

## **MAY FILINGS**

**BEFORE THE PUBLIC UTILITIES COMMISSION**

**OF THE**

**STATE OF CALIFORNIA**

**Order Instituting Rulemaking Regarding  
Building Decarbonization.**

**Rulemaking 19-01-011**

**(Filed January 31, 2019)**

**CLEAN ENERGY OPENING BRIEF**

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## **TABLE OF CONTENTS**

	<b>Page</b>
<b>1. INTRODUCTION.....</b>	<b>1</b>
<b>2. LEGAL STANDARD AND REGULATORY BACKGROUND .....</b>	<b>2</b>
<b>a. Legal Standard.....</b>	<b>2</b>
i. The Commission Must Comply with Express Legislative Mandates and Respect Jurisdictional Limits .....	2
ii. The Commission Must Make Findings Required by Statute.....	5
iii. Decisions Cannot Rely on Findings “Entirely Lacking” Support in the Record .....	5
iv. Decisions Cannot Rely on Findings Not Supported by “Substantial Evidence” or that Lack a “Rational Connection” to the Underlying Purpose .....	7
v. § 783’s Legislative History and “Written Findings” Requirement Impose a Heightened Standard Here .....	9
vi. To Conform to § 783, the Commission’s Findings Must Be Based on a Robust Evidentiary Record and Extensive Public Participation .....	11
vii. The Evidentiary Record Is Limited in Scope .....	12
<b>b. Regulatory Background .....</b>	<b>15</b>
<b>3. CLEAN ENERGY’S POSITION ON THE ELIMINATION OR MODIFICATION OF GAS LINE SUBSIDIES FOR RESIDENTIAL CUSTOMERS.....</b>	<b>16</b>
<b>4. CLEAN ENERGY’S POSITION ON THE ELIMINATION OR MODIFICATION OF GAS LINE SUBSIDIES FOR NON-RESIDENTIAL CUSTOMERS, INCLUDING ALTERNATE PROPOSALS.....</b>	<b>17</b>
<b>a. Exceptions for Projects that Provide “Environmental and Financial Benefits” (Joint Utilities Proposal) .....</b>	<b>18</b>
<b>b. Exceptions for Small Businesses (SBUA Proposal) .....</b>	<b>18</b>
<b>c. Maintaining Existing Gas Line Subsidies to Focus on Short Lived Climate Pollutants (Clean Energy Proposal) .....</b>	<b>18</b>

i.	The Negative Impact on SCLP Reduction Goals of the Staff Proposal Necessitates Its Rejection for Non-Residential Customers .....	26
ii.	The Negative Impact on GHG Emissions Reductions Goals of the Staff Proposal Further Compels its Rejection for Non-Residential Customers .....	30
d.	<b>New Methodology for Calculating and Applying Gas Line Subsidies (PG&amp;E Proposal) .....</b>	<b>31</b>
5.	<b>CLEAN ENERGY’S POSITION ON FINDINGS THE COMMISSION SHOULD MAKE PURSUANT TO PUBLIC UTILITIES CODE SECTION 783.....</b>	<b>31</b>
a.	<b>Section 783(b)(1) .....</b>	<b>32</b>
i.	Agriculture .....	33
ii.	Residential housing .....	35
iii.	Mobilehome parks .....	36
iv.	Rural customers.....	38
v.	Urban customers .....	40
vi.	Employment .....	41
vii.	Commercial and industrial building and development .....	43
b.	<b>Section 783(b)(2) .....</b>	<b>44</b>
c.	<b>Section 783(b)(3) .....</b>	<b>46</b>
d.	<b>Section 783(b)(4) .....</b>	<b>47</b>
e.	<b>Section 783(b)(5) .....</b>	<b>49</b>
f.	<b>Section 783(b)(6) .....</b>	<b>50</b>
g.	<b>Section 783(b)(7) .....</b>	<b>50</b>
6.	<b>OTHER ISSUES WITHIN THE SCOPE OF PHASE III THE COMMISSION SHOULD CONSIDER .....</b>	<b>51</b>
7.	<b>CONCLUSION.....</b>	<b>51</b>

## TABLE OF AUTHORITIES

	Page
<b>Caselaw</b>	
<i>Agostini v. Strycula</i> , 231 Cal. App. 2d 804 (1965) .....	13
<i>Ames v. Cal. Pub. Utils. Comm'n</i> , 197 Cal. App. 4th 1411 (2011) .....	8
<i>Ass'n for Retarded Citizens v. Dep't of Developmental Servs.</i> , 38 Cal. 3d 384 (1985).....	4
<i>Ass'n of Am. R.R. v. Costle</i> , 562 F.2d 1310 (D.C. Cir. 1977) .....	4
<i>Ass'n of Cal. Ins. Cos. v. Jones</i> , 2 Cal. 5th 376 (2017) .....	4
<i>Balch Enterprises, Inc. v. New Haven Unified Sch. Dist.</i> , 219 Cal. App. 3d 783 (1990) .....	11
<i>Briseno v. City of Santa Ana</i> , 6 Cal. App. 4th 1378 (1992) .....	5
<i>Broadway, Laguna etc. Ass'n v. Bd. of Permit Appeals</i> , 66 Cal.2d 767 (1967) .....	6
<i>Building Industry Ass'n of the San Joaquin Valley v. City of Fresno</i> , F052538 (Cal. Ct. App. Aug. 20, 2008).....	5
<i>Cal. Hotel &amp; Motel Ass'n. v. Indus. Welfare Comm'n</i> , 25 Cal. 3d 200 (1979).....	5, 46
<i>Cal. Hotel and Motel Ass'n</i> , 25 Cal.3d at 212 .....	9, 11
<i>Cal. Mfrs. Ass'n. v. P.U.C.</i> , 24 Cal. 3d 836, 844 (1979) .....	45
<i>Cal. Motor Transp. Co. v. Pub. Utils. Comm'n</i> , 59 Cal. 2d 270 (1963).....	3
<i>Cal. Mfrs. Ass'n. v. Pub. Utils. Comm'n</i> , 24 Cal. 3d 836 (1979).....	4
<i>Colvin v. City of Gardena</i> , 11 Cal. App. 4th 1270 (1992) .....	5
<i>Conn. Nat'l Bank v. German</i> , 503 U.S. 249 (1992) .....	4
<i>County of Humboldt v. McKee</i> , 165 Cal. App. 4th 1476 (2008) .....	3
<i>Dyna-Med, Inc. v. Fair Emp't Hous. Comm'n</i> , 43 Cal. 3d 1379 (1987).....	4
<i>Edison Co. v. Labor Board</i> , 305 U.S. 197 (1938) .....	19
<i>Fowler v. Howell</i> , 42 Cal. App. 4th 1746 (1996) .....	14

<i>Golden Drugs Co. v. Maxwell-Jolly</i> , 179 Cal. App. 4th 1455 (2009) .....	6
<i>Golden Drugs Co.</i> , 179 Cal. App. 4th at 1466 .....	9
<i>Greyhound Lines, Inc. v. Pub. Utils. Comm'n</i> , 65 Cal. 2d 811 (1967).....	9
<i>Haraguchi v. Supt. Ct.</i> , 43 Cal.4th 706 (2008) .....	6
<i>Hongsathavij v. Queen of Angels etc. Med. Ctr.</i> , 62 Cal. App. 4th 1123 (1998) .....	6
<i>In re Uber Techs. Pricing Cases</i> , 46 Cal. App. 5th 963 (2020) .....	13
<i>Jaramillo v. State Bd. for Geologists &amp; Geophysicists</i> , 136 Cal. App. 4th 880 (2006) .....	6
<i>Jones</i> , 2 Cal. 5th at 390 .....	4
<i>Kishida v. California</i> , 229 Cal. App. 3d 329 (1991) .....	3
<i>Kuhn v. Dep't of Gen. Services</i> , 22 Cal. App. 4th 1627 (1994) .....	7
<i>La Costa Beach Homeowners' Assn. v. California Coastal Comm'n</i> , 101 Cal. App. 4th 804 (2002) .....	9
<i>Martin v. Alcoholic Bev. Etc. Appeals Bd.</i> , 52 Cal.2d 238 (1959) .....	19
<i>Martin v. Alcoholic Beverage Control App. Bd.</i> , 55 Cal.2d 867 (1961) .....	6
<i>McGill v. Regents of Univ. of California</i> , 44 Cal. App. 4th 1776 (1996) .....	6
<i>McKee</i> , 165 Cal. App. 4th at 1491 .....	3, 4
<i>Morris v. County of Marin</i> , 18 Cal. 3d 901 (1977).....	5
<i>Morris v. Williams</i> , 67 Cal. 2d 733 (1967).....	4
<i>New Cingular Wireless PCS, LLC v. Pub. Utils. Comm'n</i> , 246 Cal. App. 4th 784 (2016) .....	5
<i>Pac. Bell Tel. Co. v. City of Livermore</i> , 2017 Cal. App. Unpub. LEXIS 8902, *32-33 (unpublished).....	7
<i>Pac. Gas &amp; Elec. Co. v. Pub. Util. Comm'n</i> , 237 Cal. App. 4th 812 (2015) .....	4
<i>Pac. Gas &amp; Elec. Co. v. Pub. Utils. Comm'n</i> , 188 Cal. Rptr. 3d 374 (2015) .....	5
<i>Pac. Tel. &amp; Tel. Co. v. Pub. Utils. Comm'n.</i> , 62 Cal. 2d 634 (1965).....	3

<i>People v. Coronado</i> , 12 Cal. 4th 145 (1995) .....	4, 45
<i>Ponderosa Tel. Co. v. Pub. Utils. Comm'n</i> , 36 Cal. App. 5th 999 (2019) .....	6
<i>Ponderosa</i> , 36 Cal.App.5th at 1019 .....	9, 11
<i>Pub. Utils. Comm'n v. Sup. Ct.</i> , 181 Cal. App. 4th 364, 371 n.5 (2010).....	3
<i>Pub. Utils. Comm'n. v. Sup. Ct.</i> , 2 Cal. App. 5th 1260 (2016) .....	7
<i>Pub. Utils. Comm'n</i> , 88 Cal. App. 4th 672 (2001) .....	7
<i>Roddenberry v. Roddenberry</i> , 44 Cal. App. 4th 634 (1996) .....	8
<i>Rothe Dev., Inc. v. U.S. Dep't of Def.</i> , 836 F.3d 57 (D.C. Cir. 2016) .....	4
<i>S. Cal. Edison Co. v. Peevey</i> , 31 Cal. 4th 781 (2003) .....	3, 5
<i>S. Cal. Edison Co. v. Pub. Utils. Comm'n</i> , 101 Cal. App. 4th 384 (2002) .....	7
<i>S. Cal. Edison Co. v. Pub. Utils. Comm'n</i> , 101 Cal. App. 4th 982 (2002) .....	7
<i>Shapell Indus., Inc. v. Governing Bd.</i> , 1 Cal. App. 4th 218 (1991) .....	11
<i>Sherwin-Williams Co. v. City of Los Angeles</i> , 4 Cal.4th 893 (1993) .....	6
<i>Sherwin-Williams Co. v. S. Coast Air Quality Mgmt. Dist.</i> , 86 Cal. App. 4th 1258 (2001) .....	4, 45
<i>The Utility Reform Network v. Pub. Utils. Comm'n</i> , 166 Cal. App. 4th 522 (2008) .....	6
<i>The Utility Reform Network v. Pub. Utils. Comm'n</i> , 223 Cal. App. 4th 945 (2014) .....	8
<i>Toyota Motor Sales U.S.A., Inc. v. Sup. Ct.</i> , 220 Cal. App. 3d 864 (1990) .....	7
<i>Universal Camera Corp. v. Nat'l Labor Relations Bd.</i> , 340 U.S. 474 (1951) .....	19
<i>v.</i> 6, 7	
<i>Walker v. City of San Clemente</i> , 239 Cal. App. 4th 1350 (2015) .....	6

## Statutes

§ 14.....	3
§ 1701.1 .....	2, 12, 13, 14

§ 1701.1(d)(8) .....	2
§ 1706.....	12
§ 1710.....	12
§ 1757.(a).....	2
§ 1757.1 .....	passim
Civ. Proc. § 1094.6(c).....	13
Civ. Proc. § 1094.5.....	6
Pub. Util. Code § 922(a)(1) .....	15
Stats. 1983, ch 1229, § 1(b) .....	10, 35
Stats. 1983, ch 1229, § 1(d) .....	10
Stats. 1983, ch 1229, § 1(e) .....	10
Stats. 1983, ch 1229, § 1(f) .....	10
Stats. 1983, ch 1229, § 1(h) .....	10
Stats. 1983, ch 1229, § 1(j) .....	10, 11

### **CPUC Decisions**

D. 84-04-006 .....	13
D.01-10-031 .....	5, 46
D.07-07-019 .....	19, 20, 21, 24
D.12-05-037 .....	3
D.15-06-034 .....	15
D.15-11-034 .....	14, 32
D.16-05-007 .....	7
D.20-03-027 .....	15
D.82-04-068 .....	9, 10
D.84-04-047 .....	12
D.84-07-066 .....	9
D.86-07-003 .....	14
D.91-07-006 .....	14
D.91328 .....	12
D.97-02-014 .....	4
D.98-12-067 .....	4, 45

### **CPUC Rules of Practice and Procedure**

Rule 13.12.....	1
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### **Other Authorities**

Black’s Law Dictionary (4th ed. 1971) .....	3
Cal. Evid. Code § 766 .....	7
Cal. Evid. Code § 452(c) .....	13
Cal. Evid. Code § 452(d), (h) .....	14
Gov. Code § 11523 .....	13
Rule 1.18(a).....	13
Rule 8.2(m) .....	12

Sen. Bill 48, Stats. 1983, ch. 1229, § 1.....	3
Sen. Bill 779 (1997-1998 Res. Sess.).....	13
Sen. Bill 719 (2005–2006 Reg. Sess.).....	3
Sen. Bill 1477 (Stern, 2018) .....	15

### **Summary of Recommendations**

- The Commission should recognize the legal requirements governing its actions, specifically that:
  - Its decision here cannot rely on findings lacking record support;
  - Its decision here cannot rely on findings not supported by “substantial evidence” or that lack a “rational connection” to the purpose of § 783;
  - § 783’s legislative history and “written findings” requirement impose a heightened standard on Commission decisions on gas line subsidies; and
  - To conform to § 783, the Commission’s findings must be based on a robust evidentiary record and extensive public participation.
- The Commission should recognize that the paucity of the evidentiary record prevents it from making the necessary findings required by Public Utilities Code Section 783 for non-residential customers.
- The Commission should recognize the record evidence on:
  - the beneficial impacts of RNG fueling stations on reducing Short Lived Climate Pollutants;
  - the beneficial impacts of RNG fueling stations on reducing Greenhouse Gas emissions; and
  - that the Gas Line Subsidies for RNG fueling stations that are based on volumetric throughput commitments ensure that the costs are paid in full over time.
- The Commission should not adopt the Staff Proposal as drafted and should not eliminate or modify the Gas Line Subsidies for non-residential customers.

**BEFORE THE PUBLIC UTILITIES COMMISSION**

**OF THE**

**STATE OF CALIFORNIA**

**Order Instituting Rulemaking Regarding  
Building Decarbonization.**

**Rulemaking 19-01-011**

**(Filed January 31, 2019)**

**CLEAN ENERGY OPENING BRIEF**

Clean Energy submits this opening brief pursuant to Rule 13.12 of the California Public Utilities Commission (Commission) Rules of Practice and Procedure,<sup>1</sup> and the schedule set by the *Assigned Administrative Law Judges’ Ruling Revising Remaining Proceeding Schedule and Addressing Other Procedural Matters* issued March 22, 2022.

**1. INTRODUCTION**

Clean Energy strives to make sustainability goals a reality, with Renewable Natural Gas (RNG) as a transportation fuel made from organic waste that provides drastic carbon reductions and eliminates Short Lived Climate Pollutants (SLCP) from the air now, and plans for future hydrogen development. The Commission should not harm these private industry efforts and should not adopt the Staff Proposal as drafted; its recommended elimination of the Gas Line Subsidies for all customer classes is ill-conceived, unsupported, and would work against Greenhouse Gas (GHG) emissions reductions goals and SLCP reduction goals. Equally important, given the need for reasoned decision-making, the Phase III record, and the Commission’s

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<sup>1</sup> All references to “Rule” or “Rules” are citations to the Rules of Practice and Procedure unless stated otherwise.

statutory obligations under Public Utilities Code § 783,<sup>2</sup> the Commission cannot reasonably make the necessary written findings to adopt the Staff Proposal as drafted.

## **2. LEGAL STANDARD AND REGULATORY BACKGROUND**

### **a. Legal Standard**

§ 1701.1 requires that all Commission decisions be based “on the evidence in the record.”<sup>3</sup> § 1757.1 requires that decisions be “supported by the findings.”<sup>4</sup> § 1757.(a) requires that findings in Commission decisions be “supported by substantial evidence in light of the whole record.” The Commission’s decision here must not only meet these legal standards, but also the express directives imposed by § 783, which focuses on gas line extensions.

#### **i. The Commission Must Comply with Express Legislative Mandates and Respect Jurisdictional Limits**

Section 783(a) mandates that the Commission “shall not . . . amend” the gas line extension rules, unless it does so in compliance with § 783(b), under which the Commission “shall make written findings” on seven issues:

(a) The commission shall continue to enforce the rules governing the extension of service by gas and electrical corporations to new residential, commercial, agricultural, and industrial customers in effect on January 1, 1982 . . . [T]he commission *shall not* investigate amending these rules or issue any orders or decisions that amend these rules, unless the investigation or proceeding for the issuance of the order or decision is conducted pursuant to subdivision (b).

(b) Whenever the commission institutes an investigation into the terms and conditions for the extension of services provided by gas and electrical corporations to new or existing customers, or

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<sup>2</sup> All section references are citations to the Public Utilities Code unless stated otherwise.

<sup>3</sup> § 1701.1(d)(8) (“The commission shall render its decisions based on the law and on the evidence in the record. Ex parte communications shall not be a part of the evidentiary record of the proceedings.”).

<sup>4</sup> See § 1757.1(a), (a)(4) (requiring court to determine “on the basis of the entire record” whether the decision “is not supported by the findings.”).

considers issuing an order or decision amending those terms or conditions, the commission *shall make written findings* on all of the [specified] issues [in subsections (b)(1)-(b)(7)].<sup>5</sup>

“Shall” is the legislative “word of command,”<sup>6</sup> which the Public Utilities Code expressly defines to mean “mandatory.”<sup>7</sup> Section 783, which directs that the Commission “shall” and “shall not” perform certain acts, is mandatory.<sup>8</sup> Indeed, the bill that enacted § 783 contains express findings that confirm that the Legislature intended to strip away some of the Commission’s discretion.<sup>9</sup>

When a statute imposes a mandatory duty on the Commission, the Commission must “actually implement” the statute.<sup>10</sup> Despite the Commission’s constitutional stature, it has no discretion to “disregard . . . express legislative directions to it.”<sup>11</sup> If the statute requires the enforcement of a rule, the rule must remain operative at all times.<sup>12</sup> If the Commission rescinds the rule, the statute is violated,<sup>13</sup> because elimination of the rule would be “flatly inconsistent”

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<sup>5</sup> Emphasis added.

<sup>6</sup> *Shall*, Black’s Law Dictionary (4th ed. 1971).

<sup>7</sup> § 14 (“‘Shall’ is mandatory and ‘may’ is permissive.”); *Pub. Utils. Comm’n v. Sup. Ct.*, 181 Cal. App. 4th 364, 371 n.5 (2010) (quoting § 14).

<sup>8</sup> *See, e.g.*, D.12-05-037 at \*55 n.26 (May 24, 2012) (“The operative language is . . . [‘]shall not exceed’ ”); *see also S. Cal. Edison Co. v. Peevey*, 31 Cal. 4th 781, 798, 800, 801 n.6 (2003) (interpreting “shall be” and “shall state” as “operative language” in statutes); *id.* at 814 (Baxter, J., concurring and dissenting) (evaluating in similar manner the “operative word[s]”).

<sup>9</sup> Sen. Bill 48, Stats. 1983, ch. 1229, § 1.

<sup>10</sup> When a line of appellate decisions interpreted a set statutory requirements similar to § 783(b) as a “formality” that “did not require implementation or adherence,” the Legislature *unanimously* passed legislation to compel agency compliance and correct the judiciary. Assem. Com. on Pub. Safety, Analysis of Sen. Bill No. 719 (2005–2006 Reg. Sess.), as amended May 19, 2005 at 10–12 (reversing *Kishida v. California*, 229 Cal. App. 3d 329 (1991) and subsequent cases).

<sup>11</sup> *Pac. Tel. & Tel. Co. v. Pub. Utils. Comm’n.*, 62 Cal. 2d 634, 653 (1965) (holding Commission may not “disregard . . . express legislative directions to it.”); *cf. Cal. Motor Transp. Co. v. Pub. Utils. Comm’n*, 59 Cal. 2d 270, 274–75 (1963) (“[A]mendment of [Public Utilities Code] was not an idle act.”).

<sup>12</sup> *County of Humboldt v. McKee*, 165 Cal. App. 4th 1476, 1491 (2008).

<sup>13</sup> *Id.*

with the Legislature's command.<sup>14</sup> A contrary interpretation—*i.e.*, that “shall” is permissive—would be “absurd.”<sup>15</sup>

Mandatory duties, especially those that delimit the Commission's jurisdiction, must be interpreted based on their plain meaning and legislative intent.<sup>16</sup> Accordingly, the Commission “*must* select the construction that comports most closely with the apparent intent of the Legislature.”<sup>17</sup> It must attach significance to “every word.”<sup>18</sup> The Commission's interpretation may not “defy common sense” or “render some words surplusage.”<sup>19</sup> Commission decisions

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<sup>14</sup> *Ass'n of Cal. Ins. Cos. v. Jones*, 2 Cal. 5th 376, 395–96 (2017) (*Jones*) (rejecting interpretation “flatly inconsistent with the statutory text,” as the “authority to promulgate rules and regulations ‘from time to time[,] . . . cannot conceivably mean the opposite”); *cf. Cal. Mfrs. Ass'n v. Pub. Utils. Comm'n*, 24 Cal. 3d 836, 841, 846–49 (1979) (holding, in effect, that the words “future” and “prior” “inherently contradict”).

<sup>15</sup> *McKee*, 165 Cal. App. 4th at 1491; *see also Jones*, 2 Cal. 5th at 390 (listing cases); *Ass'n for Retarded Citizens v. Dep't of Developmental Servs.*, 38 Cal. 3d 384 (1985) (“if the court concludes that the administrative action transgresses the agency's statutory authority, it need not proceed to review the action for abuse of discretion; in such a case, there is simply no discretion to abuse.”); *Morris v. Williams*, 67 Cal. 2d 733, 742 (1967) (holding that statute directing that agency “shall adopt” regulations imposed *continuing* duty to “faithfully” comply with minimum requirements imposed by Legislature).

<sup>16</sup> D.98-12-067, \*18 (Dec. 17, 1998) (citing *Dyna-Med, Inc. v. Fair Emp't Hous. Comm'n*, 43 Cal. 3d 1379, 1386–87 (1987), stating “it is this Commission's *duty* to implement the statute according to the *plain meaning* of the words and to look to the legislative history only where there is ambiguity.”) (emphasis added). Plain meaning is determined by the statute's “operative language.” *Pac. Gas & Elec. Co. v. Pub. Util. Comm'n*, 237 Cal. App. 4th 812, 853 (2015). “Operative” provisions are those that “confer and define agency powers,” *Rothe Dev., Inc. v. U.S. Dep't of Def.*, 836 F.3d 57, 66 (D.C. Cir. 2016), and “prescribe rights and duties and otherwise declare the legislative will.” *Ass'n of Am. R.R. v. Costle*, 562 F.2d 1310, 1316 (D.C. Cir. 1977). In other words, the operative language is centered on the prescriptions “shall” and “shall not.”

<sup>17</sup> D.98-12-067 at \*19 (emphasis added) (quoting *People v. Coronado*, 12 Cal. 4th 145, 151 (1995)); *accord Sherwin-Williams Co. v. S. Coast Air Quality Mgmt. Dist.*, 86 Cal. App. 4th 1258, 1284 (2001) (finding that agency “improperly arrogated” the Legislature's power); *Cal. Mfrs. Ass'n.*, 24 Cal. 3d at 844.

<sup>18</sup> *See* D.97-02-014 at \*41 (Feb. 5, 1997) (quoting *Conn. Nat'l Bank v. German*, 503 U.S. 249, 253–54 (1992)).

<sup>19</sup> *Cal. Mfrs. Ass'n.*, 24 Cal. 3d at 844.

must be based on a “reasoned analysis”<sup>20</sup> and manifest a “rational connection” to “the purposes of the enabling statute.”<sup>21</sup>

By prescribing when the Commission “shall” and “shall not” modify the line and service extension rules, § 783 imposes new duties and limits on the Commission’s discretion.<sup>22</sup> Section 783 is therefore a jurisdictional mandate that “defines the reach of [the Commission’s] power.”<sup>23</sup> Jurisdictional provisions typically state that the Commission “shall” undertake a task.<sup>24</sup>

## **ii. The Commission Must Make Findings Required by Statute**

This proceeding is quasi-legislative. A quasi-legislative decision must contain the findings required by statute.<sup>25</sup> In its decision on the Staff Proposal, the Commission must make specific findings as directed by the Legislature.

## **iii. Decisions Cannot Rely on Findings “Entirely Lacking” Support in the**

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<sup>20</sup> *Cal. Motor Transp. Co.*, 59 Cal. 2d at 274–75 (reversing Commission for lack of “reasoned analysis”).

<sup>21</sup> *Cal. Hotel & Motel Ass’n v. Indus. Welfare Comm’n*, 25 Cal. 3d 200, 212 (1979) (quoted in D.01-10-031, \*5 (Oct. 10, 2001)).

<sup>22</sup> If the Legislature intends to *preserve* the Commission’s discretion over a rule, it will say so “in plain language.” *Pac. Gas & Elec. Co. v. Pub. Utils. Comm’n*, 188 Cal. Rptr. 3d 374, 397–98 & nn.16–19, 406, 409 (2015). Conversely, regulations mandated by statute must “constrain the discretion” of agencies. *Colvin v. City of Gardena*, 11 Cal. App. 4th 1270, 1281–84 (1992); *see Morris v. County of Marin*, 18 Cal. 3d 901, 910 (1977) (holding “the statutory language makes quite clear that the Legislature intended the statutory requirements to be obligatory rather than permissive,” as statute does not “request” or “solicit,” but instead “requires”).

<sup>23</sup> *New Cingular Wireless PCS, LLC v. Pub. Utils. Comm’n*, 246 Cal. App. 4th 784, 807 (2016).

<sup>24</sup> *See, e.g., S. Cal. Edison Co. v. Peevey*, 31 Cal. 4th 781, 798, 800, 801 n.6 (2003) (interpreting “shall be” and “shall state” as the “operative language” in statutes allegedly violated by Commission); *cf. id.* at 814 (Baxter, J., concurring and dissenting) (evaluating statutory language in similar manner).

<sup>25</sup> *See, e.g., Building Industry Ass’n of the San Joaquin Valley v. City of Fresno*, F052538 (Cal. Ct. App. Aug. 20, 2008) (unpublished) (holding, where statute “requires a finding of reasonable necessity to be made” but agency failed to make such finding, that “[t]here is no finding of reasonable necessity to be reviewed, *under any standard*” because agency “failed to follow the procedure required by law.”) (emphasis added); *accord Briseno v. City of Santa Ana*, 6 Cal. App. 4th 1378, 1383 (1992) (holding ordinance must be vacated where findings mandated by statute were absent).

## Record

Under § 1757.1, Commission rulemaking decisions are generally reviewed for abuse of discretion.<sup>26</sup> This standard embeds two distinct inquiries: the adequacy of the factual findings and the rationality of the decision.<sup>27</sup> Under the most deferential standard, a decision will be upheld unless it is "entirely lacking" or "devoid" of evidentiary support.<sup>28</sup>

This highly deferential standard is not boundless. Necessary findings required by statute cannot be absent.<sup>29</sup> Furthermore, "even if a finding is supported by evidence, if that evidence is irrelevant . . . the decision must be reversed for insufficient evidence."<sup>30</sup> In *Guidotti*, for example, the court reversed a county's eligibility standards for housing assistance, because the

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<sup>26</sup> See *The Utility Reform Network v. Pub. Utils. Comm'n*, 166 Cal. App. 4th 522, 535 (2008). Abuse of discretion is a formulation of the arbitrary and capricious standard. See, e.g., *Ponderosa Tel. Co. v. Pub. Utils. Comm'n*, 36 Cal. App. 5th 999, 1018 (2019) (*Ponderosa*) (discussing standard); see also *Haraguchi v. Supt. Ct.*, 43 Cal.4th 706, 711-712 (2008) (explaining under "abuse of discretion standard" a decision is "is reversible only if arbitrary and capricious").

<sup>27</sup> See, e.g., *Martin v. Alcoholic Beverage Control App. Bd.*, 55 Cal.2d 867, 872-881 (1961).

<sup>28</sup> See *Golden Drugs Co. v. Maxwell-Jolly*, 179 Cal. App. 4th 1455, 1466-67 (2009) (noting different formulations of standard but explaining "[s]ince the ultimate question is whether the agency has abused its discretion, the answer is one of degree. In each case the court must satisfy itself that the order was supported by the evidence, although what constitutes reasonable evidentiary support may vary depending on the nature of the action.") (emphasis added); see also *McGill v. Regents of Univ. of California*, 44 Cal. App. 4th 1776, 1786 (1996) ("A court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.") (emphasis added, internal punctuation omitted).

<sup>29</sup> See, e.g., *Walker v. City of San Clemente*, 239 Cal. App. 4th 1350, 1357 (2015) ("The report's findings were mere conclusions, not the specific findings required under the Act."); *Briseno*, 6 Cal. App. 4th at 1383 (holding ordinance must be vacated where findings mandated by statute were absent); *Sherwin-Williams Co. v. City of Los Angeles*, 4 Cal.4th 893, 909 (1993) ("It is unreasonable to conclude the Legislature, having expressly set forth its motivating intent . . . nevertheless impliedly abandoned its basic intent") (court's emphasis); cf. *Topanga Ass'n for a Scenic Comm. v. Cty of Los Angeles*, 11 Cal.3d 506 (1974) (requiring findings under Code Civ. Proc. § 1094.5).

<sup>30</sup> *Hongsathavij v. Queen of Angels etc. Med. Ctr.*, 62 Cal. App. 4th 1123, 1137 (1998) citing *Broadway, Laguna etc. Ass'n v. Bd. of Permit Appeals*, 66 Cal.2d 767, 773 (1967); see also, e.g., *Jaramillo v. State Bd. for Geologists & Geophysicists*, 136 Cal. App. 4th 880, 889 (2006) (holding findings cannot be "so lacking in evidentiary support as to render them unreasonable.").

standards were based on a flawed report by county staff.<sup>31</sup> The study surveyed the costs of “housing, utilities, food, clothing, household items, personal hygiene and transportation.”<sup>32</sup> The “most significant flaw” in the housing study was its “grouping together of disparate groups for the purpose of averaging to determine [the] market value of . . . housing.”<sup>33</sup> The study also assumed that housing was available at a cost equal to the average rent paid by a subset of aid recipients, despite “many affidavits” from recipients who attested that no housing was actually available at that price.<sup>34</sup>

**iv. Decisions Cannot Rely on Findings Not Supported by “Substantial Evidence” or that Lack a “Rational Connection” to the Underlying Purpose**

While the “entirely lacking” formulation of the abuse of discretion standard has never been applied to a decision by the Commission, when Commission decisions have been reviewed under § 1757.1, factual findings have been upheld if they were supported by “substantial evidence.”<sup>35</sup> Substantial evidence “is not synonymous with ‘any’ evidence.”<sup>36</sup> It must be responsive to the issue in controversy.<sup>37</sup> It must be “reasonable, credible and of solid value.”<sup>38</sup>

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<sup>31</sup> *Guidotti v. County of Yolo*, 214 Cal. App. 3d 1552, 1557 (1989).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 1565.

<sup>34</sup> *Id.*

<sup>35</sup> *Pub. Utils. Comm’n. v. Sup. Ct.*, 2 Cal. App. 5th 1260, 1274 (2016); *S. Cal. Edison Co. v. Pub. Utils. Comm’n*, 101 Cal. App. 4th 982, 999 (2002), *as modified on denial of reh’g* (Sept. 30, 2002); *S. Cal. Edison Co. v. Pub. Utils. Comm’n*, 101 Cal. App. 4th 384, 396 (2002); *City of Vernon v. Pub. Utils. Comm’n*, 88 Cal. App. 4th 672, 679 (2001); *see also Pac. Bell Tel. Co. v. City of Livermore*, 2017 Cal. App. Unpub. LEXIS 8902, \*32-33 (unpublished) (“an abuse of discretion is established if we determine that the City’s findings are not supported by substantial evidence”).

<sup>36</sup> *Toyota Motor Sales U.S.A., Inc. v. Sup. Ct.*, 220 Cal. App. 3d 864, 871–872 (1990).

<sup>37</sup> D.16-05-007 at 41 (May 12, 2016) (holding “the failure to produce responsive testimony equates to a determination that Joint Applicants have not met the requirements”); *cf.* Cal. Evid. Code § 766 (“A witness must give responsive answers to questions, and answers that are not responsive shall be stricken on motion of any party.”).

<sup>38</sup> *Kuhn v. Dep’t of Gen. Services*, 22 Cal. App. 4th 1627, 1633 (1994).

It cannot be “generalized or theoretical.”<sup>39</sup> It cannot be “conjectural or speculative.”<sup>40</sup> “Fears” about possible dangers or the “potential for a significant . . . risk” are not substantial evidence, even if couched in technical reports.<sup>41</sup> Even expert testimony constitutes substantial evidence only if “supported by evidence in the record.”<sup>42</sup> In *TURN*, for example, PG&E filed a formal application for a power plant.<sup>43</sup> The application was supported with prepared testimony that included materials the California Independent System Operator (CAISO) had filed with the Federal Energy Regulatory Commission (FERC), CAISO’s sworn testimony before FERC, California Energy Commission and Bay Area Air Quality Management District decisions approving permits for the project, and other documents and testimony.<sup>44</sup> None of these materials were accepted by the court as substantial evidence. The materials either did not directly respond to the scoped issues, were uncorroborated by competent evidence, or constituted hearsay that had not been tested through cross-examination.<sup>45</sup>

Under § 1757.1, the Commission must have “adequately considered all relevant factors, and . . . demonstrated a rational connection between those factors, the choice made, and the

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<sup>39</sup> *Ponderosa*, 36 Cal. App. 5th at 1018 (rejecting evidence “of a generalized or theoretical nature”); see also *The Utility Reform Network v. Pub. Utils. Comm’n*, 223 Cal. App. 4th 945, 963 (2014) (*TURN*); cf. *Ames v. Cal. Pub. Utils. Comm’n*, 197 Cal. App. 4th 1411 (2011).

<sup>40</sup> *Roddenberry v. Roddenberry*, 44 Cal. App. 4th 634, 651 (1996).

<sup>41</sup> *TURN*, 223 Cal. App. 4th at 955, 965.

<sup>42</sup> *Roddenberry*, 44 Cal. App. 4th at 651. Furthermore, hearsay materials “do not constitute substantial evidence to support the Commission’s decision” unless they are “corroborated by other competent evidence.” *TURN*, 223 Cal. App. 4th at 952.

<sup>43</sup> *TURN*, *supra* note 39.

<sup>44</sup> *Id.* at 951-53.

<sup>45</sup> *Id.*

purposes of the enabling statute.”<sup>46</sup> The legislative purpose of § 783, briefly mentioned above, is summarized in more detail below.

**v. § 783’s Legislative History and “Written Findings” Requirement Impose a Heightened Standard Here**

The legislative history of § 783 strongly indicates that the appropriate standard in this proceeding is substantial evidence considered in light of the whole record. This standard requires that the Commission evaluate information that both supports and detracts from proposals under consideration and then provide a reasoned basis for its decision.<sup>47</sup>

The Legislature enacted § 783 as an urgency measure to void earlier Commission orders on gas line extensions<sup>48</sup> and to prevent an imminent Commission decision that would have eliminated certain gas line extension allowances and refunds.<sup>49</sup> The Commission had concluded that allowances and refunds were “contrary to public policy” on energy costs and energy efficiency.<sup>50</sup> Customer classes would not be affected equally. Commercial and industrial customer refunds were to be eliminated, for example. The Commission was also concerned that “allowances for rural customers would cause urban customers to bear additional costs associated with rural development without providing reciprocal benefits.”<sup>51</sup> Nonetheless, the Commission declined to adopt an “allowance for any specific customer class based on location,”

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<sup>46</sup> *Cal. Hotel and Motel Ass’n*, 25 Cal.3d at 212 (paraphrased closely in *Ponderosa*, 36 Cal.App.5th at 1019); see *Golden Drugs Co.*, 179 Cal. App. 4th at 1466; see also *Greyhound Lines, Inc. v. Pub. Utils. Comm’n*, 65 Cal. 2d 811, 813 (1967); *Cal. Motor Transp. Co.*, 59 Cal. 2d at 274.

<sup>47</sup> See, e.g., *La Costa Beach Homeowners’ Assn. v. California Coastal Comm’n*, 101 Cal. App. 4th 804, 814 (2002) (“The ‘in light of the whole record’ language means that the court reviewing the agency’s decision *cannot just isolate the evidence supporting the findings* and call it a day, thereby disregarding other relevant evidence in the record.”) (internal punctuation omitted, emphasis added).

<sup>48</sup> D.84-07-066, 1984 Cal. PUC LEXIS 589, \*2 (July 5, 1984).

<sup>49</sup> D.82-04-068, 1982 Cal. PUC LEXIS 1303 (Apr. 8, 1982).

<sup>50</sup> Order Instituting Rulemaking 92-03-050, 1992 Cal. PUC LEXIS 233, \*13 (Mar. 31, 1992).

<sup>51</sup> *Id.*

because it reasoned that judgments on agricultural, residential rural, and urban customers were best left to the Legislature.<sup>52</sup>

SB 48 included numerous findings by the Legislature:

- Gas line extension rules “must strike a balance” between the interests of residential, commercial, and industrial customers without causing “undue economic burden” or “an unreasonable impact on utility rates.”<sup>53</sup>
- The Commission’s proposal would force new customers to pay a “far greater portion of the cost of the extension of facilities.”<sup>54</sup>
- The proposal’s impact would be “especially severe with respect to agricultural and other rural customers,” because they “frequently require utility service at points distant from existing utility systems.”<sup>55</sup>
- The proposal could “render projects no longer economically viable,” “result in increased costs to ultimate purchasers and lessees,” or “significantly diminish the availability of affordable housing.”<sup>56</sup>
- The proposal would affect a “broad segment of California’s economy,” making it “imperative that the Public Utilities Commission study their impact on . . . California’s economy.”<sup>57</sup>
- The proposal should not be implemented “until there has been further study.”<sup>58</sup>

These legislative findings do not appear to contradict the Commission’s prior decisions. They instead focus on issues that were ignored or insufficiently studied in those decisions, especially the potential for adverse economic consequences. The Legislature was concerned about projects that would be “no longer economically viable,” new customers that would pay a greater share of costs,” and agricultural, rural, urban, and low-income customers, who could be disproportionately affected in ways not fully studied.

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<sup>52</sup> D.82-04-068, 1982 Cal. PUC LEXIS 1303, \*4.

<sup>53</sup> Stats. 1983, ch 1229, § 1(b).

<sup>54</sup> Stats. 1983, ch 1229, § 1(d).

<sup>55</sup> Stats. 1983, ch 1229, § 1(e).

<sup>56</sup> Stats. 1983, ch 1229, § 1(f).

<sup>57</sup> Stats. 1983, ch 1229, § 1(h).

<sup>58</sup> Stats. 1983, ch 1229, § 1(j).

In short, the Legislature intervened because the Commission had failed to consider the evidence in light of the whole record of the proceeding. The findings in SB 48 indicate that the purpose of § 783 is to compel the Commission to both create and consider the whole record.<sup>59</sup> The abuse of discretion standard obligates the Commission to demonstrate a “rational connection” between the record, its decision, and “*the purposes of the enabling statute.*”<sup>60</sup> To align with the purpose of § 783, the applicable standard must be substantial evidence in light of the whole record.<sup>61</sup> Furthermore, § 783 is a jurisdictional statute that limits the Commission’s discretion. Therefore, the Commission “*must* select the construction that comports most closely with the apparent intent of the Legislature.”<sup>62</sup>

**vi. To Conform to § 783, the Commission’s Findings Must Be Based on a**

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<sup>59</sup> Stats. 1983, ch 1229, § 1(j) (“It is the intent of the Legislature, in enacting this act, to prevent the Public Utilities Commission from approving any changes in the existing line and service extension regulations until there has been *further study . . . in accordance with this act.*”) (emphasis added).

<sup>60</sup> *Ponderosa*, 36 Cal. App. 5th at 1019 (“a rational connection [is] needed between the agency’s consideration of relevant factors, the choice made, and the purposes of the enabling statute”) (emphasis added).

<sup>61</sup> *Cal. Hotel and Motel Ass’n*, 25 Cal.3d at 212 (paraphrased closely in *Ponderosa*, 36 Cal.App.5th at 1019).

<sup>62</sup> Similarly, the abuse of discretion standard under § 1757.1 already requires substantial evidence. Given the history of SB 48 and § 783’s requirement of specific, written findings, the applicable standard cannot be easily distinguished from the substantial evidence rule. See *Balch Enterprises, Inc. v. New Haven Unified Sch. Dist.*, 219 Cal. App. 3d 783, 792 (1990). While § 783 did not expressly require an adjudicatory proceeding, greater emphasis on adequate process and a well-defined record is appropriate. Indeed, the standard is a “continuum.” *Shapell Indus., Inc. v. Governing Bd.*, 1 Cal. App. 4th 218, 232 (1991) (“The appropriate degree of judicial scrutiny in any particular case is perhaps not susceptible of precise formulation, but lies somewhere along a continuum with nonreviewability at one end and independent judgment at the other.”). Here, where the Legislature has made its intention clear by incorporating express findings into the enacting legislation and sought to constrain the Commission’s discretion over gas line extensions, and given the statutory requirement of written findings, a more robust application of the standard is needed. Cf. *id.* at 232 (holding that agency must ensure it has “adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.”).

### **Robust Evidentiary Record and Extensive Public Participation**

The legislative findings in SB 48 reflect the Legislature’s desire for more sophisticated, substantial analysis regarding the gas line extension proposals. Prior to the adoption of SB 48, the Commission, however, had not developed its proposals quickly. It had devoted several years to its consideration of the gas line extension rules. In at least one case, it conducted 19 days of public hearings as well as oral arguments before issuing a decision to reduce line extension subsidies.<sup>63</sup> After SB 48, the Commission recognized that § 783 raised the evidentiary stakes, and that modification of the line extension rules would now require a more “detailed investigation” and a new record.<sup>64</sup>

#### **vii. The Evidentiary Record Is Limited in Scope**

The Public Utilities Code,<sup>65</sup> the Commission’s rules of practice and procedure,<sup>66</sup>

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<sup>63</sup> D.91328, 1980 Cal. PUC LEXIS 148, \*5 (Feb. 13, 1980).

<sup>64</sup> D.84-04-047, 1984 Cal. PUC LEXIS 909, \*2 (Apr. 18, 1984) (“The staff points out that the existing record is bulky and outdated, and would be unsuitable as a starting point for any investigation made under PU Code § 783(b).”).

<sup>65</sup> § 1701.1(e)(8) (“The commission shall render its decisions based on the law and on the evidence in the record.”); *see also* § 1706 (“[A] transcript of that testimony, together with all exhibits or copies thereof introduced, and of the pleadings, record, and proceedings in the cause, shall constitute the record of the commission”); § 1710 (“No documents or records . . . which purport to be statements of fact shall be admitted into evidence or shall serve as any basis for the testimony of any witness, unless the documents or records have been certified under penalty of perjury . . . If certification pursuant to this section is not possible for any reason, the documents or records shall not be admitted into evidence unless admissible under the Evidence Code.”).

<sup>66</sup> Rule 8.2(m) (“The Commission shall render its decision based on the evidence of record.”).

Legislative directives,<sup>67</sup> and principles of California law<sup>68</sup> require that the Commission “shall” render all decisions based on “the evidence in the record.”<sup>69</sup> There is no exception for rulemaking proceedings.<sup>70</sup> The record is limited to the specific proceeding in which a decision is rendered.<sup>71</sup> The record consists of all pleadings, motions, briefs, transcripts, rulings, orders, decisions,<sup>72</sup> and other materials filed and served on the parties and capable of judicial notice.<sup>73</sup>

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<sup>67</sup> D.84-04-006, 1984 Cal. PUC LEXIS 269, \*23 (Apr. 4, 1984) (noting the Commission needed to perform “a complete study”). The contents of the record are substantially identical to the rulemaking records of other California agencies. This consistency reflects the enacted “intent of the Legislature” to expand judicial review of rulemaking proceedings and “to be consistent with judicial review of the other state agencies.” Sen. Bill 779 (1997-1998 Res. Sess.) § 1.5(b) (“Further, it is the intent of the Legislature that decisions by the commission . . . be subject to review on grounds similar to those of other state agencies.”).

<sup>68</sup> See, e.g., Gov. Code § 11523 (“The complete record includes the pleadings, all notices and orders issued by the agency, any proposed decision by an administrative law judge, the final decision, a transcript of all proceedings, the exhibits admitted or rejected, the written evidence and any other papers in the case.”); Civ. Proc. § 1094.6(c) (listing “the transcript of the proceedings, all pleadings, all notices and orders, any proposed decision by a hearing officer, the final decision, all admitted exhibits, all rejected exhibits in the possession of the local agency or its commission, board, officer, or agent, all written evidence, and any other papers in the case.”).

<sup>69</sup> § 1701.1(e)(8); D.17-05-013 at 235 & n.274 (May 11, 2017) (“This analysis is required by law,” citing § 1701.1(e)(8)).

<sup>70</sup> See, e.g., § 1701.1(e)(8); D.14-02-003, 2014 Cal. PUC LEXIS 69, \*55 (Feb. 5, 2014) (describing process of admitting consultant study into record pursuant to ALJ ruling after opportunity for formal comments); D.15-07-032, 2015 Cal. PUC LEXIS 467, \*3 nn.1-2 (July 23, 2015) (explaining “TURN has attached to this request for compensation the March 21, 2014 e-mail [from Policy & Planning Division], since to our knowledge it is not part of the formal record in this proceeding.”).

<sup>71</sup> See, e.g., D.17-05-013 at 233-36 (May 11, 2017) (explaining Commission bases its decision on the record of “this proceeding”); Rule 1.18(a) (“All written public comment submitted in a proceeding that is received prior to the submission of the record in the proceeding, as defined by Rule 13.15.(a), will be entered into the administrative record of that proceeding.”); Rule 10.1 (“[A]ny party may obtain discovery . . . relevant to . . . the pending proceeding”); Rule 12.1(a) (“Resolution shall be limited to the issues in that proceeding and shall not extend to . . . other or future proceedings.”); Rule 13.15(a) (“A proceeding shall stand submitted . . . after the taking of evidence”).

<sup>72</sup> Pleadings “rejected for technical deficiencies and . . . never re-filed and re-served as directed by the Commission’s Docket Office. . . . are not a part of the formal record.” D.12-12-036, 2012 Cal. PUC LEXIS 595, \*6 (Dec. 20, 2012).

<sup>73</sup> Evid. Code § 452(c) (authorizing judicial notice of “[o]fficial acts of the legislative, executive, and judicial departments . . . of any state”); *In re Uber Techs. Pricing Cases*, 46 Cal. App. 5th 963, 972 n.5 (2020) (granting judicial notice of “thousands of pages” of Commission rulemaking “orders, decisions, and rulings”); *Agostini v. Strycula*, 231 Cal. App. 2d 804, 806 (1965) (“[W]e may take judicial notice . . . of the records and proceedings of the San Francisco Civil Service Commission.”); *Fowler v. Howell*, 42 Cal.

The record may also contain testimony, exhibits, and supporting documents,<sup>74</sup> if such materials were admitted into evidence.<sup>75</sup>

Other materials generally are not part of the record and cannot form the basis for a Commission decision. Emails from the ALJ to the parties, for example, are not necessarily part of the record.<sup>76</sup> Workshops are never part of the record, though a workshop report or workshop transcript may be included in the record, if it is filed and served.<sup>77</sup> Emails regarding workshops sent by Commission staff to the parties are not part of the record.<sup>78</sup> Workpapers are not part of the record.<sup>79</sup> Consultant studies,<sup>80</sup> audit reports,<sup>81</sup> and correspondence with

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App. 4th 1746, 1750 (1996) (“Evidence Code section 452, subdivision (c) permits . . . judicial notice of the records and files of a state administrative board.”); *see also* Evid. Code § 452(d), (h).

<sup>74</sup> *See, e.g.*, D.86-07-003, 1986 Cal. PUC LEXIS 949 (July 02, 1986).

<sup>75</sup> *See* D.91-07-006, 1991 Cal. PUC LEXIS 497, \*7-9 (July 2, 1991) (“[T]he Commission's Rules of Practice and Procedure requires that documents be filed with the Docket Office before they can be considered filed in a proceeding. . . . Since [the] comments and prepared testimony tendered for filing were improperly filed or served on the parties of record, they are rejected.”).

<sup>76</sup> D.15-11-034, 2015 Cal. PUC LEXIS 717, \*2 (Nov. 19, 2015) (“An electronic mail dated July 12, 2013, from ALJ Darling . . . was not filed nor served on parties. The e-mail, therefore, is not a part of the proceeding's formal record.”).

<sup>77</sup> “If no report is prepared and the workshop is not transcribed, it does not become a part of the record.” Report to the California Public Utilities Commission Regarding Ex Parte Communications and Related Practices, 80 (June 22, 2015) <https://www.strumwooch.com/documents/Report-to-the-Commission.pdf>; *see* § 1701.1(e)(1)(A) (distinguishing between “a public hearing, workshop, or other public proceeding” and “the official record of the proceeding”); *see also* D.13-07-019, 2013 Cal. PUC LEXIS 360, \*34-35 (July 11, 2013) (admitting workshop report and presentations into record pursuant to ALJ ruling in rulemaking proceeding); D.09-09-004, 2009 Cal. PUC LEXIS 455, \*6 (Sept. 10, 2009) (“[T]he assigned [ALJ] made the August 2008 Working Group Report and attachments part of the formal record”).

<sup>78</sup> D.15-07-032, 2015 Cal. PUC LEXIS 467, \*3 nn.1-2 (July 23, 2015) (explaining “TURN has attached to this request for compensation the March 21, 2014 e-mail [from Policy & Planning Division], since to our knowledge it is not part of the formal record in this proceeding.”).

<sup>79</sup> D.10-05-023, 2010 Cal. PUC LEXIS 343, \*29-30 (May 6, 2010) (“We agree SCE's workpapers are not in the record”).

<sup>80</sup> D.14-02-003, 2014 Cal. PUC LEXIS 69, \*55 (Feb. 5, 2014) (describing process of admitting consultant study into record pursuant to ALJ ruling after opportunity for formal comments).

<sup>81</sup> D.21-12-031, 2021 CAL. PUC LEXIS 599, \*9 (Dec. 16, 2021) (“On September 7, 2021, the assigned ALJ directed PG&E and CSE to serve and file their updated SGIP budget information in the formal record . . .

Commissioners are not part of the record.<sup>82</sup> Letters from other state agencies or the governor's office are not part of the record.<sup>83</sup> Ex parte notices are not part of the record.<sup>84</sup> Indeed, even exhibits used to cross-examine witnesses are not necessarily in the record.<sup>85</sup>

**b. Regulatory Background**

This rulemaking was initiated to focus on buildings and their electrification, so the pivot of Phase III to Gas Line Subsidies for all customer classes is a surprising change of scope. The Amended Phase III Scoping Memo explains why the rulemaking was opened: to support the decarbonization of buildings in California." "[I]n response to the passage of Senate Bill 1477 (Stern, 2018). . ."<sup>86</sup> SB 1477 required the Commission "to oversee the development of two new building decarbonization programs," specifically the Building Initiative for Low-Emissions Development (BUILD) Program and Technology and Equipment for Clean Heating (TECH) Initiative.<sup>87</sup> In fact, the Phase I decision, D.20-03-027, declined to include RNG and hydrogen into the pilot programs.<sup>88</sup> The Commission clarified that SB 1477 "is focused on advancing the

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To form a more permanent part of the record of this proceeding, the assigned ALJ will enter the completed audits into the proceeding record by issuing them via ALJ Ruling when completed").

<sup>82</sup> D.15-05-056 (May 21, 2015) (striking exhibits consisting of undisclosed ex parte communications attached to application for rehearing because such "evidence is not in the record").

<sup>83</sup> D.98-03-036, 1998 Cal. PUC LEXIS 71, \*4 (Mar. 12, 1998) (determining that letters from the Director of the Governor's Office of Emergency Services and the California Independent System Operator are part of the "file of the proceeding" but not part of the record).

<sup>84</sup> D.15-07-044, 2015 Cal. PUC LEXIS 417, \*5 (July 23, 2015).

<sup>85</sup> D.15-06-034, 2015 Cal. PUC LEXIS 318, \*27-29 (June 11, 2015) (rejecting allegation that Commission "acted unlawfully by erroneously excluding key evidence from the record," instead explaining the "ALJ declined to enter these documents into the record due to concerns about public safety," even though parties "utilize[d] the documents to cross-examine witnesses") (emphasis added).

<sup>86</sup> *Assigned Commissioner's Amended Scoping Memo and Ruling* at 1 (Dec. 17, 2021) (internal citation omitted).

<sup>87</sup> *Order Instituting Rulemaking Regarding Building Decarbonization* at 6 (Feb. 8, 2019).

<sup>88</sup> D.20-03-027 at 91 (Mar. 26, 2020) (omitting internal citation to Pub. Util. Code § 922(a)(1)); *see also id.* at 96 (Finding of Fact 6).

state’s market for *low-emission space and water heating equipment* for new and existing residential and nonresidential buildings *through consumer education, contractor training, vendor training, and the provision of upstream and midstream incentives—not on particularized infrastructure or fuels.*”<sup>89</sup> In other words, the statute (SB 1477) that prompted the opening of the proceeding does not contemplate changes to the Gas line Subsidies now being explored in this Phase III.

In its November 16, 2021 Phase III Scoping Memo, the Commission expanded the scope of the proceeding to include “the reasonableness of addressing building decarbonization by modifying or ending gas distribution main and service line extension allowances, refunds, and discounts.”<sup>90</sup> Concurrently, the Commission presented the Staff Proposal, which contained the following three recommendations:<sup>91</sup>

1. Elimination of gas line extension **allowances** provided under current gas rules for all customer classes;
2. Elimination of gas line extension **refunds** provided under current gas rules for all customer classes; and
3. Elimination of gas line extension **discounts** provided under current gas rules for all customer classes.

Despite the far-reaching consequences affecting the RNG industry and non-residential customers, the Staff Proposal is almost entirely focused on “homes and offices” and “the builder community,” as described below.<sup>92</sup>

### 3. CLEAN ENERGY’S POSITION ON THE ELIMINATION OR MODIFICATION OF GAS LINE

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<sup>89</sup> *Id.*

<sup>90</sup> *Assigned Commissioner’s Amended Scoping Memo and Ruling* at 1 (Nov. 16, 2021).

<sup>91</sup> *R.19-01-011 Phase III Staff Proposal*, appended to the Phase III Scoping Ruling, Nov. 16, 2021at 2 (emphasis in original).

<sup>92</sup> Staff Proposal at 45.

## **SUBSIDIES FOR RESIDENTIAL CUSTOMERS**

Clean Energy has consistently maintained that, if the Staff Proposal is to be adopted, it should be modified to apply only to the residential class, which is the only class actually studied in the Staff Proposal.<sup>93</sup> Yet the Staff Proposal fails to provide a projected impact on GHG emissions resulting from elimination of the Gas Line Subsidies within the studied residential sector, while it assumes that discouraging the building of dual fuel buildings will help reduce emissions.<sup>94</sup> Notably, there is general support for the elimination of gas line subsidies for residential customers, and the record shows that the elimination of residential gas line subsidies provides the majority of ratepayer savings.<sup>95</sup> The Commission may, however, need additional record development to fulfill its statutory obligations prior to elimination of the Gas Line Subsidies for residential customers.

### **4. CLEAN ENERGY’S POSITION ON THE ELIMINATION OR MODIFICATION OF GAS LINE SUBSIDIES FOR NON-RESIDENTIAL CUSTOMERS, INCLUDING ALTERNATE PROPOSALS**

Clean Energy opposes elimination or modification of Gas Line Subsidies for non-residential customers. Not only does the record not support such action, it would violate the Commission’s obligations under Section 783, frustrate state climate change goals,<sup>96</sup> and harm

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<sup>93</sup> Clean Energy Comments on Assigned Commissioner’s Amended Scoping Memo and Ruling and Staff Proposal at 16 (Dec. 20, 2021); Clean Energy Reply Comments on Assigned Commissioner’s Amended Scoping Memo and Ruling and Staff Proposal at 2-3 (Jan. 10, 2022); Response of Clean Energy to Assigned Administrative Law Judge’s Ruling Seeking Clarifications and Additional Information at 2-3 (Feb. 22, 2022).

<sup>94</sup> See, e.g., Staff Proposal at 12.

<sup>95</sup> Clean Energy Comments on Gas Utility Responses to Energy Division Data Request (Apr. 11, 2022). (showing approximately 80% of subsidies go to residential); see *Assigned Administrative Law Judge’s Ruling Seeking Clarifications and Additional Information*, Attachment 1 at 2, 3 (Jan. 28, 2022) (requesting data for “calendar years from 2019-2021”); SoCalGas Response to Data Request from Energy Division at 1-2 (Apr. 4, 2022) (referring to data for 2019-2021).

<sup>96</sup> Clean Energy Comments on Assigned Commissioner’s Amended Scoping Memo and Ruling and Staff Proposal at 4-7, 16-17 (Dec. 20, 2021); Clean Energy Reply Comments on Assigned Commissioner’s

critical efforts by private industry in partnership with state, local and municipal agencies to reduce SLCP.<sup>97</sup> California vitally needs to reduce SLCP **now** and in the near- to mid-term. As Clean Energy detailed on the record here, California leads the nation in cancer risk from diesel soot, with significant portions of the State in the highest impact category for air pollution.<sup>98</sup> This is expanded upon below, but the impact from such SLCP cannot be ignored. The risk the Staff Proposal poses to private industry and local government efforts to reduce SLCP now and in the near- to mid-term warrants rejection of the Staff Proposal for non-residential customers.

**a. Exceptions for Projects that Provide “Environmental and Financial Benefits” (Joint Utilities Proposal)**

Clean Energy takes no position at this time on the Joint Utilities Proposal, beyond the position that elimination or modification of Gas Line Subsidies for non-residential customers is not supported by the record and would contravene the Commission’s statutory obligations.

**b. Exceptions for Small Businesses (SBUA Proposal)**

Clean Energy takes no position at this time on the SBUA Proposal, beyond the position that elimination or modification of Gas Line Subsidies for non-residential customers is not supported by the record and would contravene the Commission’s statutory obligations.

**c. Maintaining Existing Gas Line Subsidies to Focus on Short Lived Climate Pollutants (Clean Energy Proposal)**

Clean Energy urges the Commission to make no changes to the Gas Line Subsidies for non-residential customers; for residential subsidies, Clean Energy offers no position. Whereas

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Amended Scoping Memo and Ruling and Staff Proposal at 2-17 (Jan. 10, 2022); Response of Clean Energy to Assigned Administrative Law Judge’s Ruling Seeking Clarifications and Additional Information at 2, 8-21 (Feb. 22, 2022).

<sup>97</sup> See *supra* note 96.

<sup>98</sup> Response of Clean Energy to Assigned Administrative Law Judge’s Ruling Seeking Clarifications and Additional Information at 15-20 (Feb. 22, 2022).

the Staff Proposal is devoted to residential subsidies and therefore may furnish some basis for some of the statutory findings mandated by § 783(b), the Staff Proposal lacks a scintilla of evidence for the elimination of subsidies for non-residential customers.<sup>99</sup> Its most extensive analysis of non-residential subsidies—indeed, its only analysis—is erroneous. It rests on the faulty assumption that effects on residential and non-residential customers can be evaluated with the same methodology.

The Staff Proposal justifies the elimination of Gas Line Subsidies—and makes most of its § 783(b) findings—based on its determination that eliminating allowances will not cause a “significant rise in average property prices.”<sup>100</sup> It reaches this conclusion through a convoluted set of assumptions and inferences.<sup>101</sup> In summary, the Staff Proposal calculates how much the

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<sup>99</sup> *Martin v. Alcoholic Bev. Etc. Appeals Bd.*, 52 Cal.2d 238, 246 (1959) (explaining decisions must be supported by “substantial evidence,” not a “scintilla”) citing *Universal Camera Corp. v. Nat’l Labor Relations Bd.*, 340 U.S. 474, 477 (1951) (holding that evidence to support “findings” “must do more than create a suspicion of the existence of the fact to be established”) (internal punctuation omitted); see also *Edison Co. v. Labor Board*, 305 U.S. 197, 229 (1938) (holding similar).

<sup>100</sup> Staff Proposal at 31; see also *id.* at 37 (arguing the “property price impact” of eliminating refunds “is anticipated to be minimal.”), 41 (“Staff do not anticipate a significant impact on property prices as a result of eliminating discounts.”).

<sup>101</sup> The Staff Proposal’s analysis is as follows: In D.07-07-019, the Commission estimated, based on the price of a single-family home, that the elimination of *electric* allowances would increase *residential* property prices by \$1,235. D.07-07-019 did *not* estimate the effect of modifying allowances for gas; neither did it consider the effect of modifying either electric *or* gas allowances on non-residential. In 2007, 41% of the *total* allowances for PG&E and SDG&E—the two major dual-fuel utilities—were for electric. Given this 41% share for electric, the Staff Proposal assumes that the ratio of electric and gas subsidies is 41:59, which implies that eliminating gas allowances would have increased 2007 residential property prices by \$872. The Staff Proposal then notes that from 2007 to 2021 the inflation-adjusted average price of a single-family home decreased by 3.01%. It also notes that the maximum residential, *per-appliance* gas allowance has increased for PG&E by 72.57% and 40.42% for SDG&E, from which it calculates an average increase in maximum residential allowance of 51.66%. The Staff Proposal then decreases the 2007 average single-family home price by 3.01% and uses the adjusted 2007 price to calculate the 2021 residential price increase that would be caused by eliminating electric allowances. It then increases the 2007 *electric* allowance by 51.66% to calculate the price increase attributable to eliminating allowances for *gas in 2021*. This amount, \$1,322.70, is 0.21% of the inflation-adjusted price of a residential single-family home. In D.07-07-019, the Commission found that eliminating electric allowances would increase single-family home prices by 0.19%. The Staff Proposal alleges that D.07-07-

elimination of *gas* allowances would increase the price of a residential single-family home in 2021 by adjusting the cost increase attributable to the elimination of *electric* allowances in 2007.

The Staff Proposal then asserts, without proof or example, that “the same logic” applies to non-residential property.<sup>102</sup> Accordingly, the Staff Proposal wrongly concludes that it is “reasonable” to extend the Staff Proposal’s conclusions to non-residential customers.<sup>103</sup>

The law and the facts contradict the Staff Proposal. Regarding the law, the “same logic” in D.07-07-019 cannot extend to non-residential property, because D.07-07-019 does not support the Staff Proposal’s claims on either residential or non-residential subsidies. D.07-07-019 merely suggested that the elimination of residential electric allowances would reduce the *builder’s* cost of construction by 0.19%. It does not attempt to answer whether a 0.19% increase in residential prices due to the reduction or elimination of allowances was just and reasonable. It instead found that the question was essentially unanswerable because changes in housing costs are not “strictly” attributable to allowances:

[T]he record does not indicate that prices . . . are strictly cost-based. . . Overall, the record does not indicate whether there is a significant benefit to ratepayers due to a reduction in new and/or existing housing prices, much less what the value of any benefit would be.<sup>104</sup>

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019 found that 0.19% “will not ‘have a material effect on the overall price of housing.’” The Staff Proposal concludes that the 0.21% increase for residential *gas* allowances in 2021 is comparable to the 0.19% increase for residential *electric* allowances in 2007.

<sup>102</sup> Staff Proposal at 33.

<sup>103</sup> *Id.*

<sup>104</sup> D.07-07-019 at 18 (July 12, 2007); see *id.* at 46 (Finding of Fact 20).

The absence of a direct connection between costs and prices prevented the Commission from proffering the sort of analysis presented in the Staff Proposal. The Commission reasoned that without reliable estimates, an allowance's "benefits . . . cannot be compared to the costs," and thus the record "[did] not demonstrate that an unreasonable subsidy exists."<sup>105</sup> The Commission therefore rejected a proposal to reduce residential allowances; the lack of reliable cost and benefit estimates precluded a finding that a proposed change in allowances was reasonable.<sup>106</sup>

Contrary to the Staff Proposal, the Commission did not make a finding about the materiality of a 0.19% change in *price*. It only found that a 0.19% change in the *builder's* costs could not be "strictly" linked to other outcomes, such as economic effects on ratepayers or residential housing.<sup>107</sup> The most that might be said is that the Commission tolerated the possibility of increases in residential property prices because the record contained no obvious evidence of harm. In other words, 0.19% (as well as the derivative estimates of 0.21% and 0.25%) is useless as a yardstick for evaluating the effect of eliminating Gas Extension Subsidies.<sup>108</sup> Regarding the facts, the Staff Proposal finds that the expected 0.21% property price increase also applies to non-residential.<sup>109</sup> However, the Staff Proposal conducted its

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<sup>105</sup> *Id.* at 19.

<sup>106</sup> The proposals from Division of Ratepayer Advocates (now the Public Advocates Office) and The Utility Reform Network (TURN) sought a change in the methodology used to calculate the net revenue on which line extension allowances are determined. *See* D.07-07-019 at 9-10. The Commission also noted that the record also did not address "other unquantified benefits."

<sup>107</sup> *Id.* at 19, 47 (Finding of Fact 25).

<sup>108</sup> In PG&E's service territory, the expected property price increase would be 0.25%. PG&E's *maximum* residential gas allowance—which is based on the number of qualifying gas appliances in a home—increased more than the state average over the period 2007-2021, which implies that the elimination of PG&E gas allowances would have a larger effect on property prices. *See* Staff Proposal at 32 n.118.

<sup>109</sup> *Id.* at 33.

analysis using *total* allowances.<sup>110</sup> The *average* non-residential allowance is vastly larger than the average allowance for residential.<sup>111</sup> For example, compared to Southwest Gas's average residential allowance, *the average non-residential allowance is nearly 50x larger*. Across all utilities, non-residential allowances are 6x larger. So, assuming residential and non-residential properties had the same prices, the elimination of gas extension subsidies would cause a *far larger and disproportionate increase in the property price for non-residential*.

Non-residential allowances are also much more variable. PG&E's average commercial allowance is 1,000% larger than its residential allowance,<sup>112</sup> but SoCalGas's average commercial allowance is a mere 9.2% larger—a fraction of PG&E's difference.<sup>113</sup> The percentages and tables below are calculated from the consolidated gas utility responses to Energy Division.<sup>114</sup>

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<sup>110</sup> See *id.* at 32 nn.118-19; see also *id.* at 23-24 26-29.

<sup>111</sup> The average subsidy values are from the gas utility responses to Energy Division's March 14, 2022 Data Request. See *Assigned Administrative Law Judges' Ruling Admitting Data into the Evidentiary Record and Addressing Outline for Briefs* (Apr. 18, 2022). The responses were consolidated into a single spreadsheet provided by Energy Division. Email from Rory Cox to R.19-01-011 parties (Apr. 7, 2022, 3:52 PM).

<sup>112</sup> PG&E's 2020 average commercial allowance was \$15,477, while its average residential allowance was \$1,404: a difference of \$14,073, which is equivalent to a 1,003% increase over the residential allowance. See "Copy of Master Spreadsheet IOU responses NG extension subsidies.xlsx" (Consolidated Spreadsheet).

<sup>113</sup> SoCalGas's 2020 average commercial allowance was \$5,874, while its average residential allowance was \$5,377—a difference of \$497, which is equivalent to a 9.25% increase over the residential allowance. See *id.*

<sup>114</sup> Email from Rory Cox to R.19-01-011 parties (Apr. 7, 2022, 3:52 PM). The percentage values closely approximate the ratios shown in the tables. Data is from worksheet "2. Avg. Sub." of "Copy of Master Spreadsheet IOU responses NG extension subsidies.xlsx."

Non-Residential				
Utility	Residential Average Allowance	Non-Residential Average Allowance	Ratio of Residential to Non-Residential (Average Allowance)	Residential as % of Non-Residential (Average Allowance)
PG&E	\$1,404	\$14,231	10.1	9.9%
Southwest Gas	\$1,082	\$53,280	49.2	2.0%
SoCalGas	\$5,377	\$10,935	1.0	96.7%
Total <sup>115</sup>	\$2,621	\$15,707	6.0	16.7%

Agriculture				
Utility	Residential Average Allowance	Agriculture Average Allowance	Ratio of Residential to Agriculture (Average Allowance)	Residential as % of Agriculture (Average Allowance)
PG&E	\$1,404	\$66,342	47.3	2.1%
Southwest Gas	\$1,082	\$35,135	32.5	3.1%
SoCalGas	\$5,377	\$30,900	5.7	17.4%
Total	\$2,621	\$44,126	22.4	4.5%

Industrial				
Utility	Residential Average Allowance	Industrial Average Allowance	Ratio of Residential to Industrial (Average Allowance)	Residential as % of Industrial (Average Allowance)
PG&E	\$1,404	\$18,708	13.3	7.5%
Southwest Gas	\$1,082	\$0	<i>n/a</i>	<i>n/a</i>

<sup>115</sup> Note that SDG&E data is not available. See Staff Proposal at 32 n.114 (“Only PG&E and SDG&E allowances are reflected here because they are dual fuel utilities for which electric allowances can be compared to gas allowances”); *see also* Staff Proposal at 23 n.95, 24 n.97, 28 n.102, 29 n.106 (reporting SDG&E “system limitations”).

SoCalGas	\$5,377	\$7,792	1.5	69.0%
Total	\$2,621	\$6,625	3.4	29.7%

Commercial				
Utility	Residential Average Allowance	Commercial Average Allowance	Ratio of Residential to Commercial (Average Allowance)	Residential as % of Commercial (Average Allowance)
PG&E	\$1,404	\$15,477	11.0	9.1%
Southwest Gas	\$1,082	\$18,145	16.8	6.0%
SoCalGas	\$5,377	\$5,874	1.1	91.5%
Total	\$2,621	\$13,165	6.7	14.9%

The Staff Proposal cannot rely on D.07-07-019. That decision’s analysis is limited to *electric* allowances for *residential* property. If anything, D.07-07-019 inclines *against* the elimination of non-residential subsidies. The decision rests on the Commission’s inability to draw conclusions about the effect of allowances on housing prices, because “[i]t is not reasonable to assume that provision of the allowance is the *sole reason* that a new dwelling will be built.”<sup>116</sup> However, this logic—or a close variant—*does* apply to many non-residential projects, especially those that are likely to play an important role in California’s near-term decarbonization efforts and SLCP reduction goals. For example, the lack of a Gas Line Subsidy could be the “sole reason” that a new project is *not* built. As Clean Energy explains below, line extensions can comprise 25% of a CNG/RNG project’s cost. In general, increasing an investment’s up-front cost by 25% may make it uneconomic.

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<sup>116</sup> D.07-07-019 at 17-18, 46 (Finding of Fact 15).

In contrast to the Staff Proposal’s failure to establish a link between the elimination of allowances and property costs, much of the economic benefit of non-residential Gas Line Subsidies is unambiguous. A primary benefit of non-residential Gas Line Subsidies is how their line extension costs are recovered through the throughput commitment, which if not met, the customer must pay back the subsidy, keeping the other ratepayers whole. This is in addition to the fact the RNG provided by two recent Clean Energy fueling station projects will replace 3,000,000 gallons of gasoline and 1,300,000 gallons of diesel *per year* and correspondingly reduce SLCP and GHG emissions.

Clean Energy emphasizes Gas Line Subsidies for RNG fueling stations are based on volumetric throughput commitments, and these commitments ensure that the costs are paid in full over time, usually within a few years.<sup>117</sup> Importantly, all of the gas throughput to the RNG stations are 100% RNG, and the gas demand for these sites is consistent throughout the year, day in and day out. Historically, virtually all of the Clean Energy projects have met or exceeded the required volumetric throughput in California. Crucially, if Clean Energy fails to purchase the amount of gas which was projected and used to justify the provision of the line extension incentive, then Clean Energy is obligated pay back the incentive.<sup>118</sup>

Project	Gas Utility	Volume Commitment	Total Amount of Gas Line Upgrade Work	Amount Recovered Through Payments to Utility
Port of Long Beach	SoCalGas	3.0 million GGE/year (by year 3)	\$1,913,234	100%

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<sup>117</sup> Response of Clean Energy to Assigned Administrative Law Judge’s Ruling Seeking Clarifications and Additional Information at 21 & n.54 (Feb. 22, 2022).

<sup>118</sup> Pursuant to PG&E tariff terms and distribution and service extension agreement.

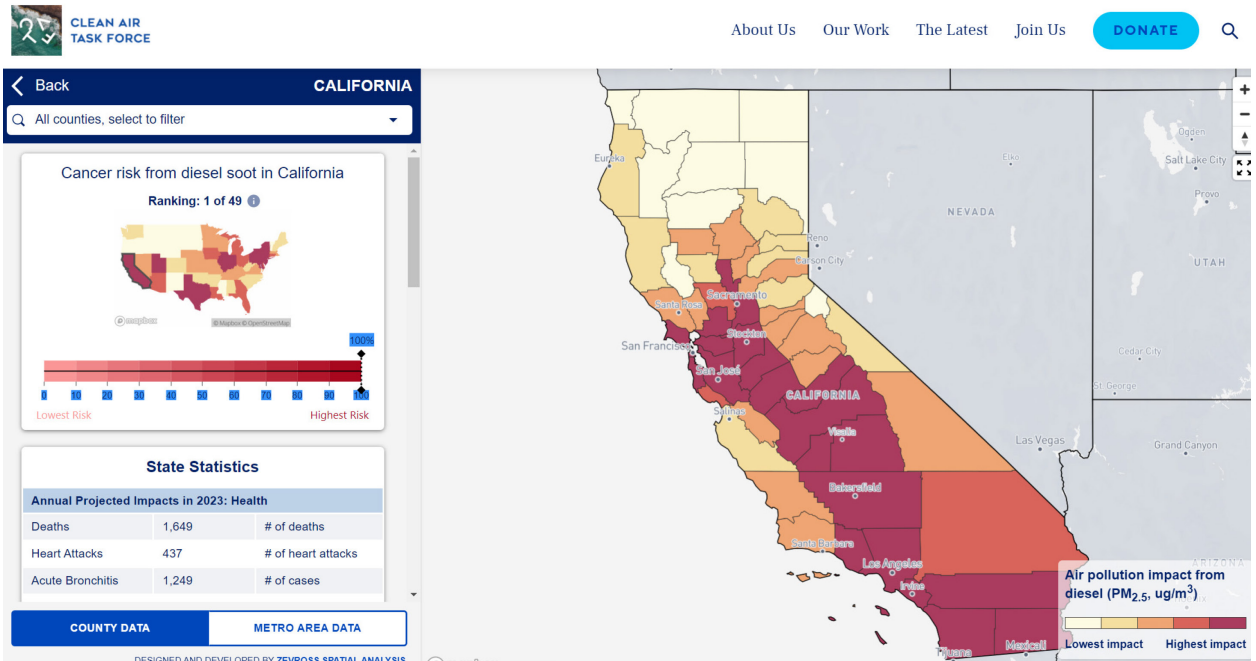
West Sacramento	PG&E	1.3 million DGE	\$160,067	100%
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The Staff Proposal’s recommended elimination of Gas Line Subsidies for non-residential customers is simply not justified by concerns over impacts on other ratepayers or the Staff Proposal itself; moreover, the elimination of the Gas Line Subsidies for non-residential customers would contravene the law, and for the reasons provided below, would be disastrous from a policy perspective.

**i. The Negative Impact on SCLP Reduction Goals of the Staff Proposal Necessitates Its Rejection for Non-Residential Customers**

As Clean Energy demonstrated:

The use of RNG as a transportation fuel for medium duty and heavy duty trucks “provides real and immediate reductions in emissions of GHGs, criteria pollutants and toxic air contaminants”. Accordingly, there is a real concern that an unintended consequence of the Staff Proposal would be deceleration of cleaner technology in the transportation/mobility sector that would otherwise reduce GHG emissions and help displace SLCPs, such as black carbon generated from diesel exhaust. The use of CNG/RNG is an immediately available technology for heavy-duty industry that can avoid continued use of diesel trucks. Using RNG in HD trucks provides GHG, NOx, and air toxicity reductions now, while electric truck infrastructure and technologies develop over time. This is immediately imperative as California leads the nation in cancer risk from diesel soot, with significant portions of the State in the highest impact category for air pollution impact from diesel.



The incredible effect of displacing diesel as a fuel source for medium duty and heavy duty trucks with carbon negative RNG can be shown as follows. Replacing a diesel Class 8 long-haul truck using 12,000 gallons of diesel (CI 100.45) per year with a RNG (est CI -62.7) fueled Class 8 long-haul truck using 12,000 DGE per year would reduce 243 metric tons of CO<sub>2</sub>e lifecycle emissions **per truck per year** relative to the diesel baseline.

Indeed, consider the statewide aggregated data produced in CARB's Large Entity Fleet Reporting showing refueling infrastructure currently installed at fleet facilities across the state. As reported by those fleets, and shown below, diesel is the primary fuel source located at fleet facilities (present in 42% of home base facilities):

### 13. Is there refueling infrastructure installed at the facility?

For this question, more than one option could be chosen for each facility. Therefore, the line-item percentages are calculated dividing the "Facility Count" by 7,767 home base facilities and the facility counts are not totaled at the bottom of this table.

Refueling Infrastructure Fuel Type	Home Base Facility Count	Percent of Total Home Base Facilities
Diesel	3,272	42%
Gasoline	2,166	28%
Natural gas	532	7%
Electricity for charging	763	10%
Hydrogen	194	2%
Other	378	5%
Not applicable	3,568	46%
No response	126	2%
Invalid responses	350	5%

When asked what fuels power their trucks, large fleets reported that electricity only powered 0.11% of their vehicles, whereas natural gas powered 3% of their trucks:

### 16. What fuel type is associated with each vehicle body type?

Fuel Type	Number Tractor Day Cab	Number Sleeper Cab Tractor	Number All Other Vehicles	Percent Total Vehicles
Diesel	104,397	40,520	113,096	67%
Gasoline	214	0	104,730	27%
Natural gas	912	29	10,147	3%
Electricity	38	0	386	0.11%
Hydrogen	0	0	22	0.01%
Other	89	0	3,047	1%
Invalid responses	133	0	8,526	2%
Total vehicles	105,783	40,549	239,954	100%

This demonstrates the significant potential for renewable natural gas to be a key and immediately available alternative to much more harmful diesel fuel sources. If only 20% of all diesel-fueled sleeper cab trucks reported by large fleets were to be replaced by RNG fueled long-haul tractors, and applying the 243 metric tons of CO<sub>2</sub>e lifecycle emissions **per truck per year** relative to the diesel baseline calculated at the beginning of this section, ***the immediate impact would be a reduction of 1,969,272***

***metric tons of CO<sub>2</sub>e lifecycle emissions per year.*** Expanding beyond that narrow subset of truck activity, the overall impact of replacing diesel as a fuel source with RNG would provide significant emissions benefits. In order to achieve those benefits, however, infrastructure needs to be put in place.

...

Assume that with the elimination of the Gas Line Subsidies, new RNG fueling station development is reduced significantly, from 1,130 new RNG fuel stations to 376 new RNG fueling stations. Based on 1.25 million DGE annual throughput per station, ***the projected GHG emissions reductions would drop from 34,951,413 MT CO<sub>2</sub>e of annual emissions reductions to 11,629,851 MT CO<sub>2</sub>e of annual emissions reductions due to the loss of Gas Line Subsidies. Similarly, projected annual SLCP reductions would drop from 78,005,764 MT CO<sub>2</sub>e reductions to 25,955,900 MT CO<sub>2</sub>e reductions because of the suppressed number of stations built due to the loss of the Gas Line Subsidies.***<sup>119</sup>

The State's goals for SLCP reductions are codified in Senate (SB) 1383, which mandates: "state agencies shall consider and, as appropriate, adopt policies and incentives to significantly increase the sustainable production ***and use*** of renewable gas, including biomethane and biogas."<sup>120</sup> The proposed elimination of the Gas Line Subsidies for non-residential customers would be a policy in direct contravention of this statutory order. The negative impacts on SLCP reduction goals that the Staff Proposal would have cannot be disregarded; the Staff Proposal should not be adopted for non-residential customers.

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<sup>119</sup> Response of Clean Energy to Assigned Administrative Law Judge's Ruling Seeking Clarifications and Additional Information at 15-20 (Feb. 22, 2022) (internal citations omitted and emphasis added); see also Multiple Air Toxics Exposure Study V Final Report, South Coast Air Quality Management District, at ES-17 (Aug. 2021) ("[T]he health risks continue to be high, especially near sources of toxic emissions such as the ports and transportation corridors. Diesel PM, while also substantially reduced from past MATES, continues to dominate the overall cancer risk from air toxics ... The results from this study support a continued focus on the reduction of toxic emissions, particularly from diesel engines").

<sup>120</sup> Health & Safety Code § 39730.8(c) (emphasis added).

**ii. The Negative Impact on GHG Emissions Reductions Goals of the Staff Proposal Further Compels its Rejection for Non-Residential Customers**

As detailed above and in the record, if the elimination of the Gas Line Subsidies suppresses the number of RNG fueling stations, 23,321,562 MT Co2e reductions in annual emissions could be lost.<sup>121</sup>

Elimination of the gas line subsidies will have a significantly negative economic effect on non-residential projects. As an illustration, consider a recent Clean Energy project in West Sacramento. Initially built to serve only LNG, the existing fueling station is now being expanded to add fuel pumps for renewable CNG generated from food waste, landfills, wastewater, and dairy farming waste.<sup>122</sup> To finance the project, Clean Energy received \$1.9 million in grant funding from the Sacramento Metropolitan Air Quality Management District.<sup>123</sup> The cost of the gas line extension was \$160,000, equivalent to 8% of the grant amount. An 8% increase in capital expense is significant, though it is relatively modest for a fueling station. Typically, a CNG project will cost approximately \$1.5-\$2.0 million plus a gas line extension cost of \$400,000-\$500,000—approximately 25% of the investment.<sup>124</sup> A 25% increase in initial cost will substantially affect a project's internal rate of return and in many cases will reduce a project below its "hurdle rate"—the rate of return at which the project is worthwhile.

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<sup>121</sup> 34,951,413 MT CO<sub>2</sub>e - 11,629,851 MT CO<sub>2</sub>e = 23,321,562 MT Co<sub>2</sub>e. See Response of Clean Energy to Assigned Administrative Law Judge's Ruling Seeking Clarifications and Additional Information at 20 (Feb. 22, 2022).

<sup>122</sup> West Sacramento City Council Meeting Agenda Item 10 at 1 (May 5, 2021) (West Sacramento Agenda Report).

<sup>123</sup> *Id.* at 2.

<sup>124</sup> Response of Clean Energy to Assigned Administrative Law Judge's Ruling Seeking Clarifications and Additional Information at 19 (Feb. 22, 2022) *citing* ICF, Economic Impacts of Deploying Low NO<sub>x</sub> Trucks Fueled by Renewable Natural Gas (May 2017).

Furthermore, the Air District supports the addition of renewable CNG, which it expects will help transition West Sacramento's many diesel trucking fleets away from heavy-duty diesel to 90% cleaner fuels.<sup>125</sup> The City also supports the project, because lower-carbon alternative fuels will advance the city's climate policies.<sup>126</sup> Elimination of Gas Line Subsidies for non-residential projects would undermine governmental efforts such as those undertaken by West Sacramento and hamstring the efforts to reduce the size and impacts of heavy-duty diesel truck fleets.

**d. New Methodology for Calculating and Applying Gas Line Subsidies (PG&E Proposal)**

Clean Energy takes no position at this time on a new methodology for calculating and applying Gas Line Subsidies.

**5. CLEAN ENERGY'S POSITION ON FINDINGS THE COMMISSION SHOULD MAKE PURSUANT TO PUBLIC UTILITIES CODE SECTION 783**

To locate any potential evidence in the record that might support the findings required by Section 783(b), Clean Energy assembled all documents submitted to the Commission's electronic filing (E-File) system for this proceeding. These documents generally consist of comments, responses to rulings, and staff proposals available through the proceeding docket. However, as Clean Energy did not move for party status until December 13, 2021, many

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<sup>125</sup> West Sacramento Agenda Report at 2 ("The Sacramento Metropolitan Air Quality Management District (SMAQD), in concert with the Yolo-Solano AQMD, supports the Clean Energy expansion to provide renewable CNG, assisting in the transition away from local fleets using heavy duty diesel fleet vehicles to cleaner heavy-duty vehicles which are 90% cleaner than a new diesel vehicle").

<sup>126</sup> *Id.* ("The proposed renewable CNG facility facilitates the transition of many diesel trucking fleets in the City to a cleaner fuel source. . . . renewable CNG is a bridge in the interim to meet these targets while the technology for electric fleet vehicles matures and becomes cost effective for private businesses.").

materials—such as emails sent to the parties by Commission staff—could not be included.<sup>127</sup>

This process was then repeated for Phase III. To the extent possible, emails from the Commission to the parties, utility data, and workshop presentations in this proceeding were included. Other materials cited by the parties and the Commission were numerous, voluminous, not clearly within the record, and primarily concerned Phases I and II. They were therefore excluded. Nonetheless, the assembled documents for the entire proceeding number approximately 8,000 pages, which far exceeds Phase 3 documents, which have a length of approximately 500 pages. These collections of documents are identified as, respectively, the Proceeding File and the Phase III File. Clean Energy believes these Files include materials that are properly excluded from the evidentiary record.

Based on the legal standards cited above and a review of the Proceeding File and Phase III File, Clean Energy takes the following positions regarding the mandatory § 783(b) findings.

**a. Section 783(b)(1)**

Section 783(b)(1) requires that the Commission make written findings regarding what “economic effect” the elimination of gas line subsidies would have on seven areas of legislative concern:

The economic effect of the line and service extension terms and conditions upon agriculture, residential housing, mobilehome parks, rural customers, urban customers, employment, and commercial and industrial building and development.<sup>128</sup>

Each area of concern is addressed separately below.

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<sup>127</sup> As noted above, such emails are generally not part of the record. *See supra* note 76, *citing* D.15-11-034, 2015 Cal. PUC LEXIS 717, \*2 (“An electronic mail dated July 12, 2013, from ALJ Darling . . . was not filed nor served on parties. The e-mail, therefore, is not a part of the proceeding’s formal record.”).

<sup>128</sup> § 783(b)(1).

**i. Agriculture**

The record of this proceeding cannot support the § 783(b) written findings regarding the economic effect upon agriculture. The Phase III File is nearly devoid of information on this issue.

- Clean Energy explained that the elimination of gas line subsidies would negatively impact the financial viability of agricultural projects.<sup>129</sup>
- Southwest Gas stated that natural gas can have positive economic effects upon agriculture, but elimination of gas line subsidies would create a disadvantage.<sup>130</sup> It added that agriculture’s “relatively inelastic economic demand for natural gas” makes it difficult to evaluate the possible outcome.<sup>131</sup>
- The Joint Utilities argue that the use of RNG could improve crop yields from greenhouses.<sup>132</sup>

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<sup>129</sup> Clean Energy Comments on Assigned Commissioner’s Amended Scoping Memo and Ruling and Staff Proposal at 16 (Dec. 20, 2021) (“Without Gas Line Incentives, the financial viability of projects that are currently needed to reduce the carbon intensity of transportation – such as the construction of additional RNG CNG fueling stations – would be negatively impacted. The same is true of RNG production sites that use dairy and other livestock waste, landfill waste, or agricultural waste to produce RNG.”).

<sup>130</sup> Comments of Southwest Gas Corporation (U 905 G) on Phase III Staff Proposal at 11 (Dec. 20, 2021) (explaining “incentives to reduce methane emissions in the dairy or agriculture industry through the production of RNG”); *id.* at 12 (“Natural gas has the potential to . . . positively impact multiple economic sectors including agriculture, dairy, transportation, and energy.”).

<sup>131</sup> Comments of Southwest Gas Corporation (U 905 G) on Assigned Administrative Law Judge’s Ruling Seeking Clarifications and Additional Information (Feb. 22, 2022) at 4, n.2 (“In many manufacturing processes, natural gas is arguably the most cost effective . . . means of creating the desired end product. Various . . . agricultural . . . users have a relatively inelastic economic demand for natural gas, which makes it more difficult to assess the impact of a given allowance, refund, or discount.”).

<sup>132</sup> Opening Comments of Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Gas Company on the Phase III Staff Proposal (Dec. 20, 2021) at 19 & n.34 (explaining that a benefit of using RNG for decarbonization is “agricultural customers can utilize the CO<sub>2</sub> . . . in their greenhouses,” which increases crop yield, whereas greenhouses that utilize electricity would likely see “an overall increase in their carbon footprint” from “increasing their energy use by transporting in the CO<sub>2</sub>”).

- Southwest Gas,<sup>133</sup> Joint Utilities,<sup>134</sup> SoCalGas,<sup>135</sup> SDG&E,<sup>136</sup> and Clean Energy<sup>137</sup> assert that the Staff Proposal lacks findings regarding the economic effect upon agriculture.
- SCE states that it does not have a response.<sup>138</sup>
- CEJA, EDF, NRDC, Sierra Club, and TURN stated they “support Energy Division Staff’s findings on these matters” but do not mention agriculture.<sup>139</sup>

In the Proceeding File, Clean Energy did not locate anything that appeared to address the economic effects upon agriculture.<sup>140</sup>

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<sup>133</sup> Comments of Southwest Gas Corporation (U 905 G) on Phase III Staff Proposal at 11 (Dec. 20, 2021) at 5-7 (noting inadequacy of Staff Proposal with respect to economic effects of agriculture).

<sup>134</sup> Opening Comments of Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Gas Company on the Phase III Staff Proposal (Dec. 20, 2021) at 35 (noting that the 2019 Non-Residential New Construction Reach Code Cost Effectiveness Study did not consider “impacts of electric new construction on . . . agriculture end-uses, which are more likely to have specialized equipment that is harder to electrify.”), 40 (expressly requesting that Commission evaluate the economic impacts on agriculture), 46 (urging Commission to seek information regarding allowances for agriculture through workshops).

<sup>135</sup> Reply Comments of San Diego Gas & Electric Company (U902G) and Southern California Gas Company (U904G) on the Phase III Staff Proposal at 2-3 (Jan. 10, 2022) (noting Staff Proposal fails to make findings regarding agriculture and citing Clean Energy’s observation that the Staff Proposal provides “no examination of the impacts of the proposed change on agriculture”).

<sup>136</sup> *Id.*

<sup>137</sup> Clean Energy Reply Comments on Assigned Commissioner’s Amended Scoping Memo and Ruling and Staff Proposal at 2-3 (Jan. 10, 2022).

<sup>138</sup> Southern California Edison Company (U 338-E) Comments on Phase III Amended Scoping Memo and Ruling of Assigned Commissioner at 16-17 (Dec. 20, 2021).

<sup>139</sup> Opening Comments of the California Environmental Justice Alliance, Environmental Defense Fund, Natural Resources Defense Council, Sierra Club, and The Utility Reform Network on the Phase III Staff Proposal at 17 (Dec. 20, 2021).

<sup>140</sup> A potential exception are materials attributed to SoCalGas but included in a Sierra Club pleading. See Sierra Club’s Motion to Deny Party Status to Californians for Balanced Energy Solutions or, in the Alternative, to Grant Motion to Compel Discovery at 6 (May 14, 2019) (reproducing talking points attributed to SoCalGas, which include: “Gas is the most efficient and affordable clean energy source available. . . NG plays a crucial role in manufacturing, industrial, and agricultural processes.”).

Although the Staff Proposal provides responses to § 783(b)(1), none of them mention agriculture.<sup>141</sup> These omissions cannot be reconciled with the legislative purpose of § 783(b). The requirement of written findings on the economic effect on agriculture is non-discretionary, but no such findings are in the staff report and nothing in the record can support such findings. Accordingly, the Commission cannot modify the gas extension rules at this time.

As noted earlier, the findings in SB 48 convey the Legislature's concern that the elimination of gas line subsidies could have "especially severe" economic effects upon agriculture.<sup>142</sup> The record is, in other words, a barren cupboard. It is "entirely lacking" and "devoid" of evidentiary support for a written finding that the elimination of non-residential gas line subsidies would have a positive economic effect on agriculture. The sparse references to agriculture concern non-economic issues or else characterize the gas line subsidies as favorable (or their elimination unfavorable). In this evidentiary vacuum, the Commission cannot satisfy § 783(b)(1). It could not produce a written finding that demonstrates a "rational connection" with "the purposes of the enabling statute," § 783(b)(1), which the Legislature enacted to avoid economic harm to agriculture.

## **ii. Residential housing**

Clean Energy does not take a position in this opening brief on whether the Commission has a sufficient record upon which to make the requisite statutory finding on the economic impact on residential housing of the proposed elimination of gas line subsidies.

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<sup>141</sup> See Staff Proposal at 33, 38, 42.

<sup>142</sup> Stats. 1983, ch 1229, § 1(e) ("The impact of the proposed rules is especially severe with respect to agricultural and other rural customers who frequently require utility service at points distant from existing utility systems.").

### iii. Mobilehome parks

The record of this proceeding cannot support the required § 783(b) written findings regarding the economic effect upon mobilehome parks.<sup>143</sup> Although the Staff Proposal provides responses to § 783(b)(1), none of them mention mobilehome parks.<sup>144</sup> The Phase III File is also devoid of information that could support a finding of economic benefits. This omission cannot be reconciled with the legislative purpose of § 783(b). The requirement of written findings on mobilehome parks is non-discretionary, but no such findings are in the staff report and nothing in the record can support such findings. Accordingly, the Commission cannot modify the gas extension rules at this time.

- SCE states that it does not have a response.<sup>145</sup>
- CEJA, EDF, NRDC, Sierra Club, and TURN stated they “support Energy Division Staff’s findings on these matters” but do not mention mobilehome parks.<sup>146</sup>

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<sup>143</sup> Although § 783 uses the term “mobilehome,” Clean Energy also searched the record for any variant, such as “mobile home.”

<sup>144</sup> See Staff Proposal at 33, 38, 42.

<sup>145</sup> Southern California Edison Company (U 338-E) Comments on Phase III Amended Scoping Memo and Ruling of Assigned Commissioner at 16-17 (Dec. 20, 2021).

<sup>146</sup> Opening Comments of the California Environmental Justice Alliance, Environmental Defense Fund, Natural Resources Defense Council, Sierra Club, and The Utility Reform Network on the Phase III Staff Proposal at 17 (Dec. 20, 2021).

- The Joint Utilities,<sup>147</sup> SoCalGas,<sup>148</sup> SDG&E,<sup>149</sup> and Clean Energy<sup>150</sup> assert that the Staff Proposal omits any findings regarding the economic effect upon mobilehome parks.

The Proceeding File includes additional references, but only PG&E arguably addresses the economic effects on mobilehome parks of eliminating Gas Line Subsidies.

- PG&E states that mobile home parks will be excluded from its zonal electrification pilot because they will probably be “unwilling to forego gas service.” “Earning potential for a park owner is limited if the park is unable to accommodate dual fuel mobile homes, which are the majority of models in use today. Park owners likely wish to maximize the pool of potential future occupants.”<sup>151</sup>

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<sup>147</sup> Opening Comments of Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Gas Company on the Phase III Staff Proposal at 35 (Dec. 20, 2021) (noting that the 2019 Non-Residential New Construction Reach Code Cost Effectiveness Study did not consider “impacts of electric new construction on . . . agriculture end-uses, which are more likely to have specialized equipment that is harder to electrify.”); *see also id.* at 40 (expressly requesting that Commission evaluate the economic impacts on agriculture), 46 (urging Commission to seek information regarding allowances for agriculture through workshops).

<sup>148</sup> Reply Comments of San Diego Gas & Electric Company (U902G) and Southern California Gas Company (U904G) on the Phase III Staff Proposal at 2-3 (Jan. 10, 2022) (noting Staff Proposal fails to make findings regarding agriculture and citing Clean Energy’s observation that the Staff Proposal provides “no examination of the impacts of the proposed change on agriculture”).

<sup>149</sup> *Id.*

<sup>150</sup> Clean Energy Reply Comments on Assigned Commissioner’s Amended Scoping Memo and Ruling and Staff Proposal at 2-3 (Jan. 10, 2022).

<sup>151</sup> Comments of Pacific Gas and Electric Company (U 39 M) on Order Instituting Rulemaking R.19-01-011 and Responses to Questions in Preliminary Scoping Memo at 5 n.7 (Mar. 11, 2019).

- TURN states, in principle, “it is desirable to promote manufacturers to develop more efficient homes,” but it took no position regarding their eligibility for the Wildfire and Natural Disaster Resiliency Rebuild (WNDRR) program.<sup>152</sup>
- CEJA states that manufactured homes “offer an affordable alternative to site-built homes, costing on average less than 50% price per square foot of site-built homes,” but it does not address the effects of terminating gas line subsidies.<sup>153</sup>

#### **iv. Rural customers**

The Commission must find that the record of this proceeding, including the Phase III Staff Proposal, cannot support the necessary § 783(b) written findings regarding the economic effect upon rural customers, at least for non-residential.<sup>154</sup> Clean Energy was the only party to directly address how the elimination of gas line subsidies would economically affect rural customers, but it focused on the potential harm to non-residential users. Other parties noted both that electrification and natural gas could lower costs for residential rural customers.

The Proceeding File and Phase III File have very few mentions of rural customers:

- Although the Staff Proposal provides multiple responses to § 783(b)(1), none of them mention rural customers.<sup>155</sup>

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<sup>152</sup> Comments of The Utility Reform Network on the Phase II Staff Proposal at 14 (Oct. 9, 2020).

<sup>153</sup> California Environmental Justice Alliance Opening Comments on Phase II Staff Proposal at 16 (Oct. 9, 2020).

<sup>154</sup> See Staff Proposal at 33, 38, 42.

<sup>155</sup> *Id.*

- Clean Energy warns that the elimination of gas line subsidies could make uneconomic rural projects funded by the California Department of Food Agriculture’s Dairy Digester Research and Development Program.<sup>156</sup>
- Clean Energy,<sup>157</sup> Joint Utilities,<sup>158</sup> SoCalGas,<sup>159</sup> SDG&E,<sup>160</sup> SouthWest Gas,<sup>161</sup> and SBUA<sup>162</sup> assert that the Staff Proposal omits any findings regarding the economic effect upon rural customers.
- SoCalGas states that natural gas can be a less expensive and cleaner heating option for rural customers than full electrification.<sup>163</sup>

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<sup>156</sup> Response of Clean Energy to Assigned Administrative Law Judge’s Ruling Seeking Clarifications and Additional Information at 15 (Feb. 22, 2022).

<sup>157</sup> Clean Energy Comments on Assigned Commissioner’s Amended Scoping Memo and Ruling and Staff Proposal at 8 (Dec. 20, 2021).

<sup>158</sup> Opening Comments of Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Gas Company on the Phase III Staff Proposal at 35 (Dec. 20, 2021) (noting that the 2019 Non-Residential New Construction Reach Code Cost Effectiveness Study did not consider “impacts of electric new construction on . . . agriculture end-uses, which are more likely to have specialized equipment that is harder to electrify.”); *see also id.* at 40 (expressly requesting that Commission evaluate the economic impacts on agriculture), 46 (urging Commission to seek information regarding allowances for agriculture through workshops).

<sup>159</sup> Reply Comments of San Diego Gas & Electric Company (U902G) and Southern California Gas Company (U904G) on the Phase III Staff Proposal at 2-3 (Jan. 10, 2022) (noting Staff Proposal fails to make findings regarding agriculture and citing Clean Energy’s observation that the Staff Proposal provides “no examination of the impacts of the proposed change on agriculture”).

<sup>160</sup> *Id.*

<sup>161</sup> Comments of Southwest Gas Corporation (U 905 G) on Phase III Staff Proposal at 6-7, 23-24 (Dec. 20, 2021) (discussing broadly).

<sup>162</sup> Small Business Utility Advocates’ Reply Comments on Phase III Staff Proposal at 2 (Jan. 10, 2022) (“The Staff Proposal does not provide sufficient documentation to ‘make written findings’ regarding ‘[t]he economic effect of the line and service extension terms and conditions upon . . . rural customers, urban customers, employment, and commercial and industrial building and development.’”).

<sup>163</sup> Southern California Gas Company’s (U 904 G) Reply Comments on Administrative Law Judge’s Ruling Seeking Comment on Staff Proposal for Building Decarbonization Pilots at 4 (Aug. 20, 2019) (“Natural Gas Can Be a Low-Cost Means to Reduce GHG and Particulate Emissions . . . In rural communities where residents still use wood or propane for space and water heating, converting to natural gas can be less expensive than full-electrification . . . For example in California City, SCE’s per-household cost was \$30,810, while SoCalGas’ cost was \$22,396 per household.”); *see also id.* at 5 (“RNG Can Provide

- SCE states that it does not have a response.<sup>164</sup>
- CEJA, EDF, NRDC, Sierra Club, and TURN stated they “support Energy Division Staff’s findings on these matters” but do not mention rural customers.<sup>165</sup>
- SBUA complains that the Staff Proposal essentially asks parties to supply the missing § 783 findings,<sup>166</sup> and it alleges that the Staff Proposal ignores rural communities.<sup>167</sup>
- CEJA, EDF, NRDC, Sierra Club, and TURN agree with SBUA that the Staff Proposal overlooked rural customers.<sup>168</sup> They also assert that diesel generators and propane in rural areas may be replaced cost-effectively with electrification for residential uses.<sup>169</sup>

**v. Urban customers**

The Commission must find that the record of this proceeding, including the Phase III Staff Proposal, does not support the requisite § 783(b) written findings regarding the economic

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Innovative Options for Reducing GHG Emissions, Increase Resiliency, and Reduce Energy Burden in Rural Communities.”).

<sup>164</sup> Southern California Edison Company (U 338-E) Comments on Phase III Amended Scoping Memo and Ruling of Assigned Commissioner at 16-17 (Dec. 20, 2021).

<sup>165</sup> Opening Comments of the California Environmental Justice Alliance, Environmental Defense Fund, Natural Resources Defense Council, Sierra Club, and The Utility Reform Network on the Phase III Staff Proposal at 17 (Dec. 20, 2021).

<sup>166</sup> SBUA Comments on Scoping Memo at 5 (Dec. 20, 2021).

<sup>167</sup> *Id.* at 3 (“ignoring other communities, particularly small commercial customers, especially in rural or less developed areas, that wish to expand existing operations or switch from trucked propane to piped natural gas.”)

<sup>168</sup> CEJA, EDF, NRDC, Sierra Club, TURN Reply Comments at 12 (Jan. 10, 2022) (“we support SBUA’s request that the Commission carefully consider the economic impacts on “low-income, small commercial and rural customers” of broader policies intended to promote building electrification and related, to plan for changes in the utilization of the existing gas system. Policies that fail to preserve access to affordable, essential utility services for these customers are failed policies.”).

<sup>169</sup> CEJA, EDF, NRDC, Sierra Club Response at 9 (Feb. 2, 2022).

effect upon urban customers. Although the Staff Proposal provides multiple responses to § 783(b)(1), none of them mention urban customers.<sup>170</sup> Clean Energy was the only party to directly address how the elimination of gas line subsidies would economically affect urban customers.

The Proceeding File and Phase III File have very few mentions of urban customers:

- Clean Energy,<sup>171</sup> Joint Utilities,<sup>172</sup> SoCalGas,<sup>173</sup> SDG&E,<sup>174</sup> SouthWest Gas,<sup>175</sup> and SBUA<sup>176</sup> assert that the Staff Proposal omits any findings regarding the economic effect upon urban customers.
- SCE states that it does not have a response.<sup>177</sup>
- CEJA, EDF, NRDC, Sierra Club, and TURN state they “support Energy Division Staff’s findings on these matters” but do not mention urban customers.<sup>178</sup>

#### **vi. Employment**

The Commission must find that the record of this proceeding, which includes the Staff Proposal, cannot support written findings regarding the economic effect upon employment.

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<sup>170</sup> See Staff Proposal at 33, 38, 42.

<sup>171</sup> Clean Energy Comments at 8 (Dec. 20, 2021).

<sup>172</sup> Joint Utilities (Dec. 20, 2021) at 35 (noting that the 2019 Non-Residential New Construction Reach Code Cost Effectiveness Study did not consider “impacts of electric new construction on . . . agriculture end-uses, which are more likely to have specialized equipment that is harder to electrify.”), 40 (expressly requesting that Commission evaluate the economic impacts on agriculture), 46 (urging Commission to seek information regarding allowances for agriculture through workshops).

<sup>173</sup> Reply Comments of San Diego Gas & Electric Company (U902G) and Southern California Gas Company (U904G) on the Phase III Staff Proposal at 2-3.

<sup>174</sup> *Id.*

<sup>175</sup> SW Gas (Dec. 20, 2021) at 6-7 (discussing broadly), 23-24.

<sup>176</sup> SBUA (Jan. 10, 2022) at 2.

<sup>177</sup> SCE (Dec. 20, 2021) at 16-17.

<sup>178</sup> CEJA, EDF, NRDC, Sierra Club, TURN (Dec. 20, 2021) at 17.

There is a dearth of employment data and analysis of the Staff Proposal's impacts on employment.

The Staff Proposal contains no findings regarding employment. Its only mention of employment is the statement that “the economic impact on the gas industry workforce *also merits consideration*,”<sup>179</sup> which, given the absence of any such consideration, functions as an acknowledgement that the economic effects on employment have not been studied by the Commission.<sup>180</sup> The “[r]obust stakeholder participation” desired by the Staff Proposal consisted mainly of warnings that the record could not support a finding on this issue.<sup>181</sup> Indeed, the factual information elicited during Phase III appears to have been primarily the estimated job impacts reported in a single UCLA white paper. That paper, however, is focused exclusively on residential and commercial.<sup>182</sup> It does not consider decarbonization of industrial and hard-to-electrify uses.

Regardless, Legislature has determined that it is “imperative” that the *Commission* itself studies how the elimination of Gas Line Subsidies would “impact . . . California’s economy,” including employment.<sup>183</sup> The Staff Proposal’s lack of findings on employment, even though its “*merits consideration*,” indicates that the Commission has not studied the issue and therefore cannot make any § 783 findings regarding employment. This conclusion is especially firm for

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<sup>179</sup> Staff Proposal at 34, 38, 42.

<sup>180</sup> The Staff Proposal contains no mention of “employment,” except when it quotes § 783(b). See Staff Proposal at 33, 38, 42. The Staff Proposal’s appendix refers to unemployment once when summarizing “stagflation” in the 1970s.

<sup>181</sup> Staff Proposal at 34, 38, 42.

<sup>182</sup> “Commercial” here also refers to municipal, university, school and hospital facilities.

<sup>183</sup> See Southern California Edison Company (U 338-E) Comments on Phase III Amended Scoping Memo and Ruling of Assigned Commissioner at 4 (Dec. 20, 2021);

many non-residential sectors, which are not addressed at all by the UCLA white paper.

Furthermore, the paper was not served on the parties or admitted into the record and, consistent with the cited legal standards, it cannot support a finding.<sup>184</sup>

**vii. Commercial and industrial building and development**

The Commission must find that the record of this proceeding, which includes the Staff Proposal, cannot support written findings regarding the economic effect upon commercial and industrial building and development. As detailed above in Section 4, Clean Energy has demonstrated the deleterious impact the Staff Proposal would have on the development of RNG fueling stations; Clean Energy has also discussed the probable impact on needed, future hydrogen developments, explaining that “making use of existing and new natural gas infrastructure – including new line extensions - may be the least expensive and most achievable way to deliver large volumes of hydrogen to future fleets.”<sup>185</sup> Clean Energy further described that continuing to provide Gas Line Subsidies for non-residential uses would help keep gas line infrastructure viable for increased potential future use of hydrogen while also reducing system costs for other ratepayers.<sup>186</sup>

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<sup>184</sup> See, e.g., Decision 14-02-003; Rulemaking 11-03-012 (February 5, 2014) 2014 Cal. PUC LEXIS 69, \*55 (Cal. P.U.C. February 5, 2014) (describing process of admitting consultant study into record pursuant to ALJ ruling after opportunity for formal comments); see also Decision 21-12-031; Rulemaking 20-05-012 2021 CAL. PUC LEXIS 599, \*9 (Cal. P.U.C. December 16, 2021) (On September 7, 2021, the assigned ALJ directed PG&E and CSE to serve and file their updated SGIP budget information in the formal record . . . To form a more permanent part of the record of this proceeding, the assigned ALJ will enter the completed audits into the proceeding record by issuing them via ALJ Ruling when completed”); Decision 13-07-019, Rulemaking 10-04-011 2013 Cal. PUC LEXIS 360, \*34-35 (Cal. P.U.C. July 11, 2013) (admitting workshop report and presentations into record pursuant to ALJ ruling in rulemaking proceeding); Decision 09-09-004; Rulemaking 07-12-015 (September 10, 2009) 2009 Cal. PUC LEXIS 455, \*6 (Cal. P.U.C. September 10, 2009) (“[T]he assigned [ALJ] made the August 2008 Working Group Report and attachments part of the formal record”).

<sup>185</sup> Clean Energy Opening Comments at 10.

<sup>186</sup> Clean Energy Reply Comments at 11.

Clean Energy continues to maintain that given the incontrovertible importance of hydrogen to California's future,<sup>187</sup> it would be myopically counter-productive to disincentivize new hydrogen by eliminating Gas Line Subsidies for new hydrogen production sites. Eliminating Gas Line Subsidies would, in effect, place another barrier in front of prospective California hydrogen projects by reducing the financial viability of those projects; further, as noted by Clean Energy, San Diego Gas & Electric (SDG&E), Pacific Gas and Electric (PG&E), and Southern California Gas Company (SoCal Gas), the proposed elimination of the Gas Line Subsidies could well cause developers to choose not to develop hydrogen projects or locate them out of state.<sup>188</sup> There is no real record evidence to the contrary regarding these key points.

**b. Section 783(b)(2)**

Clean Energy does not take a position on whether the record would support a written finding with respect to residential customers, but the record clearly does not support the necessary written finding pursuant to Section 783(b)(2) for non-residential customers. Section 783(b)(2) requires that the Commission make written findings regarding:

The effect of requiring new or existing customers applying for an extension to an electrical or gas corporation [applicants] to provide transmission or distribution facilities for other customers

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<sup>187</sup> See, e.g., *Administrative Law Judge's Ruling Seeking Comments on Proposed Preferred System Plan* dated August 17, 2021 in *Order Instituting Rulemaking to Continue Electric Integrated Resource Planning and Related Procurement Processes* (R.20-05-003) (proposing a schedule for increasing blends of renewable hydrogen for facilities using fossil fuel for electricity generation with a goal of achieving 100 percent renewable hydrogen by 2036); see also Chair Liane Randolph Comments before the Senate Transportation Committee on February 15, 2022, available at <https://www.senate.ca.gov/media/senate-transportation-committee-20220215/audio> from 03:31 – 15:03 (detailing the particular importance of hydrogen as a pathway to reducing both the carbon intensity and health impacts of transportation (with a 60% lower carbon intensity than gasoline, and 100% cleaner versus gasoline with emissions at the tailpipe).

<sup>188</sup> Clean Energy Reply Comments at 8; see also, Join Utilities Comments at 24-25.

who will apply to receive line and service extensions in the future.<sup>189</sup>

The Staff Proposal states that “eliminating gas line extension allowances for all new construction would result in no change to current methods of providing transmission or distribution facilities for future customers, as Staff is not proposing to modify such rules.”<sup>190</sup> Importantly, the Staff Proposal adds that “dual fuel new construction further away from a point of gas pipeline interconnection could expect to pay more . . . for additional trenching and infrastructure.”<sup>191</sup> Neighboring all-electric buildings, however, would not incur such costs and therefore would “not help pay to extend” service.<sup>192</sup>

These statements, like the Staff Proposal in general, focus on residential customers and builders of residential subdivisions. Moreover, Clean Energy believes that the elimination of gas line subsidies for non-residential customers would limit California’s ability to decarbonize by negatively impacting the transmission and distribution of RNG and hydrogen. In addition, the responses in the Staff Proposal appear to contradict the statute. The legislative findings in SB 48 express a concern that a reduction or elimination of line extension subsidies could force new customers to “pay a *far greater portion of the cost of the extension*.” The Commission, though, is obligated to implement § 783 based on the “intent of the Legislature,”<sup>193</sup> and its decisions

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<sup>189</sup> § 783(b)(2).

<sup>190</sup> Staff Proposal 34, 38, 42.

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> D.98-12-067 at \*19 (Dec. 17, 1998) (emphasis added) (quoting *People v. Coronado*, 12 Cal. 4th 145, 151 (1995)); accord *Sherwin-Williams Co. v. S. Coast Air Quality Mgmt. Dist.*, 86 Cal. App. 4th 1258, 1284 (2001) (finding that agency “improperly arrogated” the Legislature’s power); *Cal. Mfrs. Ass’n. v. P.U.C.*, 24 Cal. 3d 836, 844 (1979).

must bear a “rational connection” to “the purposes of the enabling statute.”<sup>194</sup> Here, the Staff Proposal’s statements appear inconsistent with § 783 with respect to non-residential uses, such as the transmission and distribution of alternative fuels. Thus the record certainly does not support a written finding regarding the provision of transmission or distribution facilities for non-residential customers.

**c. Section 783(b)(3)**

Clean Energy does not take a position regarding record support for a written finding with respect to residential customers, but there is not sufficient record support for written findings regarding § 783(b)(3) for adoption of the Staff Proposal for non-residential customers. Section 783(b)(3) requires that the Commission make written findings regarding the allocation of costs for the “distribution of, reinforcements of, relocations of, or additions to” electric and gas infrastructure:

The effect of requiring a new or existing customer applying for an extension to an electrical or gas corporation to be responsible for the distribution of, reinforcements of, relocations of, or additions to that gas or electrical corporation.<sup>195</sup>

The Staff Proposal is wrongly unconcerned with this issue: “Staff expect that eliminating gas line extension allowances for all new construction would result in increased costs to any customer seeking to extend a gas line. Depending on what infrastructure upgrades are necessary to extend gas service to the customer’s building, the increased cost would vary.”<sup>196</sup>

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<sup>194</sup> *Cal. Hotel & Motel Ass’n. v. Indus. Welfare Comm’n*, 25 Cal. 3d 200, 212 (1979) (quoted in D.01-10-031 (Oct. 10, 2001)).

<sup>195</sup> § 783(b)(3)

<sup>196</sup> Staff Proposal at 34, 39, 43.

As with § 783(b)(2) above, the Staff Proposal’s response is in tension with the statute. SB 48’s legislative findings include the objective of ensuring that customers, including commercial and industrial users, can obtain “utility services without undue economic burden.”<sup>197</sup> Moreover, SB 48 expressly refers to the risk of “projects no longer economically viable” if line extension subsidies are reduced or eliminated.<sup>198</sup> Yet, the Staff Proposal is indifferent to its impacts on projects such as CNG/RNG fueling stations; there is no mention of these impacts in the Staff Proposal. The failure to address the diversity of commercial and industrial uses is contrary to the Legislature’s intent. Clean Energy therefore believes the record clearly does not support a written finding regarding the distribution of, reinforcements of, relocations of, or additions to infrastructure, for non-residential customers.

**d. Section 783(b)(4)**

Section 783(b)(4) requires that the Commission make written findings regarding:

The economic effect of the terms and conditions upon projects, including redevelopment projects, [and projects] funded or sponsored by [local government] cities, counties, or districts.<sup>199</sup>

Clean Energy is developing projects with local government bodies that would be deleteriously impacted by the staff proposal. For example, Clean Energy’s West Sacramento fueling station expansion is supported by the city as well as the regional air quality district because it will help reduce West Sacramento’s sizeable heavy-duty diesel truck fleet and advance the goals of local climate change plans. The Staff Proposal, however, misguidedly assumes—with no underlying evidence or data—that there would be no changes for governmental projects. It states,

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<sup>197</sup> Stats 1983 ch 1229 § 1(b).

<sup>198</sup> Stats 1983 ch 1229 § 1(f).

<sup>199</sup> § 783(b)(4).

Staff expect that eliminating gas line extension allowances for all new construction would not result in changes specific to projects sponsored by cities, counties, or districts, as Staff is not proposing any such changes. Should those projects be constructed all electric, they will be less expensive than they are today, and should those projects be constructed dual fuel, they are anticipated to be only slightly more expensive than they are today.<sup>200</sup>

This is not the case. Clean Energy's West Sacramento RNG fueling station was developed with grant support from the Sacramento Municipal Air Quality Management District, and elimination of allowances would have increased project costs, diverting the grant funding provided by the SMAQD from their intended purpose. Elimination of Gas Line Subsidies could have made the station project (or, more specifically, the expansion of the station) uneconomic and thus frustrate the city's and air quality district's climate policies. Quotes below are from public city council documents:

- "Clean Energy applied for \$1,947,396 in Carl Moyer grant funds from the Sac Metro Air District. The Carl Moyer Program provides monetary grants to private companies and public agencies to clean up their heavy-duty engines"
- "Sacramento Metropolitan Air Quality Management District (SMAQD), in concert with the Yolo- Solano AQMD, supports the Clean Energy expansion to provide renewable CNG, assisting in the transition away from local fleets using heavy duty diesel fleet vehicles to cleaner heavy-duty vehicles which are 90% cleaner than a new diesel vehicle"
- "The proposed project would also further City climate policy goals"<sup>201</sup>

The assumption in the Staff Proposal regarding the impact on governmental sponsorships of projects is wrong, and the Commission cannot, based on the record, find otherwise.

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<sup>200</sup> Staff Proposal 34, 39, 43.

<sup>201</sup> West Sacramento Agenda Report.

**e. Section 783(b)(5)**

Clean Energy takes no position on whether the record may support a written finding with respect to residential customers for purposes of Section 783(b)(5), but the record certainly does not support the requisite written findings for this section for non-residential customers. The potential effects of eliminating gas line subsidies for non-residential customers will likely have complex effects on existing ratepayers, and the foregone benefits may be substantial.

Section 783(b)(5) requires that the Commission make written findings regarding effects on existing ratepayers:

The effect of the line and service extension regulations, and any modifications to them, on existing ratepayers.<sup>202</sup>

In the legislative findings of SB 48, the Legislature stated that the Commission had failed to adequately demonstrate the “*positive* effect . . . on rates to existing ratepayers.” The Legislature also repeatedly expressed concern about “the interests of existing utility customers.”<sup>203</sup> These apprehensions are especially apt for non-residential customers.

The residential share of Gas Line Subsidies is consistently around 80%. The Staff Proposal shows that the residential component of the gas line subsidies is 82.3%. Utility data recently provided to Energy Division similarly indicate that the residential component is 79.2%. If the Commission is going to act on the Staff Proposal, the Commission should focus on residential subsidies, which are the primary driver of costs and provide the greatest benefit with minimal risks of unintended, adverse consequences.

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<sup>202</sup> § 783(b)(5).

<sup>203</sup> Clean Energy Comments on Gas Utility Responses to Energy Division Data Request (Apr. 11, 2022)

The potential benefits to existing ratepayers of elimination of the non-residential gas line subsidies cannot be assumed equal to the costs of the gas line subsidies. Throughout Phase III, Clean Energy and other parties have warned that non-residential subsidies are analytically different because they are a critical rung in the decarbonization ladder.<sup>204</sup> Non-residential gas projects can provide financial and environmental benefits, such as those that encourage substitution with fuels like RNG, which can have significant negative carbon intensity.<sup>205</sup> Non-residential subsidies should not be modified at this time, because the potential consequences are unstudied. SB 48 makes clear that the Commission cannot make significant changes to the line extension rules without adequate study.

**f. Section 783(b)(6)**

Section 783(b)(6) requires that the Commission make written findings regarding:

The effect of the line and service extension regulations, and any modifications to them, on the consumption and conservation of energy.<sup>206</sup>

Clean Energy is not aware of any record evidence that would support the written findings required under § 783(b)(6) by the Commission that would serve as foundation for adoption of the Staff Proposal as proposed.

**g. Section 783(b)(7)**

Section 783(b)(7) requires that the Commission make written findings regarding:

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<sup>204</sup> See, e.g., Clean Energy Opening Comments at 13-18; Clean Energy Reply Comments at 6-7; Opening Comments of Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Gas Company on the Phase III Staff Proposal, 8 (Dec. 20, 2021); Small Business Utility Advocates' Opening Comments on Phase III Staff Proposal, 4-5 (Dec. 20, 2021)

<sup>205</sup> Clean Energy Response at 7, 18-22 (discussing comments of California Air Resources Board chair regarding low carbon alternative fuels in meeting greenhouse gas emissions goals, and summarizing benefits of substituting renewable natural gas for diesel as transportation fuel).

<sup>206</sup> § 783(b)(6).

The extent to which there is cost-justification for a special line and service extension allowance for agriculture.<sup>207</sup>

Clean Energy is not aware of any record evidence that would support the written findings required under § 783(b)(7) by the Commission that would serve as foundation for adoption of the Staff Proposal as proposed to be applied to agricultural customers.

**6. OTHER ISSUES WITHIN THE SCOPE OF PHASE III THE COMMISSION SHOULD CONSIDER**

Clean Energy has no other issues to raise at this time.

**7. CONCLUSION**

Clean Energy appreciates this opportunity to submit this opening brief. If the Commission intends to adopt the Staff Proposal, it should not apply to non-residential customers.

Respectfully submitted,

Buchalter, A Professional Corporation

By:



Nora Sheriff

Counsel for Clean Energy

May 4, 2022

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<sup>207</sup> § 783(b)(7).