

**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
(Filed November 14, 2013)

**SIERRA CLUB APPEAL OF PRESIDING OFFICER'S DECISION ORDERING
REMEDIES FOR SOUTHERN CALIFORNIA GAS COMPANY'S ACTIVITIES THAT
MISALIGNED WITH COMMISSION INTENT FOR CODES AND STANDARDS
ADVOCACY**

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Pursuant to Rule 14.4 of the California Public Utilities Commission’s Rules of Practice and Procedure and the *Presiding Officer’s Decision Ordering Remedies for Southern California Gas Company’s Activities that Misaligned with Commission Intent for Codes and Standards Advocacy* (“Decision” or “Presiding Officer’s Decision”) that Administrative Law Judge (“ALJ”) Kao issued April 21, 2021, Sierra Club respectfully submits this appeal.

I. INTRODUCTION

The Commission has long recognized the importance of fines “to effectively deter” utility misconduct and create “an incentive for public utilities to avoid violations” of Commission rules.¹ The Commission has a legal obligation and established framework for imposing penalties when a utility “fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission.”² As the record in this proceeding shows, Southern California Gas Company (“SoCalGas”) used ratepayer money to finance a long-running campaign to undermine efficiency standards at all levels of government, particularly when the Company determined that stronger efficiency standards could threaten its business interests by making gas appliances less competitive against electric options. Yet despite the Presiding Officer’s Decision finding that SoCalGas’ actions were “improper” and “result[ed] in appreciable harm to the regulatory process,” the Decision fails to impose meaningful

¹ D.98-12-075, Final Op. Adopting Enforcement Rules, at 35, R.98-04-009 (Dec. 17, 1998) (“D.98-12-075”).

² Cal. Pub. Util. Code § 2107; D.98-12-075.

consequences.³ By not assessing penalties for SoCalGas' blatant, well-documented violations and only requiring a return of shareholder incentives and a portion of misspent funds, the Presiding Officer's Decision commits legal error. The Presiding Officer's Decision is an abdication of the Commission's responsibility to deter future misconduct and duty to impose penalties for violations of Commission requirements.

The Decision's rationales for declining to impose penalties for repeated SoCalGas misconduct are meritless. The Decision asserts that the "Commission has not established clear standards or criteria for what constitutes compliance or non-compliance with its intent for codes and standards advocacy."⁴ Yet as the Decision clearly found, the Commission's intent that utilities use customer money to advocate for more stringent codes and standards "has been consistent and unambiguous" and SoCalGas did not have "a valid excuse for substituting its own judgment for the Commission's."⁵ The Decision also claims that imposing fines on SoCalGas would amount to "selective enforcement."⁶ However, the potential that other utilities engage in similar misconduct is all the more reason to impose penalties to deter systemic violations of Commission policies. Regardless, there is no evidence other utilities repeatedly sought to weaken efficiency standards at the federal, state, and local levels to further their shareholders' interests.

To rectify the legal error in the Presiding Officer's Decision, the Commission should revise the Decision to apply fines within the statutorily permissible range and use the Commission's established five-part framework for determining fines for identified instances of misconduct. Sierra Club continues to support the Public Advocates Office's ("Cal Advocates") calculation that fines totaling \$255.3 million are an appropriate and necessary penalty for SoCalGas' misconduct.⁷ The Commission has the discretion to impose a different monetary penalty based on its application of the Public Utilities Code and the Commission's own policy

³ Presiding Officer's Decision Ordering Remedies for SoCaGas' Activities that Misaligned with Comm'n Intent for Codes and Standards Advocacy, at 31 (Apr. 21, 2021) ("Decision" or "Presiding Officer's Decision").

⁴ *Id.* at 25.

⁵ *Id.* at 11, 30, 34.

⁶ *Id.* at 25.

⁷ Opening Br. of the Cal Advocates on the Order to Show Cause Directing SoCalGas to Address Shareholder Incentives for Codes and Standards Advocacy Expenditures, at 1 (Nov. 5, 2020) ("Cal Advocates Opening Brief").

framework. Yet, the Public Utilities Code does not allow the Commission to decline to impose fines altogether, as contemplated under the Presiding Officer's Decision.

In addition, the Decision errs by ordering a narrow refund that will fail to repay all the ratepayer money that SoCalGas used to undermine efficiency standards. The Decision only requires restitution for the costs of actions that all parties stipulated to and improperly ignores many additional activities that are documented in the evidentiary record. For example, the record shows that SoCalGas conducted a broad campaign to delay the transition to electric heat pump water heaters, which included recruitment of gas industry allies to oppose the rule, informal negotiations to weaken recommendations in the Codes and Standards Enhancement ("CASE") Report to the California Energy Commission ("CEC"), and sending comment letters to the CEC. The decision ignores all the costs of this ratepayer-funded campaign except for those associated with the comment letters SoCalGas sent in its own name. Consequently, the Decision would leave ratepayers on the hook for a significant portion of SoCalGas' efforts to maintain California's reliance on fossil fuels. To correct this error, the Commission should revise the Decision to require a refund of all of SoCalGas' expenditures on codes and standards advocacy from 2014–2017.

By giving SoCalGas a slap on the wrist, the Decision abrogates the Commission's fundamental obligation to hold monopoly utilities accountable for misconduct. This is an affront to California ratepayers, who depend on the Commission for utility accountability and to deter future efforts to sabotage California's climate and energy policies. Indeed, the Decision sends a message to SoCalGas and to its other regulated entities that they are free to use ratepayer funds for whatever they wish, and if they are caught misusing those funds, they only risk paying some of the money back. This Decision's invitation to ignore Commission orders is not merely symbolic. The Decision would create new Commission precedent that utilities can cite to avoid penalties in future cases. Accordingly, Sierra Club respectfully requests the Commission rectify the errors of the Decision by applying its established framework to impose penalties for SoCalGas' violations of Commission rules and policies and by requiring all costs of SoCalGas' codes and standards advocacy from 2014–2017 be borne by SoCalGas shareholders.

II. BACKGROUND: THE PRESIDING OFFICER’S FINDINGS AND SOCALGAS’ MISCONDUCT

The Decision’s findings establish that SoCalGas failed to comply with the Commission’s instruction to use ratepayer funds to support more stringent energy efficiency codes and standards and reach codes through activities dating back to at least 2014. Over at least six years, SoCalGas fought numerous codes and standards that threatened its shareholders’ interests, from efficiency rules for water heaters that threatened gas throughput, to local reach codes that jeopardized the expansion of the gas distribution system. SoCalGas used ratepayer funds to accomplish this work, and also received shareholder incentives through the Energy Efficiency Savings and Performance Incentive (“ESPI”) award program for its codes and standards advocacy, despite its work to delay advances in energy efficiency.⁸ The Decision finds that SoCalGas “committed appreciable harm to the regulatory process by using ratepayer funds in misalignment with the Commission’s intent for codes and standards advocacy.”⁹ Not only does the Decision condemn these “offenses,”¹⁰ it also finds that SoCalGas failed to justify “substituting its own judgment for the Commission’s.”¹¹ The Decision finds that SoCalGas’ failure to seek Commission guidance when it identified “supposed or alleged policy inconsistencies” is “especially disturbing and warrants a significant remedy.”¹²

A. The Decision Determined the Commission’s Intent for Investor-Owned Utilities to Advocate for Stringent Energy Efficiency Codes and Standards Has Been Consistent and Unambiguous.

The Decision surveys Commission energy efficiency decisions dating back to 2005 and correctly concludes that the Commission’s directions for the investor-owned utilities (“IOUs”) to use ratepayer funds to advocate for stronger standards has been consistent and unambiguous:

⁸ Resolution G-3510 at 31 (Dec. 3, 2015) (2014 True Up); Resolution E-4807 at 34 (Dec. 15, 2016) (2015 award) (“Res. E-4807”); Resolution E-4897 at 30, 31 (Dec. 14, 2017) (True Up, 2016 award); Resolution E-5007 (Oct. 10, 2019) (True Up) (“Res. E-5007”). In Resolution E-5007, the Commission withheld its approval of SoCalGas’ Codes and Standards incentive for 2016 and partial 2017, stating that “we have serious questions about whether SoCalGas followed the clear intent of the C&S incentive program and, if it failed to do so, what consequences should flow from that,” and noting that it would determine the answer to that question in what was ultimately this OSC. Res. E-5007 at 34.

⁹ Decision at 26.

¹⁰ *Id.*

¹¹ *Id.* at 30.

¹² *Id.* at 26.

The Commission’s intent for codes and standards advocacy has been consistent and unambiguous: the large IOUs should use ratepayer funds to advocate for more stringent codes and standards. Similarly, the Commission’s intent for reach codes has clearly been that the large IOUs should use ratepayer funds to support local governments’ adoption of reach codes.¹³

For instance, the decision authorizing the utilities’ 2013–2014 energy efficiency programs stated that the “Commission has supported funding for the IOU codes and standards program” for three purposes, including “advanc[ing] the adoption of more stringent code and standards through the codes and standards program advocacy work” and “promot[ing] adoption of Reach Codes among local jurisdictions.”¹⁴ Similarly, the Commission decision approving the energy efficiency programs and budgets for 2015 stated that “we have authorized utilities to spend EE dollars advancing more stringent codes and standards.”¹⁵ The Presiding Officer’s review of these decisions is consistent with the Commission’s recent finding in D.18-05-041 that its “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’”¹⁶

B. The Decision Finds that Numerous SoCalGas Actions Misaligned with Commission Intent for Codes and Standards Advocacy.

The Decision orders SoCalGas to refund to customers the expenses associated with several specific advocacy actions because those activities did not conform to the Commission’s intent for ratepayer-funded advocacy:

- Two comment letters to the CEC about energy efficiency standards for water heating in new residential buildings;
- Five comment letters to the U.S. Department of Energy (“DOE”) about energy efficiency standards for appliances; and
- Letters and participation at city council meetings that urged three separate municipalities not to adopt proposed reach codes.¹⁷

¹³ *Id.* at 11.

¹⁴ *Id.* (quoting D.12-05-015 at 257).

¹⁵ *Id.* (quoting D.14-10-046).

¹⁶ *Id.* at 3.

¹⁷ *Id.* at 12–19 (listing activities that misaligned with Commission intent), 21–22 (requiring refund of associated costs).

The Decision finds that SoCalGas was “aware of, at minimum, the dubiousness of proceeding with certain activities.”¹⁸ Even if the Commission’s intent had been ambiguous, the Decision finds, “any such inconsistency would not have justified SoCalGas’s conduct.”¹⁹

1. SoCalGas Opposed Stringent Water Heater Efficiency Standards at the CEC.

The Decision finds that SoCalGas’ letter and public comments submitted to the CEC regarding updates to residential water heater efficiency standards in 2014 were “misaligned with Commission intent” because they “did not support more stringent codes and standards.”²⁰ SoCalGas’ campaign against the updated water heating standards began when a Commission-sponsored CASE report recommended basing standards for these appliances on the performance of instantaneous (tankless) water heaters, rather than the inefficient storage water heaters that dominated the market at the time.²¹ SoCalGas co-sponsored the CASE report alongside the other IOUs, but sought to undermine the report upon reviewing early drafts and determining that the recommended efficiency standards would “drive storage water heaters out of new construction.”²² While other utilities supported the CASE report, SoCalGas partnered with gas industry allies like the American Gas Association (“AGA”) and American Public Gas Association (“APGA”) in attempts to de-legitimize the CASE report’s findings.²³

Separate from the comments identified in the Decision, the Company succeeded in weakening the proposed standards through participation in the CASE team process. The original CASE report recommended only allowing the installation of inefficient gas storage water heaters in combination with solar thermal technology.²⁴ As a result of SoCalGas’ negotiations with the CASE team and CEC staff, the CASE team issued an updated report that changed its recommendation to allow gas storage water heaters with Quality Insulation Installation.²⁵ The

¹⁸ *Id.* at 26–27.

¹⁹ *Id.* at 30.

²⁰ *Id.* at 34.

²¹ Exhibit Cal Advocates/Sierra Club-20, Attach. B, Ex. 41 at 1 (PDF p. 1077); CEC, *CASE Initiative, Residential Instantaneous Water Heaters*, at viii, Docket No. 15-BSTD-01 (Sept. 2014), TN No. 74360 (“2014 IWH CASE Report”), <https://efiling.energy.ca.gov/GetDocument.aspx?tn=74360&DocumentContentId=15902>.

²² Exhibit Cal Advocates/Sierra Club-20, Attach. B, Ex. 24, at 1 (PDF p. 957).

²³ *Id.* at Ex. 4–5 (PDF p. 864–72); *see also id.* at Ex. 24 (PDF pp. 956–59) (“We are developing a coalition to counter the CASE recommendations” and have contacted AGA, APGA, and AHRI).

²⁴ 2014 IWH Case Report at ix; Exhibit Cal Advocates/Sierra Club-20, Attach. B, Ex. 35 (PDF pp. 1021–36) (summarizing proposed water heating mandate on fourth slide).

²⁵ Exhibit Cal Advocates/Sierra Club-20, Attach. B, Ex. 55 (PDF pp. 1130–34) (internal email crediting SoCalGas Codes and Standards manager Martha Garcia with the inclusion of the provision allowing

CEC’s code update adopted this weaker approach.²⁶ This “key win” delayed the transition to more efficient water heaters in new homes by another three years.²⁷

Not only did SoCalGas use ratepayer funds for its advocacy against the Title 24 update, but it also improperly claimed shareholder incentives for the efficiency savings from a rule it opposed. Commission staff had warned SoCalGas of their expectation that opposing a rule would mean forfeiting shareholder incentives for the rule’s energy savings.²⁸ Representatives from Pacific Gas and Electric Company (“PG&E”) and Southern California Edison Company (“SCE”) also objected to SoCalGas putting its logo on the CASE report when SoCalGas intended to fight the report’s recommendations.²⁹ Nonetheless, SoCalGas kept its logo on the CASE Report so that it could receive shareholder incentives for funding the report and proceeded to advocate against its recommendations.³⁰ The Decision notes that “SoCalGas was aware of, at minimum, the dubiousness of proceeding with certain activities without first seeking Commission guidance” because the other utilities and Commission staff had expressed these concerns.³¹

2. SoCalGas Opposed Stronger Federal Energy Efficiency Standards.

The Decision also finds that several of SoCalGas’ comment letters to DOE were “misaligned with Commission intent” because they “did not support more stringent codes and standards.”³² For each of these filings, SoCalGas used ratepayer dollars through the Demand Side Management Balancing Account (“DSMBA”) to fund advocacy in its shareholders’ interests between 2014 and 2017.

installation of storage water heaters with Quality Insulation Installation); CEC, *CASE Initiative, Residential Instantaneous Water Heaters*, Docket No. 15-BTSD-01, at 65 (Mar. 26, 2015), TN No. 75515, <https://efiling.energy.ca.gov/GetDocument.aspx?tn=75515&DocumentContentId=16205>.

²⁶ CEC, *2016 Building Energy Efficiency Standards for Residential and Nonresidential Buildings (Marked Version)*, at 267, Docket No. 15-BTSD-01 (Dec. 2, 2015), TN No. 76412 (“2016 Building Energy Efficiency Standards for Residential and Nonresidential Buildings”), <https://efiling.energy.ca.gov/GetDocument.aspx?tn=76412&DocumentContentId=16666>. This code update is subject to official notice as an official act of the CEC.

²⁷ See Exhibit Cal Advocates/Sierra Club-20, Attach. B, Ex. 23 (PDF pp. 954–55).

²⁸ Exhibit Cal Advocates/Sierra Club-23 (PDF pp. 1246–49) (Sept. 10, 2014 email from Paula Gruendling).

²⁹ Exhibit Cal Advocates/Sierra Club-25 (PDF pp. 1254–60).

³⁰ Exhibit Cal Advocates/Sierra Club-23 (PDF p. 1247) (Sept. 10, 2014 email from Martha Garcia) (“I have requested if submittal of the CASE study proceeds this Friday, then Energy Solutions include our logo (to claim savings if it eventually adopted by CEC) since we are cofounding this study.”).

³¹ Decision at 26–27.

³² *Id.* at 34.

Three of the DOE filings that the Decision identifies as misaligned with Commission intent fought the Obama administration’s efforts to adopt stronger efficiency standards for residential furnaces.³³ When the DOE first issued its proposed rulemaking in 2015, SoCalGas’ internal emails described it as “[a]nother effort we need to address” because it “could create fuel switching away from gas.”³⁴ SoCalGas’ DSMBA-funded employees immediately understood that a strict furnace standard was a threat to the Company, a sentiment that the SoCalGas Energy Programs Supervisor expressed in colorful language when he learned about the proposed rule: “Surrounded by Assassins!”³⁵ To develop its comments on the proposal, SoCalGas used ratepayer funds to hire the same consulting firm that was supporting AGA’s advocacy on the rule.³⁶ Armed with the gas industry’s preferred analysis of the proposal, SoCalGas opposed the DOE’s proposed standard for residential furnaces.³⁷

SoCalGas’ advocacy against the stronger federal furnace rules undermined the CEC’s efforts to advance California’s climate goals. The CEC argued that the proposed 92% efficiency standard would be cost-effective for California and the rest of the country, but urged DOE to set an even more stringent standard than what it proposed to unlock even more cost-effective savings.³⁸ The CEC also explained that a prompt update to the federal furnace standards would remove “a significant barrier to California being able to achieve its climate goals through cost-effective codes and standards.”³⁹ PG&E supported the CEC’s efforts to convince DOE to increase the stringency of its furnace rule, triggering SoCalGas’ concern that “the larger issue is that they [PG&E] are working in concert with the CEC. . . . So the wagons have circled.”⁴⁰

³³ *Id.* at 12–14 (¶¶ 3, 4, and 5).

³⁴ Exhibit Cal Advocates/Sierra Club-1, App. C, Ex. 26 at 13 (PDF p. 316).

³⁵ *Id.*

³⁶ *Id.* at 21 (PDF p. 320) (contract between SoCalGas and Gas Technology Institute for work related to the DOE Notice of Proposed Rulemaking for residential furnace standards, stating that the “work statement and deliverables provide a continuation of technical work conducted under separate contract with American Gas Association”); *id.* at Ex. 13 (PDF pp. 235–57) (Gas Technology Institute report attached to SoCalGas comments to DOE); Joint Statement of Stipulated Facts December 17, 2019 Order to Show Cause Against SoCalGas (U 904 G), at 2 (Oct. 2, 2020) (Fact 3 related to SoCalGas’ energy efficiency program activity for program years 2014–17).

³⁷ Exhibit Cal Advocates/Sierra Club-2 (PDF pp. 346–47) (“we must respectfully oppose the Notice of Proposed Rulemaking...SoCalGas opposes the advancement of Energy Conservation Standards for Residential Furnaces Docket No. EERE-2014-BT-STD-0031; RIN 1904-AD20 at this time and in its current form.”).

³⁸ Exhibit Cal Advocates/Sierra Club-3 at 4 (PDF p. 478).

³⁹ *Id.* at 3 (PDF p. 477).

⁴⁰ Exhibit Cal Advocates/Sierra Club-1, App. C, Ex. 9 (PDF p. 141).

The Decision also finds that SoCalGas acted contrary to Commission intent in 2016, when it used ratepayer funds to advocate against DOE’s proposed efficiency standards for commercial packaged boilers.⁴¹ In contrast to SoCalGas, PG&E and San Diego Gas & Electric Company agreed that the proposed standards were cost-effective and “would result in net positive benefits to consumers while resulting in only modest costs to manufacturers.”⁴² SoCalGas did not dispute the standard’s cost-effectiveness nor the ability of modern condensing boilers to meet the standard, but advocated against the standard because it would knock inefficient, non-condensing gas boilers out of the market.⁴³ This rationale conflicted with the DOE stance that designing standards to allow condensing appliances to remain on the market would “effectively lock-in the currently existing technology as the ceiling for product efficiency and eliminate DOE’s ability to address technological advances that could yield significant consumer benefits in the form of lower energy costs while providing the same functionality for the consumer.”⁴⁴ It also conflicts with the Commission’s own strategic plan for energy efficiency, which states that “codes and standards are [] focused on eliminating inefficient products.”⁴⁵ SoCalGas’ use of ratepayer funds to take an advocacy position aimed at prolonging inefficient appliances’ market eligibility was inappropriate and misaligned with Commission intent, particularly when even its peer utilities had identified the standard was cost-effective.

The final DOE filing that the Decision identifies as misaligned with Commission intent was SoCalGas’ 2017 response to the Trump Administration’s Request for Information to assist DOE in “identifying existing regulations, paperwork requirements and other regulatory obligations that can be modified or repealed . . . to achieve meaningful burden reduction.”⁴⁶ SoCalGas offered the Trump administration a roadmap for lax regulation by, for instance,

⁴¹ Decision at 14–15.

⁴² Exhibit Cal Advocates/Sierra Club-7 at 1 (PDF p. 515).

⁴³ Exhibit Cal Advocates/Sierra Club-6 at 2 (PDF p. 509) (“by selecting TSL 2, DOE may be inadvertently disqualifying a significant amount of non-condensing equipment, and in some cases may be forcing a shift to condensing equipment”).

⁴⁴ Energy Conservation Program: Energy Conservation Standards for Commercial Water Heating Equipment, 81 Fed. Reg. 34,440, 34,463 (2016).

⁴⁵ D.08-09-040, Decision Adopting the California Long-Term Energy Efficiency Strategic Plan, Attach. A at 69 (Sept. 19, 2008) (“D.08-09-040”).

⁴⁶ Exhibit Cal Advocates/Sierra Club-1, App. C, Ex. 4 (PDF p. 75) (U.S. Department of Energy, Request for Information, Reducing Regulation and Controlling Regulatory Costs, 82 Fed. Reg. 24,582 (May 30, 2017)); Decision at 15; Exhibit Cal Advocates/Sierra Club-1, App. C, Ex. 7 at 5–6 (PDF pp. 115–16) (SoCalGas, Comment on the Department of Energy Proposed Rule: Reducing Regulation and Controlling Regulatory Costs (July 14, 2017)).

recommending “deprioritizing efficiency regulations where above-code equipment has already proven to be successful in the marketplace.”⁴⁷ This recommendation directly contravenes the Commission’s policy that “[t]he appeal of codes and standards for promoting energy efficiency is simple: they make better energy performance mandatory, and not just for early adopters or self-selected consumers but for all users of regulated products and structures.”⁴⁸

3. SoCalGas Opposed Reach Codes that Would Set High Local Standards for Energy Efficiency.

The Decision also finds that SoCalGas’ advocacy regarding proposed reach codes in San Luis Obispo, Santa Monica, and Culver City was “misaligned with Commission intent” because it used ratepayer funds on reach code advocacy that “did not support local governments’ adoption of reach codes.”⁴⁹ Each of these cities considered adopting a reach code that would require or encourage efficient electric appliances in new buildings. SoCalGas responded to these threats to its shareholders’ interest in expanding the gas distribution system by abusing ratepayer funds to fight the proposals. For example, in 2019, SoCalGas used ratepayer funds to try to prevent the city of San Luis Obispo from adopting an all-electric reach code. SoCalGas used ratepayer-funded labor to develop public comments opposing the reach code⁵⁰ and also spent \$10,000 of ratepayer dollars in consulting costs to prepare for the city council meeting on the code update.⁵¹ Multiple ratepayer-funded employees attended the city council meeting in person, including SoCalGas President Maryam Brown.⁵² Similarly, SoCalGas opposed reach codes in Santa Monica, Culver City, and Ventura County, using ratepayer-funded labor to prepare comments and attend city council meetings.⁵³ As the Decision recognizes, SoCalGas’

⁴⁷ Exhibit Cal Advocates/Sierra Club-1, App. C, Ex. 7 at 4 (PDF p. 114). Sierra Club’s Opening Brief explained other specious arguments against energy efficiency standards and tactics that SoCalGas urged the Trump administration to take to advance the Company’s deregulatory agenda. Opening Br. of Sierra Club in the Order to Show Cause Issued December 17, 2019 Against SoCalGas, at 30–32 (Nov. 5, 2020).

⁴⁸ D.08-09-040, Attach. A at 67.

⁴⁹ Decision at 19, 34.

⁵⁰ Exhibit Cal Advocates/Sierra Club-37 (PDF pp. 1265–66); Exhibit Cal Advocates/Sierra Club-32 at Question 7 (PDF p. 1322–23).

⁵¹ Exhibit Cal Advocates/Sierra Club-33 at Questions 3(c), 5(c) (PDF pp. 1334–35, 1336–37).

⁵² *Id.* at Questions 2–6 (PDF pp. 1333–38).

⁵³ Exhibit Cal Advocates/Sierra Club-33 at Questions 9–11, 13 (PDF pp. 1340–42, 1344–45) (SoCalGas discovery responses confirming ratepayer-funded employees’ labor related to Santa Monica reach code); Exhibit Cal Advocates/Sierra Club-68 (PDF pp. 1642–45) (SoCalGas letter expressing concern over Culver City reach code); Exhibit Sierra Club R-4 at 4–5 (stating in response to question 3(e) in Sierra Club’s sixth set of data requests that “associated costs were charged to FG9205702200, which is designated as an Above-the-Line account”); Exhibit Cal Advocates/Sierra Club-61 at 1 (PDF p. 1604)

advocacy against the reach codes was misaligned with the Commission’s intent for utilities to use ratepayer funds “to support local governments’ adoption of reach codes.”⁵⁴

4. SoCalGas’ Energy Efficiency Codes and Standards Advocacy was Motivated by its Business Interests.

The Decision recognizes that “the record evidence demonstrates SoCalGas’s actions were driven at least in part by concerns over profitable throughput as well as for maintaining some basis for gas efficiency programs.”⁵⁵ Energy efficiency codes and standards have become an existential threat to SoCalGas because achieving California’s climate goals will require dramatic improvements in energy efficiency that are only achievable through electric appliances.⁵⁶ In 2017, SoCalGas delivered a presentation at a gas industry conference that explained how the combination of California’s energy efficiency goals and other climate policies could end the state’s reliance on natural gas. SoCalGas described energy efficiency as “a pathway to meet deep de-carbonization efforts of the state” and pointed to Title 24 water heater rules as an example of an energy efficiency measure that “may eliminate use of gas”:⁵⁷

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(SoCalGas letter to Ventura County opposing provision that would have prohibited installation of gas infrastructure in residential new construction to support proposed reach codes); Exhibit SCG-02, Prepared Direct Test. of Deanna R. Haines on Behalf of SoCalGas, at 12:16–17 (Jan. 10, 2020) (confirming that the labor costs of the signatory to the letter to Ventura County were booked to ratepayer-funded accounts).

⁵⁴ Decision at 34, FOF ¶¶ 3–4.

⁵⁵ *Id.* at 29.

⁵⁶ See, e.g., CEC, *2019 California Energy Efficiency Action Plan*, at 84 (Dec. 2019) (“[T]he most viable and least-cost path to immediate zero-emission residential and commercial buildings” is electrification of gas end uses, “in particular, electrification of space and water heating to high-efficiency, demand-flexible technologies[.]”), <https://www.energy.ca.gov/programs-and-topics/programs/energy-efficiency-existing-buildings>. Reports of the Commission’s sister agencies are subject to official notice and show the conclusions of experts on California energy and climate policymaking. See D.07-04-049, Order Modifying Decision (D.) 07-01-041 and Den. Reh’g of the Decision, as Modified, at 10–12 (Apr. 16, 2007).

⁵⁷ Exhibit Sierra Club R-6 at slides 2, 7.

California is leading the way in **ZNE POLICY**

CEC		
	Integrated Energy Policy Report (IEPR)	<ul style="list-style-type: none"> Zero Net Energy (ZNE) definition may exclude role for gas in residential sector
	Energy Efficiency	<ul style="list-style-type: none"> Appliance standards may eliminate use of gas -- T-24 Water Heater Regulations Building standards may eliminate gas end uses -- regulate/eliminate venting
	Indoor Air Quality Study/NG use	<ul style="list-style-type: none"> Micro particles/NORM

7

Ultimately, SoCalGas warned that “California’s Climate Change Policy could ELIMINATE NATURAL GAS” by decarbonizing generation, electrifying energy end uses, and electrifying the transportation sector:⁵⁸

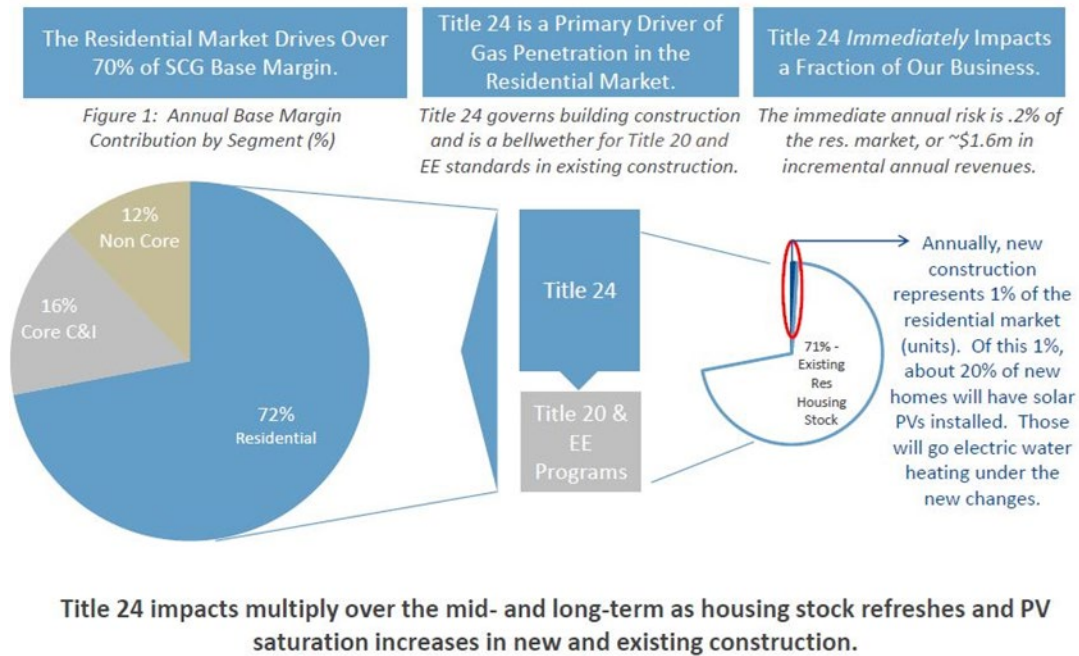
California's Climate Change Policy could
ELIMINATE NATURAL GAS

California is focused on "de-carbonizing" electricity and then electrifying end uses:

1. De-Carbonize Generation
2. Electrify Energy End Uses
3. Electrify Transportation

⁵⁸ *Id.* at slide 10.

The Company’s business interest drove SoCalGas’ positions and strategies on particular energy efficiency rules. For example, SoCalGas’ internal deliberations on potential updates to the CEC’s residential water heater efficiency standards framed its considerations in blunt terms: “What is more important to us? The C&S Program Vs Market Relevance !”⁵⁹ The Company’s internal analysis found that the CASE report recommendations “pose a significant threat to our gas water heating load in residential new construction,” which was important because residential water heating contributed at least 30% of its residential load and around \$800 million in annual revenues.⁶⁰ From SoCalGas’ perspective, perhaps the most troubling aspect of the potential Title 24 update was that they could make electric heat pump water heaters “a highly attractive consumer offer.”⁶¹ SoCalGas staff briefed the Senior Management Team on the threat to annual revenue from the proposed update to Title 24:⁶²



⁵⁹ Exhibit Cal Advocates/Sierra Club-20, Attach. B, Ex. 20 at 1 (PDF p. 941).

⁶⁰ *Id.* at Ex. 41, at 1 (PDF p. 1077).

⁶¹ *Id.* at Ex. 24 (PDF p. 958).

⁶² *Id.* at Ex. 35 (PDF p. 1022).

The Longer Term Business Impact Would Be Significant.

- » Left unchecked, the proposed changes would have a growing impact on SoCalGas:
 - Residential water heating accounts for ~\$800m of revenues/year
 - **New construction opportunity cost: Up to \$12m per year by 2020**
 - Adoption of these proposals would lead to new construction opportunity cost of \$1.6m in the first year (2016), as .2% of the market (new construction homes with PV) migrates to electric
 - By 2020, the new construction opportunity cost would be at least \$4.8m annually. If PV installations accelerate from 20% to 50% of new construction, the annual opportunity cost would be \$12m/year by 2020.
 - **Existing construction lost revenues: ~\$4.8m per year by 2020**
 - Extrapolated to retrofit standards, the first year replacement rate of gas storage or tankless by electric heat pump would result in an additional \$1.6m in lost revenues from current market the first year (2016) (2% of homes have solar PV; of those, 10% will have to replace water heater per year).
 - Assuming average water heater life of 10 years and that homes with solar PV will switch to electric water heating (2% of existing homes are solar), our gas water heating revenues would decline by an incremental \$1.6m/year, or up to \$4.8m annually by 2020
 - Total impact by 2020: Up to \$17m in lost revenues and opportunity cost annually
 - As gas water heating erodes in new construction, space heating, cooking, clothes drying, etc., are all put at risk due to dominant role of water heating in cost justifying the gas houseline
 - The loss of residential water heating revenues will cause rates to rise across other customer segments

SoCalGas employees received CEO Dennis Arriola and Chief Operating Officer Bret Lane’s “validation that Title 24 represents a significant risk to our business and have both their support to execute the action plan.”⁶³ The Company then pursued its “Title 24 Code Change Campaign,” a multi-pronged effort that included shaping the CASE report, recruiting AGA and APGA to lobby the CEC, and direct advocacy from SoCalGas to the CEC.⁶⁴

SoCalGas’ federal and local advocacy follow the same logic: inefficient gas-fueled appliances present both an opportunity to sustain “profitable throughput” for SoCalGas and “a basis for gas efficiency programs.”⁶⁵ The Decision acknowledges that due to the record evidence demonstrating SoCalGas’ concerns regarding protecting its business interests, “SoCalGas’s claims of concerns over cost-effectiveness or harm to ratepayers must be viewed with skepticism.”⁶⁶

⁶³ *Id.* at Ex. 48, at 1 (PDF p. 1106) (Sept. 22, 2014 email from Lisa Alexander describing the presentation she and Dan Rendler delivered to SMT on Title 24); *id.* at Ex. 36 (PDF p. 1044) (providing the following Action Plan on slide 7: “1. Internal team working on our opposition points with IOU’s and CASE authors/team 2. External advocacy from AGA, AGPA, Manufactures and possibly builders, real estate organizations and community advocates 3. Environmental outreach to decision makers and State stakeholders”).

⁶⁴ *Id.* at Ex. 22.

⁶⁵ Decision at 29.

⁶⁶ *Id.*

III. DISCUSSION

A. The Decision Commits Legal Error by Failing to Impose Penalties on SoCalGas.

The Decision commits legal error by failing to impose any penalties on SoCalGas after clearly establishing that SoCalGas violated Commission decisions. The Decision errs in finding that “[t]he Commission did not establish standards or criteria for determining whether the activities SoCalGas engaged in warrant a financial penalty.”⁶⁷ The Commission lacks authority to determine that some violations of Commission decisions do not warrant a financial penalty because Public Utilities Code Section 2107 sets a minimum penalty of \$500 for “[a]ny public utility that violates . . . 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.”⁶⁸ This statute requires the Commission to impose fines within a specific range when it finds that a utility has failed to comply with Commission directives.⁶⁹ The Decision did not provide a legitimate rationale for disregarding this mandate to penalize violations of Commission decisions.

Even if the Commission had authority to forego penalizing a utility for offenses, the Commission’s criteria for setting appropriate penalties within the statutory range would already provide the applicable standards. The Presiding Officer’s Decision improperly ignores the Commission’s decades-old framework for assessing penalties, which it established in D.98-12-075. The Commission has long understood that the “purpose of a fine is to go beyond restitution . . . and to effectively deter further violations by this perpetrator or others.”⁷⁰ A proper application of the Commission’s framework for setting penalties will achieve this purpose by “creat[ing] an incentive for public utilities to avoid violations.”⁷¹ The Commission should revise the Decision to impose penalties consistent with Public Utilities Code Section 2107, using the framework the Commission developed in D.98-12-075 to determine the appropriate amount.

⁶⁷ *Id.* at 34, FOF ¶ 7.

⁶⁸ Cal. Pub. Util. Code § 2107 (emphasis added).

⁶⁹ *Id.*

⁷⁰ D.98-12-075 at 35.

⁷¹ *Id.*

1. Public Utilities Code Section 2107 Requires a Minimum Fine of \$500 per Violation.

Section 2107 states that any public utility that “fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission . . . 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.”⁷² Thus, the statute contains a *minimum* penalty of \$500 for each instance of a utility failing to comply with Commission direction.⁷³ Any other reading of Section 2107 would be impermissible because it would render the \$500 minimum fine surplusage.⁷⁴ For violations prior to 2019, the former version of Section 2107 mandated a penalty range between \$500 and \$50,000.⁷⁵ The Decision commits legal error by failing to impose the statutory minimum fine for each of the instances it identifies where SoCalGas violated the unambiguous intent of the Commission’s numerous orders related to the utilities’ energy efficiency codes and standards advocacy. Further, Section 2108 provides that each day of a continuing violation “shall be a separate and distinct offense.”⁷⁶ Thus, the Commission must levy fines within the permissible statutory range for each day of the continuing offenses that SoCalGas committed.

In Section 2107.5, the Legislature set out its only exceptions to the rule that the Commission must fine regulated entities at least \$500 per violation. That section provides that the Commission “*may impose a fine* for each violation not to exceed five thousand dollars” on common carriers that violate certain statutes.⁷⁷ Section 2107.5 only applies to violations by regulated companies in the transportation sector and does not excuse the Decision’s failure to fine SoCalGas. Indeed, this provision shows that the Legislature is perfectly capable of using

⁷² Cal. Pub. Util. Code § 2107 (emphasis added).

⁷³ *Id.*

⁷⁴ *McCarther v. Pac. Telesis Grp.*, 225 P.3d 538, 541 (2010) (“A construction making some words surplusage is to be avoided.”).

⁷⁵ See Sen. Bill No. 879 (2011–2012 Reg. Sess.) Ch. 523, 2011 Cal Stats (“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 fifty thousand dollars (\$50,000) for each offense.”).

⁷⁶ Cal. Pub. Util. Code § 2108.

⁷⁷ *Id.* § 2107.5 (emphasis added).

permissive language when it wants to give the Commission discretion over whether to impose a fine.⁷⁸

The Commission must abide by the Legislature’s deliberate choice to require fines when gas utilities violate Commission decisions. As the Commission has recognized, if it determines “that the limits of Section 2107 are too confining, we may choose to ask the Legislature to expand the range.”⁷⁹ The Decision’s failure to impose even the statute’s minimum penalties was legal error.

2. The Decision’s Rationales for Not Imposing Penalties Do Not Withstand Scrutiny.

The Decision’s rationales for failing to impose financial penalties for SoCalGas’ repeated misconduct are unpersuasive. The Decision offers two reasons for not fining SoCalGas, both of which are unavailing. First, the Decision erroneously concludes that the Commission should not fine SoCalGas because it has not established clear criteria for what constitutes compliance with Commission intent, when the Decision itself found that SoCalGas’ actions misaligned with Commission intent. Second, the Decision refuses to fine SoCalGas to avoid “selective enforcement,”⁸⁰ rather than committing to take action against all utilities who engage in similar misconduct. Even if these rationales had merit, they would not relieve the Commission of its legal obligations under Section 2107 to impose fines for failing to comply with Commission decisions.

The Decision contradicts its own well-supported findings in concluding that it would be inappropriate to fine the Company because it “has not established clear standards or criteria for what constitutes compliance or non-compliance with its intent for codes and standards advocacy or for supporting local governments’ adoption of reach codes.”⁸¹ The Decision itself acknowledges that the Commission provided clear instructions for ratepayer-funded advocacy.⁸²

⁷⁸ *Am. Nurses Assn. v. Torlakson*, 304 P.3d 1038, 1047(2013) (“[T]he Legislature, by using different words to define the two exceptions, intended them to have different meanings.”); *People v. Hardacre*, 90 Cal. App. 4th 1392, 1398, 109 Cal. Rptr. 2d 667 (Cal Ct. App. 2001) (“When the Legislature uses different words in the same statute, we must presume it intended a different meaning.”).

⁷⁹ D.98-12-075 at 7.

⁸⁰ Decision at 25.

⁸¹ *Id.*

⁸² *Id.* at 34, FOF ¶ 3 (“The Commission’s intent for codes and standards advocacy and for reach codes is clear and unambiguous: the large IOUs should use ratepayer funds to advocate for more stringent codes and standards, and to support local governments’ adoption of reach codes.”).

By definition, compliance with Commission policies simply requires a utility to conduct itself in conformity with them.⁸³ The Presiding Officer’s Decision recognized that SoCalGas repeatedly failed to do so.⁸⁴ Despite the Decision’s incorrect suggestion to the contrary, fining SoCalGas does not require the Commission to apply new criteria retrospectively.⁸⁵ Rather, the Commission must penalize SoCalGas for its non-compliance with the clear instructions the Commission provided in the energy efficiency decisions that established the energy efficiency advocacy programs and authorized the utilities to use ratepayer funds on codes and standards advocacy with the sole purpose of advancing more stringent rules.⁸⁶

The Decision also has no basis for finding that penalizing SoCalGas for its years-long campaigns to undermine strong energy efficiency rules would inappropriately “subject SoCalGas to selective enforcement for conduct that other utilities might have also engaged in.”⁸⁷ If other utilities have violated the Commission’s instructions for ratepayer-funded codes and standards advocacy, the Commission should avoid concerns about “selective enforcement” by levying appropriate penalties for all such violations. The Commission will never enforce any of its orders if it refuses to penalize one utility for misconduct unless it simultaneously penalizes all other utilities for their misconduct.

⁸³ *Compliance*, Black’s Law Dictionary (11th ed. 2019) (“1. The act of yielding to some command, demand, requirement, etc.; conduct in accordance with a direction, exhortation, proposal, condition, request, wish, etc.; practical assent <his compliance was easily obtained>. 2. The state of being in conformity with some command, demand, requirement, etc.; harmony, agreement, or accordance <brought into compliance with the statute>.”).

⁸⁴ Decision at 34, FOF ¶ 4 (“SoCalGas used ratepayer funds on activities that misaligned with Commission intent for codes and standards advocacy and for reach codes.”); *id.* at 34–35, FOF ¶ 8 (“SoCalGas caused appreciable harm to the regulatory process, without justification, by using ratepayer funds on activities that misaligned with Commission intent and by repeatedly failing to take appropriate action on perceived or alleged inconsistencies between Commission decisions and other applicable authorities”).

⁸⁵ *Id.* at 25.

⁸⁶ *See, e.g.*, D.12-05-015, Decision Providing Guidance on 2013-2014 Energy Efficiency Portfolios and 2012 Marketing, Education, and Outreach, at 257 (May 18, 2021) (“[t]he Commission has supported funding for the IOU codes and standards program to: (a) advance the adoption of more stringent code and standards through the codes and standards program advocacy work; (b) improve code compliance through the Extension of Advocacy and Compliance Enhancement Program; and (c) promote adoption of Reach Codes among local jurisdictions.”); D.14-10-046, Decision Establishing Energy Efficiency Savings Goals and Approving 2015 Energy Efficiency Programs and Budgets (Concludes Phase I of R.13-11-005), at 61 (Oct. 24, 2014) (“we have authorized utilities to spend EE dollars advancing more stringent codes and standards”).

⁸⁷ Decision at 25.

It would be absurd to suggest that it is an abuse of enforcement discretion for the Commission to bring its first enforcement action for misusing energy efficiency funds against SoCalGas. SoCalGas used ratepayer funds to advocate against stronger efficiency standards since at least 2014, when the Company’s Senior Management Team received a briefing on the threat of proposed water heating rules and corporate leadership approved an action plan to block them.⁸⁸ Since then, SoCalGas continued to siphon ratepayer funds to advocate against efficiency rules at the federal, state, and local levels, taking positions that directly conflict with State policy.⁸⁹ While the Decision notes two instances in which other utilities did not support agency proposals to strengthen appliance efficiency standards, there is no evidence those utilities abused ratepayer funds in comparable, years-long campaigns against efficiency rules.

3. The Decision Must Be Revised to Apply the Commission’s Well-Established Framework for Calculating Penalties.

The Commission has an established framework for determining fines that must be applied here. The Commission’s framework for identifying the correct amount of penalties within the range set forth in Sections 2107 and 2108 strongly supports daily penalties at the high end of the spectrum. In D.98-12-075, the Commission adopted a five-prong framework for assessing penalties. In the opening briefs for this Order to Show Cause (“OSC”), Cal Advocates applied the Commission’s framework, identified ten distinct continuing violations, and recommended penalties that were 75 percent of the statutory maximum:⁹⁰

⁸⁸ Exhibit Cal Advocates/Sierra Club-20, Attach. B, at Ex. 48, at 1 (PDF p. 1106) (Sept. 22, 2014 email from Lisa Alexander describing the presentation she and Dan Rendler delivered to SMT on Title 24); *id.* at Ex. 36 (PDF p. 1044) (providing the following Action Plan on slide 7: “1. Internal team working on our opposition points with IOU’s and CASE authors/team 2. External advocacy from AGA, AGPA, Manufactures and possibly builders, real estate organizations and community advocates 3. Environmental outreach to decision makers and State stakeholders”).

⁸⁹ For example, SoCalGas’ ratepayer-funded advocacy against a federal furnace rule that the California Energy Commission urged the DOE to strengthen and adopt without delay because it was essential for meeting California’s energy policy. *Compare* Exhibit Cal Advocates/Sierra Club-2 (PDF pp. 346–47) (opposing advancement of DOE’s proposed efficiency rules for residential furnaces, arguing they are “not technically feasible and/or economically justified”), *with* Exhibit Cal Advocates/Sierra Club-3 at 4 (PDF p. 478) (CEC explaining the importance of furnace standards for climate goals and urging DOE to adopt stronger standards than proposed).

⁹⁰ Cal Advocates Opening Brief at 27–28. Sierra Club supported Cal Advocates’ calculations of daily violations and appropriate penalties in its Opening Brief as well.

Table 3: Violations and Fine Amounts:¹⁴⁸

Description	Start Date	End Date	Number of Days	Daily Fine	Total Amount (Daily Fine * Number of Days)
San Luis Obispo opposition letter	8/9/2019	2/4/2020	180	\$75,000	\$13,500,000
Santa Monica Electrification meeting and comments	9/10/2019	2/4/2020	148	\$75,000	\$11,100,000
Culver City Letter	2/4/2020	2/4/2020	1	\$75,000	\$75,000
CEC letter re: IWH	9/20/2014	5/31/2018	1349	\$37,500	\$50,587,500
Public Comments to CEC re: IWH	11/24/2014	5/31/2018	1284	\$37,500	\$48,150,000
DOE NORP comments	7/13/2015	5/31/2018	1053	\$37,500	\$39,487,500
DOE NODA comments	10/16/2015	5/31/2018	958	\$37,500	\$35,925,000
DOE SNOPR comments	1/9/2017	5/31/2018	507	\$37,500	\$19,012,500
DOE Packaged Boiler comments	6/27/2016	5/31/2018	703	\$37,500	\$26,362,500
DOE RFI Comments	8/8/2017	5/31/2018	296	\$37,500	\$11,100,000

The Decision identified each of the activities listed in Cal Advocates' table as misaligned with Commission intent.⁹¹ Even if the Commission disagrees with the assignment of 75 percent of the statutory maximum penalty for these violations, it must transparently show the following penalty analysis:

1. Starting and ending dates of the advocacy activities the Commission finds were misaligned with Commission directives to determine the number of days of continuing violations pursuant to Section 2108,
2. The daily fine, between \$500 and \$100,000 per violation starting in 2019, or between \$500 and \$50,000 per violation prior to 2019, as required by Section 2107, and
3. The five-prong analysis set forth in D.98-12-075 that underlies the Commission's calculation of the daily fine for each violation.

Sierra Club supports Cal Advocates' penalty calculations under the five-prong analysis of D.98-12-075, and addresses each of the prongs below.

⁹¹ Decision at 34. The Decision also identified an additional activity misaligned with Commission intent related to a DOE Case. DOE, 2016-09-02 Energy Conservation Program: Energy Conservation Standards for Residential Conventional Cooking Products, Docket No. EERE-2014-BTSTD-0005. Decision at 14, Activity ¶ 6. To the extent the Commission finds this activity misused ratepayer funds for advocacy that was misaligned with Commission intent, it should apply the same framework for assessing penalties.

a. Severity of the Offense

First, the Commission must consider the severity of the offense, which includes considerations of both physical and economic harm to victims as well as harm “to the integrity of the regulatory processes.”⁹² In explaining this prong of its analysis, the Commission stressed that compliance with Commission direction by utilities is “absolutely necessary to the proper functioning of the regulatory process,” and expressly required that “for this reason, disregarding a statutory or Commission directive, regardless of the effects on the public, *will be accorded a high level of severity.*”⁹³ In the Decision, the Presiding Officer concluded that SoCalGas had “committed appreciable harm to the regulatory process.”⁹⁴ Accordingly, under D.98-12-075, the Commission must accord a “high level of severity” to the offenses based on their harm to the regulatory process alone.

SoCalGas’ advocacy has also committed harm to the public by undermining California’s progress toward its climate goals, which are designed to protect the health and safety of the public. As the California Legislature explained in AB 32:

Global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California. The potential adverse impacts of global warming include the exacerbation of air quality problems, a reduction in the quality and supply of water to the state from the Sierra snowpack, a rise in sea levels resulting in the displacement of thousands of coastal businesses and residences, damage to marine ecosystems and the natural environment, and an increase in the incidences of infectious diseases, asthma, and other human health-related problems.⁹⁵

Energy efficiency codes and standards play a central role in California’s climate strategy, which the Commission has long recognized. For example, in its 2008 Energy Efficiency Strategic Plan,

⁹² D.98-12-075 at 36.

⁹³ *Id.* (emphasis added). The Commission recognizes the severity of offenses “involv[ing] the abuse of an incentive mechanism” because incentive mechanisms “require a great deal of trust between the Commission and the utility’s entire management”; incentive mechanisms offer the potential “to achieve desirable policy outcomes in the most cost effective and least burdensome manner,” but to rely on them the Commission “must be vigilant against abuse and appropriately penalize violations in order to safeguard the integrity of incentive mechanisms going forward for all utilities.” D.08-09-038, Decision Regarding Performance Based Ratemaking (PBR), Finding Violations of PBR Standards, Ordering Refunds, and Imposing a Fine, at 102–03 (Sept. 18, 2008) https://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/91249.PDF.

⁹⁴ Decision at 26.

⁹⁵ Assemb. Bill No. 32 (2005–2006 Reg. Sess.) Ch. 2, 2006 Cal. Stats.

the Commission stated: “There is no policy tool more essential for the widespread and persistent transformation of energy performance in California than energy codes and standards.”⁹⁶ The CEC has also emphasized the importance of advancing energy efficiency codes and standards without delay, finding that “each new opportunity for truly impactful investment in energy efficiency and fuel choice is precious. If the decisions made for new buildings result in new and continued fossil fuel use, it will be that much more difficult for California to meet its GHG emission reduction goals.”⁹⁷ Cal Advocates quantified the societal costs of the reduced standard SoCalGas advocated for in the DOE furnace rule alone at \$259 million to \$1.2 billion for one year of CO₂ emissions in California:⁹⁸

Table 4: Value of CO₂ Emissions Associated with Potential Furnace Rule Therm Savings

	National	California
	Estimated 1st year savings (Therms)	Estimated 1st year savings (Therms)
Savings from Furnace Rule		
Total therms	27,800,000,000	2,924,560,000
Total MMBTU (0.1 MMBTU = 1 therm)	2,780,000,000	292,456,000
Metric Tons CO ₂ (1 MMBTU = 0.053156 MTCO ₂)	147,773,680	15,545,791
Dollar Value of CO₂ From Savings		
	National - Year 1	California - Year 1
Cap & Trade value (\$16.68/MTCO ₂ e) [A]	\$ 2,464,864,982	\$ 259,303,796
Societal cost carbon (\$42/MTCO ₂ e) [B]	\$ 6,206,494,560	\$ 652,923,228
Societal cost carbon (\$72.67/ton 2019 from ACC) [C]	\$ 11,812,584,658	\$ 1,242,683,906

Sources and References:

National Furnace rule 1st year Savings	Based on 2.78 quads of energy estimate nationally - see Page 1-1 of DOE Furnace Rule document*
California Furnace rule 1st year savings	Based on 10.52% share of sales volumes - see Table 7a.2.4, p 7a-4 of DOE Furnace Rule document
Conversion of MMBTU from therms	https://www.inchcalculator.com/convert/million-btu-to-therm/
Conversion of MMBTU to MTCO ₂	From D.15-10-032, appendix A, p. 4. (0.053156 MTCO ₂ per 1 MMBTU)
[A] \$16.68/MTCO ₂ e based on August 2020 Cap and Trade Auction Price. See: ww2.arb.ca.gov/sites/default/files/2020-08/results_summary.pdf	
[B] "societal cost carbon of \$42/MTCO ₂ e" from p. 40 of CARB's 2017 climate change policy plan (in \$2007 dollars)	
[C] \$72.67/ton based on 2019 value from 2019 ACC. See: cpuc.ca.gov/General.aspx?id=5267 , and review the "emissions" tab for 2020 ACC Gas Model.	
* DOE Furnace Rule Document at: https://www.regulations.gov/document?D=EERE-2014-BT-STD-0031-0027	

In addition, in considering the severity of the offense, the Commission must consider the “number of the violations,” because “a series of temporally distinct violations can suggest an on-going compliance deficiency which the public utility should have addressed after the first instance.”⁹⁹ The Decision expressly finds that SoCalGas knowingly violated Commission intent on multiple different occasions, and devotes significant space to detailing why SoCalGas’

⁹⁶ D.08-09-040, Attach. A, at 67.

⁹⁷ CEC, *2018 IEPR Update Volume II*, at 26, Docket No. 18-IEPR-01 (Mar. 21, 2019), <https://www.energy.ca.gov/data-reports/reports/integrated-energy-policy-report/2018-integrated-energy-policy-report-update>.

⁹⁸ Cal Advocates Opening Brief at 33.

⁹⁹ D.98-12-075 at 37.

continued advocacy and failure to seek Commission guidance about its activities is “especially disturbing and warrants a significant remedy.”¹⁰⁰ The Decision recognizes that “the record evidence demonstrates that SoCalGas was aware of, at minimum, the dubiousness of proceeding with certain activities without first seeking Commission guidance” as early as 2014.¹⁰¹ Rather than seek Commission guidance or change its course, SoCalGas continued its advocacy activities in a variety of local, state, and federal venues for the next six years. This demonstration of SoCalGas’ “on-going compliance deficiency” which SoCalGas “should have addressed after the first instance” also supports imposition of a penalty at the high end of the statutory range.¹⁰²

b. Conduct of the Utility

SoCalGas’ pattern of repeatedly violating Commission instructions without disclosing or rectifying past misconduct also militates toward severe fines under the second prong of the Commission’s penalty framework analysis: the conduct of the utility.¹⁰³ In considering the conduct of the utility, the Commission considers (1) the utility’s actions to prevent a violation, (2) the utility’s actions to detect a violation, and (3) the utility’s actions to disclose and rectify a violation.¹⁰⁴

Prevention. The findings in the Presiding Officer’s Decision show that SoCalGas failed to take basic actions to prevent a violation, whereas the Commission’s longstanding policy requires that “all public utilities take reasonable steps to ensure compliance with Commission directives.”¹⁰⁵ Specifically, the Decision found SoCalGas “could have brought forth any policy inconsistency, perceived or alleged or otherwise, to the Commission for formal guidance in the energy efficiency rulemaking proceeding,” but rather chose to “substitut[e] its own judgment for the Commission’s.”¹⁰⁶ In addition to the clear instructions from the Commission itself, the Decision notes record evidence demonstrating that “SoCalGas was aware of, at minimum, the dubiousness of proceeding with certain activities without first seeking Commission guidance.”¹⁰⁷ First, the Decision explains that representatives from other utilities objected to SoCalGas

¹⁰⁰ Decision at 26.

¹⁰¹ *Id.*

¹⁰² D.98-12-075 at 37.

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 37–38.

¹⁰⁵ *Id.* at 37.

¹⁰⁶ Decision at 30.

¹⁰⁷ *Id.* at 26.

keeping its logo on the CASE report for a standard SoCalGas planned to oppose because of the conflict of interest and negative impact on the Codes and Standards program.¹⁰⁸

Second, the Decision notes that Commission staff had advised SoCalGas that taking the unprecedented step of opposing code improvements could require the Company to forfeit incentives attributed to that code update.¹⁰⁹ The Presiding Officer concludes that this e-mail from staff “was clear indication that SoCalGas should have, at minimum, sought formal guidance from the Commission.”¹¹⁰ Yet SoCalGas disregarded guidance from Commission staff and claimed incentives for updates it opposed.¹¹¹

Finally, the Decision quotes an email in which SoCalGas acknowledged that the Company faced a “dilemma” because it has “mandates to move this stuff [efficiency standards] forward.”¹¹² In that email, SoCalGas responded to a question from APGA about the Company supporting a proposed standard for commercial water heaters. SoCalGas’ Codes and Standards Manager first apologized, “My bad” in supporting the standard and then sought the industry association’s guidance for navigating the conflict between its corporate interests and the Commission’s mandates.¹¹³ While the Presiding Officer’s Decision faults SoCalGas for never seeking guidance from the Commission, the most straightforward explanation of this failure is that SoCalGas understood the Commission’s clear instructions to use its energy efficiency program to promote stronger standards and chose to ignore them.

Detection. SoCalGas’ conduct is particularly egregious under the Commission’s framework for analyzing a utility’s actions to detect a violation, which considers “management’s conduct during the period in which the violation occurred to ascertain particularly the level and extent of involvement in or tolerance of the offense by management personnel.”¹¹⁴ The evidentiary record in this case contains countless examples of SoCalGas’ management directly

¹⁰⁸ *Id.*

¹⁰⁹ Exhibit Cal Advocates/Sierra Club-23 (PDF p. 1247).

¹¹⁰ Decision at 27.

¹¹¹ *See, e.g.*, Res. E-4807 at 31–34 (2014 Ex-Post Savings).

¹¹² Decision at 27.

¹¹³ Exhibit Cal Advocates/Sierra Club-40 (PDF p. 1398) (“I think my team erred in briefing me on what the letter was proposing. Their understanding was that TSL 3 was a lower standard than the 95% being proposed and that they believed the letter reflected that. My bad. I didn’t dig as deep as I should have. My dilemma is that I also have to place nice in the sandbox here on Mars because we have mandates to move this stuff forward based on funding so in effect, I live two worlds. I would love to get some feedback from you on good ways for me to bridge between my two masters...for real.”).

¹¹⁴ D.98-12-075 at App. A, at 9.

participating in the activities that violated Commission intent. For instance, SoCalGas' Senior Management Team received a briefing on the Company's Action Plan to prevent the CEC from adopting stringent water heater standards—and approved and offered to assist those efforts.¹¹⁵ SoCalGas' Vice President of Customer Solutions oversaw and directed the Company's advocacy against the proposed federal standards for residential furnaces.¹¹⁶ More recently, SoCalGas President Brown attended a San Luis Obispo city council meeting where a public affairs employee spoke against a proposed reach code,¹¹⁷ and SoCalGas Vice President Sharon Tomkins signed the letter opposing that city's reach code.¹¹⁸ By failing to penalize SoCalGas' abuse of ratepayer funds in this case, the Presiding Officer's Decision rewards the decision of SoCalGas' management to siphon ratepayer-funded resources for the Company's campaigns against efficiency standards.

Disclosure and rectification. Finally, SoCalGas cannot enjoy whatever leniency might be appropriate if the Company had promptly reported and corrected its misuse of ratepayer funds.¹¹⁹ Not only did the Company fail to seek Commission guidance before it used ratepayer funds to obstruct energy efficiency rules, but it failed to disclose its activities after they occurred. SoCalGas' annual reports to the Commission on its energy efficiency programs demonstrate that the Company understood that the purpose of the Codes and Standards program was to strengthen efficiency rules and only disclose program activities that aligned with that purpose. For instance, in its 2017 energy efficiency report, SoCalGas states: “The Statewide Codes and Standards (C&S) Program saves energy on behalf of ratepayers by influencing regulatory bodies such as the California Energy Commission and the U.S. Department of Energy (DOE) to strengthen

¹¹⁵ Exhibit Cal Advocates/Sierra Club-20, Attach. B, Ex. 35 (PDF pp. 1021–36); *id.* at Ex. 47 (PDF pp. 1103–04).

¹¹⁶ Exhibit Cal Advocates/Sierra Club-2 (PDF p. 347) (Vice President of Customer Solutions Rodger Schwecke signed the cover letter to SoCalGas' comments on the proposed furnace rules, stating in his letter that “SoCalGas opposes the advancement of Energy Conservation Standards for Residential Furnaces . . . at this time and in its current form”); Exhibit Cal Advocates/Sierra Club-1 at C-123, C-129, C-138 (PDF pp. 163, 169, 178) (Codes and Standards Manager briefing Vice President Schwecke); Exhibit Cal Advocates/Sierra Club-10 (PDF pp. 548–51) (Vice President Schwecke reviewing options for SoCalGas' response to the DOE notice of data availability); Exhibit Cal Advocates/Sierra Club-1 at C-007 (PDF p. 47) (2016 comments of SoCalGas on supplemental notice of proposed rulemaking for federal furnace standards, signed by Vice President Lisa Alexander).

¹¹⁷ Exhibit Cal Advocates/Sierra Club-33 (PDF p. 1333) (Question 2).

¹¹⁸ Exhibit Cal Advocates/Sierra Club-37 (PDF pp. 1359–68).

¹¹⁹ *See* D.98-12-075 at 38.

energy efficiency regulations.”¹²⁰ That report fails to mention the comments SoCalGas filed urging DOE to “consider deprioritizing” certain energy efficiency regulations.¹²¹ Unless the Commission imposes severe penalties to deter future misconduct, SoCalGas will not have an incentive to correct its behavior in the future and take reasonable steps to prevent, detect, disclose and correct violations.

c. Financial Resources of the Utility

SoCalGas can afford to pay a substantial fine for its offenses. As set forth in Sierra Club’s Opening Brief, SoCalGas reported assets worth \$17.077 billion in 2019, and reported earnings of \$641 million in 2019.¹²² The Commission’s framework specifically acknowledges that fines should be tailored to achieve the objective of deterrence, comparing “[s]ome California utilities” that “are among the largest corporations in the United States” with others that are “extremely modest, one-person operations.”¹²³ A penalty at the higher end of the statutory range is appropriate to achieve deterrence for a company of SoCalGas’ size.

d. Totality of the Circumstances in Furtherance of the Public Interest

¹²⁰ Exhibit SCG-27, Attach. at 28. The Company’s description of the program in prior years is substantially the same. The 2016 report states: “The Statewide Codes and Standards (C&S) Program saves energy on behalf of ratepayers by influencing standards and code-setting bodies, such as the California Energy Commission (CEC) and the United States Department of Energy (DOE), to strengthen EE regulations.” Exhibit SCG-26, Attach. at 29. The 2015 report states: “The Statewide Codes and Standards (C&S) Program saves energy on behalf of ratepayers by influencing standards and code-setting bodies, such as the California Energy Commission (CEC) and the Department of Energy (DOE), to strengthen EE regulations by improving compliance with existing C&S, assisting local governments to develop ordinances that exceed statewide minimum requirements, and coordinating with other programs and entities to support the State’s ambitious policy goals.” Exhibit SCG-25, Attach. at 2-26–2-27. The 2014 report states: “The Statewide Codes and Standards (C&S) Program saves energy on behalf of ratepayers by influencing standards and code-setting bodies, such as the California Energy Commission (CEC) and the US Department of Energy (USDOE), to strengthen energy efficiency regulations, by improving compliance with existing codes and standards, by assisting local governments to develop ordinances that exceed statewide minimum requirements, and by coordinating with other programs and entities to support the State’s ambitious policy goals.” Exhibit SCG-24, Attach. at 2-30.

¹²¹ Exhibit SCG-27, Attach. at 31; Exhibit Cal Advocates/Sierra Club-1, App. C, Ex. 7 at 4 (PDF p. 114).

¹²² SoCalGas, Annual Report 10-K, at 57 (Feb. 27, 2020), <https://investor.sempra.com/static-files/68af0350-d99c-412c-af4f-aa8e6c8e2606>. This Securities and Exchange Commission filing includes information for Sempra Energy Company and its subsidiaries, SoCalGas and San Diego Gas & Electric Company. The 10-K filings for the Sempra utilities are subject to official notice; D.16-06-054, Decision Addressing the General Rate Cases of San Diego Gas & Electric Company and Southern California Gas Company and the Proposed Settlements, at 321, FOF ¶ 53 (June 23, 2016).

¹²³ D.98-12-075 at 38–39.

The Commission’s framework requires “[s]etting a fine at a level which effectively deters further unlawful conduct by the subject utility” by tailoring the fine and any other sanctions “to the unique facts of the case.”¹²⁴ In this case, steep fines are necessary to deter future misconduct because SoCalGas has an enormous incentive to use ratepayer funds to undermine strong efficiency rules. As discussed above, SoCalGas’ internal analysis found that a single proposal to strengthen water heating standards for new residential buildings would be “detrimental” to the Company and reduce annual revenue by \$17 million.¹²⁵ Further amplifying SoCalGas’ incentives to use ratepayer funds to undermine efficiency standards are the low likelihood of the Company getting caught¹²⁶ and its history of success using a ratepayer funds to delay the adoption of strong standards.¹²⁷ Thus, if the Commission’s sole aim were to deter SoCalGas from abusing ratepayer funds to combat residential water heating standards—and not the full suite of energy efficiency standards that threaten SoCalGas’ market share—the fine would need to be far more than \$17 million.

e. The Role of Precedent

SoCalGas’ use of customer funds to undermine California’s climate and efficiency policies is unprecedented.¹²⁸ In this case of first impression, the Commission should set a precedent that will deter similar conduct in the future and reverse the Presiding Officer’s erroneous decision to set no penalties whatsoever. The Commission’s long-standing framework for assessing penalties indicates that SoCalGas’ misconduct warrants steep penalties based on the severity of the violations, the conduct of the utility in carrying out repeated and undisclosed violations under the oversight of senior management, and the Company’s deep resources.

¹²⁴ *Id.* at App. A, at 10.

¹²⁵ Exhibit Cal Advocates/Sierra Club-20, Attach. B, Ex. 35 (PDF p. 1026).

¹²⁶ SoCalGas’ Codes and Standards staff began advocating against proposed improvements to the California residential water heating standards in 2014 and this behavior did not reach the Commission’s attention until 2017.

¹²⁷ As discussed in Section II(B)(1), SoCalGas’ ratepayer-funded campaign against the 2014 water heating standards achieved its goal of delaying a transition away from inefficient storage water heaters until another code cycle.

¹²⁸ *See* Decision at 28 (“The Commission never engaged in [deliberation about potential criteria by which utilities might reasonably use ratepayer funds to raise concerns over proposed stringent code and standards] because it never conceived of a utility using ratepayer funds for activities that did not advocate for a more stringent code or standard, and because no party – including SoCalGas – ever raised it.”).

B. The Decision’s Audit Mechanism Will Not Refund All Ratepayer Money SoCalGas Used to Advocate against Stringent Efficiency Rules.

The Decision requires SoCalGas to refund expenditures that the Company has recovered from ratepayers through the DSMBA for one letter and six public comments that advocated against stronger energy efficiency codes and standards.¹²⁹ Under the Decision, the Commission’s Utility Audits Branch will conduct an audit to determine the amount of ratepayer funds that SoCalGas spent on those specific activities.¹³⁰ The Decision will not make ratepayers whole because it will allow the Company to retain all the other ratepayer funds it used to fight stringent efficiency rules from 2014–2017. The Decision’s flawed approach rests on the legal error of failing to consider the evidence of SoCalGas’ misconduct in the evidentiary record, aside from the stipulation of facts. On appeal, the Commission should correct course and require a refund of all of SoCalGas’ expenditures on codes and standards advocacy from 2014–2017.

1. The Specific Actions that the Audit Will Investigate Are The Tip of the Iceberg of SoCalGas’ Ratepayer-Funded Advocacy against Strong Codes and Standards.

The Decision orders refunds for the costs of specific comment letters that are just one facet of SoCalGas’ DSMBA-funded campaigns against stronger state and federal efficiency rules. The Decision’s narrow audit mechanism ignores other activities that SoCalGas undertook with ratepayer-funded labor to fight specific efficiency rules and to galvanize the gas industry to advocate against efficiency codes and standards.

For instance, the audit will undercount the costs of SoCalGas’ campaign against the CEC adopting strict standards for water heating in new residential buildings that the CASE team’s independent experts identified as cost-effective in 2014. The only costs from this broad effort that the Decision would require SoCalGas to return to ratepayers are expenditures on two comment letters that the Company submitted to the CEC in September 2014 and November 2014.¹³¹ The narrow focus on the costs of preparing these letters would ignore SoCalGas’ successful efforts to weaken the standards through informal negotiations with the CASE team. Nor would the Decision require SoCalGas to return the money it spent recruiting its gas industry allies to lobby against the proposed rules.

¹²⁹ *Id.* at 12–15, 21–22.

¹³⁰ *Id.* at 24.

¹³¹ *Id.* at 12, 24; Exhibit Cal Advocates/Sierra Club-70 (PDF pp. 1649–51); Exhibit Cal Advocates/Sierra Club-27 (PDF p. 1266).

The narrow focus of the audit would allow SoCalGas to keep the ratepayer funds it spent to successfully delay the transition from inefficient storage water heaters to modern instantaneous and heat pump water heaters. The first version of the CASE Report recommended basing new standards on the cost-effective performance of efficient instantaneous gas water heaters and only allowing builders to install storage water heaters if they paired that outmoded equipment with solar thermal water heating.¹³² SoCalGas’ internal analysis found that the proposed standard would be “virtually unattainable for storage water heaters,” so it “immediately convened a team to assess the situation and the impact to our company and determined it to be detrimental.”¹³³ SoCalGas’ representative on the CASE team overcame this threat by watering down the recommendations in a revised CASE report, which it considered a “key win.”¹³⁴ That is, the new CASE report recommended allowing builders to install inefficient storage water heaters in new homes as long as they also installed quality insulation.¹³⁵ The CEC adopted this approach in its final rule, allowing builders to install inefficient gas-fired water heaters that would lock in emissions for years.¹³⁶ This successful advocacy is distinct from the letters identified in the Decision, which do not even mention the issue of installing inefficient water heaters that are paired with insulation.¹³⁷

Moreover, the costs of the letters that SoCalGas submitted in its own name would not include the costs of organizing the broader gas industry’s support for its campaign against the water heating standards. SoCalGas’ internal documents show its plans to work with AGA,

¹³² Exhibit Cal Advocates/Sierra Club-20, Attach. B, Ex. 20 (PDF pp. 940–44). *See also* 2014 IWH CASE Report at viii. The Commission has taken notice of the existence of filings in other proceedings and of materials posted on websites that is not subject to interpretation. D.16-01-014, Modified Presiding Officer’s Decision Finding Rasier-CA, LLC, in Contempt, in Violation of Rule 1.1 of the Commission’s Rules of Practice and Procedure, and that Raiser-CA, LLC’s License to Operate Should Be Suspended for Failure to Comply with Commission Decision 13-09-045, at 20–21 (Jan. 14, 2016) (“D.16-01-014”).

¹³³ Exhibit Cal Advocates/Sierra Club-20, Attach. B, Ex. 24 (PDF pp. 956–59).

¹³⁴ *Id.* at Ex. 55 (PDF p. 1132) (internal email praising Codes and Standards Manager Martha Garcia as “successful in getting the inclusion of the storage water tank with QII [quality insulation installation] + compact design (which we find an acceptable alternative to the solar thermal option).”); *Id.* at Ex. 23 (PDF p. 955).

¹³⁵ CEC, *CASE Initiative, Residential Instantaneous Water Heaters*, Docket No. 15-BTSD-01, at 65 (Mar. 26, 2015), TN No. 75515. The Commission has taken notice of the existence of filings in other proceedings and of materials posted on websites that is not subject to interpretation. D.16-01-014 at 20–21.

¹³⁶ 2016 Building Energy Efficiency Standards for Residential and Nonresidential Buildings, at 267. This code update is subject to official notice as an official act of the CEC.

¹³⁷ Exhibit Cal Advocates/Sierra Club-70 (PDF pp. 1649–51); Exhibit Cal Advocates/Sierra Club-27 (PDF p. 1266).

APGA, and other industry groups in its “Title 24 Code Change Campaign” with the objective in bold: “***GOAL: Postpone the efforts of the California Energy Commission from supplanting the minimum Federal Department of Energy (DOE) Energy Efficiency (EF) level of Storage Water Heaters (SWH) of .675 EF to an Instantaneous Water Heaters (IWH) with a .82 EF until further study is completed.***”¹³⁸ Acting as an informant to the gas industry, DSMBA-funded SoCalGas staff forwarded the draft CASE Report from August 2014 to its coalition partners to develop comments and critiques,¹³⁹ despite knowing that this preliminary draft of the report was not meant to be distributed publicly.¹⁴⁰ After AGA submitted comments criticizing the stringent proposal, SoCalGas leadership congratulated a DSMBA-funded employee on getting the trade association involved.¹⁴¹ Allowing SoCalGas to keep the ratepayer funds it spent on these activities will encourage the Company to keep abusing ratepayer funds to undermine efficiency standards that threaten its bottom line.

From 2014 to 2017, SoCalGas took advantage of DSMBA-funded labor to fight energy efficiency rules through a cornucopia of other tactics that the Decision ignores. For example, when DOE was considering stronger efficiency rules for residential furnaces, SoCalGas relied on DSMBA-funded labor to prepare briefing materials for the AGA Board meeting where SoCalGas delivered a presentation on the gas industry’s options for fighting the rule.¹⁴² These tactics allow SoCalGas to amplify the impact of its ratepayer-funded advocacy by influencing the broader gas industry’s efforts against a proposed efficiency rule.

¹³⁸ Exhibit Cal Advocates/Sierra Club-20, Attach. B, Ex. 22 (PDF p. 948) (emphasis in original).

¹³⁹ *Id.* at Ex. 3 (PDF pp. 862–63) (August 28, 2014 email from Sue Kristjansson to Daniel Lapato, Jim Ranfone and others).

¹⁴⁰ Exhibit Cal Advocates/Sierra Club-74 (PDF p. 1764) (Sierra Club-09 SoCalGas Response, Question 1).

¹⁴¹ Exhibit Cal Advocates/Sierra Club-20, Attach. B, Ex. 7 (PDF p. 880) (“Sue/Team – See below from the AGA update. Great job getting them engaged.”); Exhibit Sierra Club-76 and -76C (SoCalGas stating in response to Question 2(d) that Sue Kristjansson and other employees were DSMBA funded); *see also* Exhibit Cal Advocates/Sierra Club-20, Attach. B, Ex. 42 (PDF p. 1082) (“My understanding is that Ken will lead the charge on advocacy, including APGA etc. It seems that Martha will lead on the joint IOU working groups/comments now that she’s back, and Sue can support and provide overall strategy and coordination across those two efforts.”).

¹⁴² Exhibit Cal Advocates/Sierra Club-54 (PDF pp. 1545–51); Exhibit Cal Advocates/Sierra Club-1, App. C at C-132 (PDF p. 172) (SoCalGas C&S Manager explaining that her team worked with another team to develop the attached AGA Board Book materials).

Moreover, SoCalGas' Codes and Standards Manager contributed to the APGA's comments to DOE and letter to DOE Secretary Perry.¹⁴³ Acting under the cover of an industry association allows SoCalGas to advance positions even more extreme than those it takes when it speaks in its own voice, including positions that are in direct conflict with State policy.¹⁴⁴ By using ratepayer dollars to pay the Codes and Standards manager to work on the public comments of APGA, SoCalGas' shareholders would continue to take advantage of ratepayer funds to pay for the gas industry's self-interested advocacy. SoCalGas Codes and Standards Manager Sue Kristjansson reviewed APGA's comment letters in her role as the Company's representative on the APGA Direct Use Task Group, a committee that Ms. Kristjansson described as "one piece that is integral to success in fending off the ultimate goal....no fossil fuels!"¹⁴⁵ The Commission must not ignore these abuses of DSMBA-funded labor.

The same Codes and Standards Manager also spent time in 2016 fundraising for and organizing a keynote address at an APGA conference by Alex Epstein on "the moral case for fossil fuels."¹⁴⁶ As the primary sponsor of the speech, SoCalGas worked with APGA staff to give Mr. Epstein directions for what he should cover, inviting his thoughts on how the gas industry can push back against "the environmental and energy efficiency lobbies."¹⁴⁷ Despite the record evidence that SoCalGas used DSMBA-funded labor to plan a keynote speech by a professional climate denier, the Decision would not require a refund of that misspent money.

As a final example, this DSMBA-funded manager traveled to a gas industry conference to deliver a presentation on "Zero Net Energy: The Pathway to Electrification" that warned

¹⁴³ Exhibit Cal Advocates/Sierra Club-56 (PDF pp. 1557–59); Exhibit Cal Advocates/Sierra Club-58 at 558 of 1335 (PDF p. 1565).

¹⁴⁴ For example, APGA's letter to Secretary Perry urges him to use a legally flawed "error correction" theory to stop Obama-era efficiency rules from taking effect. Exhibit Cal Advocates/Sierra Club-57 (PDF pp. 1560–63). After DOE adopted this improper "error correction" policy, the State of California joined a broad coalition of states, consumer advocates, and environmental organizations to sue Secretary Perry and force him to perform his duty to move forward with the rules. *Nat. Res. Def. Council, Inc. v. Perry*, 940 F.3d 1072 (9th Cir. 2019).

¹⁴⁵ Exhibit Cal Advocates/Sierra Club-49 (PDF p. 1461–62) (May 2, 2016 email from Sue Kristjansson).

¹⁴⁶ Exhibit Sierra Club R-2 at 73 (SoCalGas Codes and Standards and ZNE Manager inquiring "did you think about the contribution to the APGA conference with Alex Epstein as keynote?" and explaining that "I'm just looking to off-set about \$5-7K" of the \$20K speaking fee); Exhibit Sierra Club R-3 at 1711–1712 (March 15, 2016 email from Alex Epstein's speaker's bureau requesting confirmation that the topic for the speech Alex Epstein should present is "The Moral Case for Fossil Fuels").

¹⁴⁷ Sierra Club R-3 at 1710–1711 (March 16, 2016 email RE: Alex Epstein).

attendees that “California’s Climate Change Policy could ELIMINATE NATURAL GAS.”¹⁴⁸ The presentation identified “ZNE [zero net energy]” as a metric and “electrification/deep decarbonization as the real ‘thing’” and coached her industry colleagues on fighting decarbonization in their states with “an exercise in identifying what needs to happen.”¹⁴⁹ Allowing SoCalGas to retain the ratepayer funds it spent on these activities rewards the Company for treating the DSMBA as a slush fund for its fights against energy efficiency.

2. The Decision Erred by Failing to Consider Record Evidence Beyond the Stipulated Facts.

The Decision commits legal error in refusing to order a refund of expenses “other than those associated with the facts to which all parties stipulated” because the parties agreed to waive their right to an evidentiary hearing in this proceeding.¹⁵⁰ As the Decision notes, the parties proposed a process for admitting evidence into the record without an evidentiary hearing and the assigned ALJ approved this joint proposal.¹⁵¹ As discussed above, the parties developed a robust evidentiary record that shows SoCalGas’ misconduct extends far beyond the items the Company stipulated to. It is unlawful for the Presiding Officer’s Decision to ignore the record that the parties built through this Commission-approved process. The Public Utilities Code specifically requires that “the findings of fact shall be based on the record developed by the assigned commissioner or the administrative law judge” in an adjudicatory process like this OSC.¹⁵² The Code also explicitly authorizes the Commission to use informal processes in its investigations: “No informality in any hearing, investigation, or proceeding or in the manner of taking testimony shall invalidate any order, decision, or rule made, approved, or confirmed by the commission.”¹⁵³

Further, the Decision’s refusal to consider evidence beyond the stipulation pulls the rug out from under parties that followed the approved process for building the record in this OSC. The parties discussed the need for an evidentiary hearing in this proceeding with the assigned ALJ at a status conference in July 2020 and jointly proposed a mechanism for admitting evidence without hearings.¹⁵⁴ Pursuant to this Commission-approved process, the parties filed

¹⁴⁸ Exhibit Sierra Club R-6 at title slide and slide 10.

¹⁴⁹ Exhibit Sierra Club R-5 at 194 (June 12, 2017 email from Sue Kristjansson).

¹⁵⁰ Decision at 22.

¹⁵¹ *Id.* at 7.

¹⁵² Cal. Pub. Util. Code § 1701.2(e).

¹⁵³ *Id.* § 1701(a).

¹⁵⁴ The Public Advocates Office, Sierra Club, and Southern California Gas Company Joint Status Update and Proposal for Alternative Procedural Schedules In the Orders to Show Cause Against Southern

motions to move documentary evidence into the record on September 15, 2020, and Sierra Club and SoCalGas filed motions to move rebuttal documentary evidence into the record on September 25, 2020. Parties had an opportunity to object to the admission of evidence.¹⁵⁵ The assigned ALJ admitted documentary evidence into the record in an e-mail ruling on October 19, 2020, excluding one of Cal Advocates' and Sierra Club's joint exhibits due to the objections of SoCalGas.¹⁵⁶ Collectively, the evidence in the record comprises over 2,000 pages of documents that the ALJ saw fit to receive into the record. Sierra Club would not have agreed to waive hearings if it had received notice that the Commission would only consider evidence of SoCalGas' misconduct that was introduced via stipulation or hearing.

The Commission must consider the full evidentiary record in this proceeding when it determines whether SoCalGas "booked any expenditures to its Demand Side Management Balancing Account, and associated allocated overhead costs, to advocate against more stringent codes and standards during any period of time between 2014 and 2017" and whether its "shareholders should bear the costs of its 2014 through 2017 codes and standards advocacy."¹⁵⁷ Upon review of the full record, the Commission should order SoCalGas to refund the full \$3.36 million it collected from ratepayers for its codes and standards program expenses from 2014 to 2017.¹⁵⁸

IV. CONCLUSION

For these reasons, the Commission should reverse the Decision's finding that no penalties are appropriate for SoCalGas' activities, and should adopt Cal Advocates' recommendations for

California Gas Company (Aug. 25, 2020), <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M345/K698/345698083.PDF>.

¹⁵⁵ See Response of Southern California Gas Company (U 904 G) to the September 15 and 25, 2020 Motions to Move Documentary Evidence into the Record (Oct. 6, 2020) (objecting to several of Cal Advocates and Sierra Club's exhibits), <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M348/K078/348078044.PDF>.

¹⁵⁶ E-Mail Ruling Addressing Motions to Admit Evidence, <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M349/K264/349264682.PDF>.

¹⁵⁷ E-mail Ruling Clarifying Scope of Order to Show Cause and Providing Further Instructions for Hearing (Mar. 25, 2020), <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M330/K052/330052254.PDF>; Order to Show Cause Directing Southern California Gas Company to Address Shareholder Incentives for Codes and Standards Advocacy Expenditures at 1 (Dec. 17, 2019), <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M322/K134/322134227.PDF>.

¹⁵⁸ This amount is calculated based on SoCalGas' reported expenditures within its Codes and Standards programs for 2014–2017, as reported in the 2014, 2015, 2016, and 2017 ESPI Ex-Ante Expenditures Workbooks (Part 2), <https://www.cpuc.ca.gov/General.aspx?id=4137>.

sanctioning SoCalGas for its years of misusing ratepayer funds to advocate against stringent energy efficiency codes and standards at the federal, state, and local levels. In addition, the Commission must consider the entire evidentiary record in developing its Decision and in considering the extent of restitution-based remedies to impose upon SoCalGas.

Dated: May 21, 2021.

Respectfully submitted,

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