judicial review…. The more general the findings, the more difficult it is for the reviewing court to ascertain the principles relied upon by the administrative agency. Even when the scope of review is limited, as in this case (Pub. Util. Code, § 1757), findings on material issues enable the reviewing court to determine whether the commission has acted arbitrarily….*
>
> *Since findings on material issues indicate the basis for the decision the parties can prepare accordingly for rehearing or review… 'Furthermore, a disappointed party, whether he plans further proceedings or not, deserves to have the satisfaction of knowing why he lost his case.' (2 Davis, Administrative Law Treatise (1958) § 16.05.) Findings on material issues are also helpful to anyone planning activities that might involve similar questions….*
>
> *Findings on material issues can also serve to help the commission avoid careless or arbitrary action….*[172]

The statutory requirement to render clear findings is particularly crucial when the Commission renders ratemaking decisions given that Section 451 requires that rates demanded or received are "just and reasonable"—which is necessarily a factual inquiry.[173] The Commission must make *findings* based on the record evidence to support its ultimate *conclusion* as to reasonableness. A finding that is simply an ultimate conclusion is not sufficient.[174] But that is

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[171] Pub. Util. Code § 1705; *Toward Util. Rate Normalization v. Pub. Utilities Comm'n*, 22 Cal.3d 529, 546, 585 (1978) ("Among the steps which the commission must take in order to 'regularly pursue its authority' is compliance with the statutory mandate that each of its decisions 'shall contain, separately stated, findings of fact and conclusions of law by the commission on all issues material to the order or decision.'").

[172] *Cal. Motor Transp. Co. v. Pub. Utilities Comm'n*, 59 Cal.2d 270, 274–75 (1963) ("*California Motor Transport*"); see also *Cal. Manufacturers Assn. v. Pub. Utilities Comm'n*, 24 Cal.3d 251, 259 (1979) ("The findings on the material issues are insufficient to justify the rate spread adopted. While the commission's asserted justification for changing its method of spreading rate increase is conservation of natural gas resources, neither finding nor evidence exists showing the method adopted will result in conserving more natural gas than would other proposed methods.").

[173] Pub. Util. Code § 451.

[174] Each decision "shall contain, separately stated, findings of fact and conclusions of law by the commission on all issues material to the order or decision." (Pub. Util. Code § 1705; *see also Clean Energy Fuels Corp. v. Pub. Utilities Comm'n,* 227 Cal.App.4th 641, 648 (2014) ["Every issue that must be resolved to reach that ultimate finding is material to the order or decision, and findings are

what the Decision does: it merely concludes that it would be "efficient and reasonable" to combine evaluation of the Electrification Initiative with the MHP UCP, and that the costs thereof should be split among the IOUs in proportion to work completed by them in 2024.[175]

Moreover, by ordering gas ratepayers to bear the costs of evaluating the Electrification Initiative, the Decision orders a cross-subsidy. While the Commission has historically emphasized "cost causation" in setting rates, it does not view cross-subsidies as disallowed on a wholesale basis. The Commission may allow "for certain subsidies to promote certain societal programs" or "support explicit state policy goals."[176] This policy is reflected in the Commission's recently updated "Electric Rate Design Principles," which explain that "Rates should avoid cross-subsidies ***that do not transparently and appropriately support explicit state policy goals***."[177] Here, however, the Decision does not identify state policy goals that the Cross-Subsidization Order would support. There are no findings to support the cross-subsidy, let alone findings that serve the important interests identified by the Court in *California Motor Transport*.[178] It is not surprising that there are *no findings to evaluate at all*—indeed, there was no opportunity to provide record evidence on which to base any finding.

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required of the basic facts upon which the ultimate finding is based."]; *Cal. Manufacturers Ass'n v. Pub. Utilities Comm'n.*,24 Cal.3d 251, 258-260 (1979) [Annulled a Commission decision because the "findings on the material issues are insufficient to justify the rate spread adopted. While the [CPUC's] asserted justification for changing its method of spreading rate increase is conservation of natural gas resources, ***neither finding nor evidence*** exists showing the method adopted will result in conserving more natural gas than would other proposed methods…. in absence of any evidence as to elasticity of demand, it is impossible to determine which plan is likely to result in least usage."].) The Commission has held that "Section 1705 serves to provide a rational basis for judicial review, assist the parties in preparing for administrative rehearing or judicial review, and help the Commission avoid careless or arbitrary action." (D.98-09-075 (*citing California Motor Transport,* 59 Cal.2d 270, 273-74 (1963) (emphasis added).) It is the existence of record support that makes a finding of fact or conclusion of law valid and able to withstand challenge upon review. (*See e.g.* D.99-06-094; D.19-12-033 at 5.)

[175] D.25-11-009 at 45, 54 (COLs 5, 8).

[176] Just as with cost-causation, the Commission has acknowledged that "cross-subsidies exist, and in many instances, do serve the public good." D.04-05-061 at 24. As one example, for many years, the Commission set telephone rates in a manner that was deliberately designed so that certain services, like long-distance service, would cross-subsidize other services, like basic local service. D.07-09-020 at 3.

[177] D.23-04-040 at 20 (emphasis added).

[178] "There is no merit in the commission's contention that the requirement of findings was met by the ultimate finding of public convenience and necessity. Every issue that must be resolved to reach that ultimate finding is 'material to the order or decision.'" *California Motor Transport,* 59 Cal. 2d 273.

The decades-old requirement in Section 1705 is still in effect and was also recast as a standard of appellate review in the Judicial Review Act of 1998.[179] Application of those standards shows that imposing the Cross-Subsidization Order on SoCalGas and other gas IOUs is legal error because none of the thirteen findings of fact in the Decision support the ultimate conclusion that gas IOU ratepayers should bear any of the costs of evaluating the Electrification Initiative.

For similar reasons, the Cross-Subsidization Order also constitutes an abuse of discretion and is unsupported by substantial record evidence.[180] The Decision fails to cite to record evidence to support this order or otherwise explain the basis for its arbitrary and capricious conclusion that gas ratepayers should bear the costs of evaluating the Electrification Initiative.[181] The failure to do so constitutes an abuse of discretion.[182] As explained above, the Commission also unjustifiably departs from its own precedent that "[r]ates should avoid cross-subsidies *that do not transparently and appropriately support explicit state policy goals*."[183]

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[179] Stats 1998, c.886 (SB 779) enacting Pub. Util. Code §§ 1757(a)(3) and 1757.1(a)(4).

[180] Pub. Util. Code § 1757.1(a)(1). If Public Utilities Code Section 1757 were deemed to apply, it provides the basis for the same legal challenge. The only material difference is that Section 1757 includes an explicit ground for challenging a decision based on the lack of "substantial evidence." Pub. Util. Code § 1757(a)(4). Because a decision that deviates from substantial evidence is also an abuse of discretion, the result under either statute is the same. Pub. Util. Code § 1757.1(a)(1); *see Woodbury v. Brown-Dempsey*, 108 Cal.App.4th 421, 438 (2003) (arbitrary and capricious actions constitute an "abuse of discretion"); *see also Zuehlsdorf v. Simi Valley Unified Sch. Dist.* (2007) 148 Cal.App.4th 249, 256 (actions that are "not supported by a fair or substantial reason" are also arbitrary and capricious).

[181] In imposing the costs of evaluating the Electrification Initiative on gas ratepayers, the Decision also ignores the concern raised in the Staff Proposal that, "[a]s more households electrify and leave the gas system, remaining gas customers will face higher gas rates, as there will be fewer customers over which to spread the fixed costs of maintaining and operating the gas system. Most MHP households already spend a greater percentage of their income on energy costs, a burden which will be exacerbated by remaining on the gas system in the long run." Staff Proposal at 60.

[182] *See, e.g., Woodbury*, *supra*, 108 Cal.App.4th at 438; *Zuehlsdorf, supra* 148 Cal.App.4th at 256; *McBail & Co. v. Solano County Local Agency Formation Comm'n* (1998) 62 Cal.App.4th 1223, 1232 (a failure to adequately explain the basis for the agency's decision, or the articulation of an illogical basis, is grounds for annulment).); *City of Stockton v. Marina Towers LLC* (2009) 171 Cal.App.4th 93, 114 ("A gross abuse of discretion occurs where the public agency acts arbitrarily or capriciously, [or] renders findings that are lacking in evidentiary support . . .").

[183] D.23-04-040 at 20 (emphasis added); *see Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.* (1983) 463 U.S. 29, 42 (an agency's departure from its own precedent without adequate explanation is arbitrary and capricious); *see also*; *McPherson v. Pub. Employment Relations Bd.* (1987) 189 Cal.App.3d 293, 308-309, 311.

V. CONCLUSION

For the foregoing reasons, D.25-11-009 should be reheard to correct the errors of law discussed herein.

Respectfully submitted on behalf of SoCalGas,

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