



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking
Regarding Building Decarbonization.

Rulemaking 19-01-011

**ADMINISTRATIVE LAW JUDGE'S RULING DISPOSING OF
VARIOUS MOTIONS RELATED TO CALIFORNIANS FOR
BALANCED ENERGY SOLUTIONS AND SOUTHERN
CALIFORNIA GAS COMPANY**

Summary

This ruling disposes of several motions related to Californians for Balanced Energy Solutions (C4BES) and Southern California Gas Company (SoCalGas) filed in 2019.

1. The March 13, 2019 Motion for Party Status to C4BES is moot.
2. The May 14, 2019 Motion to Deny Party Status of Californians for Balanced Energy Solutions or, in the Alternative to Grant Motion to Compel Discovery (Motion to Deny Party Status/Motion to Compel) filed by Sierra Club, is moot as to the motion to deny party status to C4BES but is granted as to the motion to compel discovery.
3. The June 19, 2019 Motion to Strike Sierra Club's Reply to Responses to Motion to Deny Party Status of Californians for Balanced Energy Solutions or, in the Alternative to Grant Motion to Compel Discovery (Motion to Strike), filed by SoCalGas is denied.
4. The August 20, 2019 Motion to Withdraw Party Status of C4BES is granted.

1. Procedural Background

Senate Bill (SB) 1477 (Stern, 2018) requires the Commission to develop programs to test two specific programmatic approaches to building decarbonization. Through SB 1477, the Legislature intended “to build upon the success of the New Solar Homes Partnership Program by providing incentives to builders to design innovative, low-emission buildings, and to make low-emission heating equipment readily available and affordable in California.”¹ On February 8, 2019, the Commission opened this rulemaking (Building Decarbonization Rulemaking) in order to fulfill the requirements SB 1477 and to begin to craft a policy framework for decarbonization of buildings.

C4BES became a party to this proceeding on March 25, 2019, when it filed reply comments to the Order Instituting Rulemaking. C4BES also filed a motion for party status. In its comments, C4BES described itself as follows:

Californians for Balanced Energy Solutions is a coalition of natural gas and renewable gas suppliers and users. We represent members of the public, small and large businesses, labor, agriculture, and nonprofits that serve seniors and low-income communities.

Our goals are to educate the public about natural and renewable gas and their importance for the economy and the environment. We support balanced energy solutions that fight climate change while protecting energy reliability, affordability, and choice. Electricity and natural gas (NG) along with renewables - gas (RNG), wind, solar, hydro - have important and unique roles to play in fighting climate change while providing energy affordability, reliability, and choice for California’s households and businesses.²

¹ SB 1477 Section 1(b).

² C4BES March 25, 2020 Reply Comments at 1.

On May 14, 2019, Sierra Club filed its Motion to Deny Party Status to Californians for Balanced Energy Solutions Or, in the Alternative, to Grant Motion to Compel Discovery.³

On May 17, 2019, the assigned Commissioner issued his Scoping Memo and Ruling setting forth the issues and procedural schedule for this proceeding. The Scoping Memo and Ruling was amended on July 16, 2019 to clarify the issues.

On May 29, 2019, C4BES and SoCalGas each filed a response opposing Sierra Club's Motion to Deny Party Status/Motion to Compel. Also on May 9, 2019, the Public Advocates Office of the Commission (Cal Advocates) filed a response supporting the Motion to Deny Party Status/Motion to Compel. On June 10, 2019, Sierra Club filed a reply to the responses.

On June 19, 2019, SoCalGas filed a Motion to Strike Sierra Club's Reply to Responses to Motion to Deny Party Status to Californians for Balanced Energy Solutions or, in the Alternative to Grant Motion to Compel Discovery. Cal Advocates filed a response opposing the Motion to Strike on July 5, 2019. Cal Advocates' response included documents obtained from SoCalGas apparently in response to a data request for "all invoices and contracts to which SoCalGas is a party for work which relates to the creation or support of C4BES."⁴

On July 5, 2019, responses to the Motion to Strike were filed by Cal Advocates and Sierra Club individually, and by Natural Resources Defense Council, Sierra Club and California Environmental Justice Alliance jointly.

³ This ruling refers to the alternative motions separately as "Motion to Deny Party Status" and "Motion to Compel" and together as "Motion to Deny Party Status/Motion to Compel."

⁴ Cal Advocates July 5, 2019 Response at Attachment 1.

On August 20, 2019, C4BES filed a Motion to Withdraw. On September 3, 2019, Sierra Club filed a response opposing the Motion to Withdraw arguing that the Commission:

should require C4BES to remain a respondent to this proceeding and compel both C4BES and SoCalGas to answer Sierra Club's discovery to enable needed transparency and a complete record for the Commission to evaluate sanctions for C4BES' and SoCalGas' conduct.⁵

Cal Advocates agrees with Sierra Club on the need for transparency about the relationship between SoCalGas and C4BES and supports further discovery.⁶

On April 6, 2020, the Commission issued its Decision Establishing Building Decarbonization Pilot Programs (Decision (D.) 20-03-027). Decision 20-03-027 resolved all of the issues required by SB 1477 and set direction for the Commission's Energy Division and the California Energy Commission (CEC) to finish implementation of the pilots. The remaining issues to resolve in this proceeding are:

- a. Should the Commission implement any programs dedicated specifically to support the construction of decarbonized buildings in communities affected by wildfires?
- b. Should the Commission make any changes to existing policies, rules, or procedures in order to facilitate better coordination with the development of Title 24 and Title 20 standards at the Energy Commission that facilitate building decarbonization?

⁵ Sierra Club Response to Motion to Withdraw Party Status for Californians for Balanced Energy Solutions, filed September 3, 2019 at 1.

⁶ Cal Advocates May 29, 2019 Response.

- c. What policies, rules, and procedures should the Commission adopt to facilitate the decarbonization of buildings?⁷

2. C4BES Motion for Party Status; Sierra Club Motion to Deny Party Status

Because C4BES established party status by filing reply comments on the Order Instituting Rulemaking, the Motion for Party Status and Sierra Club's Motion to Deny Party Status are both moot.

3. Cost Recovery for SoCalGas Spending on C4BES; Sierra Club Motion to Compel

It is well-established that regulated utilities cannot receive cost recovery for advocacy-related activities that are inherently political or do not benefit ratepayers.⁸ The burden is on the utility to show that the expenditures are eligible for recovery.⁹ In its most recent decision addressing the SoCalGas revenue requirement, D.19-09-051, the Commission stated that:

To the extent that SoCalGas utilizes ratepayer funds on expenditures that go beyond providing information about

⁷ Scoping memo at 4-5.

⁸ *Southern California Edison Co.*, 2012 Cal. PUC LEXIS 555, *765, (D.12-11-051) (finding that membership subscriptions to organizations that advance tax reduction policies are inherently political and, therefore, funding for them should be disallowed from rate recovery); *Southern California Gas Co.*, 1993 Cal. PUC LEXIS 728, *103 (D.93-12-043) (finding that "ratepayers should not have to bear the costs of public relations efforts in this area which, according to SoCalGas, are designed primarily to increase load by promoting natural gas use to business and government leaders."); see also *Southern California Edison Co.*, 2004 Cal. PUC LEXIS 325, *339 (D.04-07-022) (finding that a utility's efforts to coordinate with local governments on land-use issues, undergrounding requests, among others, can provide ratepayer benefits in the form of cost savings when those efforts give the utility influence to resolve conflicts with local governments).

⁹ *Pacific Gas & Electric Co.*, 2007 Cal. PUC LEXIS 173, *66 (D.07-03-044) (requiring the utility to keep records to demonstrate whether program costs include funding for lobbying activities); *San Diego Gas & Electric Co.*, 2019 Cal. PUC LEXIS 569, 762-763 (finding that only the quantifiable portion of membership dues that are designated as lobbying activities should be disallowed).

natural gas and constitute inappropriate political activity, the Commission will address such activities in the appropriate proceeding. Furthermore, the Commission reminds SoCalGas that any informational or educational material funded by ratepayers should not contravene the State's implementation of adopted legislation furthering programs to incentivize low emission buildings and increasing transportation electrification to achieve the State's climate goals.¹⁰

In order to address whether the funding of C4BES is eligible for cost recovery from ratepayers, the Commission will need additional information.

Sierra Club states that it "issued targeted data requests to both SoCalGas and C4BES to better understand the extent of financial, communications, and policy support SoCalGas provides to C4BES and its role in the development of C4BES positions in this proceeding."¹¹ Sierra Club believes that discovery could "reveal whether or to what extent SoCalGas is approving or reviewing C4BES's filings in this proceeding" and "how many of the board members of C4BES were recruited by SoCalGas, or by consultants acting under its direction, and how many were compensated by the utility for their participation."¹²

Pursuant to Rule 11.3 of the Commission's Rules of Practice and Procedure,¹³ prior to filing a motion to compel a party must make good faith efforts to resolve the discovery dispute. Sierra Club's Motion to Compel includes documentation of its good faith efforts to meet and confer with SoCalGas and C4BES. Specifically, Sierra Club held a meet and confer with SoCalGas on April 29, 2019 and with C4BES on May 2, 2019.

¹⁰ Decision 19-09-051 at 379-80 (footnotes omitted).

¹¹ Sierra Club Motion to Compel at 9-10.

¹² *Id.* at 10.

¹³ All subsequent references to a Rule are to the Commission's Rules of Practice and Procedure.

In light of the continued need for information on the relationship between SoCalGas and C4BES, this ruling grants Sierra Club's Motion to Compel as it relates to this need. Discovery remains subject to the Commission's Rules of Practice and Procedure and all other applicable law, including Rule 10.1 limiting discovery to a matter that either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence.

4. SoCalGas Motion to Strike

The Motion to Strike asserts that Sierra Club's reply to the responses to the Motion to Deny Party Status/Motion to Compel contains "unfounded conclusions" which were "systematically refuted by SoCalGas or C4BES in their respective responses . . ." ¹⁴ Specifically, SoCalGas asserts that:

SoCalGas was not solely responsible for funding C4BES;
SoCalGas did not compensate Matt Rahn or any institution
with which he is involved for his membership in C4BES;
C4BES is not a "utility-created front group;" and SoCalGas
does not control C4BES.¹⁵

SoCalGas points out that an evidentiary record has not been developed on this issue. If there are disputed facts, an evidentiary record will be necessary in order for the Commission to determine if SoCalGas can recover funds from ratepayers. Because the Building Decarbonization Rulemaking is the appropriate place to make this determination, the concerns asserted by Sierra Club are still relevant. Therefore, the Motion to Strike is denied.

5. C4BES Motion to Withdraw

C4BES's Motion to Withdraw should be granted. C4BES is under no obligation to participate in this proceeding and is not regulated by the

¹⁴ Motion to Strike at 2.

¹⁵ *Ibid.* (footnotes omitted).

Commission. However, because it is in the public interest to fully understand the interests of a party to a proceeding, C4BES is ordered to cite this ruling in any current proceeding in which it is a party and any future proceeding to which it becomes a party.¹⁶ This will promote transparency and provide an opportunity for parties and the Commission to be reminded of the issues raised in this ruling. This requirement shall remain in place for three years from today's date.

IT IS RULED that:

1. The March 13, 2019 Motion for Party Status of Californians for Balanced Energy Solutions is moot.
2. The May 14, 2019 Sierra Club Motion to Deny Party Status of C4BES is moot.
3. The May 14, 2019 Sierra Club Motion to Compel is granted.
4. The June 19, 2019 SoCalGas Motion to Strike is denied.
5. The August 20, 2019 Motion to Withdraw Party Status of C4BES is granted.
6. C4BES is ordered to cite to this ruling in any future proceeding to which it becomes a party or to which it is now a party.

Dated June 25, 2020 at San Francisco, California.

/s/ JEANNE M MCKINNEY

Jeanne M. McKinney
Administrative Law Judge

¹⁶ See, e.g., Rule 1.4(b)(1) requiring a person seeking party status to “fully disclose the persons or entities in whose behalf the filing, appearance or motion is made, and the interest of such persons or entities in the proceeding . . .”