

No. B310811

**IN THE
CALIFORNIA COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIVISION ONE**

**SOUTHERN CALIFORNIA GAS COMPANY,,
Petitioner,
v.**

**PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA
Respondent.**

COMMISSION RESOLUTION ALJ-391, DECISION 21-03-001

**RESPONDENT CALIFORNIA PUBLIC UTILITIES
COMMISSION'S PETITION FOR REHEARING**

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January 23, 2023

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INTRODUCTION

The California Public Utilities Commission (Commission) respectfully submits this Petition for Rehearing for the Court's consideration. The Commission concurs with the Court's determination that the Commission afforded petitioner Southern California Gas Company (SoCalGas) sufficient due process in the underlying Commission proceeding. (See Opinion, Discussion section C.1.)

The Commission respectfully asks the Court to make two material clarifications based on the record and to correct two factual errors in the Opinion, as discussed below.

DISCUSSION

The Commission respectfully asks the Court to grant rehearing of the Opinion in order to make two material clarifications based on the record and to correct two factual inaccuracies. These requested changes are addressed individually below.

1. At page 3 of the Opinion, the Court states:

In 1996, the Legislature created a division within the Commission, later naming it the Public Advocate's Office (PAO, the Office, or Cal Advocates), "to represent and advocate on behalf of the interests of public utility customers and subscribers within the jurisdiction of the commission." (Stats. 2018, ch. 51, § 39.)

This statement merits a material clarification. The Commission originally created its Public Staff Division, the predecessor to Cal Advocates, in July 1984. (See Commission Exhibit (Exh.) A, attached hereto, Enrolled Bill Report, AB 476, p. 1.) The entity now called the Public Advocates Office was created in 1985 by adding section 309.5 to the Public Utilities Code pursuant to AB 476 of the Stats 1985 ch 562 § 1. That law provided:

The commission shall create an organization or division within the commission to represent the interests of public utility customers and subscribers in commission proceedings. The commission shall, by rule or order, provide for the assignment of personnel to and the functioning of the organization or division.

The Opinion makes a similar statement at page 16. Both of these statements merit clarification on pages 3 and 16 should be appropriately clarified.

2. At page 5 of the Opinion, the Court states that the underlying discovery inquiry involved three sets of data requests from Cal Advocates to SoCalGas. The certified record references

at least sixteen separate data requests, contained in the following Exhibits: 1, 2, 3, 6, 9, 13, 14, 16, 33, 47, 50, 53 and 59.

3. At page 5 of the Opinion, the Court states:

SCG responded by producing a Work Order Authorization, which in turn contained a Balanced Energy Internal Order which accounted for shareholder contributions to fund the work order. The point of SCG's production was to show that it did not use shareholder contributions to fund astroturf groups.

This statement is incorrect.¹ SoCalGas initially insisted to Cal Advocates that it was funding its advocacy organization Californians for Balanced Energy Solutions (C4BES) with solely shareholder funds, as it is required to do since ratepayer funds cannot be used to fund advocacy. (See, e.g., SoCalGas Response to Data Request CalPA-SCG-051719 (June 14, 2019), Exh. 1, p. 49 (“Ratepayer funds have not been used to support the founding or launch of Californians for Balanced Energy Solutions (C4BES).”); Exh. 1, p. 50 (“Ratepayer funds are not used to support C4BES.”); SoCalGas Response to Data Request CalAdvocates-SC-SCG-2019-05 (August 27, 2019), Exh. 2, p. 141

¹ It is possible that the reference to “shareholder contributions” in the above-quoted text of the Opinion is a typographical error. If so, the Commission respectfully asks the Court to correct this error.

("[T]he Balanced Energy IO is not ratepayer funded."); Exh. 2, p. 142 ("The Balanced Energy IO is shareholder funded, not ratepayer funded.") SoCalGas later acknowledged that for a period of approximately six months, from March 2019 until October 30, 2019, it utilized an "incorrect settlement rule" that improperly allocated advocacy costs related to C4BES to one or more ratepayer accounts. (See Exhibit 14, p. 831; see also Exhibit 3, p. 4.) This matter is not in dispute.

4. At page 6 of the Opinion, the Court states:

However, SCG redacted from its response shareholder dollar figures from the Balanced Energy Internal Order, and objected to their production as nonresponsive to the PAO's request and unnecessary to the discharge of its duties. The PAO moved the Commission's administrative law judge (ALJ) to compel further responses containing an unredacted Work Order Authorization, which the ALJ granted.

This statement merits a material clarification based on the record. The redacted Work Order Authorization (WOA) dated March 21, 2019 for tracking costs associated with C4BES shows over \$27,000,000 in costs allocated to Federal Energy Regulatory Commission (FERC) account 920.0, which is an administrative and general salaries account passed through to ratepayers. (See

WOA, March 21, 2019, Exh. 3, p. 218; see also 18 C.F.R Part 201, 920.) The Court's statement cited above creates the impression that a portion of shareholder-funded advocacy was redacted from the WOA, when in fact the entire WOA was billed to FERC account 920.0, a ratepayer-funded account. The only redaction on the WOA appears to be a name or signature. (See WOA, March 21, 2019, Exh. 3, p. 218; see also Exh. 14, p. 831 (SoCalGas notes that costs for C4BES were incorrectly booked to a FERC 920.0 account, which is a ratepayer-funded account).) The WOA plainly states that the C4BES-related costs are billed to FERC account 920.0. (See Exh. 3, p. 218.)

CONCLUSION

For the foregoing reasons, the Commission respectfully asks the Court to grant rehearing for the purpose of clarifying and correcting the issues discussed above.

January 23, 2023

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, rule 8.204(c))

I, Carrie G. Pratt, of the California Public Utilities Commission, do hereby certify in accordance with California Rules of Court, Rule 8.204(c) that the word count of this Respondent California Public Utilities Commission's Petition for Rehearing, according to the Microsoft Word computer program used to prepare the brief, consists of 894 words, including footnotes.

January 23, 2023

/s/ CARRIE G. PRATT
CARRIE G. PRATT

COMMISSION EXHIBIT A

ENROLLED BILL REPORT

Analyst: Oscar Betts *me*
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AGENCY: STATE AND CONSUMER SERVICES AGENCY	BILL NUMBER: AB 476
DEPARTMENT, BOARD OR COMMISSION: CONSUMER AFFAIRS	AUTHOR: Moore

SUMMARY

1 Description
 BACKGROUND

BILL SUMMARY

Existing law does not create specific divisions within the Public Utilities Commission (PUC).

- 2 History
- 3 Purpose
- 4 Sponsor
- 5 Current Practice
- 6 Implementation
- 7 Justification
- 8 Alternatives
- 9 Responsibility
- 10 Other Agencies
- 11 Future Impact
- 12 Termination

This bill would direct the PUC to create and staff an organization or division within their operation to represent the interests of public utility customers in PUC proceedings.

FISCAL IMPACT ON STATE BUDGET

Background

- 13 Budget
- 14 Future Budget
- 15 Other Agencies
- 16 Federal
- 17 Tax Impact
- 18 Governor's Budget
- 19 Continuous Appropriation
- 20 Assumptions
- 21 Deficiency Measure
- 22 Deficiency Resolution
- 23 Absorption of Costs
- 24 Personnel Changes
- 25 Organizational Changes
- 26 Funds Transfer
- 27 Tax Revenue
- 28 Other Fiscal

On July 5, 1984 the PUC adopted a resolution which directed their Executive Director to create two new staff divisions, the Public Staff Division (PSD) and the Evaluation and Compliance Division. PUC representatives indicate that the major reasons for this reorganization were "to clarify the roles of major parts of the staff and to provide increased flexibility in the organization."

SOCIO-ECONOMIC IMPACT

The PUC's resolution stated that "the electric, gas and telecommunications industries are in the midst of substantial and far-reaching changes," that "the commission must maintain a high-quality staff...to critically review utility applications" and that "the effectiveness of staff is increased when assignments and roles are clearly defined."

- 29 Rights Effect
- 30 Monetary
- 31 Consumer Choice
- 32 Competition
- 33 Employment
- 34 Economic Development

These two new divisions were created from the then existing Utilities Revenue Requirements and Communications Divisions.

INTERESTED PARTIES

- 35 Proponents
- 36 Opponents
- 37 Pro/Con Arguments

A major role of the PSD is to bring engineering, auditing, financial, economic and general regulatory expertise to bear on utility proposals, projects and expenditures. There are about 200 professionals assigned to this division.

RECOMMENDATION JUSTIFICATION

- 38 Support
- 39 Oppose
- 40 Neutral
- 41 No Position
- 42 If Amended

VOTE:	<u>Assembly</u>	Partisan		<u>Senate</u>	Partisan	
		R	D		R	D
Floor:	74-0			Floor:	25-5	
Policy Committee:				Policy Committee:		
Fiscal Committee:				Fiscal Committee:		

RECOMMENDATION TO GOVERNOR: SIGN VETO NO POSITION DEFER TO OTHER AGENCY

DEPARTMENT DIRECTOR: <i>Marie Hubrey-Snell</i>	DATE: <i>8/30/85</i>	AGENCY SECRETARY:	DATE:
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The PSD is charged with the responsibility of making recommendations which take into consideration the "interests of ratepayers over the long-run." This requires their awareness of the impacts imposed on future utility customers when analyzing current utility expenditures and investments.

The PSD is required to consider the interest of all ratepayers, not any one class or sector of utility customers. The intent is to design rates that are equitable to all utility customers.

Specific Findings

Some of the major functions of the Public Staff Division include evaluation of: (a) rate design, revenue allocations to customer classes, and marginal costs of gas and electricity; (b) cost of capital and rate of return; (c) resource planning and capital budgets; and (d) the reasonableness of costs and the ratemaking treatment for major additions to the ratebase such as large power plants.

The purpose of AB 476 is to codify the internal reorganization which created the PSD within the PUC.

Fiscal Impact

None on the Department of Consumer Affairs.

Socio-economic Impact

The PSD of the PUC will represent the long-term interest of all utility ratepayers more effectively. This could result in a more moderate rise in utility rates throughout the state.

Interested Parties

Proponents: Public Utilities Commission (PUC)

Opponents: None known

Arguments:

Proponents of the bill argue codification of the newly created PSD within the PUC would ensure that the ratepayer benefits gained by creation and operation of this new unit would be continued.

The PUC indicated support for the amended version of the bill.

Recommendation

The Department of Consumer Affairs recommends that the Governor SIGN this bill.

The Department supports, in concept, the creation of the Public Staff Division within the PUC. This internal reorganization: (a) allows the PUC to more clearly define the role of its technical and professional resources regarding the long-term interests of all ratepayers. The bill was amended, on April 15, as recommended by the Department of Consumer Affairs, to delete that section of the bill which would have allowed the Public Staff Division to appeal to the Supreme Court PUC decisions which were adverse to its own. The Department felt this provision had potential for causing internal reporting problems within the PUC.