

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT, DIVISION 1

SOUTHERN CALIFORNIA GAS  
COMPANY,

Petitioner,

v.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA,

Respondent.

Case No. B310811  
Commission Decision  
No. D.21-03-001 &  
Resolution ALJ-391

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**MOTION FOR JUDICIAL NOTICE OF SOUTHERN  
CALIFORNIA GAS COMPANY; MEMORANDUM OF  
POINTS AND AUTHORITIES IN SUPPORT THEREOF;  
DECLARATION OF MATTHEW N. BALL**

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**MOTION FOR JUDICIAL NOTICE IN SUPPORT OF  
REPLY BRIEF**

Pursuant to Evidence Code sections 450 et seq. and California Rules of Court, Rule 8.252, Petitioner Southern California Gas Company (“SoCalGas”) requests that the Court take judicial notice of the following materials:

**Exhibit A:** Motion of Southern California Gas Company to Move Rebuttal Documentary Evidence Into the Record of Public Utilities Commission rulemaking proceeding 13-11-005, including Exhibit SCG-34, submitted on September 25, 2020.

**Exhibit B:** Administrative Law Judge’s E-Mail Ruling Addressing Motions to Admit Evidence in Public Utilities Commission rulemaking proceeding 13-11-005, issued on October 19, 2020.

These items qualify for judicial notice under the Evidence Code and satisfy the requirements of rule 8.252 of the California Rules of Court, for the following reasons:

1. They are relevant to Petitioner’s arguments relating to the collaboration between the Public Advocates Office (“CalPA”) and Sierra Club, which further shows that CalPA is targeting SoCalGas for its disfavored political and public-policy views. (Cal. Rules of Court, rule 8.252(a)(2)(A).)

2. Although these documents were not presented to the Commission in the context of Resolution ALJ-391, they are admissible as official acts of an executive department of the State of California. (Evid. Code, § 452, subd. (c); Cal. Rules of Court, rule 8.252(a)(2)(B–C).)

The documents do not relate to proceedings occurring after the order that is the subject of this Petition. (Cal. Rules of Court, rule 8.252(a)(2)(D).)

For these reasons, Petitioner SoCalGas respectfully submits that its motion for judicial notice meets all of the requirements for judicial notice and should be granted.

This request is based on this Motion; the accompanying Memorandum of Points and Authorities; and the accompanying Declaration of Matthew N. Ball.

Respectfully submitted,

DATED: July 16, 2021      GIBSON, DUNN & CRUTCHER  
LLP

By:           /s/ Julian W. Poon            
Julian W. Poon

*Attorneys for Southern California Gas Company*

Document received by the CA 2nd District Court of Appeal.

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

Southern California Gas Company (“SoCalGas”) respectfully requests that the Court take judicial notice of two documents relevant to this appeal. Both documents qualify for judicial notice under section 452 of the Evidence Code.

Exhibit A consists of a true and correct copy of the Motion of SoCalGas to Move Rebuttal Documentary Evidence Into the Record of Public Utilities Commission rulemaking proceeding 13-11-005, including Exhibit SCG-34 attached thereto. Exhibit B consists of a true and correct copy of the Administrative Law Judge’s (“ALJ’s”) E-Mail Ruling Addressing Motions to Admit Evidence in the same proceedings. These documents are relevant because they show that the Public Advocates Office (“CalPA”) of Respondent California Public Utilities Commission (“CPUC”) has attempted to avoid disclosing the extent to which it has collaborated with the Sierra Club in its investigation of SoCalGas. That provides further evidence that CalPA is targeting SoCalGas because of SoCalGas’s political and public-policy viewpoints, contrary to the pretextual explanations CalPA has put forth.

Accordingly, Petitioner SoCalGas respectfully requests that the Court grant this motion.

## II. ARGUMENT

### A. SoCalGas's Motion and the ALJ's Ruling Are Admissible and Relevant.

The Motion of SoCalGas to Move Rebuttal Documentary Evidence Into the Record of Public Utilities Commission rulemaking proceeding 13-11-005 qualifies for judicial notice under subdivision (c) of section 452 of the Evidence Code. The same is true of the ALJ's E-Mail Ruling, which granted SoCalGas's motion in the same proceedings. As "administrative records of the PUC," such documents are properly the subject of judicial notice because they reflect "official acts" of an executive department. (*Davis v. Southern California Edison Co.* (2015) 236 Cal.App.4th 619, 632 fn. 11.) Judicial notice of such documents is routinely granted. (See, e.g., *Goncharov v. Uber Technologies, Inc.* (2018) 19 Cal.App.5th 1157, 1161 [granting judicial notice to "rulings, submissions, scoping memoranda, and proposed decisions" from CPUC proceedings]; *Davis v. Southern California Edison Co.* (2015) 236 Cal.App.4th 619, 632 fn. 11.)

The documents are also "relevant" and "of substantial consequence to the determination of" this appeal. (Cal. Rules of Court, rule 8.252(a)(2)(A); Evid. Code, § 459, subd. (c).) CalPA insists that it has demanded SoCalGas's constitutionally protected information because it seeks to ensure that SoCalGas's political activities are not funded by ratepayers. (App. 717.) Yet CalPA has entered into an unprecedented Common Interest,

Joint Prosecution, and Confidentiality Agreement (“Joint Prosecution Agreement”) with the Sierra Club in order to jointly investigate and prosecute SoCalGas for its alleged “anti-electrification activities.” (App. 1303–1306.) That agreement, which CalPA failed to disclose for almost a year, strongly suggests that CalPA’s proffered justification of investigating SoCalGas’s ratepayer-funded activities is mere pretext, and that CalPA seeks to punish SoCalGas for the viewpoint SoCalGas holds and has been advancing regarding promoting natural gas, renewable gas, and other clean fuels as an integral part of the State’s decarbonization plans. (App. 1515–1516.)

As Exhibit A shows, when SoCalGas first learned of the existence of the Joint Prosecution Agreement, it asked CalPA to identify, among other things: (1) whether Sierra Club had provided input to or reviewed any of CalPA’s Data Requests submitted to SoCalGas; (2) copies of all email correspondence between CalPA and Sierra Club relating to CalPA’s Data Requests; (3) whether any Data Request responses provided by SoCalGas to CalPA were subsequently provided to Sierra Club; and (4) copies of all email correspondence between CalPA and Sierra Club relating to any provided documents. Tellingly, CalPA has refused to answer those questions.

CalPA’s reticence to disclose the extent of its collaboration with Sierra Club further puts into question the motives driving

CalPA’s investigation. CalPA seeks to silence SoCalGas’s speech; as such, it has ample reason to fight the disclosure of its communications with its private litigation partner. Such communications might further expose the pretext behind CalPA’s requests and render untenable the claim that any allegations of viewpoint discrimination are “without substantiation.” (Ans. p. 41.) Were CalPA truly interested in simply “following the money,” it would have nothing to hide.

### III. CONCLUSION

For all the foregoing reasons, SoCalGas respectfully asks that the Court take judicial notice of Exhibits A and B.

Respectfully submitted,

DATED: July 16, 2021

GIBSON, DUNN & CRUTCHER  
LLP

By:           /s/ Julian W. Poon            
Julian W. Poon

*Attorneys for Petitioner Southern California Gas Company*

Document received by the CA 2nd District Court of Appeal.

## DECLARATION OF MATTHEW N. BALL

I, MATTHEW N. BALL, declare as follows:

1. I am an attorney admitted to practice in the State of California and am one of the attorneys of record representing Petitioner Southern California Gas Company in this matter. I make this declaration in support of the Motion for Judicial Notice of Southern California Gas Company. The matters set forth in this declaration are based on my personal knowledge unless the context indicates otherwise, and, if called upon to do so, I could and would testify competently thereto.

2. Attached hereto as **Exhibit A** is a true and correct copy of the Motion of SoCalGas to Move Rebuttal Documentary Evidence Into the Record of Public Utilities Commission rulemaking proceeding 13-11-005. I retrieved a copy of this document from the California Public Utilities Commission website on July 14, 2021 at the following web address: <https://apps.cpuc.ca.gov/apex/f?p=401:1:0>. The document filed with the Public Utilities Commission incorporates exhibits available at <https://www.socalgas.com/regulatory/R13-11-005>, where I retrieved a copy of Exhibit SCG-34, attached thereto.

3. Attached hereto as **Exhibit B** is a true and correct copy of the Administrative Law Judge's E-Mail Ruling Addressing Motions to Admit Evidence in Public Utilities Commission rulemaking proceeding 13-11-005. I retrieved a copy of this



document from the California Public Utilities Commission website on July 14, 2021 at the following web address:

<https://apps.cpuc.ca.gov/apex/f?p=401:1:0>.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on this 16th day of July, 2021 in Denver, Colorado.

By:   
Matthew N. Ball

Document received by the CA 2nd District Court of Appeal.

**[PROPOSED] ORDER**

Good cause appearing, therefore,

IT IS HEREBY ORDERED that this Court will take judicial notice of the following documents:

Exhibit A: The September 25, 2020 Motion of Southern California Gas Company to Move Rebuttal Documentary Evidence Into the Record of Public Utilities Commission rulemaking proceeding 13-11-005.

Exhibit B: The October 19, 2020 Administrative Law Judge’s E-Mail Ruling Addressing Motions to Admit Evidence in Public Utilities Commission rulemaking proceeding 13-11-00.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Hon. \_\_\_\_\_

Justice of the Court of Appeal  
Second Appellate District,  
Division One

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**PROOF OF SERVICE**

I, Kelsey Fong, declare as follows:

I am employed in the County of Los Angeles, State of California, I am over the age of eighteen years and am not a party to this action; my business address is 333 South Grand Avenue, Los Angeles, CA 90071-3197, in said County and State. On July 16, 2021, I served the following document(s):

**MOTION FOR JUDICIAL NOTICE OF  
SOUTHERN CALIFORNIA GAS COMPANY;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF;  
DECLARATION OF MATTHEW N. BALL**

on the parties stated below, by the following means of service:

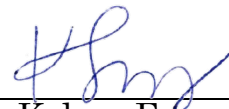
<p><b>California Public Utilities Commission</b></p> <p>Arocles Aguilar General Counsel Arocles.Aguilar@cpuc.ca.gov</p> <p>Mary McKenzie mary.mckenzie@cpuc.ca.gov</p> <p>Carrie G. Pratt carrie.pratt@cpuc.ca.gov</p> <p>Edward Moldavsky edm@cpuc.ca.gov</p> <p>505 Van Ness Avenue San Francisco, CA 94102 Telephone: (415) 703-2742</p>	<p><b>California Advocates</b></p> <p>Amy C. Yip-Kikugawa Acting Director 505 Van Ness Avenue, San Francisco, CA 94102 415-703-2588 amy.yip- kikugawa@cpuc.ca.gov</p> <p>Darwin Farrar General Counsel 505 Van Ness Avenue, San Francisco, CA 94102 415-703-1599 darwin.farrar@cpuc.ca.gov</p> <p>Traci Bone Counsel</p>
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Facsimile: (415) 703-2262	505 Van Ness Avenue, San Francisco, CA 94102 415-703-2048 traci.bone@cpuc.ca.gov
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- BY ELECTRONIC SERVICE THROUGH TRUEFILING:** I caused the documents to be electronically served through TrueFiling.
- (STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 16, 2021.

  
\_\_\_\_\_  
Kelsey Fong

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# EXHIBIT A

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

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

Rulemaking 13-11-005  
(Filed November 14, 2013)

**MOTION OF SOUTHERN CALIFORNIA GAS COMPANY (U 904 G) TO  
MOVE REBUTTAL DOCUMENTARY EVIDENCE INTO THE RECORD**

HOLLY A. JONES  
ERIC A. GRESSLER

Attorneys for  
SOUTHERN CALIFORNIA GAS COMPANY  
555 West Fifth Street, Suite 1400  
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E-mail: HAJones@socalgas.com

September 25, 2020

Document received by the CA 2nd District Court of Appeal.

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

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

Rulemaking 13-11-005  
(Filed November 14, 2013)

**MOTION OF SOUTHERN CALIFORNIA GAS COMPANY (U 904 G) TO  
MOVE REBUTTAL DOCUMENTARY EVIDENCE INTO THE RECORD**

In accordance with Rule 11.1 of the Commission’s Rules of Practice and Procedure and consistent with the March 2, 2020 *Assigned Commissioner's Ruling Setting the Scope and Schedule for the Order to Show Cause Against Southern California Gas Company*<sup>1</sup>, the March 25, 2020 Email Ruling by Administrative Law Judge (“ALJ”) Valerie Kao clarifying scope for order to show cause and providing further instructions for hearing, and the August 31, 2020 Email Ruling by ALJ Valerie Kao revising schedules for orders to show cause, Southern California Gas Company (“SoCalGas”) respectfully moves for identification of the following rebuttal exhibits and to move these exhibits into the record of the above-captioned proceeding.

EXHIBIT	TITLE
SCG-34	Public Advocates Office’s Response to SoCalGas Data Request Set 1, Q1-Q9, Submitted May 6, 2020
SCG-35	Public Advocates Office’s Response to SoCalGas Data Request Set 1, Q10-Q28 Submitted May 14, 2020
SCG-36	Public Advocates Office’s Response to SoCalGas Data Request Set 1, Q1-3, 7-11, and 13-16 Submitted July 23, 2020
SCG-37	Public Advocates Office’s Response to SoCalGas Data Request Set 2, Q5, 6, and 12 Submitted July 28, 2020

<sup>1</sup> The scoping memo pertained to the order to show cause directing SoCalGas to address shareholder incentives and costs for 2016-2017 codes and standards advocacy, issued December 17, 2019.

<b>EXHIBIT</b>	<b>TITLE</b>
SCG-38	Public Advocates Office's Response to SoCalGas Data Request Set 2, Q4 Submitted July 30, 2020
SCG-39	Sierra Club Objections and Responses to SoCalGas Data Request Set 1, Submitted April 22, 2020
SCG-40	Sierra Club Objections and Responses to SoCalGas Data Request Set 2, Submitted July 16, 2020
SCG-41	SoCalGas Response to Cal Advocates-HB-SCG-2019-12RR, Submitted January 28, 2020
SCG-42	SoCalGas Response to Cal Advocates-SK-SCG-2020-01, Submitted February 7, 2020
SCG-43	SoCalGas Response to Cal Advocates-HB-SCG-2019-13, Submitted February 7, 2020
SCG-44	SoCalGas Response to Sierra Club-02, Submitted June 16, 2020
SCG-45	SoCalGas Response to Sierra Club-SoCalGas-08, Submitted September 25, 2020
SCG-46	SoCalGas Response to ORA's Motion to Deem as Public Materials Marked as Confidential Filed December 28, 2017
SCG-47	ALJ Kao's Email Ruling Denying December 13, 2017 Motion to File Under Seal Filed February 27, 2018
SCG-48	ALJ's Ruling Denying ORA's Motion for Reconsideration Filed April 9, 2018
SCG-49	AB 1966 Sempra Energy Support Letter Dated April 21, 2006
SCG-50	AB 811 Sempra Energy Support Letter Dated January 25, 2008
SCG-51	SB 375 Sempra Energy Support Letter Dated September 22, 2008
SCG-52	Senate Rules Committee Office of the Senate Floor Analysis Amended August 19, 2016

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**Order to Show Cause Directing SoCalGas to Address Shareholder Incentives and Costs for  
2014-2017 Codes and Standards Advocacy, issued December 17, 2019  
R.13-11-005**

**SCG-34**

**SOCALGAS EXHIBIT**

**Public Advocates Office's Response to SoCalGas Data Request Set 1, Q1-Q9,  
Submitted May 6, 2020**

Document received by the CA 2nd District Court of Appeal.



## Public Advocates Office

Public Advocates Office  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, California 94102

### PUBLIC ADVOCATES OFFICE

Data Request Responses to Q1-Q9 of  
SoCalGas Data Request Set 1  
Order Instituting Rulemaking Concerning Energy Efficiency Rolling Portfolios,  
Policies, Programs, Evaluation, and Related Issues

R.13-11-005

Received: April 22, 2020

Submitted: May 6, 2020

To: **Holly Jones**  
Attorney for SoCalGas

Email: [HAJones@socalgas.com](mailto:HAJones@socalgas.com)

**Eric Gressler**  
Attorney for SoCalGas

Email: [EGressle@socalgas.com](mailto:EGressle@socalgas.com)

From: **Diana Lee**  
Attorney for Public Advocates Office

Email: [diana.lee@cpuc.ca.gov](mailto:diana.lee@cpuc.ca.gov)

**Tovah Trimming**  
Attorney for Public Advocates Office

Email: [tovah.trimming@cpuc.ca.gov](mailto:tovah.trimming@cpuc.ca.gov)

Re: **Data Request No. SCG-Cal PA-2020-01**

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## DATA REQUESTS

1. Since January 1, 2019, please identify any Data Request submitted to SoCalGas outside of a proceeding for which input on the questions was provided and/or the questions were reviewed by Sierra Club.

### **RESPONSE:**

The Public Advocates Office objects to this question because it is, on its face, not relevant to the issues scoped in the instant proceeding. The question is clearly not within the scope of this proceeding because it literally seeks “any Data Request submitted to SoCalGas *outside of a proceeding* for which input on the questions was provided and/or the questions were reviewed by Sierra Club.” (Emphasis added). See Rule 10.1 of the Commission’s Rules of Practice and Procedure (Rules) which provides that “a party may obtain discovery from any other party regarding any matter, not privileged, *that is relevant to the subject matter involved in the pending proceeding.*” (Emphasis added.)

The Public Advocates Office also objects to this question to extent the requested documents relate to issues scoped in R.13-11-005, including the two ongoing orders to show cause against SoCalGas. In the orders to show cause against SoCalGas, the Commission will determine (1) whether SoCalGas violated D.18-05-041 and (2) whether SoCalGas used ratepayer funds authorized for energy efficiency to advocate against more stringent codes and standards and local adoption of reach codes. Whether Sierra Club provided input and/or reviewed data requests propounded on SoCalGas by the Public Advocates Office is not relevant to any issue in R.13-11-005 and not reasonably calculated to lead to admissible evidence.

2. Please provide all email correspondence between personnel at the Public Advocates Office and personnel at Sierra Club concerning your response to Question 1.

**RESPONSE:**

See response to question 1.

3. Since January 1, 2019, please identify each Data Request response provided to the Public Advocates Office by SoCalGas to a Data Request inquiry issued outside of a proceeding and which was subsequently provided to Sierra Club.

**RESPONSE:**

The Public Advocates Office objects to this question because it is, on its face, not relevant to the issues scoped in the instant proceeding. The question is clearly not within the scope of this proceeding because it literally seeks “any Data Request submitted to SoCalGas *outside of a proceeding* for which input on the questions was provided and/or the questions were reviewed by Sierra Club.” (Emphasis added). See Rule 10.1 of the Commission’s Rules of Practice and Procedure (Rules) which provides that “a party may obtain discovery from any other party regarding any matter, not privileged, *that is relevant to the subject matter involved in the pending proceeding.*” (Emphasis added.)

The Public Advocates Office also objects to this question to extent the requested documents relate to issues scoped in R.13-11-005. Whether the Public Advocates Office provided Sierra Club SoCalGas’s responses to data request is not relevant to any issue in R.13-11-005 and not reasonably calculated to lead to the discovery of admissible evidence. Specifically, whether the Public Advocates Office shared SoCalGas’s non-confidential data request responses has no bearing on whether SoCalGas violated D.18-05-041 or misused ratepayer funds to advocate against stricter codes and standards or whether SoCalGas opposed the adoption of local reach codes.

Without waiving its objections, the Public Advocates Office notes that the following data requests issued outside of a proceeding and SoCalGas’s responses since January 1, 2019 are part of the Public Advocates Office’s publicly filed *Response to the Order to Show Cause Directing SoCalGas to Address Shareholder Incentives for Codes and Standards Advocacy Expenditures* (Attachment 3), and that Sierra Club is an active party to that order to show cause:

- HB-SCG-2019-09
- HB-SCG-2019-09R
- HB-SCG-2019-12
- HB-SCG-2019-13

4. Please provide all email correspondence between personnel for the Public Advocates Office and personnel at Sierra Club concerning your response to Question 3.

**RESPONSE:**

The Public Advocates Office objects to this question because it is, on its face, not relevant to the issues scoped in the instant proceeding. The question is clearly not within the scope of this proceeding because it literally seeks “any Data Request submitted to SoCalGas *outside of a proceeding* for which input on the questions was provided and/or the questions were reviewed by Sierra Club.” (Emphasis added). See Rule 10.1 of the Commission’s Rules of Practice and Procedure (Rules) which provides that “a party may obtain discovery from any other party regarding any matter, not privileged, *that is relevant to the subject matter involved in the pending proceeding.*” (Emphasis added.)

The Public Advocates Office also objects to this question to the extent the requested communications relate to documents and communications that occurred in the context of R.13-11-005, including the two ongoing orders to show cause against SoCalGas. In the orders directing SoCalGas to show cause, the Commission will determine (1) whether SoCalGas violated D.18-05-041 and (2) whether SoCalGas used ratepayer funds authorized for energy efficiency to advocate against more stringent codes and standards and local adoption of reach codes. Communications between the Public Advocates Office and Sierra Club related to sharing SoCalGas’s data requests responses are not relevant to any issue in R.13-11-005 and are not reasonably calculated to lead to the discovery of admissible evidence.

5. Please identify each conversation the Public Advocates Office has had with Sierra Club regarding the applicability of the codes and standards prohibition in D.18-05-041.

**RESPONSE:**

The Public Advocates Office objects to this question as seeking information that is not relevant to the issues R.13-11-005 and not reasonably calculated to lead to the discovery of admissible evidence. Whether or not the Public Advocates Office and Sierra Club made off the record statements about the applicability of the codes and standards prohibition in D.18-05-041 is not relevant to the Commission's determination of this issue in the proceeding. The Public Advocates Office further objects to this question as seeking legal opinions, legal conclusions, and attorneys' mental impressions. Finally, the Public Advocates Office objects to this question as calling for speculation about Sierra Club's interpretation of the applicability of the codes and standards prohibition in D.18-05-041.

Notwithstanding and without waiving these objections, the Public Advocates Office responds that the Public Advocates Office and Sierra Club made public statements on this matter during the October 22, 2019 prehearing conference. (Available at <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M318/K612/318612535.PDF>.)



6. For each conversation identified in question 5, please explain any differences of opinion between the Public Advocates Office and Sierra Club that arose.

**RESPONSE:**

See objections and response to question 5 above.

For question 7 through 18, please refer to page 46 of the Public Advocates Office 2019 Annual Report, available at [https://seuc.senate.ca.gov/sites/seuc.senate.ca.gov/files/2019\\_pao\\_annual\\_report.pdf](https://seuc.senate.ca.gov/sites/seuc.senate.ca.gov/files/2019_pao_annual_report.pdf)

7. Please provide the basis for the statement “in 2019, the Public Advocates Office presented evidence that SoCalGas actively pursued strategies to undermine improvements in energy efficiency codes and standards . . . .”

**RESPONSE:**

The statement is on page 40 of the report and the full paragraph reads:

In 2019, the Public Advocates Office presented evidence that SoCalGas actively pursued strategies to undermine improvements in energy efficiency codes and standards, subsequently flouted a CPUC order prohibiting SoCalGas from participating in efficiency codes and standards advocacy, and repeatedly violated CPUC rules by providing false and misleading statements about its activities. As a result, the CPUC announced that it is considering what penalties or sanctions may be appropriate in light of the allegations that SoCalGas undermined the state’s energy efficiency goals by misusing ratepayer funds intended for promoting higher energy efficiency standards.

The basis of the statement in question 7 is the evidence presented by the Public Advocates Office that led to the Commission’s December 17, 2019 Order to Show Cause in this proceeding (available at <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M322/K134/322134227.PDF>). The evidence is included in the following public filings by the Public Advocates Office:

- The Public Advocates Office’s *Final Comments on Energy Efficiency Program Administrators’ Business Plan Applications* and Appendix C, filed in A.17-01-013 on September 25, 2017. D.18-05-041 summarizes this evidence and make findings related to the evidence.
- The Public Advocates Office’s *Comments on Alternate Draft Resolution E-5007 approving, with adjustments, Energy Efficiency Savings and Performance Incentive awards for the four Major California investor-owned utilities for program years 2016 and 2017* (served Sept. 24, 2019) (citing to D.18-05-041 and referencing the evidence the Public Advocates Office provided to the Commission in A.17-01-013). Resolution E-5007 is available at <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M317/K672/317672918.PDF> (Oct. 10, 2019).

8. Please provide all evidence supporting the statement “in 2019, the Public Advocates Office presented evidence that SoCalGas actively pursued strategies to undermine improvements in energy efficiency codes and standards . . . .”

**RESPONSE:**

The statement quoted is on page 40 of the report and the full paragraph reads:

In 2019, the Public Advocates Office presented evidence that SoCalGas actively pursued strategies to undermine improvements in energy efficiency codes and standards, subsequently flouted a CPUC order prohibiting SoCalGas from participating in efficiency codes and standards advocacy, and repeatedly violated CPUC rules by providing false and misleading statements about its activities. As a result, the CPUC announced that it is considering what penalties or sanctions may be appropriate in light of the allegations that SoCalGas undermined the state’s energy efficiency goals by misusing ratepayer funds intended for promoting higher energy efficiency standards.

The evidence supporting this statement is provided in the Public Advocates Office’s *Final Comments on Energy Efficiency Program Administrators’ Business Plan Applications* and Appendix C, filed in A.17-01-013 on September 25, 2017. D.18-05-041 summarizes this evidence and make findings related to the evidence.

9. Please provide the sources of all evidence for question 8.

**RESPONSE:**

The sources of the evidence are identified in the Public Advocates Office's *Final Comments on Energy Efficiency Program Administrators' Business Plan Applications* and Appendix C, filed in A.17-01-013 on September 25, 2017.

# EXHIBIT B



**From:** Kao, Valerie <[valerie.kao@cpuc.ca.gov](mailto:valerie.kao@cpuc.ca.gov)>

**Sent:** Monday, October 19, 2020 3:31 PM

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**Subject:** R1311005 email ruling addressing motions to admit evidence

To the service list of Rulemaking 13-11-005 (energy efficiency proceeding),

This email ruling addresses several motions to admit evidence relating to the order to show cause addressing shareholder incentives (initiated by ruling dated December 17, 2019).

## 1. Motion by Southern California Gas Company

On September 15, 2020, Southern California Gas Company (SoCalGas) filed a motion to admit into evidence Exhibits SCG-01 through SCG-33, as described in the motion. Exhibits SCG-01 through SCG-33 have been served on the parties (via notice of availability), and I have received no objection as to their receipt into evidence. Therefore Exhibits SCG-01 through SCG-33 are hereby marked, identified, and received into evidence.

## 2. Motion by the Public Advocate's Office of the Public Utilities Commission and Sierra Club

On September 16, 2020, the Public Advocate's Office of the Public Utilities Commission (Cal Advocates) and Sierra Club filed a motion to admit into evidence Exhibits Cal Advocates / Sierra Club-1 through Cal Advocates / Sierra Club-75, as described in the motion.

On October 6, 2020, SoCalGas filed a response objecting to admission of Exhibits Cal Advocates / Sierra Club-29, -39, -46, -47, -51, -61, -62, -63, -64, -65, -66, -67, -71, -72, and -75.

On October 13, 2020, Cal Advocates and Sierra Club filed a reply to SoCalGas's response, asserting the Commission should reject each of SoCalGas's arguments against admission of the above-listed exhibits. We discuss the exhibits at issue here.

SoCalGas asserts Exhibits Cal Advocates / Sierra Club-39, -46, -47, -51, -61, -71, -72, and -75 are not in scope because they are not related or material to SoCalGas's codes and standards advocacy during 2014 – 2017 or to its engagement with reach codes. Cal Advocates and Sierra Club argue that Exhibits Cal Advocates / Sierra Club-39, -46, -47, -51, -61, -71, -72, and -75 do

concern codes and standards advocacy and reach codes; Cal Advocates and Sierra Club further argue the Commission should admit Exhibits Cal Advocates / Sierra Club-39, -46, -47, -51, -71, -72, and -75 because they show that SoCalGas opposed stricter codes and standards to protect its business interests, and such evidence rebuts SoCalGas's argument that its reason for opposition was that stricter codes and standards were not cost-effective. The question is whether each of these exhibits is relevant to either of the two factual questions the Commission must address, relating to the use of ratepayer funds for codes and standards advocacy or for advocating against reach codes. Separately, arguments about the motivation for advocating against stricter codes and standards or reach codes will not impact the Commission's determination of the factual questions, though they may be relevant to parties' recommendations on the appropriate remedies, if any. I find that Exhibits Cal Advocates / Sierra Club-39, -46, -47, -51, -61, -72, and -75 have some tendency to increase the likelihood of the factual questions the Commission must address, therefore they should be received into evidence.

Exhibit Cal Advocates/Sierra Club-71 does not appear to directly relate to SoCalGas's codes and standards advocacy or to its engagement with reach codes. 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. Therefore I will not receive Exhibit Cal Advocates/Sierra Club-71 into evidence.

SoCalGas asserts Exhibits Cal Advocates / Sierra Club-29, -62, -63, -64, -65, -66, and -67 are not in scope because their associated costs have been booked to Below-the-Line accounts and not to the Demand Side Management Balancing Account or other ratepayer-funded mechanisms. SoCalGas asserts that admitting these exhibits on the sole basis that they relate to Issue 3 (i.e., appropriate remedies), as Cal Advocates and Sierra Club suggest, would be erroneous. Cal Advocates and Sierra Club acknowledge the Commission will only reach Issue 3 if it finds the factual questions to be true, but argue "it does not logically follow that the Commission must disregard exhibits that would be useful in crafting remedies unless those exhibits would also prove one of the factual questions." I find that Exhibits Cal Advocates / Sierra Club-29, -62, -63, -64, -65, -66, and -67 are relevant to the Commission's consideration of Issue 3, i.e., appropriate remedies in the event the Commission finds either of the factual questions to be true, therefore they should be received into evidence.

Exhibits Cal Advocates / Sierra Club- 1 through Cal Advocates / Sierra Club-70, and Exhibits Cal-Advocates -72, -73, -74, and -75 are hereby marked, identified, and received into evidence. Exhibit Cal Advocates / Sierra Club-71 is marked and identified, but is not received into evidence.

On October 15, 2020, Cal Advocates filed a motion to seal the evidentiary record for confidential exhibits identified in its and Sierra Club's September 16, 2020 motion (Exhibits 1C,

32C, and 33C). Cal Advocates' motion to seal the evidentiary record for confidential Exhibits 1C, 32C, and 33C is granted.

### **3. Motion by Sierra Club to admit rebuttal exhibits**

On September 25, 2020, Sierra Club filed a motion to admit into evidence Exhibits Sierra Club R-1 through Sierra Club R-9. These exhibits have been served on the parties.

SoCalGas's October 6, 2020 response objects to admission of Exhibit Sierra Club R-5 and Exhibit Sierra Club R-6, asserting both concern zero net energy and not codes and standards advocacy or reach codes. Cal Advocates and Sierra Club raise the same argument as with Exhibit Cal Advocates / Sierra Club-39, and further assert these exhibits do in fact concern codes and standards advocacy. I find that the exhibits have some tendency to increase the likelihood of the factual questions the Commission must address, therefore they should be received into evidence. Therefore Exhibits Sierra Club R-1 through Sierra Club R-9 are hereby marked, identified, and received into evidence.

### **4. Motion by SoCalGas to admit rebuttal exhibits**

Also on September 25, 2020, SoCalGas filed a motion to admit into evidence Exhibits SCG-34 through SCG-55, as described in the motion. Exhibits SCG-34 through SCG-55 have been served on the parties (via notice of availability), and I have received no objection as to their receipt into evidence. Therefore Exhibits SCG-34 through SCG-55 are hereby marked, identified, and received into evidence.

### **5. Motion by Sierra Club to admit revised discovery response**

On October 14, 2020, Sierra Club filed a motion to admit into evidence Exhibit Sierra Club-76, which is the public version of SoCalGas's revised response to Sierra Club's ninth set of data requests in this proceeding, and Exhibit Sierra Club-76C, which is the confidential version. SoCalGas's original response to Sierra Club's ninth set of data requests is marked as Exhibit Cal Advocates/Sierra Club-74. The motion explains Sierra Club received SoCalGas's revised response on September 18, 2020, i.e., after the final date to file motions to admit evidence for this order to show cause, and states SoCalGas agreed to stipulate to enter its revised discovery response into the record. Exhibit Sierra Club-76 has been served on the parties. For good cause shown, and upon Sierra Club's representation that SoCalGas will stipulate to its entry, Exhibits Sierra Club-76 and Sierra Club-76C are hereby marked, identified, and received into evidence.

The evidentiary record for confidential Exhibit Sierra Club-76C shall be sealed.

**IT IS SO RULED.**

**The Commission's Docket Office shall formally file this email ruling.**

[Note: I have divided distribution of this email ruling into segments to avoid rejection by servers.]

Valerie U. Kao  
Administrative Law Judge  
California Public Utilities Commission  
Pronouns: she, her, hers

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