

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Concerning
Energy Efficiency Rolling Portfolios, Policies,
Programs, Evaluation, and Related Issues.

Rulemaking 13-11-005

**OPENING BRIEF OF THE PUBLIC ADVOCATES
ON THE ORDER TO SHOW CAUSE DIRECTING SOCALGAS
TO ADDRESS SHAREHOLDER INCENTIVES FOR CODES
AND STANDARDS ADVOCACY EXPENDITURES**

TOVAH TRIMMING

Attorney for

Public Advocates Office
California Public Utilities Commission
300 Capitol Mall, Suite 400
Sacramento, CA 95814
Telephone: (916) 823-4836
E-mail: tovah.trimming@cpuc.ca.gov

November 5, 2020

TABLE OF CONTENTS

	<u>Pages</u>
TABLE OF AUTHORITIES.....	iii
I. SUMMARY OF RECOMMENDATIONS	1
II. INTRODUCTION	1
III. BACKGROUND AND PROCEDURAL HISTORY.....	4
IV. BURDEN OF PROOF	7
V. ARGUMENT	8
A. SoCalGas is Prohibited From Using Ratepayer Funds to Oppose Codes and Standards and Reach Codes.....	8
B. SoCalGas Repeatedly Violated Commission Decisions When it Used Ratepayer Funds Recorded Expenditures to its Demand Side Management Balancing Account to Advocate Against Codes and Standards Between 2014 and 2017.....	10
1. SoCalGas Used Ratepayer Funds Recorded to the DSMBA to Advocate for the Delay of the California Energy Commission’ Residential IWH Standards	10
2. SoCalGas Used Ratepayer Funds to Oppose the DOE’s Furnace Rule.	11
3. SoCalGas Used Ratepayer Funds to Undermine the DOE’s Commercial Package Boilers Rule.....	17
4. SoCalGas Used Ratepayer Funds to Undermine Efficiency Standards in Comments on the DOE’s RFI.....	18
C. SoCalGas Repeatedly Violated Commission Decisions When it Used Ratepayer Funds to Oppose the Adoption of Reach Codes.....	20
VI. REMEDIES.....	23
A. The Commission Should Order SoCalGas to Refund Codes and Standards Program Expenditures and Related ESPI awards for 2014-2016.....	23
B. The Commission Should Impose Fines on SoCalGas For Its Blatant and Persistent Opposition to Efficiency Standards.....	26
1. Criterion 1: Severity of the Offense.....	29
2. Criterion 2: Conduct of the Utility.....	37
3. Financial resources of the utility and deterrent effect of future violations...	39

4. The Role of Precedent	40
5. Totality of the Circumstances	40
VII. OTHER REMEDIES	41
1. The Commission should remove SoCalGas from any future role in codes and standards programs for at least seven years and order shareholder- funded audits during that period.	41
B. The Commission Should Remove SoCalGas as the Statewide Lead for the Emerging Technologies Program On Or Before January 1, 2022.....	43
VIII. CONCLUSION.....	43

TABLE OF AUTHORITIES

	<u>Pages</u>
<u>Commission Decisions and Resolutions</u>	
D.86-05-672	33
D.87-12-067	33
D.98-12-075	passim
D.05-09-043	8,14,27
D.07-01-041	16,17,22,23
D.07-10-032	8
D.08-09-038	passim
D.08-09-040	3,21,26
D.09-09-005	20
D.09-09-047	passim
D.12-05-015	passim
D.13-09-023	16
D.14-10-046	2,3,8
D.15-12-016	28
D.16-01-014	passim
D.16-01-025	15,16,17
D.16-08-020	7
D.16-12-003	7
D.17-03-017	25
D.17-09-025	3
D.18-05-041	passim
D.18-07-025	16
<u>California Public Utilities Code</u>	
§ 399.11(e)(1)	22
§ 451	15,16,33
§ 454.5.....	1
§ 454.5(b)(9)(C)	1,26

§ 702.....	19
§ 2107.....	17,19,27
§ 2108.....	18,19,27

Commission Rules of Practice and Procedure

Rule 13.9.....	20,22
Rule 13.11.....	1

California Evidence Code

§ 452.....	16,17,20,34
------------	-------------

California Cases

<i>Utility Consumers' Action Network v. Public Utilities Com.</i> (2010) 187 Cal. App. 4th 688	7
---	---

California Bills

Assembly Bill 32 (Nunez), Ch. 488, Stats. 2006.....	3,21
Senate Bill 32 (Pavley), Ch. 249, Stats. 2016.....	3,22
Senate Bill 100 (De León), Ch. 312, Stats. 2018.....	3,22
Senate Bill 1477 (Stern), Ch. 378, Stats. 2018	20
Assembly Bill 3232 (Friedman), Ch. 373, Stats. 2018.....	20

California Executive Orders

Exec. Order No. S-3-05	3
Executive Order B-55-18.....	3

I. SUMMARY OF RECOMMENDATIONS

Based on the record in this proceeding, the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) recommends the following for the *Order to Show Cause Directing Southern California Gas Company to Address Shareholder Incentives for Codes and Standards Advocacy Expenditures* (OSC):¹

- The Commission should order Southern California Gas Company (SoCalGas) to refund shareholder incentive awards and program expenditures related to SoCalGas' 2014-2017 building codes and appliance standards programs and its 2018-2020 reach codes program;
- The Commission should fine SoCalGas \$255,300,000 for using ratepayer funds to oppose building codes, appliance standards, and reach codes in violation of Commission decisions that mandate ratepayer funds are used to promote the adoption of these codes and standards;
- The Commission should prohibit SoCalGas from planning, administering, and implementing any codes and standards programs until independent audits, funded by SoCalGas' shareholders and assessed by the Commission and interested parties, demonstrate that SoCalGas is fit to administer energy efficiency codes and standards programs;
- The Commission should remove SoCalGas as the statewide lead for the Emerging Technologies program as soon as practical, but not later than January 1, 2022.

II. INTRODUCTION

In accordance with Rule 13.11 of the California Public Utilities Commission (Commission) Rules of Practice and Procedure and the procedural schedule set forth in the Assigned Administrative Law Judge's (ALJ) October 6, 2020 *Email Ruling Revising Schedules for Orders to Show Cause*,² Cal Advocates submits this opening brief.

SoCalGas and the other investor-owned utilities (IOUs) are obligated by statutes, state policies, and past Commission decisions to prioritize cost-effective energy efficiency and to achieve specified savings goals. Public Utilities Code Section 454.5,³ California's Energy

¹ *Order to Show Cause Directing Southern California Gas Company to Address Shareholder Incentives for Codes and Standards Advocacy Expenditures* (Dec. 17, 2019) (hereinafter OSC).

² *Email Ruling Revising Schedules for Orders to Show Cause* (October 6, 2020).

³ Public Utilities Code Section 454.5(b)(9)(C) ("The electrical corporation shall first meet its unmet resource needs through all available energy efficiency and demand reduction resources that are cost

Action Plan,⁴ and past Commission decisions (e.g., Decision (D.) 04-09-060) all prioritize cost-effective energy efficiency first in the loading order. As part of their energy efficiency (EE) portfolios, the Commission “authorized utilities to spend EE dollars advancing *more stringent* codes and standards.”⁵ Accordingly, ratepayer funding for the codes and standards program includes providing technical assistance to the state and federal agencies responsible for appliance and building codes and advocating for the adoption of more stringent codes and standards on behalf of ratepayers.⁶ As part of their codes and standards advocacy, the IOUs also are provided ratepayer funding for a local reach codes⁷ program in order to “promote the adoption” of reach codes.⁸

In addition, the Commission authorizes shareholder incentives, the Efficiency Savings and Performance Incentive (ESPI),⁹ for the IOUs’ codes and standards advocacy.¹⁰ Specifically, the codes and standards component of the ESPI is set at 12 percent of approved expenditures for the codes and standards programs.¹¹ Ratepayer funding for shareholder incentives is intended to encourage and reward the utilities for their work advocating for more stringent codes and standards and reach codes on ratepayers’ behalf.¹²

Critically, energy efficiency policy and environmental policy are inextricably linked. Energy efficiency is an important tool for addressing greenhouse gas (GHG) emissions in the

effective, reliable, and feasible.”).

⁴ The Energy Action Plan (EAP) identifies goals and actions to ensure that adequate, reliable, and reasonably-priced electrical power and natural gas supplies are procured through cost-effective and environmentally sound strategies. D.08-09-040, Attachment A, Energy Action Plan (2008 Update).

⁵ D.14-10-046, p. 61 (emphasis added).

⁶ D.14-10-046, p. 61.

⁷ See D.12-05-015, p. 244 at fn. 324 (defining reach codes as voluntary standards adopted by local governments that go beyond minimum efficiency requirements in existing codes).

⁸ D.12-05-015, p. 244; id. at pp. 243-244 (“Progressive increases in building and appliance efficiency standards are a critical component of achieving the State’s long-term energy efficiency goals. The Commission has authorized IOU activity in this area, including giving credit for savings attributable to codes and standards advocacy and supporting the addition of new strategies to improve compliance and promote the adoption of Reach Codes.”); see also D.09-09-047 (approving a new reach code subprogram to “increase the likelihood of [reach] code adoption and compliance”).

⁹ The Commission adopted the ESPI in D.13-09-023.

¹⁰ D.14-10-046, p. 61 (emphasis added).

¹¹ D.13-09-023, pp. 20, 94-95 (Ordering Paragraph 3), and 98 (Ordering Paragraph 15).

¹² D.13-09-023, pp. 20, 88, Finding of Fact 9, Ordering Paragraph 15.

energy sector¹³ and codes and standards comprise the largest source of energy efficiency savings.¹⁴ Thus, codes and standards support California’s longstanding policies to reduce GHG emissions to avoid the most severe impacts of the climate crisis, including public health impacts.¹⁵

Commission decisions make clear that SoCalGas may not use ratepayer funds to advocate against the adoption of more stringent codes and standards.¹⁶ Contrary to this mandate, the record evidence shows SoCalGas’ pattern and practice of advocating against stricter codes and standards in violation of D.18-05-041 and its predecessors. Since at least 2014, SoCalGas has engaged in a concerted effort to undermine the state’s energy efficiency goals related to new codes and standards, which in turn undermines the state’s climate goals. Moreover, SoCalGas worked with national industry organizations – for example the American Gas Association (AGA) – to formulate adverse policy positions in an attempt to delay or halt implementation of rules it considered likely to reduce its profitable gas throughput business.

The facts in this OSC also demonstrate that SoCalGas opposed codes and standards as a business strategy in order to preserve its business model and to generate shareholder profits— regardless of the impacts on its customers and contrary to the state’s energy efficiency and GHG reduction goals. In other words, SoCalGas’ blatant violations of Commission decisions that undermine state energy, environmental, and public health policies and goals are calculated business decisions. SoCalGas is willing to make these decisions because it views the benefits of preserving its profitability as outweighing the risks of possible repercussions imposed by the Commission and adverse consequences to the environment and public health.

¹³ D.08-09-040, Attachment A, Energy Action Plan (2008 Update), pp. 1-3.

¹⁴ D.17-09-025, p. 35.

¹⁵ See, e.g., Cal. Exec. Order No. S-3-05 (June 1, 2005), <https://www.library.ca.gov/Content/pdf/GovernmentPublications/executive-order-proclamation/5129-5130.pdf> (Governor Schwarzenegger’s Executive Order establishing targets to reduce greenhouse gas pollution to 1990 levels by 2020 and to 80 percent below 1990 levels by 2050); Assembly Bill (AB) 32 (Nunez), Ch. 488, Stats. 2006 (requiring a statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions levels in 1990 to be achieved by 2020); Senate Bill (SB) 32 (Pavley), Ch. 249, Stats. 2016 (requiring economy wide greenhouse gas emissions to be reduced to at least 40 percent below 1990 levels); SB 100 (De León), Ch. 312, Stats. 2018 (requiring 100 percent of electricity sales to be from renewables and zero-emission resources by 2045); Executive Order B-55-18 (Sept. 10, 2018) (carbon neutrality by 2045), <https://www.ca.gov/archive/gov39/wp-content/uploads/2018/09/9.10.18-Executive-Order.pdf>.

¹⁶ See, e.g., D.18-05-041, p. 143; D.14-10-046, p. 61.

The Commission has the opportunity in this OSC to impose the necessary fines and other appropriate remedies to ensure that SoCalGas does not continue to conduct its business based on opportunity costs between profits and the state’s energy, environmental, and public health goals and policies. To this end, and for the reasons explained below, the Commission should impose the remedies proposed by Cal Advocates in this brief.

III. BACKGROUND AND PROCEDURAL HISTORY

Relying on evidence presented by Cal Advocates¹⁷ in Application (A.) 17-01-013 et al., the Commission found it reasonable in Decision 18-05-041 to “prohibit[] SoCalGas from using ratepayer funds to conduct codes and standards advocacy ... based on the Commission’s clear policy intent for such funds and on evidence submitted by [Cal Advocates] of SoCalGas’s past contravention of that policy intent.”¹⁸ Based on the evidence of SoCalGas’ actions, and the obvious potential for SoCalGas to continue to misuse ratepayer funds authorized for codes and standards advocacy, the Commission prohibited SoCalGas from “participating in statewide codes and standards advocacy activities, other than to transfer funds to the statewide lead.”¹⁹ The Commission declined to impose sanctions for SoCalGas’ misconduct because the scope of the proceeding was limited to consideration of the 2018-2025 business plans.²⁰ Instead, the Commission stated that Cal Advocates’ request for sanctions may be renewed in R.13-11-005 or its successor.²¹

In Resolution E-5007, approving the ESPI awards for the four major California IOUs for program years 2016 and 2017, the Commission ordered the issuance of an order to show cause in this proceeding.²² On December 17, 2019, the Commission issued this OSC directing SoCalGas, and inviting other parties, to respond to the below questions:

¹⁷ D.18-05-041, pp. 140-144.

¹⁸ D.18-05-041, pp. 150-151; see id. at Finding of Fact 77.

¹⁹ D.18-05-041, pp. 144, 193, Ordering Paragraph 53.

²⁰ D.18-05-041, p. 144.

²¹ D.18-05-041, p. 144.

²² Resolution E-5007 provides that “within 60 days of the date of this Resolution, the Commission shall issue an Order in R.13-11-005 directing SoCalGas to show cause why it is entitled to shareholder incentives for codes and standards advocacy in 2016 and 2017; whether its shareholders should bear the costs of its 2016 and 2017 codes & standards advocacy; and to address whether any other remedies are appropriate.” Resolution E-5007 (October 10, 2019), p. 40, paragraph 5.

1. Is SoCalGas entitled to shareholder incentives for codes and standards advocacy during program years 2016 and 2017? Explain why or why not.
2. Should SoCalGas's shareholders bear the costs of its 2016 and 2017 codes and standards advocacy expenditures? Explain why or why not.
3. Address whether any other Commission actions are appropriate with respect to the finding in Decision (D.) 18-05-041 that Southern California Gas Company did not work "towards adoption of more stringent codes and standards."²³

In January 2020, SoCalGas, Cal Advocates, and Sierra Club filed responses; SoCalGas and Cal Advocates filed replies on January 31, 2020. SoCalGas thereafter filed a motion to strike portions of Sierra Club's and Cal Advocates' responses, which was denied in an April 28, 2020 ALJ ruling.

On February 4, 2020, the Commission held a prehearing conference. On March 2, 2020, the Commission issued the *Assigned Commissioner's Ruling Setting the Scope and Schedule for the Order to Show Cause Against Southern California Gas Company* (Scoping Memo). The Scoping Memo ordered:

The factual questions to be addressed in this OSC are:

1. Whether Respondent used ratepayer funds that were authorized for energy efficiency to advocate against more stringent codes and standards during any period of time between 2014 and 2017 (inclusive); and
2. Whether Respondent ever used ratepayer funds that were authorized for energy efficiency to advocate against local governments' adoption of reach codes.

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

1. Whether Respondent is entitled to shareholder incentives for codes and standards advocacy in 2014 through 2017;
2. Whether Respondent's shareholders should bear the costs of its 2014 through 2017 codes and standards advocacy; and
3. Whether any other remedies are appropriate.²⁴

²³ OSC, pp. 1-2.

²⁴ Scoping Memo, p. 2.

After the issuance of the Scoping Memo, the ALJ invited parties to file comments on the ACR to address any ambiguities in the scope.²⁵ ALJ Kao's March 25, 2020 *Email Ruling Clarifying Scope of Order to Show Cause and Providing Further Instructions for Hearing* clarified that the factual issues to be addresses are the following:

1. Whether Respondent 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 (inclusive); and
2. Whether Respondent ever used ratepayer funds, regardless of the balancing account or other accounting mechanism to which such funds were booked, to advocate against local governments' adoption of reach codes.²⁶

On September 15, 2020, Cal Advocates and Sierra Club (filing jointly), and SoCalGas filed motions to enter evidence into the record. On September 25, 2020, Sierra Club and SoCalGas filed separate motions to enter rebuttal evidence into the record. SoCalGas filed a motion opposing certain exhibits included in the motions of Cal Advocates and/or Sierra Club on October 6, 2020. Sierra Club and Cal Advocates, with the ALJ's permission, filed a joint reply to SoCalGas' October 6, 2020 motion on October 13, 2020. On October 14, 2020, Sierra Club filed a motion to enter a public and confidential version of a revised data request response that SoCalGas provided in response to a Sierra Club data request. SoCalGas stipulated it did not oppose admittance of these exhibits (Sierra Club-76 and Sierra Club-76C) into the record. On October 19, 2020, the ALJ ruled that Exhibit Cal Advocates/Sierra Club 71 was not received into evidence, but otherwise denied SoCalGas' motion opposing the introduction of exhibits.²⁷

On October 2, 2020 the Parties filed a joint stipulation of facts. There was no testimony and no evidentiary hearings in this OSC.

²⁵ *ALJ Ruling Providing Comments and Reply Comment Opportunity Re: March 2020 Scoping Ruling and Granting Extension*; March 4, 2020; *Cal Advocates and Sierra Club Joint Comments on the Scoping Memo* (Mar. 13, 2020); *SoCalGas Reply Comments on the Scoping Memo* (Mar. 20, 2020).

²⁶ *Email Ruling Clarifying Scope of Order to Show Cause and Providing Further Instructions for Hearing* (Mar. 25, 2020).

²⁷ *ALJ E-mail Ruling Addressing Motions to Admit Evidence*, October 19, 2020. Exh. Cal Advocates/Sierra Club-71 was a 2018 AGA Committee Scopebook. The ALJ ruled that the exhibit would not be received into evidence, stating the following: "There are two SoCalGas employees listed, one as a chair of the Customer Service Committee, and another as a co-chair of the Customer Field Services & Measurement Committee; there is no indication of SoCalGas's codes and standards advocacy or engagement with reach codes."

On October 22, 2020, Cal Advocates and Sierra Club jointly filed a motion to consolidate this OSC and the other OSC against SoCalGas in R.13-11-005. As of the date of this brief, the motion is pending.

IV. BURDEN OF PROOF

In an order to show cause proceeding, in which the Commission has set forth allegations and a prima facie case based on record evidence, the Respondent has the burden of showing why the Commission should not take the proposed legal action.²⁸ In comparison, the Commission has held that “[i]n an investigatory proceeding launched by Commission staff in response to allegations of violations ... [the applicable division] bears the burden of proof.”²⁹ The Commission has further held that the standard of proof its staff must meet is preponderance of evidence, which is defined in terms of probability of truth.³⁰

Cal Advocates presented evidence in 2017 of SoCalGas’ misconduct that served as the basis for this OSC.³¹ Specifically, Cal Advocates’ presented evidence that SoCalGas (1) used ratepayer funds to oppose the United States Department of Energy’s (DOE) proposed rule to consider new efficiency standards for residential furnaces (Furnace Rule) and (2) engaged in bad faith with the other IOUs in joint codes and standards efforts.³² Resolution E-5007 required the Commission to issue an Order in R.13-11-005 directing SoCalGas to show cause why it is entitled to shareholder incentives for codes and standards advocacy in 2016 and 2017; whether its shareholders should bear the costs of its 2016 and 2017 codes and standards advocacy; and to address whether any other remedies are appropriate.³³ The Scoping Memo issued in the

²⁸ See D.16-12-003, pp. 81-91 (wherein the Commission established a prima facie case for a penalty without opening a separate OII or OSC, and placed the burden on the utility in a subsequent penalty phase of that proceeding to show why it should not be penalized); D.15-04-008 (wherein the Commission had denied a motion to initiate a separate OII or OSC proceeding regarding a utility's alleged violation of Rule 1.1, by February 21, 2014 ALJ Ruling opened the OSC based on a preponderance of the record evidence, and ordered the utility to show why it should not be sanctioned).

²⁹ D.16-08-020, p. 18.

³⁰ D.16-08-020, p. 18; *see also Utility Consumers' Action Network v. Public Utilities Com.* (2010) 187 Cal. App. 4th 688, 698 (“Witkin states that “[t]he phrase ‘preponderance of evidence’ is usually defined in terms of probability of truth, e.g., ‘such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth.’ ... [‘more likely true than not true’].”).

³¹ D.18-05-041, pp. 141, 168 (Finding of Fact 78); Resolution E-5007; December 17, 2019 OSC in R.13-11-005.

³² D.18-05-041, pp. 141.

³³ Resolution E-5007 (October 10, 2019), p. 40, paragraph 5.

proceeding includes codes and standards activities for 2014-2017 and reach codes for any time period.

SoCalGas argues that including reach codes in the scope of this proceeding amounts to an investigation and not an order to show cause.³⁴ This brief sets forth both the factual allegations and the applicable legal standards, and demonstrates by a preponderance of the evidence that SoCalGas' opposition to state and federal efficiency standards and local reach codes violates relevant Commission decisions. Thus, the Commission could evaluate each allegation presented in this brief using the burden and standard of proof applicable to investigations to find by the preponderance of the evidence that SoCalGas violated Commission decisions and should be penalized accordingly.

V. ARGUMENT

A. SoCalGas is Prohibited From Using Ratepayer Funds to Oppose Codes and Standards and Reach Codes.

The Commission's intent that the IOUs use ratepayer funds to advocate for more stringent state and federal codes and standards has been clearly and consistently articulated since 2005.³⁵ In D.12-05-015, the Commission authorized ratepayer funding for the IOUs to promote the adoption of codes and standards because "[p]rogressive increases in building and appliance efficiency standards are a critical component of achieving the State's long-term energy efficiency goals."³⁶ In 2009, the Commission included reach codes as part of its longstanding support for efficiency standards.³⁷ Clarifications from the Energy Division staff and emails among the

³⁴ See, e.g., *SoCalGas Motion to Strike Attachment 3 to the Response of the Public Advocates Office and Attachment 4 to the Response of Sierra Club to the Order to Show Cause Directing SoCalGas to Address Shareholder Incentives for Codes and Standards Advocacy Expenditures*, pp. 6-7 (Feb. 21, 2020).

³⁵ See, e.g., D.05-09-043, Finding of Fact 40, p. 177; see also D.07-10-032, p. 119 ("the utility programs should include efforts to encourage the adoption of more stringent C&S."); D.12-05-015, p. 257 ("The 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, p. 61 ("authoriz[ing] utilities to spend EE dollars advancing *more stringent* codes and standards") (emphasis added); D.18-05-041, pp. 143-144, 150-151, Finding of Fact 78, p. 168.

³⁶ D.12-05-015, p. 243.

³⁷ D.09-09-047, p. 203 (authorizing a reach code C&S subprogram to "increase the likelihood of code adoption and compliance").

IOUs, including SoCalGas, are consistent with the decisions that reflect the Commission’s intent for appropriate use of ratepayer funds.³⁸

The most recent affirmation of the Commission’s long-standing requirement that the utilities must use ratepayer funds only to advocate for more stringent codes and standards is in D.18-05-041.³⁹ D.18-05-041 declined to carve out any exception to the requirement, stating that “[w]e see no reason to now consider what constitutes a reasonable basis for taking a position other than in support of more stringent standards, given our intent for such activities has been clear since we first authorized energy efficiency funding for those activities.”⁴⁰ Instead, D.18-05-041 explicitly found that the evidence showed that SoCalGas had not worked towards adoption of higher standards, using ratepayer funds, in contravention of the Commission’s intent for ratepayer funds based on Commission policy and the facts presented by Cal Advocates⁴¹ and, therefore, prohibited SoCalGas from using ratepayer funds to engage in codes and standards advocacy during the 2018-2025 business plan period except to transfer funds to the statewide lead.⁴²

³⁸ See Exh. Cal Advocates/Sierra Club-23 (Sept. 10, 2014 SoCalGas email re: RE: Questions Regarding Loss of Therm Savings) (Energy Division stating that “we assumed all IOUs either supported the [Codes and Standards Enhancement study] CASE or, if not prepared the CASE, supported the [California Energy Commission] CEC” and that “if one IOU does not support the standard or even oppose it, its seems like it (that particular IOU) would be forfeiting attribution of the savings for that standard”); Exh. Cal Advocates/Sierra Club-25 (Sept. 11, 2014 SoCalGas email re: IWH Proposal: Next Steps) (as an example of avoiding a possible conflict of interest and negative impact on the C&S Program and the IOUs as a whole, SCE informed SoCalGas that it removed its logo from the light emitting diode (LED) CASE topic and took a neutral position); Exh. Cal Advocates/Sierra Club-40 (August 8, 2016 email re ASRAC) (August 8, 2016 email exchange between SoCalGas’ C&S Manager and APGA, the manager stated: “My dilemma is that I also have to play nice in the sandbox here on Mars because we have mandates to move this stuff [DOE proposed efficiency standards] forward based on funding so in effect, I live two [in] two worlds. I would love to get some feedback from you on good ways for me to bridge between my two masters.”).

³⁹ D.18-05-041, pp. 143-144, 150-151, 168, Finding of Fact 77, pp. 168-169; Finding of Fact 78.

⁴⁰ D.18-05-041, p. 144.

⁴¹ D.18-05-041, pp. 143,168, Finding of Fact 77; pp. 168-169, Finding of Fact 78.

⁴² D.18-05-041, pp. 150-151, Ordering Paragraph 53.

B. SoCalGas Repeatedly Violated Commission Decisions When it Used Ratepayer Funds Recorded Expenditures to its Demand Side Management Balancing Account to Advocate Against Codes and Standards Between 2014 and 2017.

The record evidence shows several instances where SoCalGas violated Commission decisions prohibiting the use of ratepayer funds to oppose stricter codes and standards.⁴³ From 2014-2017 SoCalGas repeatedly recorded costs associated with its opposition to the ratepayer-funded Demand Side Management Balancing Account (DSMBA). The record evidence also shows that these violations reflected an ongoing strategy to oppose efficiency standards that could reduce SoCalGas' profitable gas throughput business. Each of these violations is discussed below.

1. SoCalGas Used Ratepayer Funds Recorded to the DSMBA to Advocate for the Delay of the California Energy Commission' Residential IWH Standards

In A.17-01-013, Cal Advocates conducted discovery on SoCalGas' activities related the California Energy Commission's (CEC) rulemaking regarding residential instantaneous water heaters (IWH) under the 2016 building energy efficiency standards.⁴⁴ At this time, water heating standards were "critical for achieving Zero Net Energy ready homes by 2020" and essential to meet the Governor's goal to increase building efficiency by 50%.⁴⁵ However, these IWH standards presented a threat to SoCalGas' profitable gas throughput because residential water heaters constituted at least 30% of SoCalGas' residential load and the standards could "drive storage water heaters out of new construction."⁴⁶ Indeed, a September 22, 2014 presentation by SoCalGas' senior management team identified the near- and long-term projected effects on SoCalGas revenues, citing losses of up to \$17 million in lost revenues and opportunity costs

⁴³ Joint Statement of Stipulated Facts (Oct. 2, 2020).

⁴⁴ Exh. Cal Advocates/Sierra Club-20 (*Motion of the Office of Ratepayer Advocates to Deem as Public the Materials that Southern California Gas Company Improperly Marked as Confidential or Redacted*, pp. 2-3). Evidence related to SoCalGas' opposition to the CEC's IWH standards were not part of the Commission's determination in D.18-05-041. See D.18-05-041, p. 141.

⁴⁵ Exh. SCG-24 (SoCalGas 2014 Energy Efficiency Programs Annual Report, p. 2-31).

⁴⁶ Cal Advocates/Sierra Club-20 (*Motion of the Office of Ratepayer Advocates to Deem as Public the Materials that Southern California Gas Company Improperly Marked as Confidential or Redacted*), Attachment B, Exhibit 24, p. 1 and Exhibit 20.

annually by 2020.⁴⁷ Moreover, because SoCalGas lacked a replacement technology to drive similar therms savings as the potential savings from tankless IWHs, the standards would diminish shareholder revenue from energy efficiency programs that were based on therms savings.⁴⁸

In an effort to fight the IWH standards, SoCalGas collaborated with AGA's Building Energy Codes and Standards (BECS) Committee.⁴⁹ Ultimately, SoCalGas submitted two public documents recommending delay of the IWH rulemaking and recorded costs related to preparation of these documents to the DSMBA ratepayer account.⁵⁰ On September 20, 2014, SoCalGas sent a letter to the CEC recommending that the CEC delay the IWH regulation until the 2019 Codes and Standards cycle.⁵¹ Similarly, on November 24, 2014, SoCalGas filed comments recommending that the CEC refrain from adopting further Title 24 regulations on IWH until the completion of further research.⁵² SoCalGas grossly misused ratepayer funds to advocate for a delay of standards that were deemed essential to achieve Zero Net Energy ready homes by 2020 and the Governor's goal to increase building efficiency by 50 %.

2. SoCalGas Used Ratepayer Funds to Oppose the DOE's Furnace Rule.

In February 2015, the DOE issued a Notice of Proposed Rulemaking (NPR) to consider new efficiency standards for residential furnaces (Furnace Rule) and solicited public comments on the proposed rule.⁵³ The DOE proposed a single 92% annual fuel utilization efficiency

⁴⁷ Cal Advocates/Sierra Club-20 (*Motion of the Office of Ratepayer Advocates to Deem as Public the Materials that Southern California Gas Company Improperly Marked as Confidential or Redacted*), Attachment B, Exhibit 35.

⁴⁸ Cal Advocates/Sierra Club-20 (*Motion of the Office of Ratepayer Advocates to Deem as Public the Materials that Southern California Gas Company Improperly Marked as Confidential or Redacted*), Attachment B, Exhibit 24, p.2.

⁴⁹ See, e.g., Exh. Cal Advocates/Sierra Club-20 (*Motion of the Office of Ratepayer Advocates to Deem as Public the Materials that Southern California Gas Company Improperly Marked as Confidential or Redacted*), Attachment B, Exhibit 7 (September 6, 2014 emails).

⁵⁰ Joint Statement of Stipulated Facts (Oct. 2, 2020), Paragraph II(1) and II(2).

⁵¹ Exh. Cal Advocates/Sierra Club-70 (September 20, 2014 letter from SoCalGas to Mazi Shirakh).

⁵² Exh. Cal Advocates/Sierra Club-27 (SoCalGas CEC Comments re: California Title 24 Update Process (Nov. 24, 2014)).

⁵³ See DOE docket number EERE-2014-BT-STD-0031, RIN: 1904-AD20.

(AFUE) standard nationwide.⁵⁴ At the time, it had been 28 years since the nation experienced any substantial improvements in efficiency standards for residential non-weatherized gas furnaces and nearly 40 years in California due to federal preemption limitations.⁵⁵ The CEC described DOE’s “outdated and weak” standards for furnaces, among other products, as a “significant barrier to California being able to achieve its climate goals through cost-effective codes and standards for new and existing buildings.”⁵⁶ The CEC elaborated that “any further delay in adopting stringent federal furnace standards threatens to set California back in its efforts to double energy efficiency in existing buildings by 2030 and to achieve zero net energy buildings in 2020.”⁵⁷

In its comments on the NOPR, the CEC supported the proposed standard but encouraged the DOE to adopt even higher efficiency standards that DOE had already found to be cost-effective and technologically feasible.⁵⁸ The CEC also explained how the ability to scale production would help reduce costs and mitigate the impact of the new furnace standards on low-income customers.⁵⁹ Further, the CEC explained that keeping cheap, inefficient products on the market actually creates greater harm to low-income consumers because low-income customers are the least able to afford the higher energy consumption from inefficiency appliances.⁶⁰

Pacific Gas and Electric Company’s (PG&E) NOPR comments fully supported the DOE’s single standard but, like the CEC, also recommended a higher efficiency standard of 95% AFUE.⁶¹

⁵⁴ Exh. Cal Advocates/Sierra Club-1 (Final Comments of the Office of Ratepayer Advocates on Energy Efficiency Program Administrators’ Business Plan Applications), Appendix C, Exhibit 10, C-175.

⁵⁵ Exh. Cal Advocates/Sierra Club-3 (CEC Comments on DOE Furnace Rule NOPR, pp. 3-4).

⁵⁶ Exh. Cal Advocates/Sierra Club-3 (CEC Comments on DOE Furnace Rule NOPR, p. 3).

⁵⁷ Exh. Cal Advocates/Sierra Club-3 (CEC Comments on DOE Furnace Rule NOPR, p. 3).

⁵⁸ Exh. Cal Advocates/Sierra Club-3 (CEC Comments on DOE Furnace Rule NOPR, pp. 2, 4).

⁵⁹ Exh. Cal Advocates/Sierra Club-3 (CEC Comments on DOE Furnace Rule NOPR, p. 5).

⁶⁰ Exh. Cal Advocates/Sierra Club-3 (CEC Comments on DOE Furnace Rule NOPR, pp. 5-6).

⁶¹ Exh. Cal Advocates/Sierra Club-10 (October 4, 2015 SoCalGas email re: Recommended Course of Action for DOE Furnace NODA).

The proposed standard posed a significant threat to SoCalGas' business profits because it would raise the cost of some gas furnaces and encourage fuel switching away from natural gas.⁶² As a result, and in stark contrast to PG&E and the CEC, SoCalGas' NOPR comments adamantly opposed the proposed Furnace Rule.⁶³ SoCalGas used ratepayer funds recorded to the DSMBA to prepare the comments.⁶⁴ SoCalGas asserted that the DOE used flawed cost assumptions, inputs, and methods as well as argued that the new standards were not needed because "where the higher efficiencies make economic sense, they are already being adopted by consumers."⁶⁵ Unlike the CEC, SoCalGas also took the position that "the negative impact to Southern California customers is real and burdensome enough to warrant our full opposition to this rule."⁶⁶

In developing its comments, SoCalGas declined PG&E's invitation to coordinate research with PG&E. Instead, in light of the threat the proposed Furnace Rule posed to SoCalGas' business, SoCalGas aligned itself with industry associations and also hired consultants to develop strategies and separate analyses to attack the rule using ratepayer funds.⁶⁷ Numerous emails show SoCalGas's close coordination with AGA on policy advocacy, and indicate that the company used the industry association's guidance as a basis for its policy

⁶² Exh. Cal Advocates/Sierra Club-1 (*Final Comments of the Office of Ratepayer Advocates on Energy Efficiency Program Administrators' Business Plan Applications*), De-designated Exhibit 1 (Manager of energy efficiency programs at SoCalGas wrote in an email on February 12, 2015, "This NOPR will increase the cost of a furnace if adopted and as such could create fuel switching away from gas... The gas industry needs to be actively involved with this issue." This language is copied verbatim from an email sent by AGA.); see also *id.* at Appendix C, Exhibit 8, C-082 ("In order to fully assess the revenue impacts to SoCalGas and determine the validity of the DOE LCC analysis we would have to take this to the next step."); *id.* at Appendix C, Exhibit 9, C-085 (SoCalGas emails discussing the Furnace Rule and stating that "[t]here are a few strategies that the Company can use to maintain this load"); *id.* at Appendix C, Exhibit 10, C-166, C-171 (memo from BIRA Energy et al. to SoCalGas finding: (1) "the potential impact of the [DOE's furnace] upon gas and product sales, and the SoCalGas's energy efficiency program portfolio is significant" and (2) the "impact of this standard on the SoCalGas's long term portfolio of energy efficiency programs – an important source of revenue- may be substantial").

⁶³ Exh. Cal Advocates/Sierra Club-2 (SoCalGas Comments on DOE Furnace Rule NOPR).

⁶⁴ Joint Statement of Stipulated Facts, Paragraph II(3).

⁶⁵ Exh. Cal Advocates/Sierra Club-2 (SoCalGas Comments on DOE Furnace Rule NOPR); Exh. Cal Advocates/Sierra Club-1 (*Final Comments of the Office of Ratepayer Advocates on Energy Efficiency Program Administrators' Business Plan Applications*), Appendix C, Exhibits 3, C-013 to C-033 (Attachment to SoCalGas NOPR Comments – 6/26/15 Negawatt Analysis).

⁶⁶ Exh. Cal Advocates/Sierra Club-2 (SoCalGas Comments on DOE Furnace Rule NOPR, p. 1).

⁶⁷ Exh. Cal Advocates/Sierra Club-1 (*Final Comments of the Office of Ratepayer Advocates on Energy Efficiency Program Administrators' Business Plan Applications*), Appendix C, Exhibit 17, C-226 to C-227; *id.* at Appendix C, Exhibit 19, C-232 to C-234; see also *id.* at Appendix C, Exhibit 19, C-232 (PG&E stating that SoCalGas had become more aligned with industry and EE issues, replacing its [codes and standards manager] and key staff).

positions.⁶⁸ SoCalGas used ratepayer funds to hire consultants to prepare studies that aligned with AGA’s guidance, then used these reports to advocate against adoption of more stringent standards for residential gas furnaces as proposed by the DOE in its Furnace Rule.⁶⁹⁻⁷⁰

Notably, SoCalGas’ outright opposition was not its only path forward. A memo developed by the consultants (BIRA Energy, Negawatt Consulting, and Colorado Energy Group, Inc.) that SoCalGas hired to analyze the DOE’s Furnace Rule NOPR explained ways SoCalGas could attack the rule⁷¹ but also provided possible solutions (e.g., waivers or rebates for those who cannot afford the cost of a new 92% AFUE furnace, reviving the short-lived regional energy standards, creation of a separate product class that would largely eliminate pressure on customers to switch from natural gas to electric).⁷² Instead of pursuing any of these strategies, SoCalGas fully opposed the rule. For example, although SoCalGas cited to DOE’s finding that low-income

⁶⁸ For example, the SoCalGas manager of energy efficiency programs wrote in an email on February 12, 2015, “This NOPR will increase the cost of a furnace if adopted and as such could create fuel switching away from gas.... The gas industry needs to be actively involved with this issue.” This language is copied verbatim from an email sent by AGA. Exh. Cal Advocates/Sierra Club-1 (Final Comments of the Office of Ratepayer Advocates on Energy Efficiency Program Administrators’ Business Plan Applications), De-designated Exhibit 1. In another example, on April 14, 2015, the manager of codes and standards at SoCalGas recommended support for AGA’s approach to the Furnace Rule and proposes a series of steps to try to delay the Furnace Rule’s adoption and implementation. *Id.* at Appendix C, Exhibit 8, C-082 to C-083. In addition, on May 13, 2015, the manager referred to an upcoming AGA board meeting and says that she would “prefer not to submit our comments and finalize [the company’s position on the furnace rule] until I’ve attended [an AGA conference call] and confirmed that our conclusions and position are in line with what will be presented and discussed at the board meeting.” *Id.* at Appendix C, Exhibit 9, p. 48, C-132. Also, on October 8, 2015, SoCalGas director of Customer Programs & Assistance describes materials the company has prepared for the upcoming AGA board meeting. Included are the SoCalGas comments on the DOE notice and AGA comments, which the director describes as “hardline approach reinforcing our position.” See *id.* at Appendix C, Exhibit 9, p. 3, C-087.

⁶⁹ Exh. Cal Advocates/Sierra Club-1 (Final Comments of the Office of Ratepayer Advocates on Energy Efficiency Program Administrators’ Business Plan Applications, pp. 8-9).

⁷⁰ See contract between SoCalGas and GTI from April 15, 2015 for \$20,000 and related invoice from November 16, 2015. Exh. Cal Advocates/Sierra Club-1 (Final Comments of the Office of Ratepayer Advocates on Energy Efficiency Program Administrators’ Business Plan Applications), De-designated Exhibits 11 and 12. See also *id.* at Appendix C, Exhibit 13, C-196 to C-217, (GTI Analysis) and Exhibit 14, C-219. The scope of work for SoCalGas describes the deliverable as “a continuation of technical work conducted under separate contract with American Gas Association (AGA). SoCalGas tasked GTI with technical analysis support for the DOE Furnace rule, focusing on an evaluation of the rule’s impact on customers. *Id.*, De-designated Exhibit 11, pp. 1-2.

⁷¹ Exh. Cal Advocates/Sierra Club-1 (Final Comments of the Office of Ratepayer Advocates on Energy Efficiency Program Administrators’ Business Plan Applications), Appendix C, Exhibit 10, C-169 to C-171.

⁷² Exh. Cal Advocates/Sierra Club-1 (Final Comments of the Office of Ratepayer Advocates on Energy Efficiency Program Administrators’ Business Plan Applications), Appendix C, Exhibit 10, C-171, C-178, C-186.

customers may bear a larger burden than other customers if the rule was promulgated, SoCalGas made no recommendation for waivers or rebates for these customers.⁷³ Additionally, SoCalGas' NOPR comments on the Furnace Rule were devoid of any discussion or recommendation regarding separate product classes for condensing and non-condensing furnaces.⁷⁴ In other words, SoCalGas had options to support the Furnace Rule while also making recommendations to address the alleged adverse impacts asserted by SoCalGas. However, proposing solutions to the impacts claimed by SoCalGas would not have addressed SoCalGas' real concern: that the Furnace Rule would substantially threaten SoCalGas' business profits by encouraging fuel switching away from natural gas. Thus, SoCalGas proceeded to oppose the rule in its entirety.

After the NOPR, the DOE issued a Notice of Data Availability (NODA) in response to comments on the NOPR.⁷⁵ The NODA reflected a compromise by modifying the original proposal for a single nationwide standard of 92% AFUE to having two product sizes for the furnace standard: 92% AFUE for condensing furnaces and a new smaller furnace class at 80% AFUE with a British thermal unit (Btu) input rating to be determined.⁷⁶

Again, record evidence shows that SoCalGas aligned itself with industry groups to fight regulations that could result in reduced gas throughput profits. SoCalGas' emails state that, while the DOE had not set a threshold Btu rating, initial discussions about the rating for the smaller furnace class indicate a threshold input rates between 45-50 kilo Btu per hour (kBtu/h) range.⁷⁷ SoCalGas' internal emails also indicated that anecdotal information suggests that

⁷³ Exh. Cal Advocates/Sierra Club-2 (SoCalGas Comments on DOE Furnace Rule NOPR, pp. 3-4); see also Exh. Cal Advocates/Sierra Club-1 (Final Comments of the Office of Ratepayer Advocates on Energy Efficiency Program Administrators' Business Plan Applications), Appendix C, Exhibit 2, C-011 (SoCalGas Comments on DOE Furnace Rule SNOPR, p. 5) (SoCalGas touting that it runs eighty two EE programs with a budget of over \$89.5 million, but failing to recommend rebates or other incentives to assist low-income customers).

⁷⁴ See generally Exh. Cal Advocates/Sierra Club-2 (SoCalGas Comments on DOE Furnace Rule NOPR); Exh. Cal Advocates/Sierra Club-4 (SoCalGas cover letter on DOE Furnace Rule NODA) (attaching SoCalGas Comments on DOE Furnace Rule NOPR); Exh. Cal Advocates/Sierra Club-1 (Final Comments of the Office of Ratepayer Advocates on Energy Efficiency Program Administrators' Business Plan Applications), Appendix C, Exhibit 2, C-007 to C-011 (SoCalGas Comments on DOE Furnace Rule SNOPR).

⁷⁵ See Exh. Cal Advocates/Sierra Club-10 (October 4, 2015 SoCalGas email re: Recommended Course of Action for DOE Furnace NODA); Exh. Cal Advocates/Sierra Club-4 (SoCalGas cover letter on DOE Furnace Rule NODA).

⁷⁶ Exh. Cal Advocates/Sierra Club-10 (October 4, 2015 SoCalGas email re: Recommended Course of Action for DOE Furnace NODA).

⁷⁷ Exh. Cal Advocates/Sierra Club-10 (October 4, 2015 SoCalGas email re: Recommended Course of Action for DOE Furnace NODA).

SoCalGas' territory would need in the 60-70 kBtu/h range to minimize the potential for fuel switching⁷⁸ and that a rating of 65 kBtu/hour would be acceptable to its customers.⁷⁹ In comparison, the AGA would ask for more than 70 kBtu/hour, prompting SoCalGas to not "sell [its] position short."⁸⁰ SoCalGas' Director of Customer Programs and Assistance indicated that SoCalGas would pivot away from the 65 kBtu/hour "in light of AGAs plan" and it also would work with its internal stakeholders to suggest removing a specific number to allow it to "benefit from a higher [Btu] level should the AGA be successful."⁸¹

SoCalGas' NODA comments, posted October 16, 2015, again opposed the proposed rule as modified, reattaching its comments on the NOPR and the related analyses that did not address the split standard.⁸² SoCalGas used ratepayer funds recorded to the DSMBA to prepare the comments.⁸³ Unlike SoCalGas' self-serving alignment with the AGA industry group, PG&E worked to prepare a response to the NODA on behalf of the statewide codes and standards team that would recommend a threshold of 35 kBtu/hour for the smaller furnace size.⁸⁴

DOE then issued a Supplemental Notice of Proposed Rulemaking (SNOPR) proposing a 55,000 Btu/h split standard.⁸⁵ On January 6, 2017, SoCalGas submitted comments on DOE's SNOPR with the Gas Technology Institute's (GTI) analysis and an updated Negawatt analysis, asserting flawed cost assumptions, inputs, and methods.⁸⁶ SoCalGas used ratepayer funds

⁷⁸ Exh. Cal Advocates/Sierra Club-1 (Final Comments of the Office of Ratepayer Advocates on Energy Efficiency Program Administrators' Business Plan Applications), Appendix C, Exhibit 18, C-229 (Oct. 4, 2015 SoCalGas email).

⁷⁹ Exh. Cal Advocates/Sierra Club-10 (October 4, 2015 SoCalGas email re: Recommended Course of Action for DOE Furnace NODA, p. 1).

⁸⁰ Cal Advocates/ Sierra Club-12 (October 13, 2015 SoCalGas email re: AGA Board Prep).

⁸¹ Cal Advocates/ Sierra Club-12 (October 13, 2015 SoCalGas email re: AGA Board Prep); see also Cal Advocates/ Sierra Club-11 (October 13, 2015 SoCalGas email re: SoCalGas' Response to DOE NODA) (email from SoCalGas C&S Manager to the Vice President of Customer Solutions [Rodger Schwecke]).

⁸² Exh. Cal Advocates/Sierra Club-4 (SoCalGas cover letter on DOE Furnace Rule NODA); Joint Statement of Stipulated Facts, Paragraph II(4).

⁸³ Joint Statement of Stipulated Facts, Paragraph II(4).

⁸⁴ Exh. Cal Advocates/Sierra Club-10 (October 4, 2015 SoCalGas email re: Recommended Course of Action for DOE Furnace NODA), p. 2.

⁸⁵ See Exh. Cal Advocates/Sierra Club-1 (Final Comments of the Office of Ratepayer Advocates on Energy Efficiency Program Administrators' Business Plan Applications), Appendix C, Exhibit 2, C-007, C-009 (SoCalGas Comments on DOE Furnace Rule SNOPR, pp. 1, 3).

⁸⁶ Exh. Cal Advocates/Sierra Club-1 (Final Comments of the Office of Ratepayer Advocates on Energy Efficiency Program Administrators' Business Plan Applications), Appendix C, Exhibit 2, C-007, C-008

recorded to the DSMBA to prepare the comments.⁸⁷ SoCalGas also used ratepayer funds, again recorded to the DSMBA to send its Codes and Standards Manager and another employee to reiterate SoCalGas' position at the October 17, 2016 public meeting on the SNOPR in Washington, D.C.⁸⁸

After submission of its comments on the SNOPR, SoCalGas recorded to the DSMBA ratepayer account the time spent by its Codes and Standard Manager related to a March 7, 2017 letter that the American Public Gas Association (APGA) sent to Energy Secretary Perry.⁸⁹ This Codes and Standards Manager helped review and edit the letter, which opposed the DOE Furnace Rule and attacked the DOE's methodologies for appliance efficiency rules.⁹⁰

3. SoCalGas Used Ratepayer Funds to Undermine the DOE's Commercial Package Boilers Rule.

On June 22, 2016, SoCalGas again filed comments on a DOE energy conservation standard, a proposed rule for commercial packaged boilers (Commercial Packaged Boilers Rule).⁹¹ SoCalGas's comments recommended adoption of Trial Standard Level (TSL) 1 instead of TSL 2, even though SoCalGas did not dispute that the DOE's proposal to set standards at TSL 2 would be cost effective.⁹² In the context of this rulemaking, TSL 1 is a less stringent standard than TSL 2. For instance, TSL 2 set a standard of 81% thermal efficiency limited to small gas-fired steam commercial packaged boilers, whereas TSL 1 would set a standard of 80% for these

(SoCalGas Comments on DOE Furnace Rule SNOPR, pp. 1-2); Joint Statement of Stipulated Facts, Paragraph II(5).

⁸⁷ Joint Statement of Stipulated Facts, Paragraph II(5).

⁸⁸ Exh. Cal Advocates/Sierra Club-14 (DOE Furnace Rule NOPR Public Meeting Transcript (Oct. 17, 2016), p. 1, 43-46); Exh. Cal Advocates/Sierra Club-15 (SoCalGas response to data request SierraClub-SoCalGas-04, question 1).

⁸⁹ Exh. Cal Advocates/Sierra Club-52 (SoCalGas response to data request SierraClub-SoCalGas-07, question 2); Exh. Cal Advocates/Sierra Club-56 (March 3, 2017 message from Sue Kristjansson attaching "Secretary Perry letter with acorbin and SJK edits.docx"); Exh. Cal Advocates/Sierra Club-57 (March 7, 2017 letter to Energy Secretary Perry).

⁹⁰ Exh. Cal Advocates/Sierra Club-52 (SoCalGas response to data request SierraClub-SoCalGas-07, question 2); Exh. Cal Advocates/Sierra Club-56 (March 3, 2017 message from Sue Kristjansson attaching "Secretary Perry letter with acorbin and SJK edits.docx"); Exh. Cal Advocates/Sierra Club-57 (March 7, 2017 letter to Energy Secretary Perry).

⁹¹ Exh. Cal Advocates/Sierra Club-6 (SoCalGas Comments on DOE Commercial Packaged Boilers Rule).

⁹² See generally Exh. Cal Advocates/ Sierra Club-6 (SoCalGas Comments on DOE Commercial Packaged Boilers Rule); Cal Advocates/ Sierra Club-8 at 10-2 (defining the TSLs considered in the commercial packaged boiler rulemaking).

same boilers.⁹³ Regardless, SoCalGas argued that TSL 2 may inadvertently disqualify a significant amount of non-condensing gas equipment, and in some cases force a shift to electric condensing equipment.⁹⁴ SoCalGas argued that TSL 1 was reasonable and allegedly minimized the risk of negative economic impacts to California customers.⁹⁵ SoCalGas used ratepayer funds recorded to the DSMBA to prepare the comments that argued in support of the weaker efficiency standard.⁹⁶

In contrast, the joint comments of PG&E and San Diego Gas & Electric Company (SDG&E) agreed with DOE's proposed TSL 2, citing significant energy savings and environmental benefits.⁹⁷ PG&E and SDG&E also cited significant economic benefits, contrary to SoCalGas' assertion about negative economic impacts.⁹⁸ In other words, SoCalGas misused ratepayer funds to advocate for a weaker standard so that less efficient commercial packaged boilers could remain on the market and to avoid potential fuel switching to electric boilers, even though SDG&E and PG&E identified more aggressive standards as cost-effective. In doing so, SoCalGas opposed greater economic and environmental benefits for its customers, California, and the nation.⁹⁹

4. SoCalGas Used Ratepayer Funds to Undermine Efficiency Standards in Comments on the DOE's RFI.

In May-July 2017, the IOUs each responded to a request for information (RFI) from the DOE that asked utilities to identify regulatory burdens that could be eased under current law.¹⁰⁰

⁹³ Exh. Cal Advocates/Sierra Club-8 (Excerpt from DOE Technical Support Document for the Commercial Packaged Boilers Rule) (see, e.g., Table 10.2.1 and Table 10.2.2).

⁹⁴ Exh. Cal Advocates/Sierra Club-6 (SoCalGas Comments on DOE Commercial Packaged Boilers Rule, p. 2).

⁹⁵ Exh. Cal Advocates/Sierra Club-6 (SoCalGas Comments on DOE Commercial Packaged Boilers Rule, p. 4).

⁹⁶ Joint Statement of Stipulated Facts, Paragraph II(7).

⁹⁷ Exh. Cal Advocates/Sierra Club-7 (PG&E and SDG&E Joint Comments on DOE Commercial Packaged Boilers Rule, p. 1).

⁹⁸ Exh. Cal Advocates/Sierra Club-7 (PG&E and SDG&E Joint Comments on DOE Commercial Packaged Boilers Rule, p. 1).

⁹⁹ See Exh. Cal Advocates/Sierra Club-7 (PG&E and SDG&E Joint Comments on DOE Commercial Packaged Boilers Rule, p. 1) (listing specific economic and environmental benefits); see also Exh. Cal Advocates/Sierra Club-8 (Excerpt from DOE Technical Support Document for the Commercial Packaged Boilers Rule, p. 1-2) (same).

¹⁰⁰ Exh. Cal Advocates/Sierra Club-1, Appendix C, Exhibits 2 and 3, C-007 to C-033.

While the responses of PG&E, SDG&E, Southern California Edison Company (SCE), and the CEC requested that DOE maintain and strengthen energy efficiency policies, SoCalGas' responses instead requested that the federal government reverse previously adopted or pending standards such as the Furnace Rule.¹⁰¹ As discussed above, the DOE's current standards for furnaces, among other products, were weak and outdated and a "significant barrier to California being able to achieve its climate goals through cost-effective codes and standards for new and existing buildings."¹⁰²

SoCalGas also suggested that the DOE "consider deprioritizing efficiency regulations where above-code equipment has already proven to be successful in the marketplace for many applications and customers."¹⁰³ SoCalGas argued that "[i]n these situations, one can support the position that a standard is not needed, because the higher efficiencies are attractive enough to be adopted by utility customers without government intervention."¹⁰⁴ In other words, SoCalGas recommended that customers have a choice to "opt out of higher efficiency equipment."¹⁰⁵ SoCalGas used ratepayer funds recorded to the DSMBA to prepare the comments seeking to roll back efficiency standards.¹⁰⁶

SoCalGas' strategy for responding to the DOE RFI was similar to the one used in responding to the Furnace Rule. SoCalGas' initial response to the RFI was to recommend that its consultant Negawatt reach out to AGA and other industry groups "as they may have some points that we can side with."¹⁰⁷ The SoCalGas Codes and Standards Manager replied to the Project Manager that "I believe that both AGA and APGA have responded and actually fed the DOE the information to launch the RFI."¹⁰⁸ Later, this Project Manager sent the SoCalGas Codes and Standards Manager a draft of SoCalGas's draft RFI summary "for review and

¹⁰¹ Exh. Cal Advocates/Sierra Club-1, Appendix C, Exhibits 5-7, C-038 to C-080 (responses to the RFI).

¹⁰² Exh. Cal Advocates/Sierra Club-3 (CEC Comments on DOE Furnace Rule NOPR, p. 3).

¹⁰³ Exh. Cal Advocates/Sierra Club-1, Appendix C, Exhibit 7, C-074 (SoCalGas Comments on DOE RFI, p. 4).

¹⁰⁴ Exh. Cal Advocates/Sierra Club-1, Appendix C, Exhibit 7, C-074 (SoCalGas Comments on DOE RFI, p. 4).

¹⁰⁵ Exh. Cal Advocates/Sierra Club-1, Appendix C, Exhibit 7, C-074 (SoCalGas Comments on DOE RFI, p. 4).

¹⁰⁶ Joint Statement of Stipulated Facts, Paragraph II(8).

¹⁰⁷ Exh. Cal Advocates/Sierra Club-1, Appendix C Exhibit 14, C-219.

¹⁰⁸ Exh. Cal Advocates/Sierra Club-1, Appendix C Exhibit 15, C-221 to C-222.

possible alignment with AGA, APGA.”¹⁰⁹ This series of emails is another example of the pattern and practice of SoCalGas to use ratepayer funds to advance its business interest in direct conflict with Commission directives.

C. SoCalGas Repeatedly Violated Commission Decisions When it Used Ratepayer Funds to Oppose the Adoption of Reach Codes.

The Commission has recognized that local jurisdictions that “adopt reach codes become an important stepping stone and testing ground to collect data on adoption rates of new technologies.”¹¹⁰ Accordingly, the Commission ordered the IOUs to “coordinate with the Codes and Standards program and the California Energy Commission’s Codes and Standards Programs to . . . support the advancement of emerging technologies and approaches, including demonstration of technologies, that are candidates for adoption into future codes and standards as well as Reach Codes.”¹¹¹ As discussed below, the record evidence shows critical instances where SoCalGas failed to comply with this Commission mandate and, therefore, violated Commission decisions authorizing ratepayer funds to promote reach codes.¹¹²

SoCalGas’ opposition to reach codes is an effort to halt all-electric construction that would significantly reduce the amount of natural gas SoCalGas would sell to customers and impede the related benefits of reduced reliance on fossil fuels. As stated in SoCalGas’2017 Energy Efficiency Programs Annual Report:

Many local jurisdictions have established goals within their Climate Action Plans to reduce energy use and greenhouse gas emissions from buildings through adopting and implementing local energy ordinances. Given the changing policy and funding priorities at the federal level, cities and counties are experiencing a greater sense of urgency for local action to meet the state’s GHG emission reduction goals. This urgency has translated to a greater interest in reach codes as a path to achieve the goals. With reducing GHG emissions as the highest priority, there is a shift in focus from reducing energy use generally to specifically reducing energy use associated with carbon emissions.¹¹³

¹⁰⁹ Exh. Cal Advocates/Sierra Club-1, Appendix C Exhibit 16, C-224.

¹¹⁰ D.12-05-015, pp. 254-55.

¹¹¹ D.12-05-015, Ordering Paragraph 99 at 24.

¹¹² See, e.g., D.09-09-047, p. 203; D.12-05-015, pp. 243, 254-255.

¹¹³ Exh. SCG-37 (SoCalGas 2017 Energy Efficiency Programs Annual Report, pp. 33-34).

In 2019, the City of San Luis Obispo was finalizing its consideration of a reach code to encourage all-electric construction to reduce emissions from new buildings.¹¹⁴ About 40 percent of San Luis Obispo’s total carbon emissions were from natural gas generated from buildings and the city projected more than 4,600 new homes and more than 5 million square feet of nonresidential building units by 2035 would be incentivized to electrify through the proposed reach code.¹¹⁵ San Luis Obispo’s draft reach code threatened SoCalGas’ core business and profits, so SoCalGas used ratepayer funds to try to prevent the City Council from passing the code.

SoCalGas sent a letter to the City of San Luis Obispo opposing its reach code on August 9, 2019.¹¹⁶ SoCalGas’ letter is contrary to its obligations to advocate for the adoption of reach codes and also to provide technical support or to conduct research and analysis for establishing performance levels and cost-effectiveness for proposed reach codes.¹¹⁷ Here again, SoCalGas billed ratepayers for this effort. Specifically, the letter was signed by SoCalGas’ Vice President of Strategy and Management,¹¹⁸ a position funded by ratepayers.¹¹⁹ SoCalGas employees whose time is recorded in ratepayer funded accounts prepared the letter of opposition and the related follow-up emails.¹²⁰ Thus, SoCalGas’ misused ratepayer funds to undermine the Commission’s policy and directives contrary to its obligation to promote reach codes.

¹¹⁴ Exh. Cal Advocates/Sierra Club-34 (Article: Nick Wilson, SLO Passes New Policy Requiring All-Electric Buildings).

¹¹⁵ Exh. Cal Advocates/Sierra Club-34 (Article: Nick Wilson, SLO Passes New Policy Requiring All-Electric Buildings).

¹¹⁶ Exh. Cal Advocates/Sierra Club-37 (SoCalGas Letter re: Oppose City of San Luis Obispo – Local Amendments to the 2019 California Building Code); Exh. Cal Advocates/Sierra Club-32 (SoCalGas Response to data request CalAdvocates-HB-SCG-2019-12, Q6 and attached responsive emails).

¹¹⁷ See, e.g., D.09-09-047, p. 203 (approving a new Reach Code subprogram to “increase the likelihood of [reach] code adoption and compliance”); D.12-05-015, pp. 243, 254-255 (authorizing IOU efforts to promote the adoption of reach codes and other codes and standards advocacy because “[p]rogressive increases in building and appliance efficiency standards are a critical component of achieving the State’s long-term energy efficiency goals” and identifying reach codes as “an important stepping stone and testing ground to collect data on adoption rates of new technologies”); Exh. SCG-24 (SoCalGas 2014 Energy Efficiency Annual Report, p. 2-34).

¹¹⁸ Exh. Cal Advocates/Sierra Club-32 (SoCalGas Response to data request CalAdvocates-HB-SCG-2019-12, Q1.b).

¹¹⁹ Cal Advocates/Sierra Club-32 (SoCalGas Response to data request CalAdvocates-HB-SCG-2019-12, Q7).

¹²⁰ Exh. Cal Advocates/Sierra Club-32 (SoCalGas Response to data request CalAdvocates-HB-SCG-2019-12, Q3 and Q7).

In addition, on September 3, 2019, five SoCalGas employees attended the San Luis Obispo City Council meeting, which considered the proposed reach code.¹²¹ All five positions are traditionally ratepayer-funded.¹²² In a revised data request response SoCalGas now claims to have moved the salary costs of one of the employees to a shareholder-funded account to correct an inadvertent error.¹²³ Notably, SoCalGas also recorded \$10,000 in consulting costs associated with preparing for the city council meeting on the reach code to a shareholder account,¹²⁴ thereby acknowledging opposing reach codes activities should not be funded by ratepayers.

Around the same time that SoCalGas waged its opposition to San Luis Obispo's reach code, it also tried to undermine a Santa Monica reach code that proposed to replace gas equipment with electric equipment.¹²⁵ In September 2019, SoCalGas sent three employees whose salaries are funded by ratepayers to the Santa Monica city council meeting to promote natural gas and advocate against the proposed reach code^{126,127}

SoCalGas also attempted to impede a Culver City reach code intended to increase renewable energy and decrease citywide emissions.¹²⁸ As the city conducted public meetings on its proposed reach code, SoCalGas submitted a comment letter on February 4, 2020, arguing the city failed to adequately consider use of renewable natural gas and claiming that natural gas was necessary as part of the resource mix to maintain a reliable, affordable, and resilient energy

¹²¹ Exh. Cal Advocates/Sierra Club-33 (SoCalGas response to data request CalAdvocates-HB-SCG-2019-13, Q1); Exh. Cal Advocates/Sierra Club-36 (Article: Electric Appliances in SLO CA Recommended by Energy Experts).

¹²² Exh. Cal Advocates/Sierra Club-33 (SoCalGas response to data request CalAdvocates-HB-SCG-2019-13, Q2 to Q6).

¹²³ Exh. SCG-43 (SoCalGas revised response to data request CalAdvocates-HB-SCG-2019-13, Q3 and Q5).

¹²⁴ Exh. SCG-43 (SoCalGas revised response to data request CalAdvocates-HB-SCG-2019-13, Q3 and Q5).

¹²⁵ Exh. Cal Advocates/ Sierra Club-35 (Article: Madeleine Pauker, City Hall to Encourage Replacing Gas Appliances With Electric Alternatives).

¹²⁶ See Exh. Cal Advocates/Sierra Club-33 (SoCalGas response to data request CalAdvocates-HB-SCG-2019-13, Q7, Q9 and Q10).

¹²⁷ Exh. Cal Advocates/Sierra Club-33 (SoCalGas response to data request CalAdvocates-HB-SCG-2019-13, Q11 and Q13).

¹²⁸ Exh. Cal Advocates/Sierra Club-68 (SoCalGas letter to Culver City Building Safety Division re: Public Outreach Meetings, REACH code amendments).

system.¹²⁹ SoCalGas' comment letter was a far cry from its Commission-mandated obligation to promote reach codes,¹³⁰ which are a stepping stone toward statewide codes that will achieve the state's climate goals in a cost-effective manner.¹³¹ Here again, SoCalGas recorded the labor costs of preparing this letter to ratepayer-funded accounts.¹³²

Not only did SoCalGas oppose reach codes at the local level, it also joined several other entities to oppose the codes at state level before the CEC in a December 11, 2019 joint letter. Specifically, the joint letter requested that the CEC "pause in its consideration of REACH code approvals" to provide more time to address reliability concerns and consumer impacts.¹³³ SoCalGas claims that the costs to draft the letter were recorded in a shareholder-funded account,¹³⁴ thus acknowledging that such costs to oppose reach codes should not be funded by ratepayers.

VI. REMEDIES

A. The Commission Should Order SoCalGas to Refund Codes and Standards Program Expenditures and Related ESPI awards for 2014-2016.

Public Utilities Code Section 451 states:

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

¹²⁹ Exh. Cal Advocates/Sierra Club-68 (SoCalGas letter to Culver City Building Safety Division re: Public Outreach Meetings, REACH code amendments).

¹³⁰ See, e.g., D.09-09-047, p. 203; D.12-05-015, pp. 243, 254-255.

¹³¹ See D.09-09-047, p. 203 (authorizing a reach code codes and standards subprogram to "increase the likelihood of code adoption and compliance"); D.12-05-015, pp. 243, 254-55 (authorizing IOU efforts to promote the adoption of reach codes and other codes and standards advocacy because "[p]rogressive increases in building and appliance efficiency standards are a critical component of achieving the State's long-term energy efficiency goals" and identifying reach codes as "an important stepping stone and testing ground to collect data on adoption rates of new technologies"); D.05-09-043, Finding of Fact 40 at 177 ("Using ratepayer dollars to work towards adoption of higher appliance and building standards may be one of the most cost-effective ways to tap the savings potential for energy efficiency and procure least-cost energy resources on behalf of all ratepayers.").

¹³² Exh. Sierra Club-R-4(SoCalGas response to data request Sierra Club-SoCalGas-06, question 3).

¹³³ Exh. Cal Advocates/Sierra Club-29 (Dec. 11, 2019 Joint Letter to CEC re: Docket No. 19-BSTD-06, REACH Codes).

¹³⁴ Exh. Sierra Club-R-4(SoCalGas response to data request Sierra Club-SoCalGas-06, question 1).

All rules made by public utility affecting or pertaining to its charges or service to the public shall be just and reasonable.

The Commission should order SoCalGas to refund to ratepayers \$146,032.92 in shareholder incentives, the amount associated with SoCalGas' building codes and compliance advocacy and appliance standards advocacy that it has received through the ESPI for program years 2014-2016.¹³⁵ Since these subprograms relate to SoCalGas' activities that amount to violations of Commission decisions,¹³⁶ it would be unjust and unreasonable to allow SoCalGas to retain ratepayer funds for ESPI awards associated with these programs.¹³⁷ SoCalGas' demonstrated pattern of undermining ratepayer and state interests in its ratepayer funded codes and standards advocacy work should disqualify SoCalGas from any shareholder incentives associated with its management of these codes and standards subprograms. Table 1 below shows a breakdown of these incentives.

///

///

///

¹³⁵ SoCalGas did not receive ESPI awards after 2016 because SoCalGas' ESPI award request for 2017 was denied in its entirety. Resolution E-5007 pp. 2, 34-35, and 39 (Finding 16) (The Commission found that "there is a question whether SoCalGas' codes and standards advocacy in 2016 and 2017 could reasonably have been expected to result in energy savings").

¹³⁶ Cal Advocates makes no recommendations about ESPI awards related to SoCalGas' compliance and enhancement and planning coordination subprograms.

¹³⁷ See D.08-09-038, pp. 2, 80-87 (ordering SCE to refund the portion of its 2003 to 2005 revenue requirement related to the utility's Results Sharing program that was affected by fraudulent data); *id.* at pp. 100-101, Conclusion of Law 2 and Conclusion of Law 5 (ordering refunds for violations of Section 451 because SCE received performance based rewards and collected revenues based on data known to management to be false or misleading); *id.* at p. 84 (rejecting SCE's argument that the revenue requirement should be preserved since it was not demonstrated that the payouts recorded in 1999 and 2000 were improperly inflated due to data falsification in 1999 and 2000, and finding that the evidence clearly demonstrates that data used as a basis for the 1999 and 2000 payouts was tainted); *see also* Public Utilities Code Section 451, D.18-07-025, p. 30 (Disallowances resulting from the Commission's implementation of Section 451 are not penalties to encourage deterrence; they are grounded in the necessity of protecting ratepayers from bearing unjust and unreasonable cost).

Table 1: 2014-2016 ESPI Awards for Building Codes and Compliance, Appliance Standards, and Reach Codes¹³⁸

Expenditures (excluding Admin)				
Year	Statewide C&S- Building Codes & Compliance Advocacy	Statewide C&S- Appliance Standards Advocacy	Sum	Sum * 12% (ESPI) ¹³⁹
2014	\$224,119.00	\$40,514.00	\$264,633.00	\$31,755.96
2015	\$204,689	\$75,764	\$280,453.00	\$33,654.36
2016	\$451,311	\$220,544	\$671,855.00	\$80,622.60
Subtotal				\$146,032.92

Additionally, SoCalGas should be ordered to refund \$1,877,758 in program costs for its 2014-2020 building codes and compliance, appliance standards, and reach codes programs. Since these subprograms relate to SoCalGas’ activities that amount to violations of Commission decisions, it would be unjust and unreasonable to allow SoCalGas to retain ratepayer funds for program costs associated with these programs.¹⁴⁰ Table 2 below shows these program costs.

¹³⁸ ESPI award amounts are as follows: 2014 = \$73,418-\$5,262 (True-Up) = \$68,156 (SoCalGas Advice Letter No. 4826); 2015 = \$59,009-\$5880 (True-Up) = \$53,129 (2015 ESPI Ex-Ante Workbook Expenditures Part 2, available on Commission’s ESPI Website: <https://www.cpuc.ca.gov/General.aspx?id=4137>); 2016 = \$91,293-\$343 (True-Up) = \$90,950 (2016 ESPI Ex-Ante Workbook Expenditures Part 2, available on the Commission’s ESPI Website: <https://www.cpuc.ca.gov/General.aspx?id=4137>). The Commission may take official notice of these document pursuant to Rule 13.9 of the Commission’s Rules of Practice and Procedure, Section 452 of the Evidence Code, D.16-01-014, p. 21 and fn. 16 (courts have taken official notice of government agency websites), and D.07-01-041, pp. 25-26 (taking official notice of a CEC report).

¹³⁹ The codes and standards component of the ESPI is set at 12 percent of approved expenditures for the codes and standards programs. D.13-09-023, pp. 20, 94-95 (Ordering Paragraph 3), and 98 (Ordering Paragraph 15).

¹⁴⁰ See D.08-09-038, pp. 2, 80-87 (ordering SCE to refund the portion of its 2003 to 2005 revenue requirement related to the utility’s Results Sharing program that was affected by fraudulent data); *id.* at pp. 100-101, COL 2 and COL 5 (ordering refunds for violations of Section 451 because SCE received performance based rewards and collected revenues based on data known to management to be false or misleading); *id.* at p. 84 (rejecting SCE’s argument that the revenue requirement should be preserved since it was not demonstrated that the payouts recorded in 1999 and 2000 were improperly inflated due to data falsification in 1999 and 2000, and finding that the evidence clearly demonstrates that data used as a basis for the 1999 and 2000 payouts was tainted); *see also* Public Utilities Code Section 451, D.18-07-025, p. 30 (Disallowances resulting from the Commission’s implementation of Section 451 are not penalties to encourage deterrence; they are grounded in the necessity of protecting ratepayers from bearing unjust and unreasonable cost).

Table 2: 2014-2020 Program Costs for Building Codes and Compliance, Appliance Standards, and Reach Codes¹⁴¹

Year	Statewide C&S-Building Codes & Compliance Advocacy	SW C&S-Appliance Standards Advocacy	SW C&S-Reach Codes
2014	\$247,119.00	\$48,756.00	
2015	\$229,152.00	\$92,067.00	
2016	\$477,043.90	\$237,347.90	
2017	\$196,238.17	\$276,023.18	
2018			\$36,101.85
2019	-	-	\$32,982.00
2020	-	-	\$4,907.00
Totals	\$1,149,553.07	\$654,194.08	\$74,010.85

B. The Commission Should Impose Fines on SoCalGas For Its Blatant and Persistent Opposition to Efficiency Standards.

As explained above, SoCalGas violated Commission decisions mandating that ratepayer dollars be used to promote the adoption of stricter codes and standards and the adoption of local reach codes. The Commission’s authority to impose fines for these violations is set forth in the Public Utilities Code Sections 2107 and 2108 as follows:¹⁴²

Section 2107: 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

¹⁴¹ Program expenditures are broken down as follows: 2014 = \$680,480 (Exh. SCG-20, UAFCB 2014 SCG EE Audit, Section B.4); 2015 = \$552,493 (2015 ESPI Ex-Ante Workbook Expenditures Part 2, available on the Commission’s ESPI Website: <https://www.cpuc.ca.gov/General.aspx?id=4137>); 2016 = \$1,161,065.51 (2016 ESPI Ex-Ante Workbook Expenditures Part 2, available on the Commission’s ESPI Website (<https://www.cpuc.ca.gov/General.aspx?id=4137>)); 2017 = \$965,095 (2017 ESPI Ex-Ante Workbook Expenditures Part 2, available on the Commission’s ESPI Website: <https://www.cpuc.ca.gov/General.aspx?id=4137>); 2018 = \$482,830 (2018 Expenditures Workbook: <https://www.cpuc.ca.gov/General.aspx?id=4137>); 2019 = \$233,875 (All Budget Data is Estimated Total Expenditures from CEDARs: <https://cedars.sound-data.com/>, see the Program Budget Summary for 2019); 2020 = \$22,026 (All Budget Data is Estimated Total Expenditures from CEDARs: <https://cedars.sound-data.com/>, through February 2020). The Commission may take official notice of these document pursuant to Rule 13.9 of the Commission’s Rules of Practice and Procedure, Section 452 of the Evidence Code, D.16-01-014, p. 21 and fn. 16 (courts have taken official notice of government agency websites), and D.07-01-041, pp. 25-26 (taking official notice of a CEC report).

¹⁴² D.16-01-025, p. 15.

penalty of not less than five hundred dollars (\$500), nor more than one hundred thousand dollars (\$100,000), for each offense.

Section 2108: Every violation of the provisions of this part or of any part of any order, decision, decree, rule, direction, demand, or requirement of the commission, by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be a separate and distinct offense.”

For fines assessed prior to 2019, the minimum amount is \$500 and the maximum amount is \$50,000 for each offense.¹⁴³

The purpose of a fine is to go beyond restitution to the victim and to effectively deter further violations by the utility or others.¹⁴⁴ Deterrence is particularly important against violations which could result in public harm, and particularly against those where severe consequences could result.¹⁴⁵ Two general criteria are used to capture these ideas and “help guide the Commission in setting fines which are proportionate to the violation”: (1) severity of the offense and (2) conduct of the utility.¹⁴⁶ In addition, the Commission considers the financial resources of the utility, the deterrent effect of future violations, the totality of the circumstances, and the role of precedent to set a penalty amount.¹⁴⁷

Here, given the above considerations, a fine of \$255,300,000 is both necessary and appropriate. Specifically, as explained below, SoCalGas’ behavior was egregious, ongoing, and reflected profit-motivated business decisions at the costs to ratepayers, public health, and the environment. While there is evidence of significant indirect harm in terms of public health risks and climate change, Cal Advocates reduced the maximum fines by 25 percent because there was no direct physical and immediate harm.

The \$255,300,000 fine is calculated based on SoCalGas’ the below public documents or comments at a city council meeting that most directly and blatantly undermined efficiency

¹⁴³ The former Public Utilities Code §2107 stated: “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.” SB 879, Ch. 523, Stats. 2011.

¹⁴⁴ D.98-12-075, p. 35.

¹⁴⁵ D.98-12-075, p. 35.

¹⁴⁶ D.98-12-075, p. 35.

¹⁴⁷ D.98-12-075, pp. 38-39.

standards, and which are manifestations of SoCalGas’ general strategy to fight efficiency standards that threatened its business profits. Table 3 below identifies the violations and fines amounts.

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 SNO PR 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

For 2014-2017 violations, the start date is the date that SoCalGas issued the public document and the end date is date that D.18-05-041, the decision prohibiting SoCalGas from codes and standards advocacy during the current energy efficiency business plan (2021-2025), was effective, May 31, 2018. Considering SoCalGas’ failure to disclose or rectify its violations as discussed below, using the date the Commission intervened to prohibit SoCalGas from future codes and standards advocacy is appropriate.¹⁴⁹ Each violation is considered continuous from the documents date of document submission to the end date.

¹⁴⁸ Joint Statement of Stipulated Facts (Oct. 2, 2020).

¹⁴⁹ The scope of this prohibition is at issue in the other order to show cause against SoCalGas in this rulemaking, *Administrative Law Judge’s Ruling Granting the Motion of the Public Advocate’s Office of the Public Utilities Commission and Directing Southern California Gas Company to Show Cause Why It Should Not be Sanctioned by the Commission for Violation of California Public Utilities Code Sections 702, 2107 or 2108 or Rule 1.1 of the Commission’s Rules of Practice and Procedure Order to Show*

For reach codes violations, the start date is the date each public document was issued or in the case of Santa Monica’s reach code, when SoCalGas made public comments at the city council meeting. Cal Advocates used February 4, 2020, the date of the Culver City letter as the end, since this was the last and most recent attempt of SoCalGas to oppose reach codes in the record of this OSC. Considering SoCalGas’ failure to disclose or halt its violations, even after the Commission opened this OSC on December 17, 2019, SoCalGas’ last known violation is an appropriate end date. Each violation is considered continuous from the date of the document to the end date.

This fine amount, including consideration of each violation as ongoing, is supported based on the Commission’s penalty analysis, as discussed below.

The Commission should allocate the fines so that SoCalGas will pay half of the calculated penalty amount to the General Fund and the remaining half to fund Commission electrification programs such as BUILD¹⁵⁰ and the Self-Generation Incentive Program (SGIP).¹⁵¹ Additional funding for these electrification programs will help advance the state’s GHG reduction goals, the very goals SoCalGas has attempted to undermine by opposing efficiency standards.

1. Criterion 1: Severity of the Offense

Criterion 1 requires that the size of a fine be proportionate to the severity of the offense.¹⁵² To determine the severity of the offense, the Commission considers the following

Cause Why SoCalGas Should Not Be Sanctioned for Violating a Commission Order and Rule 1.1 of the Commission’s Rules of Practice and Procedure, issued October 3, 2019.

¹⁵⁰ In September 2018, Governor Brown signed two bills into law related to reducing greenhouse gas emissions from buildings, SB 1477 (Stern), Ch. 378, Stats. 2018, and AB 3232 (Friedman), Ch. 373, Stats. 2018. SB 1477 calls on the CPUC to develop, in consultation with the California Energy Commission, two programs (BUILD and TECH) aimed at reducing greenhouse gas emissions associated with buildings. <https://www.cpuc.ca.gov/BuildingDecarb/>. The Commission may take official notice of its website pursuant to Rule 13.9 of the Commission’s Rules of Practice and Procedure, Section 452 of the Evidence Code, and D.16-01-014, p. 21 and fn. 16 (courts have taken official notice of government agency websites).

¹⁵¹ The Commission’s SGIP provides incentives to support existing, new, and emerging distributed energy resources. SGIP provides rebates for qualifying distributed energy systems installed on the customer’s side of the utility meter. Qualifying technologies include wind turbines, waste heat to power technologies, pressure reduction turbines, internal combustion engines, microturbines, gas turbines, fuel cells, and advanced energy storage systems. <https://www.cpuc.ca.gov/sgip/>. The Commission may take official notice of its website pursuant to Rule 13.9 of the Commission’s Rules of Practice and Procedure, Section 452 of the Evidence Code, and D.16-01-014, p. 21 and fn. 16 (courts have taken official notice of government agency websites).

¹⁵² D.09-09-005, p. 29.

factors: (a) physical harm; (b) economic harm; (c) harm to the regulatory process; and (d) the number of violations.¹⁵³

a. Physical Harm

Violations that cause physical harm to people or property are considered the most severe violations, with violations that threatened such harm closely following.¹⁵⁴ The Commission has found that evidence of a direct link between the violation and physical harm is not necessary to satisfy this factor: a close link is adequate.¹⁵⁵

Reductions in GHG emissions through energy efficiency is closely linked to public health. Energy policy and environmental policy are inextricably linked, and energy efficiency is a critical tool for reducing GHG emissions in the energy sector.¹⁵⁶ Codes and standards are central to achieving the state’s energy efficiency and climate goals, because “[t]here is no policy tool more essential for the widespread and persistent transformation of energy performance in California than energy codes and standards.”¹⁵⁷ As such, energy efficiency codes and standards are a necessary strategy to mitigate the disastrous public health impact identified in several California climate bills.

For example, in AB 32 the Legislature identified the need for climate policies to protect public health:

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.¹⁵⁸

¹⁵³ D.98-12-075, p. 36.

¹⁵⁴ D.98-12-075, p. 36.

¹⁵⁵ D.08-09-038, p. 111 (“As previously discussed, the most serious violations are those involving physical harm, and SCE’s misreporting of health and safety records is closely linked to physical harm, although we have no evidence that the misreporting presented a direct physical harm of the most severe nature.”).

¹⁵⁶ D.08-09-040, Attachment A, Energy Action Plan (2008 Update), pp. 3, 6.

¹⁵⁷ D.08-09-040, Attachment A, Energy Action Plan (2008 Update), p. 67.

¹⁵⁸ AB 32 (Nunez), Ch. 488, Stats. 2006.

In Senate Bill (SB) 32 the Legislature declared that reducing climate pollution is critical for all communities, especially so for the “most disadvantaged communities [that] are disproportionately impacted by the deleterious effects of climate change on public health.”¹⁵⁹ Similarly, SB 100 declares that “[s]upplying electricity to California end-use customers that is generated by eligible renewable energy resources is necessary to improve California’s air quality and public health, particularly in disadvantaged communities.”¹⁶⁰ SoCalGas’ advocacy against codes and standards and reach codes warrants a substantial fine because SoCalGas worked to undermine the state’s goals aimed at mitigating the public health impacts of climate change for all Californians, especially the most vulnerable.

For example, the memo from BIRA Energy et al. to SoCalGas found that “the potential impact of the [DOE’s Furnace Rule] upon gas and product sales, and the SoCalGas’s energy efficiency program portfolio is significant” and the “impact of this standard on the SoCalGas’s long term portfolio of energy efficiency programs – an important source of revenue – may be substantial.”¹⁶¹ By opposing the Furnace Rule to preserve profitable gas throughput in both its comments on the DOE’s Furnace Rule and RFI, SoCalGas was fighting potential energy savings in California that could have prevented \$259 million to \$1.2 billion in harm caused by carbon dioxide (CO₂) emissions.¹⁶²

Specifically, the utilities’ 2020 cost of carbon, as set through California’s Cap and Trade program, is \$16.68 per metric tons (MT) CO₂.¹⁶³ The Cap and Trade price does not include the

¹⁵⁹ SB 32 (Pavley), Ch. 249, Stats. 2016, Section 1(c).

¹⁶⁰ SB 100 (De León), Ch. 312, Stats. 2018; Public Utilities Code Section 399.11(e) (1).

¹⁶¹ Exh. Cal Advocates/Sierra Club-1 (Final Comments of the Office of Ratepayer Advocates on Energy Efficiency Program Administrators’ Business Plan Applications), Appendix C, Exhibit 10, C-166, C-171.

¹⁶² This range is calculated by taking DOE’s estimated therm savings (first year value for the United States of 28 billion therms, and 2.9 billion therms for California) and using carbon pricing from California’s Cap and Trade program, the California Air Resources Board (CARB), and the Commission. See p. 1.1 of DOE’s “Technical Support Document: Energy Efficiency Program for Consumer Products and Commercial and Industrial Equipment: Residential Furnaces (Feb 10, 2015) for savings national savings estimate in quads. <https://www.regulations.gov/document?D=EERE-2014-BT-STD-0031-0027>. Estimate of furnaces shipped to California can be found on Page. 7a-4 of this report (with 10.52% of furnaces of national total). The Commission may take official notice of this DOE report pursuant to Rule 13.9 of the Commission’s Rules of Practice and Procedure, Section 452 of the Evidence Code, and D.07-01-041, pp. 25-26 (taking official notice of a CEC report).

¹⁶³ \$16.68/MTCO₂e based on August 2020 Cap and Trade Auction Price. See ww2.arb.ca.gov/sites/default/files/2020-08/results_summary.pdf. The Commission may take official notice of this CARB document pursuant to Rule 13.9 of the Commission’s Rules of Practice and Procedure, Section 452 of the Evidence Code, D.16-01-014, p. 21 and fn. 16 (courts have taken official

societal cost of carbon (SCC), which would capture the environmental and health consequences of increased emissions.¹⁶⁴ Values published by the California Air Resources Board (CARB) and the 2020 Avoided Cost Calculator (ACC) approved by the Commission (these values are \$42 per metric ton CO₂¹⁶⁵ to \$84.3 per metric ton CO₂¹⁶⁶) are two of several available methods to assess the societal cost of CO₂ emissions.

Table 4 below shows the first year therm savings for the Furnace Rule, converting the therms estimated by DOE to the total CO₂ that could have been emitted, along with the relative dollar value of those emissions.

notice of government agency websites), and D.07-01-041, pp. 25-26 (taking official notice of a CEC report).

¹⁶⁴ See August 2020 Cap and Trade Auction Price, Auction #24. Available at ww2.arb.ca.gov/sites/default/files/2020-08/results_summary.pdf; see also The California Air Resources Board 2017 Climate Change Scoping Plan, pp. 39-40 (describing the societal cost of carbon). The Commission may take official notice of this CARB document pursuant to Rule 13.9 of the Commission's Rules of Practice and Procedure, Section 452 of the Evidence Code, and D.07-01-041, pp. 25-26 (taking official notice of a CEC report).

¹⁶⁵ The California Air Resources Board 2017 Climate Change Scoping Plan, p. 40 (providing a range of SCC values for 2020, all based in 2007 dollars). Available at https://ww2.arb.ca.gov/sites/default/files/classic/cc/scopingplan/scoping_plan_2017.pdf. The \$42/metric ton CO₂ value is a conservative value that does not escalate the 2007 dollars to 2020 equivalent. The Commission may take official notice of this CARB document pursuant to Rule 13.9 of the Commission's Rules of Practice and Procedure, Section 452 of the Evidence Code, and D.07-01-041, pp. 25-26 (taking official notice of a CEC report).

¹⁶⁶ The 2020 Avoided Cost Calculator adopted by the commission utilizes \$72.67/ton for its 2019 value. See: <https://www.cpuc.ca.gov/General.aspx?id=5267>, and review the "emissions" tab for the "2020 ACC Gas Model." \$76.67/ton is equivalent to \$84.34/metric ton (1 ton = 0.907 metric tons). The Commission may take official notice of this Commission document pursuant to Rule 13.9 of the Commission's Rules of Practice and Procedure, Section 452 of the Evidence Code, D.16-01-014, p. 21 and fn. 16 (courts have taken official notice of government agency websites), and D.07-01-041, pp. 25-26 (taking official notice of a CEC report).

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 CO2 (1 MMBTU = 0.053156 MTCO2)	147,773,680	15,545,791
Dollar Value of CO2 From Savings		
	National - Year 1	California - Year 1
Cap & Trade value (\$16.68/MTCO2e) [A]	\$ 2,464,864,982	\$ 259,303,796
Societal cost carbon (\$42/MTCO2e) [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 MTCO2	From D.15-10-032, appendix A, p. 4. (0.053156 MTCO2 per 1 MMBTU)
[A] \$16.68/MTCO2e 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/MTCO2e" 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	

For a single year alone, the consequence of SoCalGas’ efforts to thwart the Furnace Rule would be in the range of \$259 million to \$1.2 billion in terms of CO₂ emissions in California.

Considering this rule would be in effect for multiple years, it is reasonable to consider the cost in terms of health and environmental benefits would be many multiples of these numbers. Since this was a potential federal rule, the consequences are staggering when considered nationwide, with the first-year consequences in the range of \$2.4 billion \$11.8 billion. In the context of the real values associated with CO₂ from the Commission’s avoided cost calculator and the Cap and Trade Program, the fines Cal Advocates proposes are a fraction of the real harm SoCalGas’s actions could reasonably be anticipated to cause, and, therefore, are necessary to deter future misconduct.

b. Economic Harm

Economic harm consists of the amount of expense imposed on victims and any unlawful benefits gained by the utility.¹⁶⁷ The Commission generally orders the greater of these two amounts in setting the fine.¹⁶⁸ That economic harm is hard to quantify, does not diminish

¹⁶⁷ D.98-12-075, p. 36.

¹⁶⁸ D.98-12-075, p. 36.

the severity of the offense or the need for sanctions.¹⁶⁹ As explained above, SoCalGas ratepayers were economically harmed by the collection of \$2,023,790.92 in costs associated with expenditures for the building, appliance, and reach codes programs and related ESPI awards for program years 2014-2020.

In addition, the Commission should consider the unlawful benefit that could have been gained considering the business opportunity costs for SoCalGas to oppose efficiency standards that threaten its revenues. For example, in the case of the CEC's IWH standards under the 2016 building energy efficiency standards, residential water heaters constituted at least 30% of SoCalGas' residential load and, according to SoCalGas, the IWH standards could "drive storage water heaters out of new construction."¹⁷⁰ As stated in SoCalGas' September 22, 2014 presentation, the standards alone could result in up to \$17 million in lost revenues and opportunity costs annually by 2020.¹⁷¹ The fines Cal Advocates proposes are appropriate considering the lost revenues SoCalGas avoided from opposing standards that threatened its business profits, such as the CEC's IWH standards.

c. Harm to the regulatory process

Harm to the regulatory process can be a significant factor in the Commission's determination to impose penalties.¹⁷² Public utilities are required to comply with Commission rules and regulations.¹⁷³ Such compliance is "absolutely necessary to the proper functioning of

¹⁶⁹ D.98-12-075, p. 36.

¹⁷⁰ Cal Advocates/Sierra Club-20 (*Motion of the Office of Ratepayer Advocates to Deem as Public the Materials that Southern California Gas Company Improperly Marked as Confidential or Redacted*), Attachment B, Exhibit 24, p. 1 and Exhibit 20.

¹⁷¹ Cal Advocates/Sierra Club-20 (*Motion of the Office of Ratepayer Advocates to Deem as Public the Materials that Southern California Gas Company Improperly Marked as Confidential or Redacted*), Attachment B, Exhibit 35.

¹⁷² See D.17-03-017, p. 8 (finding that in the totality of the circumstances analysis that the "principal harm threatened here is to the regulatory process" and issuing a \$10,000 fine for a single violation); see *id.* at p. 5 ("Applicants' violation of §854(a) did not result in physical or economic harm to their customers or consumers generally, there is no evidence that Applicants significantly benefited from the violation and the violation had no widespread impact. However, there was harm to the regulatory process because this is a statutory violation.").

¹⁷³ D.98-12-075, p. 36; Public Utilities Code Section 702.

the regulatory process.”¹⁷⁴ Accordingly, a violation of “a statute or Commission directive, regardless of the effects on the public, will be accorded a high level of severity.”¹⁷⁵

Harm to regulatory process weighs heavily in favor of imposing the recommended fine. First, the Commission has found that the abuse of an incentive mechanism raises particular concerns because incentive mechanisms “require a great deal of trust between the Commission and the utility’s entire management.”¹⁷⁶ The Commission explained that “the utility’s management must communicate through its practices, rules, and corporate culture that the data submitted to the Commission that impacts the incentive mechanisms must be completely accurate and timely.”¹⁷⁷ The Commission concluded that if it “is to continue to rely on and potentially create new incentive mechanisms ... [it] must be vigilant against abuse and appropriately penalize violations in order to safeguard the integrity of incentive mechanisms going forward for all utilities.”¹⁷⁸ The ESPI mechanism was intended to motivate utilities to prioritize EE goals and to reinforce the Commission’s commitment to EE as the highest energy resource priority to meet California’s energy demand.¹⁷⁹ SoCalGas’ failure to promote codes and standards and reach codes obliterates Commission and ratepayer trust in this shareholder incentive mechanism.

Second, SoCalGas’ actions significantly and irreparably harmed state energy efficiency and GHG reduction policies and goals. Energy efficiency is at the top of the state’s loading order and substantially supported by codes and standards.¹⁸⁰ Indeed, “[u]sing ratepayer dollars to work towards adoption of higher appliance and building standards may be one of the most cost-effective ways to tap the savings potential for EE and procure least-cost energy resources on

¹⁷⁴ D.98-12-075.

¹⁷⁵ D.98-12-075, p. 36.

¹⁷⁶ D.08-09-038, p. 102.

¹⁷⁷ D.08-09-038, p. 102.

¹⁷⁸ D.08-09-038, pp. 102-103.

¹⁷⁹ D.13-09-023, p. 2.

¹⁸⁰ D.08-09-040, Attachment A, Energy Action Plan (2008 Update), p. 1; Public Utilities Code Section 454.5(b)(9)(c) (“The electrical corporation will first meet its unmet resource needs through all available energy efficiency and demand reduction resources that are cost effective, reliable, and feasible.”).

behalf of all ratepayers.”¹⁸¹ In addition, reach codes are a stepping stone toward statewide codes that will achieve the state’s climate goals in a cost-effective manner.¹⁸² As a result, the impact of SoCalGas’ misconduct had significant consequences for the state’s energy efficiency policy and goals and, therefore, warrants a severe penalty.

d. The number of violations

A single violation may be less severe than multiple offenses whereas a widespread violation that affects a large number of consumers can be a more severe offense than one that is limited in scope.¹⁸³ Here the offenses were both multiple and of widespread impact. Under Public Utilities Code Section 2108, the Commission can treat each day as a separate offense.¹⁸⁴ In addition, Code Section 2107 provides that each violation is a separate and distinct offense.

SoCalGas’ violations were continuous. SoCalGas’ violations span at least six years - from when it sent a letter to the CEC recommending that the CEC delay the IWH regulation until the 2019 Codes and Standards cycle.¹⁸⁵ Even prior to this letter, SoCalGas was developing a long-term strategy to mount an attack on the IWH code proposal, aligning itself with industry groups. Over the next several years, SoCalGas’ submitted public comments and letters and its employee made public comments opposing and undermining federal, state, and local governments’ efforts to adopt higher efficiency standards. During this time, SoCalGas maintained an allegiance with industry groups whose goal, like SoCalGas’ goal, was to preserve gas throughput and associated profits. As such, SoCalGas’ violations were not a series of one-

¹⁸¹ D.18-05-041, p. 143 (citing D.05-09-043, p. 6); *see id.* at p. 144 (“We see no reason to now consider what constitutes a reasonable basis for taking a position other than in support of more stringent standards, given our intent for such activities has been clear since we first authorized energy efficiency funding for those activities.”).

¹⁸² See D.09-09-047, p. 203 (authorizing a reach code codes and standards subprogram to “increase the likelihood of code adoption and compliance”); D.12-05-015, pp. 243, 254-55 (authorizing IOU efforts to promote the adoption of reach codes and other codes and standards advocacy because “[p]rogressive increases in building and appliance efficiency standards are a critical component of achieving the State’s long-term energy efficiency goals” and identifying reach codes as “an important stepping stone and testing ground to collect data on adoption rates of new technologies”); D.05-09-043, Finding of Fact 40 at 177 (“Using ratepayer dollars to work towards adoption of higher appliance and building standards may be one of the most cost-effective ways to tap the savings potential for energy efficiency and procure least-cost energy resources on behalf of all ratepayers.”).

¹⁸³ *See* D.98-12-075, p. 37.

¹⁸⁴ D.98-12-075, p. 37.

¹⁸⁵ Exh. Cal Advocates/Sierra Club-70 (September 20, 2014 letter from SoCalGas to Mazi Shirakh).

time failures to fulfill Commission mandates; instead, SoCalGas continually and intentionally violated its ongoing duty to appropriately use ratepayer funds.¹⁸⁶

In addition, SoCalGas' ongoing abuses of ratepayer funds were widespread throughout the appliance, building, and reach codes and standards programs and affected all ratepayers. SoCalGas continued to collect and spend ratepayer funds related to these programs and request the associated ESPI awards even though its activities were in contravention of the Commission's clear direction regarding the use of these ratepayer funds.

2. Criterion 2: Conduct of the Utility

The size of a fine should reflect the conduct of the utility.¹⁸⁷ The Commission considers the following factors when assessing the utility's conduct: (1) the utilities actions to prevent a violation; (2) the utilities actions to detect a violation; and (3) the utility's actions to disclose and rectify a violation.¹⁸⁸ For the prevention factor, "[p]rudent practice requires that all public utilities take reasonable steps to ensure compliance with Commission directives," including that the utility become "familiar with applicable laws and regulations, and most critically, reviewing its own operations regularly to ensure full compliance."¹⁸⁹ The Commission considers the utility's past record of compliance with Commission directives when evaluating its efforts to ensure compliance.¹⁹⁰

The record evidence shows that rather than take actions to prevent the widespread and ongoing violations, SoCalGas developed internal strategies to undermine efficiency standards. SoCalGas also collaborated and coordinated with industry groups to perpetuate its strategies to undermine efficiency standards in contravention of Commission mandates to promote more stringer codes and standards and to promote reach codes. SoCalGas' misuse of ratepayer funds continued despite the fact it had clarifications from the Energy Division regarding appropriate use of ratepayer funds for codes and standards advocacy, discussed further below.

¹⁸⁶ See D.15-12-016, pp. 37-38.

¹⁸⁷ D.09-09-005, p. 31.

¹⁸⁸ D.98-12-075, pp. 37-38.

¹⁸⁹ D.98-12-075, pp. 37.

¹⁹⁰ D.98-12-075, pp. 37.

The detection factor considers that utilities are expected to diligently monitor their activities.¹⁹¹ Deliberate, as opposed to inadvertent wrongdoing, will be considered an aggravating factor.¹⁹² The level and extent of management's involvement in or tolerance of, the offense will be considered in determining the amount of any penalty.¹⁹³

Here, SoCalGas had knowledge that its conduct violated Commission directives to promote the adoption of efficiency standards. Clarifications from the Energy Division and emails among the IOUs indicated the Commission's intent for ratepayer funds.¹⁹⁴ Further, the email exchanges between SoCalGas' C&S Manager and APGA highlights SoCalGas' inappropriate use of ratepayer funds, make clear that SoCalGas was aware of the conflict between the appropriate use of ratepayer funds and aligning with the gas industry to oppose efficiency standards.¹⁹⁵

My dilemma is that I also have to play nice in the sandbox here on Mars because we have mandates to move this stuff [DOE proposed efficiency standards] forward based on funding so in effect, I live two [in] two worlds. I would love to get some feedback from you on good ways for me to bridge between my two masters."¹⁹⁶

Thus, SoCalGas knew it was prohibited from using ratepayer funds to oppose efficiency standards but misused these funds anyway.

¹⁹¹ D.98-12-075, pp. 37.

¹⁹² D.98-12-075, pp. 38.

¹⁹³ D.98-12-075, pp. 38.

¹⁹⁴ See Exh. Cal Advocates/Sierra Club-23 (Sept. 10, 2014 SoCalGas email re: RE: Questions Regarding Loss of Therm Savings) (Energy Division stating that "we assumed all IOUs either supported the CASE or, if not prepared the CASE, supported the CEC" and that "if one IOU does not support the standard or even oppose it, it seems like it (that particular IOU) would be forfeiting attribution of the savings for that standard"); see also Exh. Cal Advocates/Sierra Club-25 (Sept. 11, 2014 SoCalGas email re: IWH Proposal: Next Steps).

¹⁹⁵ Exh. Cal Advocates/Sierra Club-40 (August 8, 2016 email re ASRAC).

¹⁹⁶ Exh. Cal Advocates/Sierra Club-40 (August 8, 2016 email re ASRAC).

Moreover, SoCalGas' management encouraged ratepayer funded advocacy against efficiency standards at all levels of government.^{197-198,199} Thus, SoCalGas' violations were directed and promoted from upper levels of management.

Detection and rectification require the utilities to promptly bring a violation to the Commission's attention.²⁰⁰ Steps taken by a utility to promptly and cooperatively report and correct violations may be considered in assessing any penalty.²⁰¹ Here, SoCalGas failed to detect or rectify its violations. To the contrary, the investigation by Cal Advocates starting back in 2017 and the current investigations of Cal Advocates and Sierra Club detected the violations. Though these investigations provided actual notice, SoCalGas took no actions to rectify the violations and instead continued its assault on efficiency standards from at least 2014 and continuing even after the opening of this OSC with opposition to Culver City's reach code.

In sum, SoCalGas failed to take any actions to prevent, detect, disclose, and rectify its ongoing violations that were formulated and directed by SoCalGas management as part of a strategy to oppose efficiency standards that posed a threat to the utility. Thus, there are no mitigating actions warranting a reduction to Cal Advocates' recommended penalty amount.

3. Financial resources of the utility and deterrent effect of future violations

The size of a fine should reflect the financial resources of the utility and that fines should

¹⁹⁷ See, e.g., Exh. Cal Advocates/Sierra Club-20 (*Motion of the Office of Ratepayer Advocates to Deem as Public the Materials that Southern California Gas Company Improperly Marked as Confidential or Redacted*), Attachment B, Exhibits 35 and 47 (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).

¹⁹⁸ See, e.g., Exh. Cal Advocates/Sierra Club-2 (SoCalGas Comments on DOE Furnace Rule NOPR) (Vice President of Customer Solutions Rodger Schwecke signed the cover letter); Cal Advocates/Sierra Club-1 (Final Comments of the Office of Ratepayer Advocates on Energy Efficiency Program Administrators' Business Plan Applications), Appendix C, Exhibit 9, C-123, C-129, C-138 (Codes and Standards Manager briefing Vice President Schwecke); *id.* at Appendix C, Exhibit 2, C-011 (SoCalGas Comments on DOE Furnace Rule SNOPR) (signed by Vice President of Customer Solutions Lisa Alexander).

¹⁹⁹ Exh. Cal Advocates/Sierra Club-37 (SoCalGas Letter re: Oppose City of San Luis Obispo – Local Amendments to the 2019 California Building Code) (signed by Sharon Tomkins Vice President of Strategy and Engagement); Cal Advocates/Sierra Club-68 (SoCalGas letter to Culver City Building Safety Division re: Public Outreach Meetings, REACH code amendments) (signed by Mike Harriel Senior Public Affairs Manager).

²⁰⁰ D.98-12-075, pp. 38.

²⁰¹ D.98-12-075, pp. 38.

be set at a level that deters future violations.²⁰²

SoCalGas is a large and well-resourced utility. According to SoCalGas' most recent General Rate Case (GRC) application, SoCalGas has total assets and other debts of \$15.5 billion, and retained earnings of almost \$3 billion.²⁰³ Considering SoCalGas' financial resources, the \$255,300,000 fine recommended by Cal Advocates is warranted in order to deter future violations, especially considering SoCalGas' long history of undermining efficiency standards, its opportunity costs, and the impact on the state's and Commission's energy efficiency and climate policies and the associated public health impacts, as discussed above.

4. The Role of Precedent

Any decision which imposes a fine should address previous decisions that involve reasonably comparable factual circumstances and explain any substantial differences in outcome.²⁰⁴ The Commission adjudicates a wide range of cases which involve sanctions, many of which are cases of first impression, accordingly, the outcomes of cases are not usually directly comparable.²⁰⁵

This OSC is a case of first impression. Cal Advocates is unaware of other Commission decisions addressing the egregious attempts of a utility to systematically undermine critical programs that promote the state's and the Commission's energy and climate goals. As such, the Commission has an unprecedented opportunity to impose fines that deter SoCalGas gas from future misconduct.

5. Totality of the Circumstances

A fine should be tailored to the unique facts of each case.²⁰⁶ When assessing the unique facts of each case, the Commission evaluates facts that both mitigate and exacerbate that utility's degree of wrongdoing, always from the perspective of the public interest.²⁰⁷

²⁰² D.98-12-075, pp. 38-39.

²⁰³ A.17-10-008 (Application for Authority to Update Marginal Costs, Cost Allocation, and Electric Rate Design) (filed October 6, 2017), Appendix B (Balance Sheet, Income Statement, and Financial Statement), available at <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M196/K814/196814925.PDF>.

²⁰⁴ D.98-12-075, p. 39.

²⁰⁵ D.98-12-075, p. 39.

²⁰⁶ D.98-12-075, p. 39.

²⁰⁷ D.98-12-075, p. 39.

As identified above, SoCalGas' behavior was egregious and ongoing, and there are no mitigating factors other than no direct and immediate physical harm. Even though there is no record evidence of direct harm (in terms of these actions causing immediate irreparable harm to a person or property), there is evidence of significant indirect harm in terms of public health risks and climate change. Ultimately, SoCalGas' conduct and associated violations included the following: economic harm to ratepayers; substantial harm to the regulatory process, including tarnishing the integrity of shareholder incentives (ESPI awards); ongoing, widespread, and continuous violations; and the absolute failure to take any actions to prevent, detect a violation, disclose, and rectify its violations. Nonetheless, because there was no direct physical and immediate harm, Cal Advocates reduced the maximum fines by 25 percent.²⁰⁸ Given the totality of the circumstances at issue, the fine recommended by Cal Advocates is warranted.

Further, SoCalGas' violations of Commission mandates corrupted the trust necessary for shareholder incentives, exacerbated public health risks associated with climate change, and betrayed the public interest. SoCalGas used captive ratepayer funds to oppose the very codes and standards activities it was meant to support. SoCalGas deprived its ratepayers of the benefit of the bargain it agreed to, at costs that include not only monetary costs, but public trust and health costs. Thus, the recommended fine is warranted and in the public interest.

VII. OTHER REMEDIES

1. The Commission should remove SoCalGas from any future role in codes and standards programs for at least seven years and order shareholder-funded audits during that period.

The Commission should prohibit SoCalGas from playing any role in codes and standards programs other than transferring ratepayer funds to the statewide lead for a period no less than seven years (2021 to at least 2028).²⁰⁹ The Commission should issue a ruling in this proceeding or its successor to solicit party comment on whether SoCalGas should be allowed to oversee codes and standards programs in the future. Codes and standards advocacy programs are the most cost-effective element of the IOUs' energy efficiency portfolios and a cornerstone of local, state, and federal energy policy. Allowing SoCalGas to continue to play a role in planning, administering, and implementing codes and standards programs without a review of its activities

²⁰⁸ See D.08-09-038, p. 111 (“[T]he most serious violations are those involving physical harm.”)

²⁰⁹ Since a final decision will not be issued until 2021, Cal Advocates used 2021 as the beginning period.

would allow SoCalGas the opportunity to continue to undermine the state’s commitment to codes and standards.

In order to ensure that SoCalGas ratepayers’ and the state’s interests are unharmed, the Commission should direct SoCalGas to continue to collect funds for codes and standards advocacy and transfer them to the statewide codes and standards lead for program implementation. However, SoCalGas should receive no ESPI awards for the transfer of these funds.²¹⁰ SoCalGas should not be entitled to a 12 percent profit for this ministerial and legally obligatory task. Prohibiting SoCalGas from receiving ESPI awards for writing a check to PG&E will ensure the Commission is fulfilling its obligation to approve only just and reasonable rates.²¹¹

During the seven-year ban, the Commission should require SoCalGas shareholders to fund activities intended to prevent future wrongdoing.²¹² Specifically, the Commission should order annual audits of SoCalGas’ activities recorded to any ratepayer-funded account that are either inconsistent with or support the state’s commitment to codes and standards advocacy. The audits should be performed by an outside and independent firm and directed by Energy Division. The Energy Division should establish a stakeholder group, including Cal Advocates and other interested parties, to solicit input on the scope of the audit. The primary purpose of the audits is to identify whether SoCalGas continues to use ratepayer funds for purposes contrary to the Commission’s mandates and stated goals of promoting efficiency standards or whether SoCalGas is fit to administer energy efficiency codes and standards programs. The Commission should issue a ruling to seek party input on whether SoCalGas should continue to be banned from planning, administering, and implementing any codes and standards programs.

²¹⁰ SoCalGas continues to request ESPI awards for its work on codes and standards advocacy in 2018, even after the Commission prohibition in D.18-05-041. SoCalGas Advice Letter 5509-G, September 3, 2019, p. 2 and 7-8.

²¹¹ See Public Utilities Code Section 451.

²¹² See, e.g., D.87-12-067, 27 CPUC 2d 1, 1987 WL 1498407, *26 (“It is fundamentally clear that were it not for the violations of statute, general order and tariff provisions cited in D.86-05-072, none of the costs or expenses to be incurred as a result of today’s order, and required to implement the notice and refund program, would have been incurred. Simply stated, there is no reason to require that any of the costs of the remedial notice and refund program be borne by ratepayers who did not cause the cost of the program, and who will receive no additional benefits from the program, but will merely be restored to the position they would have enjoyed but for these marketing abuses.”).

B. The Commission Should Remove SoCalGas as the Statewide Lead for the Emerging Technologies Program On Or Before January 1, 2022.

The Commission designated SoCalGas as the statewide lead for the Emerging Technologies program through 2025.²¹³ Given SoCalGas' misconduct in codes and standards programs, SoCalGas should no longer act as the statewide lead for the Emerging Technologies energy efficiency program in the next energy efficiency business plan cycle.²¹⁴ SoCalGas should be removed as the lead as soon as practical, but not later than January 1, 2022.

The Emerging Technologies program supports increased energy efficiency market demand and technology supply and facilitates the use of new measures in achieving California's aggressive energy and demand savings goals.²¹⁵ SoCalGas' established track record of working against the adoption of clean and efficient technology makes it unsuitable to lead the Emerging Technologies program. The motivations that led SoCalGas to undermine the codes and standards advocacy program in the gas sector is likely to apply to the emerging technologies sector. Specifically, SoCalGas faces a similar set of incentives to prevent the adoption of highly efficient technologies that would reduce profitable gas throughput or lead to fuel-switching away from gas, both of which might reduce the long-run profitability of the company. Therefore, the Commission should designate a new statewide lead for the Emerging Technologies program as soon as practical, but not later than January 1, 2022.²¹⁶

VIII. CONCLUSION

For the reasons stated in this opening brief, the Commission should fine SoCalGas \$255,300,000, order SoCalGas to refund ESPI awards and program expenditures associated with its building, appliance, and reach codes programs, prohibit SoCalGas from playing any role in codes and standards programs other than transferring ratepayer funds to the statewide lead for a

²¹³ D.18-05-041, pp. 90-92.

²¹⁴ See D.18-05-041, p. 91 (designating SoCalGas as the statewide lead).

²¹⁵ Commission Emerging Technologies webpage, available at <https://www.cpuc.ca.gov/energyefficiency/>. The Commission may take official notice of its own website pursuant to Rule 13.9 of the Commission's Rules of Practice and Procedure, Section 452 of the Evidence Code, D.16-01-014, p. 21 and fn. 16 (courts have taken official notice of government agency websites).

²¹⁶ SCE is the lead for the electric side of the Emerging Technologies program. D.18-05-041, p. 90. However, SCE does not have a gas component to its business. PG&E, already the codes and standards statewide lead, may be the best candidate to take over SoCalGas' role as lead for the Emerging Technologies program.

period no less than seven years, and remove SoCalGas as the statewide lead for the Emerging Technologies program.

Respectfully submitted,

/s/ TOVAH TRIMMING
TOVAH TRIMMING
Attorney

Public Advocates Office
California Public Utilities Commission
300 Capitol Mall, Suite 400
Sacramento, CA 95814
Telephone: (823) 916-4836
E-mail: Tovah.Trimming@cpuc.ca.gov

November 5, 2020