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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Approval of the 2009-2011 Low Income Energy Efficiency and California Alternate Rates for Energy Programs and Budget (U39M).

Application 08-05-022
(Filed May 15, 2008)

And Related Matters.

Application 08-05-024
Application 08-05-025
Application 08-05-026

**JOINT ASSIGNED COMMISSIONER AND ADMINISTRATIVE
LAW JUDGE'S POST ORDER TO SHOW CAUSE HEARING RULING**

1. Summary

This ruling follows the Order to Show Cause (OSC) hearing held on December 6, 2011, the main subject of which was the activities by and on behalf of Southern California Gas Company (SoCalGas) relating to the Joint Emergency Motion filed on November 29, 2011 by The East Los Angeles Community Union (TELACU), the Association of California Community and Energy Services (ACCES), and the Maravilla Foundation to Continue the Low Income Energy Savings Assistance Program (ESAP) for Southern California Gas Company's Low Income Households (Joint Motion).

This ruling directs SoCalGas to retain an independent third party management auditing firm, at its own shareholders' expense, to examine

SoCalGas' records of its ESAP with focus on the period from July 1, 2011 to December 31, 2011, to determine what causes, precursors, or contributory factors affected and otherwise triggered the "sudden spike" in contractors' invoicing in November of 2011 which in turn led to SoCalGas' decision to temporarily suspend the ESAP activities during the month of December 2011 with a notice, dated November 28, 2011, sent to the contractors to halt the ESAP activities starting December 1, 2011 to and including December 31, 2011.

The audit will identify and examine all of SoCalGas' management actions relating to the ESAP activities during the timeframe subject to the audit. The audit will include the review of SoCalGas' then-existing ESAP related management practices, protocols and contract management tools in place in November 2011. The audit will also include random verification of 10 percent of the contractors' actual November 2011 invoices with the concluded ESAP work during the same month to ascertain whether ESAP measures were actually installed, whether such work was completed in compliance with the ESAP rules and standards, and to see a random profile of ESAP activities during that anomalous period to better understand the "sudden spike." The audit report will be prepared and will report on the audit findings on SoCalGas' internal staff and contractors' activities within this period that led to the unforeseen spike in costs, management practices, protocols and contract management tools in place during that time and present recommendations for how those practices and tools should be enhanced to prevent recurrence of any potential stoppage of future ESAP activities.

This ruling also directs SoCalGas to (1) file any and all late ex parte notices relating to the communications at issue in this ruling; (2) identify all of its representatives that SoCalGas has a reasonable belief to have future potential

contacts with the Commission decisionmakers,¹ including their advisors, (3) retain an independent firm, at its own shareholders' expense, to conduct a minimum of two Northern California and two Southern California half day training sessions on the issues of Rule 1.1 and Article 8 of the Rules, noticed to and open to public and service list of proceeding Application (A.) 11-05-017 et al., Commission practitioners and SoCalGas' representatives, and (4) complete the aforementioned trainings and file a certificate of completion of those trainings and a certificate for each of its representatives who SoCalGas reasonably believes to have future potential contacts with the Commission decisionmakers, including their advisors, declaring under penalty of perjury that they each have attended and received at least one of the trainings prescribed here.

2. Procedural Background

On November 29, 2011, a Joint Motion was filed by TELACU et al.

On November 30, 2011, the assigned Administrative Law Judge (ALJ) issued an email ruling (November 30, 2011 Ruling) tentatively authorizing and directing certain fund shifts to SoCalGas to resolve the immediate emergency presented in the Joint Motion. The November 30, 2011 Ruling also ordered SoCalGas to file a response to the Joint Motion by December 1, 2011, and to attend an OSC hearing on December 6, 2011.

¹ Unless otherwise stated, all subsequent references to Rules herein are to the Commission's Rules of Practice and Procedure. Rule 8.1 (b) defines "Decisionmaker" as "any Commissioner, the Chief Administrative Law Judge, any Assistant Chief Administrative Law Judge, the assigned Administrative Law Judge, or the Law and Motion Administrative Law Judge."

On December 1, 2011, the assigned Commissioner and ALJ issued the Joint Ruling (December 1, 2011 Ruling) confirming the ALJ's November 30, 2011 Ruling.

On December 1, 2011, SoCalGas timely filed its response (Response) to the Joint Motion.

On December 6, 2011, SoCalGas appeared before the assigned Commissioner Timothy A. Simon and ALJ Kim for an OSC hearing and presented explanations and requested that no sanctions or penalties be issued.

During the OSC hearing, SoCalGas was represented by counsel, Kim Hassan, and its Vice President, Hal Snyder, and Bill Blattner of SoCalGas' San Francisco office. TELACU et al., the moving party, was represented by and through counsel James Hodges, and CEO and President of TELACU, Michael Lizarraga. Other members of the public and interested parties in attendance were each afforded a brief opportunity to present and speak on the issues raised by the Joint Motion.

The matter was submitted at the close of the OSC hearing.

3. Discussion

Based upon our review of the Joint Motion, the Response, the testimonies and statements received during the December 6, 2011 OSC hearing, and the record of this proceeding, we address two highly important issues in this ruling concerning SoCalGas' management of its ESAP activities and contracts, and SoCalGas' communications and compliance with the Commission's Rules.

3.1 SoCalGas' Management of ESAP Activities and Contracts

In their Response and during the OSC hearing, SoCalGas representatives presented the following sequence of events and context leading up to the Joint

Motion. SoCalGas' representative explained that during the November 2011 timeframe, SoCalGas did not have a routine practice of projecting and anticipating ESAP activities. While to close out the 2009-2011 budget cycle, in October of 2011, SoCalGas did some projections in preparation to seek approval of needed fund shifting. In October of 2011, SoCalGas was unaware that its ESAP budget was in any jeopardy of being depleted before the end of the cycle, with only two months remaining in the cycle.

Then, in mid-November, SoCalGas noticed that the number of contractors' invoices increased dramatically. In response, SoCalGas promptly requested its contractors to prepare and submit their November projections based on what was in the contractors' November 2011 pipeline. Contractors each submitted their November projections and the aggregate of those projections showed that contractors' total projected November 2011 invoices would be \$22.4 million, which translates to more than four times that of the month prior, and the same month, a year prior. SoCalGas scrambled to check and recheck the \$22.4 million figure, tried to seek contractors' cooperation to ramping down the contractors' activities, explored possible advice letter options, contacted Commissioners' offices, etc., all in its attempt to find a solution, rather than to halt the ESAP activities for December of 2011.

By November 28, 2011, SoCalGas representative explained that it had no funds to fund any ESAP activities starting on December 1, 2011, and SoCalGas concluded that it had no choice but to send its ESAP contractors the letter of suspension of ESAP activities from December 1-31, 2011.

In its Response and during the OSC hearing, SoCalGas outlined three main contributing factors which it offers as having caused the November 2011

“sudden spike” and SoCalGas’ related and unfortunate decision to temporarily suspend the ESAP activities during the month of December 2011.

The first was that ESAP has proven to be a huge success and successfully transitioned from program “ramping up stage” to fully ramped-up stage, as evidenced by the historic number of homes treated in 2011. However, SoCalGas explained that its budget management practices and tools, as of November 2011, were not poised and ready for this fully ramped-up stage of the program.

The second was SoCalGas’ contracting strategy which had been geared for the ramping up stage of the program. During the ramping up stage, SoCalGas purposely allowed the contractors more flexibility by entering into contracts, aggregates of which exceeded the total authorized budget, to encourage the contractors to get the treated home numbers up wherever and whenever possible. According to SoCalGas’ representative, this contracting strategy worked until the program reached this current ramped-up stage, which SoCalGas claims it did not and could not have anticipated.

The third was that the extraordinary and unanticipated jump in the number of invoices submitted by its contractors in November of 2011 was an anomalous event, as compared to SoCalGas’ experience to date, and as such, SoCalGas could not have reasonably anticipated the November 2011 “sudden spike” event from looking at the past trends from the months preceding November 2011 and even looking at the invoices from the same month from the prior year.

TELACU’s representative, during the OSC hearing, generally confirmed the contributory factors outlined by SoCalGas. TELACU’s representative also indicated while the contractors attempted to cooperate with SoCalGas in response to SoCalGas’ November 2011 budget crisis, the contractors and

SoCalGas immediately realized that the magnitude of the SoCalGas' expected budget shortfall was such that contractors' cooperation was not going to be enough to offset the amount of budget shortfall at issue. Then, on November 28, 2011, the contractors received the suspension notice from SoCalGas stating that ESAP activities would be suspended from December 1-31, 2011. Therefore, at that point, the contractors concluded they had no choice but to file the Joint Motion to halt the SoCalGas' suspension of ESAP activities.

In view of the record in this proceeding to date and in light of the totality of the circumstances leading to SoCalGas' decision to temporarily suspend its ESAP activities from December 1-31, 2011, we do not believe there was bad faith or reckless mismanagement involved. We therefore do not find there to be basis for fines, penalties or sanctions for mismanagement based on what is known at the present time. We do however direct in this ruling further management audit be completed, as ordered, including the review of the pertinent management practices and activities. Any and all issues or further information which comes to light after this ruling and as a result of the audit ordered in this ruling will be filed and dealt with, as appropriate, in the succeeding ESAP proceeding, A.11-05-017 et al.

3.2 SoCalGas' Communications and Compliance with Commission's Rules

There are two significant aspects of SoCalGas' contacts and communications with the Commission and its related representations to and before the Commission in this proceeding that are highly troublesome and violate Commission Rules.

3.2.1 Ethics Rule Violation

Rule 1.1 provides that:

Any person who . . . transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and **never to mislead the Commission or its staff by an artifice or false statement of fact or law. (Emphasis added.)**

The Commission's very first rule, Rule 1.1 (Ethics Rule), is specifically intended to set the tone in stressing the importance of preserving the integrity of the Commission's process and to ensure that parties and/or their representatives that practice before the Commission not "mislead the Commission or its staff by an artifice or false statement of fact or law." The integrity of the process is compromised when Rule 1.1 is violated. We therefore carefully scrutinize each party and its representatives who conduct business with the Commission and insist that they do so forthrightly and without false or misleading information, with staff, Commissioners' offices and advisors, formal filings and representations in a public proceeding.

Here, we find that SoCalGas' representative was less than forthright and at times mischaracterizing or providing false statements in the Response and during the OSC hearing. These actions violate Rules 1.1 and we take such violations seriously.

Specifically, in its Response, SoCalGas explained:

As a result and after timely consultation with the Energy Division and Commissioners, SoCalGas planned to suspend its program activities for the month December and recommence activities in January.²

Then, during the course of the OSC hearing, Bill Blattner of SoCalGas testified to his efforts on behalf of SoCalGas during the November 2011 timeframe to explore possible advice letter options with the Commission's Energy Division staff and to consult with the Commissioners' offices, including the assigned Commissioner's office. In essence, his carefully worded testimony coupled with the Response suggested that all of the Commissioners' office and the Energy Division blessed, tacitly approved and/or otherwise concurred with the SoCalGas' decision to suspend the ESAP activities.

Both direct and indirect implications throughout the SoCalGas' Response and related testimony and statements made by SoCalGas' representatives at the OSC hearing were that Energy Division and all five Commissioners' offices uniformly, knowingly, and tacitly approved the SoCalGas' decision to suspend its ESAP activities for December 1-31, 2011 and that such tacit approvals were made through individual telephone conversations or e-mails with Energy Division staff and each of the Commissioner's energy advisors. When specifically asked about the "timing ... and nature of the consultation" by the ALJ, the response from SoCalGas' representative became evasive. For instance:

² Response at 10.

MR. BLATTNER: I may have to look to others to help me out here who participated in those calls, but I would say in mid-November we talked to Energy Division about the possibility of expedited advice letter filing.³

Upon repeated inquiries from the ALJ, SoCalGas' representative seems to relent:

ALJ KIM: When you characterize you had consultation with them, it was more noticing that you were working on a budget shortfall issue through the Energy Division dialog?

MR. BLATTNER: I think that's accurate.⁴

Then to confirm, in fact, that the Commissioners' offices did not tacitly or otherwise informally, by telephone, by e-mail and/or through the Commissioners' advisors, approve the ESAP suspension during such contacts with the SoCalGas' representatives, the ALJ queried further, and the following came to light:

ALJ KIM: Were you given specific direction -- were you under the impression by any of the Commissioners' offices that the correct course of conduct would be to suspend the Energy Savings Assistance Program?

MR. BLATTNER: Yes. I received feedback that, "We understand the -- the situation and that you believe a suspension is an unavoidable course of action."

ALJ KIM: From which offices?

MR. BLATTNER: The assigned Commissioner's office. There may have been others.⁵

³ OSC Hearing Transcript at 12.

⁴ *Id.* at 17.

⁵ *Ibid.*

The ALJ then asked Mr. Momoh, the advisor to assigned Commissioner Simon, to speak on the nature and substance of the communications Mr. Blattner was referring to as the consultation with him that gave SoCalGas the impression Commissioner Simon's office understood and concurred with SoCalGas' decision that "suspension [of ESAP activities] is an unavoidable course of action:"

ALJ KIM: And were you under the impression prior to the [SoCalGas'] proposed suspension of the Energy Savings Program that Commissioner Simon had concurred and okayed such a suspension proposal?

MR. MOMOH: No, that was not my understanding that SoCalGas will suspend the program. I was briefed by Mr. Blattner that there are some issues with the funding, and as he indicated, we encouraged him to continue to resolve it. But that was the last time we spoke. And then you [Mr. Blattner] left a voicemail that the program will be suspended.⁶

Similarly, the Commission's Energy Division representative, Hazlyn Fortune, spoke in detail of the nature and substance of the Energy Division's communications Mr. Blattner was referring to as the consultation with the Energy Division that gave SoCalGas the impression Energy Division understood and concurred with SoCalGas' decision that "suspension [of ESAP activities] is an unavoidable course of action."

MS. FORTUNE: I had not been informed there was a decision to suspend as of the 22nd -- or I'm sorry 23rd, the day I got the e-mail. I responded to Mr. Tisdale telling him I'd investigate and be getting back to him as soon as I was back in the office. And that was the last

⁶ *Id.* at 18.

communication I had about what was happening in the program.⁷

Upon examination of the Response and SoCalGas' representative's OSC hearing testimony, some excerpts noted in the preceding section of this ruling, we find them to be misleading and in material respects false. In particular, there is no credible evidence to support SoCalGas' suggestion of alleged "impression" that Commissioner Simon and the Energy Division staff understood and concurred with SoCalGas' decision that "suspension [of ESAP activities] is an unavoidable course of action."

In fact, that was not the case. Mr. Blattner's "impression" that he testified to was contradicted by Commissioner Simon, his energy advisor, Rahmon Momoh and the Energy Division supervisor, Hazlyn Fortune. As for all the non-assigned Commissioners' offices, the admitted "noticing" of the offices of what budget shortfalls SoCalGas was facing by e-mails and/or voicemails does not constitute consulting and concurrence of any sort, as implied and suggested by SoCalGas' representative as his "impression."

Another aspect of the SoCalGas' representative's testimony that was troubling was his carefully worded responses of the SoCalGas' representative to the ALJ's questions. Perhaps he was nervous, but the responses taken as a whole were evasive and lacked credibility. The key aspects of his testimony was contradicted by both Commissioner Simon and his energy advisor, Rahmon Momoh, present during the OSC hearing. Likewise, as for the alleged consultation with the Energy Division, the testimony of the Energy Division representative indicated that his testimony mischaracterized his communication

⁷ *Id.* at 24.

activities with the Energy Division to suggest that the Energy Division was supportive or in agreement with the suspension, when in fact Energy Division had not specifically weighed in on such action.

As discussed, we find that SoCalGas' by and through its Response and its representative's testimony violated Rule 1.1.

3.2.2 Ex Parte Rule Violation

Relating the foregoing Ethics Rule violation, as counsel for Division of Ratepayer Advocates (DRA) correctly pointed out, SoCalGas' representative's multiple contacts with the Commissioners' offices during the subject timeframe is not evidenced in any ex parte notices filed in this proceeding docket.

California Public Utilities Code⁸ Section 1701.1(c)(4) and Rule 8.1(c) provide that an ex parte communication involves any written or oral communication, between a decisionmaker and "interested person" in a matter before the Commission regarding a substantive (not procedural) issue that does not occur in a public hearing, workshop, other public setting, or on the record of the formal proceeding. Pub. Util. Code § 1701.3(c) and Rules 8.2, 8.3(c) and 8.4 also permit such ex parte communication subject to certain reporting requirements. Specifically, Rule 8.4 provides:

Ex parte communications that are subject to these reporting requirements shall be reported by the interested person, regardless of whether the communication was initiated by the interested person. Notice of ex parte communications shall be filed within three working days of the communication. The notice

⁸ Unless otherwise noted, all subsequent references to Code refers to California Public Utilities Code.

may address multiple ex parte communications in the same proceeding, provided that notice of each communication identified therein is timely. The notice shall include the following information:

- (a) The date, time, and location of the communication, and whether it was oral, written, or a combination;
- (b) The identities of each decisionmaker (or Commissioner's personal advisor) involved, the person initiating the communication, and any persons present during such communication;
- (c) A description of the interested person's, but not the decisionmaker's (or Commissioner's personal advisor's), communication and its content, to which description shall be attached a copy of any written, audiovisual, or other material used for or during the communication. (citations omitted)

Akin to the Ethics Rule, the ex parte rule is intended and designed to promote trust and confidence in the Commission's proceedings and further transparency in the Commission's proceeding. Thus, its compliance is critical in preserving the transparency, and in turn, integrity and public confidence in this forum.

Here, most, if not all, of the SoCalGas' admitted communications (referenced in this ruling) as characterized by SoCalGas were NOT of purely procedural nature in that they concerned budget augmentation and suspension of ESAP activities (active and open proceeding A.08-05-022 et al.) which were ordered to be administered continuously through and including December 31, 2011 under Decision (D.) 08-11-031. Therefore, any changes in the funding or prospects of continued administration of that program are clearly substantive in nature and subject to ex parte reporting requirements under

Article 8 of the Commission's Rules. The proceeding docket does not show that SoCalGas timely filed such notices. We find that highly troublesome.

When queried by the ALJ during the OSC hearing about SoCalGas' failure to comply with the ex parte reporting requirements, SoCalGas' representative testified as follows on this issue:

MR. BLATTNER: It was our view at the time before the motion was filed that the issues we were discussion were not within the scope of the proceeding. As soon as the motion was filed, we considered the communications to be ex parte. We haven't had any ex parte communications since then other than to provide the documents that were public and to make people aware of the process that was taking place.

ALJ KIM: Not within the scope of what proceeding?

MR. BLATTNER: Of this proceeding. That there were -- we were not asking for an action of the Commission. There were no decisions that were teed up.

ALJ KIM: We were talking about suspension of the Energy Savings Assistance Program that was authorized for 2011; right, under A08-05-022 et al., which was an open proceeding? Not true?

MR. BLATTNER: That's correct. I'm sorry.⁹ Rather than to acknowledge error or misunderstanding, SoCalGas' representative then proceeded to offer his alternate justification for not following the ex parte reporting requirements, as follows:

ALJ KIM: Okay. So you were under a misimpression that it [the consultations with the Commissioners' offices] was not within an active proceeding.

⁹ *Id.* at 49-50.

MR. BLATTNER: That the issues that we were discussing, our relationships with the contractor and/or contractual -- the provisions within the contract were not within the scope of the proceeding.¹⁰

In view of the record in this proceeding and in light of the totality of the circumstances and entire series of events leading up to these contacts with the Commissioners' offices, we are not persuaded by the explanation that SoCalGas viewed the issue solely to be contractual and not within the scope of the proceeding. To the contrary, suspension of a program approved and ordered by the Commission is squarely within the scope of the Commission's proceeding, and suspension of 2011 ESAP program is an issue squarely within the scope of the Commission's proceeding A.08-05-022 et al.

All substantive issues before the Commission will probably have contractual aspects to them, but a decision to suspend the ESAP activities budgeted and ordered in an active open proceeding (A.08-05-022 et al.) is not a merely contractual concern and squarely within the scope of the proceeding. Thus, we find that SoCalGas' representative's numerous admitted communications with the Commissioners' advisors were substantive in nature.

It is undisputed that SoCalGas did not comply with the ex parte reporting requirements under Rule 8.4 concerning those numerous admitted communications with the Commissioners' advisors. We therefore also find that SoCalGas failed to comply with the ex parte Rule 8.4.

3.3. Penalties, Sanctions or Fines

While we do not find there to be basis for fines, penalties or sanctions for mismanagement based on what is known at the present time, we do find that

¹⁰ *Id.* at 49.

SoCalGas violated Rule 1.1 (the Ethics Rule) and Article 8 (Ex Parte Rule), specifically Rule 8.4. For such violations of the Rules, SoCalGas is subject to potential sanctions pursuant to Pub. Util. Code §§ 701 and 2113 et seq. As set forth in D.06-09-025,¹¹ the Commission has recognized a number of remedies for its Rule violations.¹²

Traditionally, the Commission pursues monetary fines for violation of its Rules and orders in amounts ranging from \$500 to \$20,000 per incident.

D.98-12-075 clarifies the general factors considered by the Commission when levying fines. These include the severity of the offense, the conduct of the utility, the financial resources of the utility, the totality of the circumstances, and the role of precedent. Additionally, a ban on ex parte communications, either for the duration of the proceeding or for a specified period of time, could be imposed here. Due to the importance of maintaining the integrity of the proceeding, we will consider all available options, not limited to those described above, to tailor a solution to the particulars of the violation and the public interests involved.

¹¹ D.06-09-025 recognizes that any violation of Rule 1 [referring to the predecessor rule to Rule 1.1] would subject such violating party to sanctions, including but not limited, to prohibiting a party from participating in a Commission's proceeding, disallowing intervenor's compensation for unreasonable conduct, rejecting pleadings, holding a party in contempt under section 2113, and any other sanctions permitted under the law. *Id.* at 10. (See also Code Section 701; See also Cal. Const., Art. XII, Sec. 6.)

¹² Code Section 2113 provides: "Every public utility, corporation, or person which fails to comply with any part of any order, decision, rule, regulation, direction, demand, or requirement of the commission or any commissioner is in contempt of the commission, and is punishable by the commission for contempt in the same manner and to the same extent as contempt is punished by courts of record."

Here, we have examined all of the circumstances surrounding the SoCalGas' communications at issue in this ruling and find that SoCalGas violated both the Ethics Rule and the ex parte rule. As for the ex parte rule violation, it seems that, in part, those could have been just a byproduct of the panic and haste that were inherent in the crisis mode SoCalGas was facing in November of 2011. There clearly was also tremendous urgency surrounding the program suspension and poor judgment appears to have been made under the pressures.

In all fairness, there is nothing inherently wrong with the admitted contacts assuming they were made forthrightly and openly, in compliance with the ex parte rule, Rule 8.1 et seq. Here, SoCalGas in haste, panic or error, pursued a series of communication with all of the Commissioners' offices seemingly in effort to secure a decision or some direction from those offices on an issue outside of the open public process prescribed in the statute and Rules and failed to report them. That is Rule 8.4 violation for failure to report.

What is unacceptable is the SoCalGas' representative, even during the OSC hearing, did not seem to recognize that the series of admitted contacts and communications he had with the various Commissioners' offices were subject to ex parte rules. It is unclear, if this is legal maneuvering or lack of understanding of the Rules.

Of the two Rule violations however, Ethics Rule violation as discussed above is far more troubling, as there appears to be a more knowing and intentional component to SoCalGas' violation. For instance, the SoCalGas representative's testimony was that there were consultations resulting in Commissioners' offices and Commission's staff making and conveying decisions about the fate of ESAP activities by phone or e-mails. That testimony was not

supported by any credible evidence. Specifically, SoCalGas' testimony was that SoCalGas was under the impression that the Commissioners were of the belief that "We understand the -- the situation and that you believe a suspension is an unavoidable course of action." In fact, while there is evidence that e-mails and phone messages were sent or left, there is no evidence of any of the Commissioners' offices and Commission's staff having made or conveyed a direction, agreement or decision, as suggested by SoCalGas, that ought to be made openly and publically.

Each and every one of those communications was misrepresented and mischaracterized to the Commission, the assigned Commissioner, the public and the ALJ, in the course of the Commission proceeding and during the OSC hearing. Such misrepresentations and mischaracterizations then compromised the integrity of the Commission, the assigned Commissioner, the Commission's advisors, the Commission's staff, the Commission's process and this very important proceeding. That is unacceptable.

We struggle to find excuse or mitigating factors for SoCalGas' above referenced conduct, the Ethics Rule violation. One remotely possible mitigating fact might be that SoCalGas does not appear to have an extensive history of these Ethics Rule violations and perhaps SoCalGas erred in the midst of a crisis and that clouded the judgments and resulted the violations. On the other hand, SoCalGas still has not acknowledged or accepted any responsibility for its misjudgment or wrong-doing in this Ethics Rules violation.

3. Conclusion

Based on these facts, there is a reasonable basis to conclude at this juncture that SoCalGas made some management errors but no significant or bad faith mismanagement has been identified during the OSC hearing relating to its decision to suspend ESAP activities from December 1-31, 2011. However, the November 2011 “sudden spike” still remains unexplained. Thus, an audit is ordered to better understand what occurred as well as better plan going forward, as detailed in this ruling.

Moving forward, SoCalGas’ counsel and its Vice President, Hal Snyder, during the OSC hearing explained that SoCalGas is open to an audit and is also open to improving its practices in several respects: (1) better real time tracking (working with the contractors in monitoring, projecting and tracking); (2) tightening of its contracting practices and not contracting in excess of the total budget amount; and (3) enforcement of the budget cap. Such effort to improve its practices should also involve developing a tracking method with contractors to enhance its ongoing dialogue and forecast of what’s in the pipe line, what has not yet been invoiced and generally what contract activities are being expected/projected as well as generally updating and fine-tuning its practices to employ best available management practices to get the most out of the ratepayers dollars.

Based on the foregoing, we conclude that SoCalGas violated the Ethics Rules and ex parte Rules but given SoCalGas’ good track record, totality of the circumstances and the statements by the moving party’s representative and other

interested parties who all spoke at the OSC hearing,¹³ we will not be imposing monetary penalties, fines or sanctions. Instead, we order training as set forth below to assure such violation does not recur and SoCalGas and other parties and practitioners before the Commission all move forward with lessons learned in a positive direction with better understanding of the Rules. Next similar violation will not be looked upon as leniently.

IT IS RULED that:

1. Management and Program Audit:

a. Selection and Retention:

- (i) Within 45 days of the issuance of this ruling, Southern California Gas Company (SoCalGas) shall select and retain an independent third party management auditing firm, at its own shareholders' expense, to conduct an audit; and
- (ii) The selected third party management auditing firm must first be approved by Energy Division;

b. Scope:

- (i) The scope of the management audit shall include examination of SoCalGas' records of its Energy Savings Assistance Program (ESAP) with focus on the period from July 1, 2011 to December 31, 2011, to determine what causes, precursors, or contributory factors affected and otherwise triggered the "sudden spike" in contractors' invoicing in November of 2011 which in

¹³ SoCalGas, as well as the moving parties, TELACU et al., expressed their position that penalties and sanction are not dues here. DRA voiced its neutral position on the sanctions and penalties issue.

turn led to SoCalGas' decision to temporarily suspend the ESAP activities during the month of December 2011 with a notice, dated November 28, 2011, sent to the contractors to halt the ESAP activities starting December 1, 2011 to and including December 31, 2011;

- (ii) The audit will clearly identify and examine all of SoCalGas' management actions relating to the ESAP activities during the timeframe subject to the audit;
- (iii) The audit will include the review of SoCalGas' then-existing ESAP related management practices, protocols and contract management tools in place in November 2011; and
- (iv) The audit will also include random verification of 10 percent of the contractors' actual November 2011 invoices with the concluded ESAP work during the same month to ascertain whether ESAP measures were actually installed, whether such work was completed in compliance with the ESAP rules and standards, and to see a random profile of ESAP activities during that anomalous period to better understand the "sudden spike."

c. Audit Report:

- (i) The audit report (Audit Report) shall be prepared and report on the audit findings on SoCalGas' internal staff and contractors' activities within this period that led to the unforeseen spike in costs, management practices, protocols and contract management tools in place during that time and present recommendations for how those practices and tools should be enhanced to prevent recurrence of any potential stoppage of future ESAP activities; and

- (ii) Within 180 days, SoCalGas shall assure that the final audit report is submitted to the Administrative Law Judge for filing in proceeding A.11-05-017 et al.

2. Ethics and Ex Parte:

- a. Within 5 days, SoCalGas shall file any and all late ex parte notices relating to the communications at issue in this ruling, in proceeding A.11-05-017 et al.;
- b. Within next 30 days, SoCalGas shall retain an independent third party firm, at its own shareholders' expense, to conduct minimum of two Northern California and two Southern California half day training sessions on the issues of the Commission's Rules 1.1 and Article 8, noticed to and open to public and service list of proceeding A.11-05-017 et. al., Commission practitioners and SoCalGas' representatives;
- c. Within next 120 days, SoCalGas shall complete the four aforementioned trainings and file a certificate of completion of those training sessions; and
- d. Within next 120 days, SoCalGas shall file a certificate for each of its representatives who SoCalGas believes will have reasonable likelihood of future potential contacts with the Commission decisionmakers, including the advisors, in the next two years, declaring under penalty of perjury that they each has attended and received the training prescribed here.

3. Filings:

- a. All future filings relating to the Joint Motion, this ruling, the Report and issues raised therein will be resumed and filed in proceeding A.11-05-017 et al.; and
- b. All subsequent actions related thereto is hereby being transferred and will be taken in the proceeding docket, A.11-05-017 et al.

4. SoCalGas' Shareholders' Expense:

All expense associated with complying with this ruling will be borne by the shareholders of SoCalGas.

5. Effective Date:

This ruling is effective immediately.

6. Service:

This ruling shall be served on service lists of A.08-05-022 et al. and A.11-05-017 et al.

Dated February 16, 2012, at San Francisco, California.

/s/ TIMOTHY ALAN SIMON

Timothy Alan Simon
Assigned Commissioner

/s/ KIMBERLY H. KIM

Kimberly H. Kim
Administrative Law Judge