STATE OF CALIFORNIA GAVIN NEWSOM, *Governor*

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298

March 21, 2022

TO PARTIES OF RECORD IN Rulemaking 13-11-005, DECISION 22-03-010:

On February 3, 2022, a Presiding Officer's Decision in this proceeding was mailed to all parties. Public Utilities Code Section 1701.2 and Rule 15.5(a) of the Commission's Rules of Practice and Procedure provide that the Presiding Officer's Decision becomes the decision of the Commission if no appeal or request for review has been filed within 30 days of the mailing of the Presiding Officer's Decision.

No timely appeals to the Commission or requests for review have been filed. Therefore, the Presiding Officer's Decision is now the decision of the Commission.

The decision number is shown above.

/s/ ANNE E. SIMON
Anne E. Simon
Chief Administrative Law Judge

AES:mph

Attachment

Decision 22-03-010 March 21, 2022

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

(See Appendix A for a List of Appearances)

PRESIDING OFFICER'S DECISION FINDING SOUTHERN CALIFORNIA GAS COMPANY IN CONTEMPT, IN VIOLATION OF RULE 1.1 OF THE COMMISSION'S RULES OF PRACTICE AND PROCEDURE, AND ORDERING REMEDIES FOR FAILURE TO COMPLY WITH COMMISSION DECISION 18-05-041

TABLE OF CONTENTS

Title **Page**

PRESIDING OFFICER'S DECISION FINDING SOUTHERN CALIFORNIA GAS COMPANY IN CONTEMPT, IN VIOLATION OF RULE 1.1 OF THE COMMISSION'S RULES OF PRACTICE AND PROCEDURE, AND ORDERING REMEDIES FOR FAILURE TO COMPLY WITH COMMISSION DECISION 18-05-041

Summary

This Presiding Officer's Decision finds that Southern California Gas Company spent ratepayer funds on codes and standards activities following the issuance of Decision 18-05-041, which prohibited such activity. This decision directs Southern California Gas Company to refund ratepayer expenditures and associated shareholder incentives; prohibits Southern California Gas Company from recovering costs of codes and standards activity (such as conducting research or communicating with an agency responsible for establishing building or appliance standards about a proposed building code or appliance standard) from ratepayers unless and until Southern California Gas Company demonstrates sufficient and appropriate policies, practices and procedures to ensure adherence to Commission intent for codes and standards advocacy; and imposes a financial penalty of $9,807,000 for violations of California Public Utilities Code Sections 2113 and 2107.

This proceeding remains open.

1. Background

This order to show cause (OSC) is one of two OSCs in the energy efficiency rulemaking, both concerning Southern California Gas Company's (SoCalGas, or Respondent) conduct related to codes and standards advocacy. The first OSC addressed SoCalGas's codes and standards advocacy during 2014-2017, and its conduct regarding local governments' adoption of reach codes during any timeframe. This OSC addresses SoCalGas's alleged codes and standards

advocacy following the effective date of Decision (D.) 18-05-041, which prohibited SoCalGas from charging ratepayers for such activity.

Regarding the first OSC, on April 21, 2021 the Commission issued a presiding officer's decision that found SoCalGas's codes and standards advocacy during 2014 through 2017 (prior to the Commission's prohibition on SoCalGas's use of ratepayer funds for codes and standards advocacy) and reach code activities misaligned with Commission intent, ordered SoCalGas to refund those expenditures and their associated shareholder incentive payments, and prohibited SoCalGas from charging ratepayers for codes and standards programs, pending further Commission action. Two appeals to that presiding officer's decision were timely filed. That OSC remains pending as of the issue date of this presiding officer's decision, addressing the second OSC, for SoCalGas's codes and standards activities following the effective date of D.18-05-041.

1.1. Factual Background

In Application (A.) 17-01-013 et al., concerning the energy efficiency program administrators' 2018-2025 business plans, the Commission addressed an issue raised by the Public Advocate's Office (Cal Advocates) in its final comments. Cal Advocates alleged that SoCalGas had used ratepayer funds to advocate against adoption by the California Energy Commission (CEC) and the United States Department of Energy (DOE) of more stringent codes and standards. Codes and standards generally refer to technical specifications that impact building and appliance energy consumption; the Commission has authorized ratepayer funds to advocate for more stringent codes and standards since 2005. Specifically, Cal Advocates' comments detailed SoCalGas's filings in the DOE's rulemaking on proposed new efficiency standards for residential

furnaces, opposing the new standards; and SoCalGas's use of ratepayer funds for studies to support its opposition. Cal Advocates also described instances of alleged bad faith engagement with the other investor-owned utilities (IOU) in joint codes and standards efforts, again related to a DOE rulemaking.[1]

On April 4, 2018, the Commission issued a proposed decision addressing the 2018-2025 business plans. The proposed decision found no explicit prohibition against the use of ratepayer funds for "any activity that does not result in adoption of more stringent codes and standards," but observed:

> [O]ur initial authorization of energy efficiency funding for codes and standards advocacy makes clear our intent for those funds: "[u]sing ratepayer dollars to work towards adoption of higher appliance and building standards may be one of the most cost-effective ways to tap the savings potential for [energy efficiency, or EE] and procure least-cost energy resources on behalf of all ratepayers."[2]

Noting that Cal Advocates "provides evidence of instances in which SoCalGas has not worked towards adoption of higher standards, using ratepayer funds, which SoCalGas concedes," the proposed decision concluded that the Commission is "convinced that there is a potential for SoCalGas to misuse ratepayer funds authorized for codes and standards advocacy," and thus prohibited SoCalGas from using ratepayer funds to participate in codes and standards advocacy, other than to transfer funds to the statewide codes and standards lead.[3]

---

[1] D.18-05-041 *Decision Addressing Energy Efficiency Business Plans*, adopted May 31, 2018, at 140-141.

[2] A.17-01-013 et al. *Proposed Decision addressing Energy Efficiency Business Plans*, filed April 4, 2018 (A.17-01-013 et al. Proposed Decision), at 143.

[3] A.17-01-013 et al. Proposed Decision, at 139-140.

On May 31, 2018, the Commission adopted D.18-05-041, addressing the 2018-2025 business plans. In response to SoCalGas's comments on the proposed decision, D.18-05-041 made clear:

> [W]e are not prohibiting SoCalGas from advocating against or in favor of codes and standards, on whatever basis SoCalGas determines is reasonable, which SoCalGas acknowledges. We are prohibiting SoCalGas from *using ratepayer funds* to conduct codes and standards advocacy, which we find reasonable based on the Commission's clear policy intent for such funds and on evidence submitted by [Cal Advocates] of SoCalGas's past contravention of that policy intent.[4]

On July 15, 2019, Cal Advocates filed a motion requesting the Commission initiate an OSC, for SoCalGas to show cause why it should not be sanctioned for violating a Commission order and Rule 1.1 of the Commission's Rules of Practice and Procedure (Rules). The motion contained information that, Cal Advocates alleged, demonstrated SoCalGas continued to charge ratepayers for energy efficiency codes and standards advocacy, and that SoCalGas had submitted misleading and inaccurate information that minimized the full extent of its codes and standards advocacy, after the Commission ordered SoCalGas to cease such activity. Regarding its allegation of misleading and inaccurate information, the motion identified a number of activities that SoCalGas (allegedly) engaged in, but did not include in responses to Cal Advocates' data requests. Cal Advocates asserted SoCalGas relied on its own definition of the codes and standards advocacy prohibited by D.18-05-041 as not including engagement with the DOE. The motion recommended the Commission:

- Sanction SoCalGas for violating a Commission order;

[4] D.18-05-041, at 150-151.

- Sanction SoCalGas for violating Rule 1.1 of the Commission's Rules of Practice and Procedure;
- Order SoCalGas to demonstrate all of its charges to ratepayers since June 1, 2018, including balancing account entries in the Demand Side Management Balancing Account (DSMBA), are in compliance with D.18-05-041; and
- Order SoCalGas to reverse each charge that does not comply with D.18-05-041 and make any other adjustments needed to ensure SoCalGas did not charge ratepayers for advocacy in violation of D.18-05-041.

On July 30, 2019, SoCalGas filed a response to Cal Advocates' motion. SoCalGas's response emphasized that SoCalGas did not engage in any advocacy under the statewide energy efficiency codes and standards program after July 10,2018, just over a month after the June 5, 2018 issue date of D.18-05-041. SoCalGas asserted any advocacy activities it engaged in, between June 5, 2018 and July 10, 2021, were limited to "transitional activities as [SoCalGas] came into compliance with the Decision."[5] With respect to Cal Advocates' allegation of misleading and inaccurate information, SoCalGas emphasized the discrepancies noted by Cal Advocates amount to a less than five-minute phone call between SoCalGas and Pacific Gas and Electric Company (PG&E), and an alleged brief call between a SoCalGas director and a PG&E director of which SoCalGas had no record. Finally, SoCalGas noted that it reviewed its DSMBA upon Cal Advocates' suggestion, and identified some additional consultant activity that it had not included in prior data request responses. The response asserted, in

[5] *Response of Southern California Gas Company (U904G) to the Motion of the Public Advocates Office for an Order to Show Cause Why Southern California Gas Company Should Not be Sanctioned for Violating a Commission Order and Rule 1.1 of the Commission's Rules of Practice and Procedure*, filed July 30, 2019, at 1.

light of the limited scope and amount of any codes and standards advocacy activity it engaged in after D.18-05-041's issuance, and the minimal discrepancy in its data request responses to Cal Advocates, that Cal Advocates' recommended remedies were unwarranted.

On August 9, 2019, Cal Advocates filed a reply to SoCalGas's response. Cal Advocates asserted SoCalGas should have filed a petition for modification if it believed D.18-05-041's prohibition was ambiguous. Cal Advocates also asserted that the codes and standards advocacy activities SoCalGas engaged in after D.18-05-041's issuance were not purely transitional in nature, despite SoCalGas's assertion to the contrary. Cal Advocates maintained that SoCalGas's response failed to address most of the previous inaccurate data request responses, and further noted that SoCalGas's conduct obligating Cal Advocates to repeatedly seek more information "reflects a troubling pattern of disregard for Rule 1.1 of the Commission's Rules of Practice and Procedure."[6]

1.2. OSC Procedural Background and Scope

On October 3, 2019, the assigned Administrative Law Judge (ALJ) issued a ruling granting Cal Advocates' motion and directing SoCalGas to show cause why it should not be sanctioned for violation of California Public Utilities (Pub. Util.) Code §§ 702, 2107, 2108 or 2113 or Rule 1.1. The ruling also stated the Commission may consider whether and how to adjust SoCalGas's Energy Savings Performance Incentive (ESPI) award for program years 2018 and 2019, if the Commission finds that SoCalGas used ratepayer funds to engage in codes and standards advocacy after D.18-05-041's issuance.

[6] *Reply of the Public Advocates Office to the Response of Southern California Gas Company to the Motion of the Public Advocates Office for an Order to Show Cause*, filed August 9, 2019, at 6.

The assigned ALJ held a prehearing conference (PHC) on October 22, 2019. In addition to Cal Advocates and SoCalGas, Sierra Club participated in the PHC and stated its intent to participate actively in the OSC proceeding. During the PHC, Cal Advocates and SoCalGas described a disagreement over whether the scope of the OSC should include balancing accounts (or other similar accounting mechanisms) other than the DSMBA. Sierra Club stated it was not involved in discussions with Cal Advocates and SoCalGas over this disagreement, but rather its participation in this OSC stemmed from a concern that SoCalGas was "operating through third party intermediaries to undermine the intent of and spirit and letter of" D.18-05-041, and further that SoCalGas was "again opposing local governments . . . in their efforts to adopt local reach codes," and all of these issues should be in scope of the OSC.[7]

On December 2, 2019, the assigned Commissioner issued an amended scoping memo identifying the OSC issues as follows:

Factual issues:

1. Whether SoCalGas continued to charge ratepayers for energy efficiency codes and standards advocacy after the Commission ordered SoCalGas to cease such advocacy; and
2. Whether SoCalGas submitted misleading and inaccurate information that minimized the full extent of its codes and standards advocacy after the Commission ordered SoCalGas to cease its ratepayer-funded advocacy.

If the above factual questions are true, the issues to be determined are:

1. If SoCalGas failed to comply with D.18-05-041, should SoCalGas be fined, penalized or have other sanctions imposed for such failure; and

[7] PHC transcript, at 260: 28 through 261: 2 and 261: 7 – 9.

2. If SoCalGas failed to comply with Rule 1.1, should SoCalGas be fined, penalized or have other sanctions imposed for such failure.

The amended scoping memo specified that the scope of this OSC includes any allocated overhead costs, defined as "general administrative overhead activities such as general administration, accounting support, IT services and support, and regulatory support." The amended scoping memo further specified that the scope does not include any costs other than those referenced in Cal Advocates' motion.

SoCalGas served testimony addressing its codes and standards advocacy on January 10, 2020. On March 13, 2020, Cal Advocates and SoCalGas filed a joint statement of stipulated facts, which addressed relevant facts about D.18-05-041, Cal Advocates' data requests and SoCalGas's data request responses, and Cal Advocates' motion and SoCalGas's response to the motion.

On March 27, 2020, SoCalGas served testimony addressing its adherence to D.18-05-041 and the Commission's Rules of Practice and Procedure. Cal Advocates served direct testimony on April 24, 2020.

On May 13, 2020, Cal Advocates and SoCalGas filed a joint motion for continuance, noting they had initiated settlement discussions and requesting to extend the remainder of the procedural schedule by 90 days to allow time to continue settlement discussions. SoCalGas served rebuttal testimony on May 15, 2020. The assigned ALJ granted Cal Advocates' and SoCalGas's request for continuance on May 20, 2020.

On July 17, 2020, Sierra Club filed a motion to compel SoCalGas to respond to specified questions in Sierra Club's December 23, 2019 data request. The assigned ALJ granted Sierra Club's motion on August 7, 2020.

Prior to evidentiary hearings -- on August 24, 2020 and October 23, 2020 -- SoCalGas requested leave to serve supplemental testimony addressing recent activity, which SoCalGas described as "non-EE funded" but related to energy efficiency codes and standards and advocacy at the state or federal level.

The assigned ALJ held evidentiary hearings on November 2 and 3, 2020. Cal Advocates, Sierra Club and SoCalGas (together, the OSC parties) filed briefs on December 11, 2020 and reply briefs on January 15, 2021.

On June 25, 2021, the assigned Commissioner issued an amended scoping ruling to include the activities addressed in SoCalGas's August 24, 2020 and October 23, 2020 supplemental testimony. On June 28, 2021, the assigned ALJ issued a ruling directing further briefing on SoCalGas's assertions, included in its opening brief, regarding potential impacts to its First Amendment rights to free speech and free association. The OSC parties filed opening and reply briefs on SoCalGas's First Amendment claims on July 30, 2021 and August 27, 2021, respectively.

2. Jurisdiction and Preliminary Matters

SoCalGas operates as a public utility providing gas service in California. SoCalGas is a gas utility subject to the Commission's jurisdiction.

2.1. Rules for Statutory Interpretation

Because this decision will interpret a number of statutes that have been identified in parties' pleadings and will apply that interpretation to resolve the legal issues that are in dispute, it is necessary to set forth the rules for statutory interpretation that this decision must follow. The California Supreme Court has adopted a three-part test for statutory interpretation: First, the Commission must examine the plain language of the statute and their context and give the words

their usual and ordinary meaning.[8] Second, if the language permits more than one reasonable interpretation, the Commission may consider other aids such as the statute's purpose, legislative history, and public policy.[9] Third, if these external aids fail to provide clear meaning, then the final step is to apply a construction that leads to the more reasonable result, bearing in mind the apparent purpose behind the legislation. In doing so, the Commission must avoid a construction that would lead to an unreasonable, impractical, or arbitrary result.[10]

3. Issues Before the Commission

The assigned Commissioner's December 2, 2019 scoping memo, as amended by the June 25, 2021 amended scoping ruling, identified the following issues to be addressed in this OSC:

Factual issues:

1. Whether SoCalGas continued to charge ratepayers for energy efficiency codes and standards advocacy after the Commission ordered SoCalGas to cease such advocacy; and
2. Whether SoCalGas submitted misleading and inaccurate information that minimized the full extent of its codes and standards advocacy after the Commission ordered SoCalGas to cease its ratepayer-funded advocacy.

If the above factual questions are true, the issues to be determined are:

---

[8] *Beal Bank, SSB v. Arter & Hadden, LLP* (2007) 42 Cal. 4th 503, 507; and *Bernard v. City of Oakland* (2012) 202 Cal.App.4th 1553, 1560-1561.

[9] *Ailanto Properties, Inc. v. City of Half Moon Bay* (2006) 142 Cal.App.4th 572, 582-583.

[10] D.12-05-035, quoting from *Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal.4th 381, 387-388. *See also People v. Canty* (2004) 32 Cal.4th 1266, 1276; *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735; and *California Manufacturers Ass'n v. Public Utilities Commission* (1979) 24 Cal.3d 836, 844.

3. If SoCalGas failed to comply with D.18-05-041, should SoCalGas be fined, penalized or have other sanctions imposed for such failure; and
4. If SoCalGas failed to comply with Rule 1.1, should SoCalGas be fined, penalized or have other sanctions imposed for such failure.

The scope of this OSC includes any allocated overhead costs, defined as "general administrative overhead activities such as general administration, accounting support, IT services and support, and regulatory support." The scope does not include any costs other than those referenced in Cal Advocates' motion, SoCalGas's August 24, 2020 supplemental testimony, and SoCalGas's October 23, 2020 supplemental testimony.

4. Factual Issues

4.1. Failure to Comply with D.18-05-041

D.18-05-041 provides:

> We are prohibiting SoCalGas from *using ratepayer funds* to conduct codes and standards advocacy . . . .
>
> Southern California Gas Company is prohibited from participating in statewide codes and standards advocacy activities, other than to transfer ratepayer funds to the statewide lead for codes and standards, during this business plan period . . . . This order is effective today (May 31, 2018).[11]

Because this decision must determine whether SoCalGas used ratepayer funds on codes and standards advocacy activities, this decision refers to the scope of activities the IOUs engaged in as part of their energy efficiency codes and standards advocacy subprogram prior to D.18-05-041. This scope of activities includes any activity in which a utility or any of its employees:

[11] D.18-05-041, at 150 and 195 and Ordering Paragraph (OP) 53.

- obtained information about, discussed or conducted research or analysis of a proposed code or standard;
- paid another individual or organization to obtain information about, discuss or conduct research or analysis of a proposed code or standard;
- communicated (*e.g.,* sent letters, provided comments, or made public statements) with the CEC, DOE, or a local government regarding a proposed code or standard; or
- paid another individual or organization to communicate with the CEC, DOE, or a local government regarding a proposed code or standard.

It is reasonable to assess SoCalGas's conduct in this OSC according to the above scope of activities, as SoCalGas was itself engaged in the energy efficiency codes and standards advocacy subprogram prior to D.18-05-041, and therefore had firsthand knowledge of what activities were in scope of this subprogram.

The parties generally do not dispute that SoCalGas continued to charge ratepayers for energy efficiency codes and standards advocacy after the Commission ordered SoCalGas to cease such advocacy (using ratepayer funds). As detailed in the joint statement of stipulated facts, the parties do not dispute SoCalGas's responses to Cal Advocates' data requests, which include:

- During June 2018, a SoCalGas employee participated in a conference call about implementation of California Title 24 standards, provided comments on a draft report on hearth products for a Codes and Standards Enhancement (CASE) initiative, and joined conference calls regarding electric standards for pool pumps, air conditioners, and fans. The employee's time was charged to the DSMBA and specifically attributed to the Appliance Standards Advocacy subprogram (SCG 3725) of the Statewide Codes and Standards program.
- On June 7, 2018, a SoCalGas employee reviewed and edited the scope of work for a request for proposals for a

consultant to develop energy efficiency standards for non-residential buildings. The employee's time was charged to SoCalGas's DSMBA and specifically attributed to the Building Codes and Compliance Advocacy subprogram (SCG 3724) of the Statewide Codes and Standards program.

- A SoCalGas employee and consultant participated in a June 18, 2018 call regarding DOE's proposed interim waivers for space-constrained heat pump units. The time spent on this activity was charged to the DSMBA and specifically attributed to the Appliance Standards Advocacy subprogram (SCG 3725) of the Statewide Codes and Standards program.
- On June 4, 2018 and June 7, 2018, representatives of the California utilities discussed a comment letter to DOE regarding residential dishwasher product categories. The time spent by SoCalGas's employee and consultant on this activity was charged to the DSMBA and specifically attributed to the Appliance Standards Advocacy subprogram (SCG 3725) of the Statewide Codes and Standards program. On June 21, 2018, SoCalGas approved sending the letter on its behalf.
- On June 18, 2018, a SoCalGas employee and consultant attended a meeting to develop comments on a petition for rulemaking regarding DOE's proposed procedure to test cooking tops. On June 22, 2018, SoCalGas authorized the submission, on its behalf, of the final draft of a joint California utility comment letter to the DOE on cooktop test procedures. SoCalGas revoked its approval on June 25, 2018. The time spent on this activity was charged to the DSMBA and specifically attributed to the Appliance Standards Advocacy subprogram (SCG 3725) of the Statewide Codes and Standards program.

The record evidence demonstrates that SoCalGas continued to engage in codes and standards advocacy after the effective date of D.18-05-041 and that SoCalGas charged the expenses for these activities to ratepayer-funded accounts.

The instances in which SoCalGas continued to participate in codes and standards advocacy after D.18-05-041 are numerous and substantive, as summarized in Attachment B of Cal Advocates' opening brief.[12] Each such instance of codes and standards advocacy constitutes a violation of D.18-05-041's prohibition on SoCalGas's use of ratepayer funds for these activities. This includes the one instance that Cal Advocates did not address in its testimony, which was a June 7, 2018 activity in which a SoCalGas employee reviewed and edited the scope of work for a Request for Proposals for a consultant to develop energy efficiency standards for non-residential buildings.[13] SoCalGas disputes that this activity should be considered a violation of D.18-05-041, and asserts it would be improper for the Commission to consider it because Cal Advocates did not address it in testimony. However, this activity was included in Cal Advocates' motion and is therefore within scope of this proceeding;[14] it was also included in Cal Advocates' and SoCalGas's joint statement of stipulated facts.[15] Further, this proceeding allowed for both prepared testimony and documentary evidence, all of which the parties had opportunity to examine and object to prior to evidentiary hearing. SoCalGas had opportunity to cross-examine Cal Advocates'

[12] Attachment B of Cal Advocates' opening brief includes detailed references to evidence in the record of this proceeding for each instance.

[13] *Reply Brief Of Southern California Gas Company (U 904 G) To The Order To Show Cause Directing Southern California Gas Company To Show Cause Why It Should Not Be Sanctioned By The Commission For Violation Of California Public Utilities Code Sections 702, 2107 Or 2108 Or Rule 1.1 Of The Commission's Rules Of Practice And Procedure*, filed January 15, 2021 (SoCalGas reply brief), at 8-9.

[14] *Motion Of The Public Advocates Office For An Order To Show Cause Why Southern California Gas Company Should Not Be Sanctioned For Violating A Commission Order And Rule 1.1 Of The Commission's Rules Of Practice And Procedure*, filed July 15, 2019 (Cal Advocates motion), Appendix A at 120, 121-135, 137.

[15] *Joint Statement Of Stipulated Facts October 3, 2019, Order To Show Cause Against Southern California Gas Company*, filed March 13, 2020 (Joint statement of stipulated facts), at 4 and 7.

witness about this activity. This activity is procedurally appropriate to consider in this OSC, and this decision finds that it violates D.18-05-041.

This decision also includes the membership of a SoCalGas employee in the DOE's Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC), which SoCalGas disputes because "[h]aving an employee appointed to ASRAC was not an official part of the EE C&S advocacy programs, rather it was a prestigious opportunity for the employee."[16] SoCalGas maintains the employee "participated in ASRAC as an individual representative" and not as a representative of SoCalGas. Sierra Club's evidence, wherein SoCalGas's Codes and Standards Manager reports that the employee was nominated to represent "us" (*i.e.*, SoCalGas), demonstrates otherwise.[17] Further, Sierra Club cites the ASRAC charter as specifying that each ASRAC member shall represent an entity, unless they are appointed as special government employees.[18] Every member of ASRAC is listed as a representative of their respective entity, and not as an individual representing their self.[19] It is more reasonable to conclude that SoCalGas expected its employee to represent SoCalGas, than that SoCalGas expected its employee to represent herself, through her participation in ASRAC. SoCalGas's attempt to dismiss Sierra Club's evidence by characterizing the Codes and Standards Manager as a "low level" employee is not persuasive.[20]

---

[16] SoCalGas reply brief, at 26.

[17] Exhibit SC-08, at 1.

[18] *Opening Brief Of Sierra Club In The Order To Show Cause Issued December 2, 2019 Against Southern California Gas Company*, filed December 11, 2020 (Sierra Club opening brief), at 12.

[19] *See* Appliance Standards and Rulemaking Federal Advisory Committee webpage, https://www.energy.gov/eere/buildings/appliance-standards-and-rulemaking-federal-advisory-committee, accessed January 13, 2022.

[20] SoCalGas reply brief, at 27.

Nor is SoCalGas's attempt to distinguish activities as being part of its codes and standards program, as opposed to activities (*e.g.,* its employee's membership in ASRAC) as *not* being part of its codes and standards program. As discussed further in Section 4.1.2 of this decision, D.18-05-041's prohibition applies to all ratepayer-funded codes and standards advocacy activities, regardless of which program SoCalGas classifies them under or which balancing account SoCalGas charges their expenses to. SoCalGas's employee's membership in ASRAC constitutes engagement in codes and standards advocacy and, therefore, a violation of D.18-05-041.

This decision includes activities that SoCalGas claims were only informational, as information has potential value for advocacy. Because SoCalGas was prohibited from charging ratepayers for codes and standards advocacy, it should not have charged ratepayers for information it could have used to engage in codes and standards advocacy. Therefore, this decision includes the attendance by three SoCalGas employees on a June 26, 2018 conference call with PG&E, which SoCalGas asserts should not be considered a violation of D.18-05-041 because the purpose of the meeting was to discuss building decarbonization and "EE codes and standards were, at most, a minimal topic of discussion."[21] SoCalGas does not dispute that codes and standards were discussed during this conference call; any charge to ratepayers for discussion of codes and standards by SoCalGas, however minimal, is a violation of D.18-05-041.

This decision also includes activities characterized by SoCalGas as "wrap up" or "transitional". D.18-05-041 does not permit *any* ratepayer-funded codes

[21] SoCalGas reply brief, at 3.

and standards activity by SoCalGas, transitional or otherwise, thus any activity would be a violation. SoCalGas was a party to A.17-01-013 et al. and had the same notice and opportunity as any other party to comment on the proposed decision that the Commission ultimately adopted as D.18-05-041. The original proposed decision, which contained the same prohibition as D.18-05-041, was filed and served on April 4, 2018 – nearly two months before the Commission adopted D.18-05-041. SoCalGas's comments to the proposed decision did not suggest, much less explicitly assert, any need to engage in "transitional" or "wrap up" activities after the effective date of a final decision.

Sections 4.1.1 and 4.1.2 address two disputes related to the scope of D.18-05-041's prohibition.

4.1.1. The Scope of D.18-05-041's Prohibition Includes Federal Codes and Standards Advocacy.

SoCalGas maintains that D.18-05-041 permits SoCalGas to continue participating in federal codes and standards advocacy activities, emphasizing (1) reference to "statewide" in Ordering Paragraph (OP) 53, and (2) language elsewhere in D.18-05-041 stating "[i]f an item is not discussed or otherwise decided in this decision, PAs should consider that aspect of the business plans approved," combined with language in its business plan stating "[i]n the near-term, the statewide Building Code & State Appliance Standards subprograms will be separated from the National (and possibly International) Standards subprogram and activities will remain local," to support this interpretation. This is an unreasonable interpretation, and betrayed by SoCalGas's comments to the proposed decision addressing its 2018-2025 business plan, in which SoCalGas acknowledged the basis for the proposed decision's prohibition was SoCalGas's engagement with the DOE on its proposed furnace

rule (*i.e.*, a federal codes and standards advocacy activity).[22] D.18-05-041's discussion of the reasons for prohibiting further ratepayer-funded codes and standards advocacy by SoCalGas makes plain that the prohibition on SoCalGas's use of ratepayer funds for codes and standards advocacy includes federal codes and standards advocacy.[23] Further, D.18-05-041 specifically states "[w]e are prohibiting SoCalGas from using ratepayer funds to conduct codes and standards advocacy."[24] The inclusion of "statewide" in OP 53 of the decision should not have caused SoCalGas to conclude it was permitted to continue using ratepayer funds for federal codes and standards advocacy. SoCalGas's use of ratepayer funds for federal codes and standards advocacy, following the issuance of D.18-05-041, is in violation of D.18-05-041.

4.1.2. The Scope of D.18-05-041's Prohibition is not Limited to Activities Charged to SoCalGas's DSMBA

SoCalGas's supplemental testimony includes the following activities:

- Three SoCalGas employees attended an August 12, 2020 CEC business meeting; one of these employees provided oral comments regarding proposed updates to the Energy Code as part of the 2022 Title 24 code cycle.[25]
- A SoCalGas consultant attended a March 26, 2020 CEC staff workshop on 2022 Energy Code Compliance Metrics, and drafted a comment letter to the CEC regarding the pre-rulemaking for the California 2022 Energy Code Compliance Metrics, which SoCalGas submitted to the

[22] A.17-01-013 et al. *Comments of Southern California Gas Company (U904G) to Proposed Decision Addressing Energy Efficiency Business Plans*, filed April 24, 2018, at 7-10.

[23] *See* D.18-05-041, at 140-144.

[24] D.18-05-041, at 15-151.

[25] Exhibit SCG-05, at 3-4.

CEC on August 21, 2020. SoCalGas submitted a second comment letter, also regarding this same pre-rulemaking.[26]

- Seven SoCalGas employees and a SoCalGas consultant attended a September 30, 2020 CEC workshop as part of its 2022 Energy Code Pre-rulemaking; one of the employees provided oral comments during the workshop.[27]
- Two SoCalGas employees and SoCalGas's consultants met with a CEC commissioner and CEC staff on October 14, 2020 to discuss issues raised during the September 30, 2020 workshop.[28]
- SoCalGas submitted a comment letter to the CEC regarding the September 30, 2020 workshop on October 16, 2020.[29]

Many of the costs associated with the above activities were charged to ratepayers.

SoCalGas asserts the Commission should not find a violation of D.18-05-041 for the above activities, because (1) SoCalGas used ratepayer funds in a general rate case (GRC) account rather than an energy efficiency accounting mechanism, and therefore (2) applying D.18-05-041's prohibition to these activities would be impermissible viewpoint discrimination and would violate SoCalGas's due process rights.

Here again, SoCalGas seeks to advance a specious argument for why the prohibited activity it engaged in is not prohibited. As with its erroneous interpretation of D.18-05-041's prohibition as not applying to federal codes and

---

[26] *Ibid*.

[27] Exhibit SCG-06, at 4. Workshop notice: https://efiling.energy.ca.gov/GetDocument.aspx?tn=234694&DocumentContentId=67548, accessed January 10, 2022.

[28] Exhibit SCG-06, at 4-5.

[29] *Ibid*.

standards advocacy, SoCalGas again narrowly construes the prohibition as applying only to ratepayer funds sourced from its DSMBA. Such an interpretation would render the prohibition meaningless and is therefore unreasonable.

Viewpoint discrimination is not a relevant consideration in this case. Had SoCalGas advocated for the most stringent codes and standards (following adoption of D.18-05-041), it would have nevertheless violated D.18-05-041. The Commission ruled that SoCalGas must cease its ratepayer-funded involvement in codes and standards advocacy activities — regardless of the form and content of those activities — based on SoCalGas's demonstrated propensity to contravene Commission intent. SoCalGas provides no reasonable authority to suggest this prohibition is unconstitutional.

4.2. Failure to Comply with Rule 1.1

Rule 1.1 of the Commission's Rules of Practice and Procedure states:

> Any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law.

Cal Advocates asserts SoCalGas violated Rule 1.1 (or Rule 1) by failing to provide truthful and accurate information to Commission staff. Sierra Club's opening brief includes allegations of Rule 1 violations committed during the course of this OSC.

Regarding Cal Advocates' allegations, SoCalGas asserts any omissions were minimal and/or owing to the fact that SoCalGas had no record of a specific

item of information, such that finding a Rule 1 violation in this case is unwarranted. And SoCalGas asserts the conduct raised by Sierra Club's allegations does not amount to a Rule 1 violation.

In D.01-08-019, the Commission determined that intent to violate Rule 1 was not a prerequisite but that "the question of intent to deceive merely goes to the question of how much weight to assign to any penalty that may be assessed. The lack of direct intent to deceive does not necessarily, however, avoid a Rule 1 violation." As the Commission later explained in D.13-12-053, where there has been a "lack of candor, withholding of information, or failure to correct information or respond fully to data requests," the Commission can and has found a Rule 1 violation.[30] Thus, SoCalGas's assertion indicating it did not intend to withhold information is irrelevant as its conduct can still amount to a Rule 1 violation.

Application of SoCalGas's actions to the plain language of Rule 1 and the case law that has interpreted it demonstrates SoCalGas violated Rule 1 in three ways.

4.2.1. SoCalGas Failed to Respond Fully to Cal Advocates' Data Requests

We find that SoCalGas failed to provide complete information in response to Cal Advocates' data requests. For instance, Cal Advocates' data requests ask

[30] D.13-12-053 *Final Decision Imposing Sanctions for Violation of Rule 1.1 of the Commission's Rules of Practice and Procedure* at 21. This standard was recently affirmed in *Pacific Gas and Electric Company v. Public Utilities Commission* (2015) 237 Cal.App.4th 812, 848. *See* also D.09-04-009 at 32, Finding Of Fact 24 (Utility was "subject to a fine for its violations, including noncompliance with Rule 1.1, even if the violations were inadvertent…"); D.01-08-019 at 21 Conclusion Of Law 2 ("The actions of Sprint PCS in not disclosing relevant information concerning NXX codes in its possession in the Culver City and Inglewood rate centers caused the Commission staff to be misled, and thereby constitutes a violation of Rule 1."); and D.94-11-018, (1994) 57 CPUC 2d, at 204 ("A violation of Rule 1 can result from a reckless or grossly negligent act.").

for "any energy efficiency codes and standards advocacy activities;" the data requests do not specify "statewide" or otherwise distinguish between advocacy activities undertaken through statewide implementation and so-called "local" advocacy activities. SoCalGas had no reasonable basis for limiting its response to "statewide energy efficiency [codes and standards] advocacy." As a second example, Cal Advocates requested information about "any phone conversations or in-person meetings with other California IOUs that were related to energy efficiency codes and standards advocacy." SoCalGas omitted certain communications that, SoCalGas asserts, only concerned the fact that SoCalGas would be "transitioning" out of codes and standards advocacy. But at least one of these communications concerned a DOE comment letter on cooktop test procedures, which is clearly related to codes and standards advocacy.[31]

SoCalGas endeavors to characterize this situation as a mere discovery dispute, for which it admonishes Cal Advocates for not seeking to resolve any differences through an informal meet and confer process. We conclude that this is not a mere discovery dispute. California Pub. Util. Code § 309.5 provides:[32]

> (a) There is within the commission an independent Public Advocate's Office of the Public Utilities Commission to represent the interests of public utility customers and subscribers within the jurisdiction of the commission. The goal of the office shall be to obtain the lowest possible rate for service consistent with reliable and safe service levels . . . .

[31] Cal Advocates motion, Appendix B, PG&E Response to Public Advocates Office Data Request ORA-HB-2018-14, July 23, 2018, Question 2, Attachment 2.

[32] Unless otherwise specified, all further statutory references are to the California Public Utilities Code.

> (e) The office may compel the production or disclosure of any information it deems necessary to perform its duties from any entity regulated by the commission, provided that any objections to any request for information shall be decided in writing by the assigned commissioner or by the president of the commission, if there is no assigned commissioner.

Cal Advocates requested information from SoCalGas to review SoCalGas's compliance with D.18-05-041. This request is consistent with its statutory mandate to represent ratepayers' interests and to secure the lowest possible rate for reliable and safe service. To the extent SoCalGas objected to Cal Advocates' request, Section 309.5(e) makes clear that such objection must be brought to either the assigned Commissioner or the Commission's president for a written resolution.

Even if this situation was a discovery dispute, Cal Advocates made more than reasonable efforts to obtain the information it sought prior to seeking formal Commission action. More importantly, regardless of how SoCalGas characterizes the situation, SoCalGas also bore responsibility to seek resolution through informal means, for instance by communicating with the data request originator prior to submitting its response, to explicitly raise its "interpretation" of D.18-05-041.

By refusing to provide information responsive to Cal Advocates' data requests, SoCalGas withheld information from Commission staff. The information in question is significant as it relates to SoCalGas's compliance with a Commission order.

4.2.2. SoCalGas has Failed to Give the Respect Due to the Commission

Persons appearing before the Commission are required to respect and comply with the authority of the Commission, Commission staff, and the Commission's ALJs.

SoCalGas's posture throughout this OSC has been one of disregard for the Commission's authority. SoCalGas's arguments for why its code and standards activities are not violations and why, if the Commission finds violations, penalties are not warranted, illustrate this disregard for Commission authority. First, SoCalGas's main argument for why it continued any codes and standards advocacy activities after the effective date of D.18-05-041 is that it was "still assessing the full implications of [D.18-05-041] and what activities were affected."[33] SoCalGas had notice and opportunity to seek guidance on "what activities were affected" as early as April 4, 2018, when the Commission issued the proposed decision that prohibited its involvement in codes and standards advocacy. At no time did SoCalGas seek such guidance.[34] Second, with respect to its unreasonable interpretation of D.18-05-041's prohibition as not applying to federal codes and standards advocacy, SoCalGas maintains it saw no need to

[33] Exhibit SCG-03, at 6:13-16.

[34] Witness Haines testified that "we've requested the CPUC to open up an inquiry to help make it clear on what is included and what is not... my understanding is that we have sent a letter I think to the Commission requesting that." (Hearing transcript at 101:23-28 to 102:1-13.). In response to a March 9, 2021 ruling directing SoCalGas to "provide a copy of any written communication in which SoCalGas requested the Commission or any of its staff to clarify any language in Decision 18-05-041," SoCalGas responded that the letter referenced by Witness Haines "does not concern D.18-05-041 or the prohibition on statewide energy efficiency codes and standards contained therein." *See Response of Southern California Gas Company (U904G) to Administrative Law Judge Kao's email ruling to provide written communication in which Southern California Gas Company requested the Commission or any of its staff to clarify any language in D.18-05-041*, filed March 16, 2021, at 1-2.

seek clarification regarding the scope of D.18-05-041's prohibition, whether through a petition for modification or otherwise. This argument is difficult if not impossible to reconcile with SoCalGas's main argument for its failure to comply, and both arguments inappropriately and self-servingly designate SoCalGas as the entity that decides how a Commission decision should be interpreted. Third, the only instance in which SoCalGas sought guidance about D.18-05-041's prohibition was an in-person meeting with Commission staff. Not only did SoCalGas fail to seek guidance from the Commission, but SoCalGas maintains it decided for itself that it would cease its federal codes and standards advocacy activities.[35]

The totality of SoCalGas's arguments for why it should not be penalized demonstrate profound, brazen disrespect for the Commission's authority.

4.2.3. SoCalGas Failed to Comply with the Laws of this State

Under the plain meaning rule for statutory interpretation, compliance "with the laws of this State" would include the laws set forth above regarding the duty to respect and comply with a Commission decision. In addition, SoCalGas's failure to comply amounts to a violation of the requirement in Section 2107 that a public utility not violate "any order, decision, decree, rule, direction, demand, or requirement of the commission."

[35] *Opening Brief Of Southern California Gas Company (U904G) To The Order To Show Cause Directing Southern California Gas Company To Show Cause Why It Should Not Be Sanctioned By The Commission For Violation Of California Public Utilities Code Sections 702, 2107 Or 2108 Or Rule 1.1 Of The Commission's Rules Of Practice And Procedure*, filed December 11, 2020 (SoCalGas opening brief), at 23: "On July 31, 2018…SoCalGas representatives held a meeting with representatives of [Energy Division]….Shortly thereafter, SoCalGas decided to heed the advice of [Energy Division] and no longer engage in federal EE C&S advocacy..."

4.2.4. Sierra Club's Rule 1 Allegations Regarding SoCalGas's Prepared and Oral Testimony

Sierra Club asserts SoCalGas misled the Commission in both its prepared testimony and during cross-examination of its witness, Ms. Haines, regarding its employee's membership in ASRAC. Specifically, Sierra Club challenges SoCalGas's assertion that the employee's "appointment to ASRAC was not related to the two Statewide C&S advocacy programs that are part of the EE portfolio."[36] This decision finds the evidence presented by Sierra Club, to disprove SoCalGas's assertion, insufficient basis for finding a Rule 1 violation.[37] This does not, however, alter our conclusion that SoCalGas's employee's membership in ASRAC constitutes a violation of D.18-05-041, as discussed, *supra,* in Section 4.1 of this decision.

5. Remedies

5.1. Ratepayers shall not Pay for Prohibited Activities or Associated Shareholder Incentive Payments

Section 451 of the Public Utilities Code states:

> All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust and unreasonable charge demanded or received for such product or commodity or service is unlawful . . . .

This decision concludes that expenditures on activities prohibited by a Commission decision are unjust and unreasonable; thus it would be unreasonable to allow SoCalGas to retain ratepayer funds or associated

[36] Sierra Club opening brief, at 13.

[37] Exhibit SC-20, at 1.

shareholder awards for such expenditures. As explained in Cal Advocates' opening brief, SoCalGas transferred expenditures for some of the prohibited activities from its DSMBA to an account that could be manually excluded from its next GRC on August 16, 2019; SoCalGas transferred those expenditures to an account that would be automatically excluded from its next GRC on December 20, 2019.[38]

Further, having found that SoCalGas spent ratepayer funds on activities that were prohibited by a Commission decision, this decision finds it unreasonable that SoCalGas shareholders should receive ESPI payment for these expenditures. SoCalGas is not entitled to shareholder awards for the expenditures on prohibited activities charged to its DSMBA. Commission staff may dispose of SoCalGas's 2018 codes and standards management fee-related request, consistent with this decision.

SoCalGas must refund, with interest, all ratepayer-funded expenditures associated with the activities identified in Table 1 of this decision that SoCalGas has not yet removed from ratepayer-funded accounts, no matter the accounting mechanism to which they were booked.

5.1.1. Audit of Past Expenditures to Determine Refund Amounts

This decision directs the Commission's Utility Audits Branch (UAB) to conduct an audit to determine the full amount of ratepayer funds that SoCalGas expended on the activities identified in Table 1 and that SoCalGas has not yet removed from ratepayer-funded accounts.

[38] *Opening Brief Of The Public Advocates On The Commission's October 3, 2019 Order To Show Cause*, filed December 11, 2020 (Cal Advocates opening brief), at 26-27, citing Hearing Transcript at 48: 23-40 and 50: 1-22.

The UAB's annual energy efficiency audits address SoCalGas's recording, reporting, and compliance with accrual policy and procedures, and the effects of the policy and procedures on ESPI. Given this limited scope, the annual energy efficiency audits do not address alignment with Commission intent regarding the use of ratepayer funds to support more stringent codes and standards. As such, prior UAB audits do not include review of the types of documentation needed to address the specific objective of the audit ordered herein.

SoCalGas is expected to respond as expeditiously as possible and to provide accurate and complete documentation as specified within the timeframe outlined by the UAB with no delays, but not later than five business days after receipt of instructions. Documentation may include but is not limited to interviews, meetings, data, supporting documents (such as timesheets, invoices, employee job descriptions/duty statements, email correspondence, contracts/standard agreements), and other materials as the UAB deems necessary. In the event that SoCalGas's records do not enable UAB to calculate the specific amounts that SoCalGas must refund, UAB is authorized to employ whatever method it deems appropriate, to estimate the amounts that SoCalGas must refund. The UAB's audit will identify the amounts of ratepayer expenditures that SoCalGas must return to ratepayers, and any amount of ESPI payments for which SoCalGas has not yet received authorization and is now, as a result of this decision, ineligible to collect. The UAB's audit report will be subject to comment and Commission review and approval.

5.2. SoCalGas is Prohibited from Using Ratepayer Funds on Codes and Standards Programs, Pending an Affirmative Demonstration of Sufficient and Appropriate Policies, Practices and Procedures to Ensure Adherence to Commission Intent

Section 701 states:

> The Commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.

Having found repeated violations of a Commission decision, in which the Commission clearly expressed grave concern over the conduct that gave rise to the relevant order, this decision finds reason to impose an indefinite prohibition on SoCalGas's cost recovery from ratepayer-funded accounts for participating in any codes and standards programs, other than to transfer funds to the statewide codes and standards lead.

To forestall claims of ambiguity, this decision specifies that "codes and standards programs" include all activities, regardless of which balancing account or other accounting mechanism to which their expenses are booked, that would be performed as part of any of the energy efficiency Codes and Standards sub-programs, *i.e.*, codes and standards advocacy, compliance improvement, reach codes, planning and coordination, code-readiness, and any subsequent sub-programs. Further, this decision specifies that "codes and standards advocacy" includes, at minimum, any activity in which a utility or any of its employees:

- obtains information about, discusses or conducts research or analysis of a proposed code or standard, including a proposed reach code;

- pays another individual or organization to obtain information about, discuss or conduct research or analysis of a proposed code or standard, including a proposed reach code;
- communicates (*e.g.*, sends letters, provides comments, or makes public statements) with the CEC, DOE, or a local government regarding a proposed code or standard; or
- pays another individual or organization to communicate with the CEC, DOE, or a local government regarding a proposed code or standard.

SoCalGas may not seek recovery from ratepayer-funded accounts for the costs of labor and associated overhead for codes and standards programs. SoCalGas must implement appropriate tracking of employees' time so that the Commission can supervise compliance with this decision. SoCalGas may only seek recovery of funds transferred to the statewide codes and standards lead from ratepayer-funded accounts.

This decision directs UAB to include compliance with this decision's prohibition within scope of its annual energy efficiency audits for no fewer than five years. If membership dues to a particular organization provide(d) services or benefits in addition to codes and standards program activities, UAB shall determine what portion of those membership dues are subject to this decision's prohibition, using whatever method UAB deems appropriate.

The Commission may lift this decision's prohibition either on its own motion or upon finding that SoCalGas possesses sufficient and appropriate policies, practices and procedures to ensure adherence to Commission intent for codes and standards advocacy. The Commission will issue a ruling in Rulemaking 13-11-005 or another relevant proceeding to invite comments on the specific criteria that SoCalGas must meet, and how SoCalGas must demonstrate

that it meets those criteria, in order for the Commission to reach such a finding. The assigned Commissioner or ALJ may subsequently issue a ruling determining the criteria that SoCalGas must meet, and how SoCalGas must demonstrate that it meets those criteria.

As long as SoCalGas is prohibited from using ratepayer funds on codes and standards programs (other than to transfer funds), SoCalGas will not be eligible for ESPI awards for codes and standards programs, or any codes and standards-related shareholder incentives that the Commission may adopt in the future.

Regarding Cal Advocates' recommendation to remove SoCalGas from its current role as the statewide lead for the gas Emerging Technology Program, it would be improper to adopt such a recommendation without direct evidence of misconduct, or questionable conduct, specific to SoCalGas serving in this capacity.

5.3. Penalty Pursuant to Section 2113: Contempt

Section 2113 states:

> Every public utility, corporation, or person which fails to comply with any part of any order, decision, rule, regulation, direction, demand, or requirement of the commission or any commissioner is in contempt of the Commission, and is punishable by the commission for contempt in the same manner and to the same extent as contempt is punished by courts of record. The remedy described in this section does not bar or affect any other remedy prescribed in this part, but is cumulative and in addition thereto.

The Commission has required that, in order to find a respondent in contempt:

- The person's conduct must have been willful in the sense that the conduct was inexcusable; or

- That the person accused of the contempt had an indifferent disregard of the duty to comply; and
- Proof must be established beyond a reasonable doubt.[39]

The record of this OSC demonstrates that the factors for a finding of contempt against SoCalGas have been established beyond a reasonable doubt. We find that SoCalGas is in contempt for violating the prohibition set forth in D.18-05-041. None of the legal or factual defenses that SoCalGas has advanced cause us to reconsider the finding of contempt.

SoCalGas must pay $1,000.00 pursuant to Section 2113, which states that a finding of contempt: "is punishable by the Commission for contempt in the same manner and to the same extent as contempt is punished by a court of record." In superior court, pursuant to Code of Civil Procedure Section 1219(a), the maximum monetary civil penalty for a single act of contempt is $1,000.00.

The Commission is not limited to fining SoCalGas $1,000.00. Section 2113 states that the remedy allowed "does not bar or affect any other remedy prescribed in this part, but is cumulative and in addition there." In other words, the findings made here for SoCalGas's contempt can also be utilized by the Commission to impose additional fines for violating Rule 1. We therefore discuss the propriety of imposing additional fines on SoCalGas.

5.4. Penalty Pursuant to Section 2107

Section 702 provides:

> Every public utility shall obey and comply with every order, decision, direction, or rule made or prescribed by the commission in the matters specified in this part, or any other matter in any way relating to or affecting its business as a

[39] 57 CPUC2d at 205, citing *Little v. Superior Court of Los Angeles County* (1968) 260 Cal.App.2d 311, 317; *In re Burns* (1958) 161 Cal.App.2d 137, 141-142; 68 CPUC 245; 63 CPUC 76; 80 CPUC 318; and D.87-10-059.

> public utility, and shall do everything necessary or proper to secure compliance therewith by all of its officers, agents, and employees.
>
> Section 2107 provides:
>
> Any public utility that violates or fails to comply with any provision of the Constitution of this state or of this part, or that fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars ($500), nor more than one hundred thousand dollars ($100,000), for each offense.

Having found that SoCalGas violated Rule 1 and D.18-05-041, this decision finds reason to impose a financial penalty pursuant to Section 2107.

Cal Advocates provides a recommended approach for determining an appropriate penalty amount, in Appendix B of its opening brief. This decision generally agrees with Cal Advocates' recommended approach, with the following important differences:

- This decision finds no reason to apply different amounts, per offense, just because of a change to the maximum allowable amount. Such a change might be relevant if the Commission determined to apply the maximum allowable penalty, but that is not the case here. Instead of applying $5,000 per offense to offenses that occurred before January 1, 2019, this decision applies $10,000 for each offense. As discussed below, regarding considerations of precedent, the Commission has previously assessed a penalty amount per offense between $5,000 and $12,000 for similar offenses, the higher amount for offenses that had health and safety implications. In this case, where the offenses do not appear to have directly jeopardized health or safety, but the egregiousness of the utility's conduct warrants a high level of severity, it is reasonable to assess a per-offense penalty amount of $10,000.

- This decision finds no reason to apply a different, much higher penalty amount to the activities addressed in SoCalGas's supplemental testimony. Cal Advocates does not cite any past cases in which the Commission assessed such a high amount based on finding that a utility's actions were caused by a goal of protecting its shareholders, which is the stated rationale for its recommended amount of either $37,500 or $75,000 per offense.
- This decision reduces the penalty amount, per offense, for expenditures transferred from the DSMBA to an account that could be manually excluded from SoCalGas's next GRC, during the period before they were transferred to an account that would be automatically excluded, from $1,000 to $500. Although SoCalGas took some time to transfer these expenditures to an account that would be automatically excluded from its GRC, SoCalGas could nevertheless exclude them from its next GRC; thus it is reasonable to impose only a minimal penalty amount per offense for this time period. This decision does not agree with SoCalGas that no penalty should be imposed for this time period, because the possibility still existed that these expenditures might be charged to ratepayers.
- This decision recognizes only one offense for each incomplete data request response alleged by Cal Advocates, as opposed to Cal Advocates' recommendation to levy a distinct penalty for multiple parts of each data request response. Data request responses can be parsed in a variety of ways that would lead to a varying number of instances being counted, and Cal Advocates' opening brief contains little to no explanation to justify its recommended itemization of distinct violations related to SoCalGas's incomplete data request responses. Further, this decision acknowledges that even though SoCalGas objected to the interpretation of D.18-05-041's prohibition as including federal codes and standards advocacy, SoCalGas still provided responsive information in certain instances.

- Each violation is a distinct, but not continuing, offense. None of the identified violations—participating in a conference call, reviewing and editing documents, filing comments, making public statements—are akin to the situations (long-term equipment maintenance problems, for example) in which we have previously deemed a violation continuing. Neither Cal Advocates nor Sierra Club seem to address this point. We do not find that these violations amount to continuing offenses within the meaning of Section 2108.
- We impose a separate fine for the continuing violation of Rule 1 from the date of SoCalGas's first violation (June 1, 2018) through the submission date of this OSC (January 15, 2021). This distinct penalty recognizes the continuing harm to the regulatory process caused by SoCalGas's violation of D.18-05-041 and its failure to prevent, detect, disclose or rectify the violation.

With the above modifications, this decision imposes a total penalty, pursuant to Section 2107, of $9,806,000. Table 1, below, provides a detailed calculation of the total penalty amount.

Table 1: Calculation of financial penalty amount under Section 2107

Activity/description	**Penalty amount**
Codes and standards activities	
Participated in conference call regarding dedicated (electric) purpose pool pump standards	$10,000
Participated in a call re: comment letter to DOE about residential dishwasher product categories	$10,000
Reviewed and edited the scope of work for a Request for Proposals for a consultant to develop energy efficiency standards for non-residential buildings	$10,000
Participated in a one-hour conference call regarding comment letter on residential dishwasher petition	$10,000
Attended Title 24 2019 Wrap up and 2022 Planning, Biweekly Building Codes Advocacy check-in call	$10,000

Activity/description	**Penalty amount**
Comments on a draft CASE report on hearth products for development of California Title 20 standards	$10,000
SoCalGas Customer Programs Advisor attended 2019 Title 24 Advocacy Support ASHRAE 90.1 Presentation	$10,000
Participated in meeting to discuss a draft comment letter for a petition for rulemaking on the cooking top test procedure	$10,000
Participated in a call regarding DOE's proposed interim waivers for space-constrained heat pump units	$10,000
Participated in conference call regarding electric standards for portable air conditioners	$10,000
SoCalGas Customer Programs Advisor provided edits to Commercial Dryer Reproducibility draft memo	$10,000
Participated in conference call regarding electric standards for fans	$10,000
Three SoCalGas employees attended a building decarbonization conference call	$10,000
Staff participation in ASRAC	$10,000
Codes and standards activities transferred from DSMBA to an account that could be manually excluded from next GRC	
Participated in conference call regarding dedicated (electric) purpose pool pump standards	$500
Participated in a call re: comment letter to DOE about residential dishwasher product categories	$500
Reviewed and edited the scope of work for a Request for Proposals for a consultant to develop energy efficiency standards for non-residential buildings	$500
Participated in a one-hour conference call regarding comment letter on residential dishwasher petition	$500
Attended Title 24 2019 Wrap up and 2022 Planning, Biweekly Building Codes Advocacy check-in call	$500
Comments on a draft CASE report on hearth products for development of California Title 20 standards	$500
SoCalGas Customer Programs Advisor attended 2019 Title 24 Advocacy Support ASHRAE 90.1 Presentation	$500
Participated in meeting to discuss a draft comment letter for a petition for rulemaking on the cooking top test procedure	$500

Activity/description	**Penalty amount**
Participated in a call regarding DOE's proposed interim waivers for space-constrained heat pump units	$500
Participated in conference call regarding electric standards for portable air conditioners	$500
SoCalGas Customer Programs Advisor provided edits to Commercial Dryer Reproducibility draft memo	$500
Participated in conference call regarding electric standards for fans	$500
Misleading or incomplete data request responses	
Incomplete responses to Data Request ORA-HB-SCG-2018-09	$10,000
Incomplete responses to Data Request ORA-HB-SCG-2018-13	$10,000
Codes and standards activities addressed in supplemental testimony	
Technical comments to CEC regarding 2022 Energy Code Compliance Metrics	$10,000
Second set of comments to CEC regarding 2022 Energy Code Compliance Metrics	$10,000
Meeting with CEC commissioner and staff regarding 2022 Energy Code Pre-rulemaking workshop	$10,000
Comment letter to CEC regarding 2022 Energy Code Pre-rulemaking workshop	$10,000
Continuing harm to regulatory process	
$10,000 x 960 days - Daily penalty amount - Start date of violation (June 1, 2018) through OSC submission date (January 15, 2021)	$9,600,000
Total penalty under Section 2107	$9,806,000

D.98-12-075 provides guidance on the application of fines.[40] Two general factors are considered in setting fines: (1) the severity of the offense and (2) the conduct of the entity. In addition, the Commission considers the financial resources of the entity, the totality of the circumstances in furtherance of the

[40] D.98-12-075 indicates that the principles therein distill the essence of numerous Commission decisions concerning penalties in a wide range of cases, and the Commission expects to look to these principles as precedent in determining the level of penalty in a full range of Commission enforcement proceedings. (*Mimeo* at 34-35.)

public interest, and the role of precedent.[41] This decision discusses the specific criteria and determines below their applicability to SoCalGas's conduct.

Criterion 1: Severity of the Offense

In D.98-12-075, the Commission held that the size of a fine should be proportionate to the severity of the offense. To determine the severity of the offense, the Commission stated that it would consider the following factors.[42]

- Physical harm: The most severe violations are those that cause physical harm to people or property, with violations that threatened such harm closely following.
- Economic harm: The severity of a violation increases with (i) the level of costs imposed upon the victims of the violation, and (ii) the unlawful benefits gained by the public utility. Generally, the greater of these two amounts will be used in setting the fine. The fact that economic harm may be hard to quantify does not diminish the severity of the offense or the need for sanctions.
- Harm to the Regulatory Process: A high level of severity will be accorded to violations of statutory or Commission directives, including violations of reporting or compliance requirements.
- The number and scope of the violations: A single violation is less severe than multiple offenses. A widespread violation that affects a large number of consumers is a more severe offense than one that is limited in scope.

SoCalGas's violation of Rule 1 and Section 2107 harmed the regulatory process by failing to comply with D.18-05-041 and subsequently refusing to produce information requested by Cal Advocates regarding its failure to comply. As this Commission stated in D.98-12-075, "such compliance is absolutely

[41] D.98-12-075, *mimeo*, at 34-39.

[42] 1998 Cal. PUC LEXIS 1016 at 71-73.

necessary to the proper functioning of the regulatory process. For this reason, disregarding a statutory or Commission directive, regardless of the effects on the public, will be accorded a high level of severity."[43]

Criterion 2: Conduct of the Penalized Entity

In D.98-12-075, the Commission held that the size of a fine should reflect the penalized entity's conduct. When assessing the conduct, the Commission stated that it would consider the following factors:[44]

- The Entity's Actions to Prevent a Violation: Entities are expected to take reasonable steps to ensure compliance with applicable laws and regulations. The entity's past record of compliance may be considered in assessing any penalty.
- The Entity's Actions to Detect a Violation: Entities are expected to diligently monitor their activities. Deliberate, as opposed to inadvertent wrongdoing, will be considered an aggravating factor. The level and extent of management's involvement in, or tolerance of, the offense will be considered in determining the amount of any penalty.
- The Entity's Actions to Disclose and Rectify a Violation: Entities are expected to promptly bring a violation to the Commission's attention. What constitutes "prompt" will depend on circumstances. Steps taken by an entity to promptly and cooperatively report and correct violations may be considered in assessing any penalty.

Here, SoCalGas's actions were contrary to preventing, detecting, disclosing or rectifying a violation. The number and extent of violations are significant

[43] 84 CPUC2d 155, 188; *See* also Resolution ALJ-277 Affirming Citation No. ALJ-274 2012-01-001 Issued to Pacific Gas and Electric Company for Violations of General Order (GO) 112-E at 8 (April 20, 2012).

[44] 1998 Cal. PUC LEXIS 1016 at 73-75.

enough to rule out a reasonable inference that SoCalGas took reasonable steps to ensure compliance, or that any wrongdoing was inadvertent. And SoCalGas did not alert the Commission of the violations; the only reason for Commission action regarding these violations (*i.e.*, this OSC) is the diligent action taken by the staff of Cal Advocates.

SoCalGas has always had the ability to comply with D.18-05-041. If SoCalGas had any need for clarification or guidance on D.18-05-041's prohibition, it had ample opportunity to seek such guidance. Instead, as discussed in Section 4.2, *supra*, SoCalGas repeatedly chose to substitute its own judgment for the Commission's so as to avoid compliance with a Commission order. Such insolence must be accorded a high degree of severity.

Criterion 3: Financial Resources of the Entity

In D.98-12-075, the Commission held that the size of a fine should reflect the financial resources of the entity. When assessing the financial resources of the entity, the Commission stated it would consider the following factors:[45]

- Need for Deterrence: Fines should be set at a level that deters future violations. Effective deterrence requires that the Commission recognize the financial resources of the entity in setting a fine.
- Constitutional Limitations on Excessive Fines: The Commission will adjust the size of fines to achieve the objective of deterrence, without becoming excessive, based on each entity's financial resources.

The goal of effective deterrence argues in favor of levying a sizable penalty.

[45] 1998 Cal. PUC LEXIS 1016 at 75-76.

The Commission has typically considered revenues or net income as a reasonable proxy for a company's financial resources. According to SoCalGas's most recent public financial statements filed with the Commission, its operating revenues for the six months ending on June 30, 2017 were $2,012,178,505, and its net operating income for the same time period was $299,137,740.[46] SoCalGas has the ability to pay the financial penalties assessed by this decision; the amount of financial penalties represents less than two percent of its estimated annual net operating income. The penalty this decision adopts is within SoCalGas's ability to pay and, therefore, will not cripple its ability to provide utility services.

Criterion 4: The Totality of the Circumstances in Furtherance of the Public Interest

In D.98-12-075, the Commission held that a fine should be tailored to the unique facts of each case. When assessing the unique facts of each case, the Commission stated that it would consider the following factors:[47]

- **The Degree of Wrongdoing:** The Commission will review facts that tend to mitigate the degree of wrongdoing as well as facts that exacerbate the wrongdoing.
- **The Public Interest:** In all cases, the harm will be evaluated from the perspective of the public interest.

There are no facts to mitigate the degree of SoCalGas's wrongdoing. None of the grounds asserted by SoCalGas provide a sound justification for violating D.18-05-041. SoCalGas's conduct has exacerbated its wrongdoing because its failure to comply has become a series of offenses to Commission authority,

[46] A.17-10-008 *Test Year 2019 General Rate Case Application of Southern California Gas Company (U904G)*, filed October 6, 2017, Appendix B.

[47] 1998 Cal. PUC LEXIS 1016, 76.

including failure to seek Commission guidance and failure to report and rectify the violations.

SoCalGas's conduct has also resulted in harm to the public's interest in responsible and permissible use by public utilities of ratepayer funds.

Criteria 5: The Role of Precedent

In D.98-12-075, the Commission held that any decision that imposes a fine or penalty should: (1) address previous decisions that involve reasonably comparable factual circumstances, and (2) explain any substantial differences in outcome.[48]

This decision first looks at prior Commission precedent that imposed a fine or penalty based on the finding of a continuing offense. These cases demonstrate that the Commission is well within its authority to impose a continuing violation penalty against SoCalGas based on these past decisions:

- *PG&E, San Bruno*, D.15-04-024, at 77-79 (PG&E engaged in 2425 violations, some of which occurred over a number of years, meaning that the range of potential penalties went from a low of $9.2 billion to a high of $254 billion. The Commission arrived at a total penalty and forbearances of $1.6 billion, of which $300 million represented the fine that would be paid to the General Fund.)
- *PG&E, Gas Explosion at Rancho Cordova,* D.11-11-001, at 40-42, and OP 4 (PG&E faced a potential continuing penalty of $97 million, which the Commission calculated as follows: violations of both Pub. Util. Code § 451 and GO 112-E in each of the five instances set forth in the Order Instituting Investigation (OII) at 9-10; continuing violations from September 21, 2006 to December 24, 2008 for the use of the unmarked pipe in Rancho Cordova; continuing violations from November 9, 2006 to December 24, 2008 for failing to discover the defective Rancho Cordova repair as

[48] 1998 Cal. PUC LEXIS 1016, 77.

a result of being notified of the use of defective pipe used in Elk Grove; continuing violations from September 21, 2006 to December 24, 2008 for failing to develop and implement effective gas emergency plans; and $80,000 in penalties for failing to safeguard life and property and failing to administer drug and alcohol tests on December 24, 2008. In light of this potential exposure, the decision rejected the proposed stipulated penalty of $26million and imposed a $38 million penalty subject to agreement by the parties.)

- *Rasier-CA, TNC Services*, D.16-01-014, at 82-83, and OP 1 (Rasier's failure to comply with D.13-09-045's reporting requirements for TNCs regarding accessibility requests, service by zip code, and driver problems were separate continuing offenses commencing in September of 2014. At $5,000 per day per offense, the calculated fine totaled $7,350,000.00. The decision imposed another $276,000.00 for the 138 days past the reporting deadline for Rasier to comply with Reporting Requirement J.)
- *Cingular Investigation*, D.04-09-062 at 62 ("Section 2108 provides, in relevant part, that 'in case of a continuing violation each day's continuance thereof shall be a separate and distinct offense. Both violations constitute continuing offenses during the relevant time periods. Considering the record as a whole, we find that the penalty for each violation should be calculated on a daily basis."); and Conclusion of Law 4 ("[F]or the violations of law for the period January 1, 2000 to April 30, 2002 (849 days), Cingular should pay a penalty of $10,000 per day, or $8,490,000.")
- Qwest, D.02-10-059 at 43, n. 43 ("Qwest is liable for a fine of $500 to $20,000 for every violation of the Public Utilities Code or a Commission decision. Pub. Util. Code § 2108 provides that every violation is a separate and distinct offense, and in case of a continuing violation each day's continuance constitutes a separate and distinct offense.")

- *Southern California Edison Company's (SCE's*) Performance-Based Ratemaking OII, D.08-09-038 at 111 ("Finally, a fine of $30 million is reasonable when viewed as an ongoing violation that should be subject to a daily penalty, as recommended by CPSD and used by the Commission in the case that was upheld in *Pacific Bell Wireless, LLC v. Pub. Util. Comm'n*. If SCE's violations are viewed as daily violations that continued for seven years, then a $30 million dollar fine equates to a daily penalty of just less than $12,000 ($30 million/7 years/365 days).")

SoCalGas's blatant disregard for Commission authority, evidenced by its continuing failure to identify, report or rectify these violations, provides a reasonable basis for finding a continuous violation.

This decision further addresses the cases/decisions raised by Cal Advocates – the only party to address this criterion in its opening brief – as applicable to this OSC. Cal Advocates cites both the *Rasier-CA, TNC Services* and SCE's Performance-Based Ratemaking OII to suggest its proposed penalty amount, ranging between $1,000 and $10,000 per offense, is reasonable.

Both of these cases, while not perfectly analogous to the fact pattern of this OSC, provide a reasonable basis for determining an appropriate penalty amount for SoCalGas's misconduct. Although both the Rasier OSC and this case involve a failure to provide complete information to Commission staff, SoCalGas's failure in this case caused it to be less than forthcoming about *ratepayer expenditures that the Commission had prohibited*, whereas Rasier's failure did not have such a direct economic implication for its customers. And while the SCE OII implicated risks to health and safety, which this OSC does not appear to do, SCE reported its violation to the Commission, whereas in this case SoCalGas failed to report any violation, and the sole reason for this OSC was a motion brought forth by Cal Advocates. Notwithstanding that important difference, which aggravates

SoCalGas's violations in this OSC, the conduct of the utility is similar with respect to misleading the Commission and considerable harm to the regulatory process. The Commission is justified in imposing a penalty amount of $10,000 per offense.

The penalty amount, pursuant to Section 2107, of $9,806,000 is consistent with the foregoing precedents. There is ample legal authority for imposing a high penalty based on the presence of a continuing offense or offenses. This decision finds it is reasonable to impose this amount, as opposed to a lesser penalty amount, to serve as sufficient deterrent against such misconduct in the future.

6. Assignment of Proceeding

Genevieve Shiroma is the assigned Commissioner and Julie A. Fitch and Valerie U. Kao are the assigned ALJs in this proceeding. ALJ Kao is the presiding officer in this OSC.

Findings of Fact

1. Prior to D.18-05-041, the scope of activities in the energy efficiency codes and standards subprogram included any activity in which a utility or any of its employees:

- obtained information about, discussed or conducted research or analysis of a proposed code or standard;
- paid another individual or organization to obtain information about, discuss or conduct research or analysis of a proposed code or standard;
- communicated (*e.g.,* sent letters, provided comments, or made public statements) with the CEC, DOE, or a local government regarding a proposed code or standard; or
- paid another individual or organization to communicate with the CEC, DOE, or a local government regarding a proposed code or standard.

2. SoCalGas violated D.18-05-041, and therefore Section 2107, by charging expenditures to ratepayer-funded accounts for codes and standards advocacy activities after the effective date of D.18-05-041; the violations were numerous and substantive, as detailed in the record evidence of this proceeding and summarized in Table 1 of this decision.

3. SoCalGas is in contempt of the Commission for violation of D.18-05-041.

4. SoCalGas violated Rule 1.1 by failing to respond fully to Cal Advocates' data requests, by exhibiting profound disrespect for the Commission's authority, and by violating Section 2107.

Conclusions of Law

1. SoCalGas's expenditures on the activities identified in Table 1 of this decision are unjust and unreasonable.

2. SoCalGas is not entitled to shareholder incentive payments for activities that violated D.18-05-041 and Rule 1.1.

3. SoCalGas should refund any expenditures on the activities identified in Table 1 that it has not already excluded from ratepayer-funded accounts as of the date this decision becomes the Commission's decision.

4. Commission staff should dispose of SoCalGas's request for 2018 codes and standards ESPI earnings, consistent with this decision.

5. SoCalGas should be prohibited from cost recovery, from ratepayer-funded accounts, for codes and standards programs, as described in this decision, and SoCalGas should be prohibited from participating in any current or future codes and standards subprograms, except to transfer funds to the statewide codes and standards lead.

6. It is reasonable to maintain the prohibition ordered in this decision until the Commission lifts such prohibition or until the Commission finds that

SoCalGas has sufficient and appropriate policies, practices and procedures to ensure adherence to Commission intent.

7. It is reasonable to include SoCalGas's compliance with the prohibition ordered in this decision within the scope of UAB's annual energy efficiency audits, for no fewer than five years.

8. It is not reasonable to remove SoCalGas from its current role as the statewide gas Emerging Technology Program lead.

9. Taking into consideration the record as a whole and the public interest, it is reasonable to order SoCalGas to pay a fine of $9,807,000 under Pub. Util. Code §§ 2113 and 2107.

O R D E R

IT IS ORDERED that:

1. Southern California Gas Company must refund all ratepayer-funded expenditures associated with the activities identified in Table 1 of this decision, to the extent it has not already excluded these expenditures from ratepayer-funded accounts as of the date this decision becomes the Commission's decision.

2. Any expenditures associated with the activities identified in Table 1 of this decision, for which Southern California Gas Company has not yet received Efficiency Savings and Performance Incentive (ESPI) payment, are hereby ineligible for ESPI payment.

3. Commission staff is authorized to proceed with disposing of Southern California Gas Company's 2018 codes and standards Efficiency Savings and Performance Incentive earnings.

4. Within two years after the issue date of this decision, the Commission's Utility Audits Branch shall complete an audit to determine the amount of

ratepayer-funded expenditures associated with the activities identified in Table 1 of this decision. This audit shall identify the amount of expenditures that are ineligible for Efficiency Savings and Performance Incentive payment. The audit shall also examine and identify any other financial benefits that accrued to Southern California Gas Company (SoCalGas) or any SoCalGas employee, such as performance bonuses, resulting from these activities. SoCalGas must respond as expeditiously as possible and provide accurate and complete documentation as specified within the timeframe outlined by the Utility Audits Branch with no delays, but not later than five business days after receipt of instructions.

5. Within 30 days after the Commission approves the audit ordered by Ordering Paragraph 4, Southern California Gas Company must submit a Tier 2 advice letter detailing the entries it will make to the Demand Side Management Balancing Account and any other accounting mechanisms identified by the results of the audit ordered by Ordering Paragraph 4, to effectuate the refund of all expenditures associated with the activities identified in Table 1 of this decision, consistent with the findings of the audit ordered by Ordering Paragraph 4. Southern California Gas Company must include interest, consistent with the operation of the Demand Side Management Balancing Account and of any other accounting mechanisms identified by the results of the audit ordered by Ordering Paragraph 4, on these refund amounts. Southern California Gas Company must propose to effectuate this refund as part of its next gas Public Purpose Programs surcharge change.

6. Southern California Gas Company is prohibited from cost recovery, from ratepayer-funded accounts, for codes and standards programs as described in this decision; Southern California Gas Company is prohibited from participating in any current or future codes and standards subprograms; this prohibition does

not apply to the transfer of funds to the statewide codes and standards lead. Southern California Gas Company may not seek recovery from ratepayer-funded accounts for the costs of labor and associated overhead for codes and standards programs, as described in this decision.

7. Within 30 days after the issue date of this decision, Southern California Gas Company must implement appropriate tracking of employee time to ensure compliance with this decision. At minimum, Southern California Gas Company must identify and track the employee name, cost category, number of hours, and specific activity for all employee time spent on codes and standards programs.

8. The Commission's Utility Audits Branch shall include compliance with this decision within scope of its annual energy efficiency audits for no fewer than five years following the issue date of this decision.

9. Southern California Gas Company must implement every recommendation relating to tracking of employee time that the Utility Audits Branch includes in its annual energy efficiency audit reports, no later than 30 days after the publish date of each report.

10. The prohibition ordered in this decision shall remain in effect until the Commission lifts such prohibition, or until the Commission finds that Southern California Gas Company has sufficient and appropriate policies, practices and procedures to ensure adherence to Commission intent for codes and standards advocacy.

11. Unless and until the Commission lifts the prohibition ordered in this decision, Southern California Gas Company is not eligible to receive Efficiency Savings and Performance Incentive payments for codes and standards programs, or any codes and standards-related shareholder incentive payments that the Commission may adopt in the future.

12. Within 30 days of the issue date of this decision, Southern California Gas Company shall remit to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, California 94102, a check for $9,807,000 made payable to the State of California's General Fund. The number of this decision shall be shown on the face of the check.

13. Rulemaking 13-11-005 remains open.

This order is effective today.

Dated March 21, 2022, at San Francisco, California.

APPENDIX A
Appearances

Holly A. Jones
Sr. Counsel
SOUTHERN CALIFORNIA GAS COMPANY
555 W. FIFTH STREET, GT-14E7
LOS ANGELES CA 90013
(213) 244-2232
HAJones@SoCalGas.com
For: Southern California Gas Company

Sara Gersen
Sr. Attorney
EARTHJUSTICE
707 WILSHIRE BLVD., SUITE 4300
LOS ANGELES CA 90017
(213) 766-1073
SGersen@Earthjustice.org

Diana L. Lee
Deputy Chief Counsel
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-4342
Diana.lee@cpuc.ca.gov
For: Cal PA - Public Advocates Office (formerly ORA)

(End of Appendix A)