Senator David Min
1021 O Street, Suite 6710
Sacramento, CA 95814

Re: SB 938 - Sponsor Support from Earthjustice and The Utility Reform Network

Dear Senator Min:

On behalf of Earthjustice and The Utility Reform Network ("TURN"), we are pleased to sponsor Senate Bill ("SB") 938, the Utility Accountability Act, which provides needed safeguards against utility misuse of ratepayer funds for political and promotional activities.

As reported in the *Sacramento Bee* and *Los Angeles Times*, utilities like Southern California Gas Company ("SoCalGas") have been lobbying against the state's climate and clean air goals and improperly passing the costs of doing so onto their customers.[1] SB 938 addresses these abuses by clearly defining the political and advertising activities which utility shareholders – and not ratepayers – are responsible for funding, creating strong transparency and penalty provisions to deter non-compliance, and prohibiting utilities from charging ratepayers for costly memberships to trade groups engaged in political influence activities.

SB 938 Establishes the Needed Statutory Definitions for the Types of Political Activities California Investor-Owned Utility Shareholders Must Fund

California law does not currently define the types of political expenses utilities must charge their shareholders. Instead, state regulators have looked to the Federal Energy Regulatory Commission ("FERC") Uniform System of Accounts ("USofA"), which establishes regulatory accounting and financial reporting requirements for electric and natural gas industries under

[1] Joe Rubin & Ari Plachta, *SoCalGas fought a key California climate solution for years. It cost customers millions,* SACRAMENTO BEE (Aug. 17, 2023), https://www.sacbee.com/news/politics-government/capitol-alert/article277266828.html; Sammy Roth, *SoCalGas shouldn't be using customer money to undermine state climate goals, critics say,* L.A. TIMES (Nov. 22, 2019), https://www.latimes.com/environment/story/2019-11-22/socalgas-climate-change-customer-funds. *See also Editorial: SoCalGas' sleazy 'Astroturf' effort to keep fossil fuels flowing in California*, L.A. TIMES (Aug. 10, 2019), https://www.latimes.com/opinion/story/2019-08-10/socalgas-astroturf-cpuc-aliso-canyon.

FERC jurisdiction.[2] Account 426.4 of the USofA requires that utility shareholders pay for expenditures for the purpose of influencing public opinion or the decisions of public officials.[3] SB 938 incorporates this standard into state law to ensure its consistent application along with additional clarifications on its applicability to stop utilities from continuing to attempt to recover costs for their unsolicited efforts to influence climate, air quality, and other proposed rules that are not directly related to safe operation of the electrical or gas system.

For example, in its most recent General Rate Case ("GRC"), SoCalGas is seeking to charge ratepayers for the costs of its interventions in regulatory proceedings such as the California Air Resources Board ("CARB") State Implementation Plan and South Coast Air Quality Management District ("SCAQMD") development of Indirect Source Rules for railyards and ports.[4] In its past engagement in these types of rulemakings, SoCalGas has opposed zero-emission requirements and urged greater reliance on methane-burning vehicles.[5] SB 938 does not prohibit the utility from this advocacy, but it does protects ratepayers from bearing the costs of these efforts by making clear that costs of utility intervention in development of "rules or policies related to emissions of greenhouse gases or criteria air pollutants" are shareholder expenses.[6]

SB 938 would also expressly prohibit utilities from charging ratepayers for the costs of their involvement in "vehicle, appliance or other equipment spending programs that would increase

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[2] *See,* FERC, Accounting Matters, https://www.ferc.gov/accounting-matters-1. *See, e.g.,* California Public Utilities Commission, D.93-12-043, In the Matter of Southern California Gas Company for Authority to Increase Rates Charges for Gas Service Based on Test Year 1994, 1993 Cal. PUC LEXIS 728; 52 Cal. Pub. Util. Comm'n 2d 471 (Dec. 17, 1993) at *104 (referring to FERC Account 426.4 as "the authority for defining lobbying activities that should not be funded by ratepayers.").

[3] 18 C.F.R. § 367.7264, https://www.ecfr.gov/current/title-18/chapter-I/subchapter-U/part-367/subpart-H/subject-group-ECFR6884d712a2346de/section-367.4264. The full text of FERC Account 426.4 states:

(a) This account must include expenditures for the purpose of influencing public opinion with respect to the election or appointment of public officials, referenda, legislation, or ordinances (either with respect to the possible adoption of new referenda, legislation or ordinances or repeal or modification of existing referenda, legislation or ordinances) or approval, modification, or revocation of franchises; or for the purpose of influencing the decisions of public officials.

(b) This account must not include expenditures that are directly related to appearances before regulatory or other governmental bodies in connection with an associate utility company's existing or proposed operations.

[4] A.22-05-015, Exh. SCG-29-R-E, Revised Prepared Direct Testimony of Sara P. Mijares at SPM-33 (May 2023), https://docs.cpuc.ca.gov/PublishedDocs/SupDoc/A2205015/6087/509544098.pdf.

[5] *See, e.g.,* SoCalGas, Comments on the Proposed 2022 State Strategy for the State Implementation Plan (Sept. 12, 2022), https://www.arb.ca.gov/lists/com-attach/13-statesip22-BXZUPVMxADIFbwVi.pdf; SoCalGas Comments on the Draft 2020 Mobile Source Strategy (May 14, 2021), https://ww2.arb.ca.gov/sites/default/files/2021-05/4-SoCalGas_Comment_RevisedDraft2020MobileSourceStrategy.pdf (SoCalGas was the only utility to comment in this proceeding and submitted additional comments at the Board Meeting as part of a Natural Gas Coalition. *See* https://ww2.arb.ca.gov/resources/documents/revised-draft-2020-mobile-source-strategy-comments-received; https://www.arb.ca.gov/lispub/comm/bccommlog.php?listname=mobilesourcestrat20&_ga=2.87227032.1439863208.1706206678-1846882355.1611247428).

[6] SB 938, Sec. (c)(1)(B)(ii).

consumption of electricity or gas."[7] This provision makes clear that existing statutory prohibitions on the use of ratepayer funds for "advertising which encourage increased consumption of" gas or electricity apply equally to a utility's influence activities and addresses instances where utilities such as SoCalGas have used ratepayer funds to argue California should continue to dedicate incentive funds to the purchase of methane-burning trucks.[8] Utilities remain free to engage in these types of proceedings, but like other stakeholders, will have to use their own money to do so.

SB 938 contains reasonable exceptions allowing utilities to charge ratepayers for the costs of their participation in proceedings where the utility is the applicant or respondent in the proceeding, or where it "has been specifically requested by the regulatory body to participate or the proceeding is directly related to rules or regulations regarding the safe operation of the electrical or gas system."[9] For example, when the California Public Utilities Commission ("CPUC") opens a new proceeding, it lists the utilities whose participation it believes is necessary as respondents.[10] SB 938 recognizes that costs of participation from listed utilities is therefore appropriately borne by those utilities' ratepayers. However, where a utility joins a proceeding as a party where it is not an applicant, respondent, or otherwise specifically requested to do so, such as when SoCalGas intervened in electric utilities' transportation electrification applications to oppose Southern California Edison's proposed investments in heavy-duty electric vehicle charging infrastructure, the utility shareholders must bear those costs.[11] Utilities have historically charged the costs of these types of unsolicited efforts to influence regulatory outcomes to their ratepayers and SB 938 makes clear these costs are properly borne by utility shareholders.

SB 938 also maintains the current use of ratepayer funds for utility advocacy for more stringent energy efficiency codes and standards.[12] SB 938 does nothing to disturb the Commission's determination that SoCalGas is prohibited from using ratepayer funds for codes and standards advocacy because it "committed appreciable harm to the regulatory process and violated clear

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[7] SB 938, Sec. (c)(1)(B)(i).
[8] Pub. Util. Code § 796; *see, e.g.,* SoCalGas Comments on CEC Draft 2021-2023 Investment Plan Update for the Clean Transportation Program at 5 (Sept. 30, 2021), https://efiling.energy.ca.gov/GetDocument.aspx?tn=239890&DocumentContentId=73331.
[9] SB 938, Sec. (c)(1)(B)(iii).
[10] *See, e.g.,* R.20-05-003, Order Instituting Rulemaking to Continue Electric Integrated Resource Planning and Related Procurement Processes at 20 (May 14, 2020), https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M337/K641/337641522.PDF (listing all-load serving entities (electric corporations, electric service providers or community choice aggregators) as respondents).
[11] *See* A.17-01-020, Opening Brief of Southern California Gas Company (Nov. 21, 2017), https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M201/K974/201974344.PDF.
[12] SB 938, Sec. (c)(2).

legal principles" by using ratepayer funds to "oppose more stringent codes and standards and adoption of reach codes."[13]

SB 938 Includes Critically Needed Penalty and Transparency Provisions to Deter Utilities from Passing Costs of their Political Activities onto Ratepayers

While utilities are prohibited from charging ratepayers for their political activity, utilities like SoCalGas have a history of moving political activity costs to shareholder accounts only after the costs are externally investigated, and often after attempting to obfuscate or minimize the extent to which ratepayers funded these activities.

For example, in 2017, SoCalGas engaged in a successful lobbying campaign to influence the Los Angeles Metropolitan Transit Authority ("MTA") into procuring gas-fired buses instead of electric buses and booked the campaign's costs to ratepayer accounts.[14] The Public Advocates Office ("Cal Advocates") investigation revealed that SoCalGas "routinely misrepresented and minimized the scope and cost of this campaign in response to Cal Advocates' data requests."[15] SoCalGas also improperly booked costs to ratepayer accounts for its campaigns promoting natural gas vehicles at the San Pedro Bay Ports and the Los Angeles World Airports. In its "campaign to convince the San Pedro Bay Ports to modify their Clean Air Action Plan to include natural gas vehicles," SoCalGas engaged in months of planning, funded a coalition, employed "at least four consulting firms," performed direct outreach to elected officials, and engaged in media and communications work, all of which it charged to ratepayers.[16] In 2019, SoCalGas booked costs associated with the front group Californians for Balanced Energy Solutions ("C4BES") to the ratepayer-funded Account 920, which is "an account for administrative and general salary expenses."[17] Despite claiming for months that "[r]atepayer funds have not been used to support the founding or launch of [C4BES]," SoCalGas did not actually move the costs out of Account 920 and into Account 426.4—the shareholder account that FERC has designated for political activities—until a Commission ruling ordered SoCalGas to produce the contracts associated with these costs.[18]

More recently, the California Environmental Justice Alliance ("CEJA") was forced to file a Motion to Compel in SoCalGas' most recent GRC in response to SoCalGas' refusal to provide requested information in discovery regarding outside legal expenses. SoCalGas only then stated

[13] D.22-04-034, Decision Different of Commissioner Rechtschaffen at 23, 53 (Apr. 18, 2022), https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M468/K751/468751269.PDF.
[14] A.22-05-015, Ex. CA-23-E-R, Report on the Results of Operations for San Diego Gas & Electric Company, Southern California Gas Company Test Year 2024 General Rate Case: Political Activities Booked to Ratepayer Accounts, at 6–9 (Mar. 27, 2023 with final redaction on Oct. 24, 2023) ("Castello GRC Testimony"), https://docs.cpuc.ca.gov/PublishedDocs/SupDoc/A2205015;A2205016/6908/521080869.pdf.
[15] *Id.* at 6, 9.
[16] *Id.* 10–11.
[17] *Id.* at 17 n.57.
[18] A.20-12-011, Public Advocates Office Petition for Modification of Resolution ALJ-391 and Decision 21-03-001 at 10 (Nov. 28, 2023), https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M520/K997/520997829.PDF.

it "unintentionally categorized" over $1.1 million to ratepayer accounts for the law firm used by the California Restaurant Association in its challenge to the City of Berkeley's ban on gas in new construction.[19] After the Commission granted CEJA's Motion, SoCalGas admitted it had charged ratepayers for legal services "that were intended to be recorded below-the-line" related to the legal issues at the heart of that lawsuit.[20] SoCalGas has faced no repercussions for its "error."

As reflected in the examples above, the Commission and intervenors must invest extensive resources to uncover improperly allocated costs and the only consequence the utility has been to move these costs to shareholder accounts when its misconduct is caught. With no meaningful consequences in place for improperly booking costs of political activities to customer accounts, the existing regulatory structure creates perverse incentives for utilities to see what they can get away with. By establishing mandatory penalties for compliance with its provisions, SB 938 creates a strong shareholder incentive for utilities to properly account for the costs of their political activities when the costs are incurred. The clear, mandatory penalties that accrue from the date an expense is improperly assigned to customers provide the utilities with the motivation to police themselves rather than requiring investigation by intervenors and the Commission. The new potential for penalties should be of little concern to utilities that are already properly accounting for the costs of their political activities.

SB 938's transparency provisions will make it clear how utilities are charging political activity costs and easier for regulators to tell if utilities are complying with the rules. Not only will they protect ratepayers from bearing costs of utilities' political activity, but they will save ratepayers money by reducing legal wrangling over utilities' disclosures. SB 938 requires that electric and gas utilities submit annual reports identifying employees and associated salaries for any employee working in a utility line of business related to political influence and advertising.[21] These reporting requirements will streamline review of political influence and advertising activities to ensure ratepayers have not been inappropriately charged.

A similar reporting requirement was recently passed in Connecticut.[22] Although Connecticut law prohibits direct or indirect costs associated with investor relations from being passed to customers, in the report filed pursuant to Connecticut's new transparency requirement, a utility

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[19] A.22-05-015, Ex. CEJA-48, Third Supplemental Data Request CEJA-SEU-009, Q.5(b), https://docs.cpuc.ca.gov/PublishedDocs/SupDoc/A2205015;A2205016/6547/516901003.pdf.

[20] *Id.* at 3; *see also* A.22-05-015, Administrative Law Judge's Ruling Granting California Environmental Justice Alliance's Motion to Compel (Apr. 11, 2023), https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M505/K833/505833533.PDF. Below-the-line accounts contain expenses that are not recoverable from ratepayers.

[21] SB 938, Sec. (e)(2). Electric and gas utilities are already required to annually report information including executive compensation, costs of outside legal counsel, and dues, subscriptions and donations paid to outside organizations pursuant to CPUC General Order 77-M. CPUC, General Order No. 77-M, https://docs.cpuc.ca.gov/word_pdf/GENERAL_ORDER/66148.pdf.

[22] Connecticut Public Act No. 23-102, Sec. 3(e), https://www.cga.ct.gov/2023/ACT/PA/PDF/2023PA-00102-R00SB-00007-PA.PDF.

stated its Vice President of Investor Relations spent only 7 hours over a three-month period on investor relations and other activities Connecticut law requires be shareholder funded.[23] While there may be a legitimate justification for the small percentage of total hours by the Vice President of Investor Relations billed to shareholders, the reporting provides a simple and transparent way for regulators to flag potential concerns and focus inquiries into whether a utility is improperly passing shareholder costs to its ratepayers.

SB 938 Ends Ratepayer Funding of Trade Associations that Engage in Political Influence Activities

California utilities charge ratepayers millions of dollars a year in membership dues to trade associations engaging in extensive lobbying and political influence activities, such as the American Gas Association ("AGA") and the Edison Electric Institute ("EEI").[24] The AGA regularly intervenes in Department of Energy rulemakings on appliance efficiency standards and advocates against stringent performance standards, including in direct opposition to California agencies such as the California Energy Commission,[25] runs advertisements promoting gas and has recruited influencers to promote gas cooking on YouTube and Instagram despite its documented heath impacts,[26] and filed an amicus brief in support of the California Restaurant Association's challenge to the City of Berkeley's ban on gas connections to new construction that was in direct opposition to the State of California.[27] EEI runs training camps to teach utility lobbyists and executives how to run winning political campaigns, contributes to other political

[23] Connecticut Light & Power Public Act. No 23-102 Compliance Filing for June 29 – September 30, 2023 at 6, https://www.dpuc.state.ct.us/DPUCUndocketed.nsf/bcd901adcc093b15852588d2005e5d1d/852588360075b5c9885258aa60070b895/$FILE/PA%20No.%2023-102%20Sec.%203(e)%20Compliance%20Report%20(CL&P)%20-%20REDACTED.pdf.

[24] For example, in its most recent GRC, SDG&E and SoCalGas requested over $1 million from ratepayers for their combined annual AGA membership dues and SDG&E requested $792,294 from ratepayers for its EEI membership. A.22-05-015, Data Request CEJA-SEU-008, Q.14, available at https://docs.cpuc.ca.gov/PublishedDocs/SupDoc/A2205015;A2205016/5863/504801936.pdf, pdf p.21; A.22-05-015, Data Request CEJA-SEU-007, Q.3, available at https://docs.cpuc.ca.gov/PublishedDocs/SupDoc/A2205015;A2205016/5863/504801815.pdf, pdf p.164.

[25] *See, e.g.,* Comments of AGA on Supplemental Notice of Proposed Rulemaking on Energy Conservation Standards for Residential Furnaces, DOE Docket No. EERE-2014-BT-STD-0031 (Jan. 6, 2017), https://downloads.regulations.gov/EERE-2014-BT-STD-0031-0306/attachment_1.pdf); Pet. For Rulemaking Before the Office of Energy Efficiency and Renewable Energy, DOE Docket No. EERE-2014-BT-STD-031, -042, at 2, 4, 9 (Oct. 18, 2018), https://www.regulations.gov/document?D=EERE-2018-BT-STD-0018-0063; California Energy Commission, Comments Re: Energy Conservation Program: Energy Standards for Residential Furnaces and Commercial Water Heaters, Notice of Petition for Rulemaking, DOE Docket No. EERE-2018-BT-STD-0018 (Mar. 1, 2019), https://downloads.regulations.gov/EERE-2018-BT-STD-0018-0056/attachment_1.pdf.

[26] Rebecca Leber, *The Gas Industry is Paying Instagram Influencers to Gush Over Gas Stoves*, Mother Jones (June 17, 2020), https://www.motherjones.com/environment/2020/06/gas-industry-influencers-stoves/; CARB, Res. 20-32 (Nov. 19, 2020), https://ww2.arb.ca.gov/sites/default/files/barcu/board/res/2020/res20-32.pdf (recognizing "studies have linked exposure to high levels of NO_2 and other nitrogen species (NOx) emitted from gas appliances with asthma and exacerbation of other respiratory symptoms.").

[27] Brief of Amicus Curiae American Gas Association in Support of the California Restaurant Ass'n, https://www.aga.org/wp-content/uploads/2023/04/As-Filed-Brief-CRA-v-Berkeley-Mar-22-23.pdf; Brief of Amici Curiae States of California et al in Support of City of Berkeley, https://climatecasechart.com/wp-content/uploads/case-documents/2022/20220208_docket-21-16278_amicus-brief-4.pdf.

organizations such as the American Legislative Exchange Council ("ALEC"), and engages in regulatory advocacy, such as when it joined AGA in urging the Securities and Exchange Commission to limit proposed climate risk disclosure rules.[28] SB 938 follows states like Colorado, New York, Connecticut and Maine that have passed legislation prohibiting customer funds from being used to pay for memberships to trade associations engaged in lobbying activity.[29] Captive ratepayers should have no role in financing lobbying organizations and SB 938 ensures that Californians will not be indirectly funding the same organizations that are otherwise advocating against California's climate goals. As is the case with other political influence costs, SB 938 in no way limits the ability of the utility to engage in these activities or pay dues to these trade associations; it only ensures that customers are not footing the bill of membership.

By preventing utilities from passing any portion of membership dues of lobbying organizations onto ratepayers, SB 938 also simplifies one aspect of the already enormous and overly complicated GRC proceeding and avoids the litigation required to determine what, if any, portion of dues is appropriately funded by customers. Under current Commission practice, utilities can seek recovery of trade association dues for the portion of dues not associated with political activities and public policy advocacy.[30] Despite this Commission precedent, utilities have repeatedly sought to include political influence costs in customer bills, only providing the narrow data point of "lobbying costs" (as defined in the federal tax code) in the GRC when proposing an allocation of dues.[31] However, the CPUC has recognized that lobbying costs typically only include the legislative advocacy of an organization like the Edison Electric Institute and additional reductions are required to protect customers from funding political

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[28] Energy & Policy Institute, *EEI used anti-clean energy campaigns as role models in political boot camp for utility execs*. Energy and Policy Institute (Aug. 27, 2020), https://energyandpolicy.org/eei-campaign-institute/; EEI, *Form 990* (2021), https://www.documentcloud.org/documents/23310887-eei-2021-form-990; EEI and AGA, *Letter to Chair Gary Gensler, Re: ESG and Climate Change Disclosures – March 15, 2021 Request for Public Input*, at 4–6 (June 2, 2021), https://www.sec.gov/comments/climate-disclosure/cll12-8861705-240106.pdf.

[29] Colorado Senate Bill 23-291 Section 3(g), https://leg.colorado.gov/sites/default/files/2023a_291_signed.pdf; New York Senate Bill 1556 (2021-2022 Legislative Session), https://www.nysenate.gov/legislation/bills/2021/S1556; Connecticut Public Act No. 23-102, Sec. 3(a), https://www.cga.ct.gov/2023/ACT/PA/PDF/2023PA-00102-R00SB-00007-PA.PDF; Maine S.P.146 – L.D. 325 (2023) § 302(2)(B), https://www.mainelegislature.org/legis/bills/getPDF.asp?paper=SP0146&item=5&snum=131.

[30] The CPUC standard excludes from rates any portion of dues associated with the following cost categories defined by the National Association of Regulatory Utility Commissioners ("NARUC") for auditing purposes *because they offer no ratepayer benefits*: (1) Legislative Advocacy, (2) Legislative Policy Research, (3) Regulatory Advocacy, (4) Advertising, (5) Marketing, and (6) Public Relations. *See, e.g.,* D.14-08-032, *Decision Authorizing Pacific Gas and Electric Company's General Rate Case Revenue Requirement for 2014-2016*, at 261–262 (Aug. 20, 2014) ("D.14-08-032"), https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M102/K361/102361873.PDF (adopting TURN's recommendation to disallow 43.3% of Edison Electric Institute ("EEI") dues, rather than the utility's proposed 25%).

[31] Lobbying, as defined by the Internal Revenue Service ("IRS") in Internal Revenue Code § 162(e)(1) includes "activities to influence legislation, support a candidate for elected office, influence election or legislative outcomes, or directly communicate with senior executive branch officials regarding agency actions." D.21-08-036, *Decision on Test Year 2021 General Rate Case for Southern California Edison Company*, at 366–67 (Aug. 20, 2021), https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M401/K299/401299406.PDF.

advocacy costs.[32] Indeed, the CPUC has repeatedly disallowed a larger portion of dues than the utility's limited exclusion for "lobbying costs."[33] Other times, the CPUC has disallowed all dues because of the absence of information supporting any other allocation.[34]

Despite the string of CPUC decisions making clear the expectation that the utility will exclude from the GRC request costs associated with political activities, utilities continue to seek ratepayer recovery of dues that likely fund political influence activities. As a result, GRC intervenors must invest significant time and resources ensuring customers are protected from bearing these costs. For example, there are repeated Commission decisions limiting the Nuclear Energy Institute ("NEI") dues appropriately collected from customers. Nonetheless, in its 2020 GRC, Southern California Edison ("SCE") sought a lower allocation of NEI costs paid by shareholders without a clear explanation for the deviation from precedent. TURN was then required to complete extensive discovery and cross-examination to determine that, in fact, there was no evidence supporting an alternative allocation.[35] Similarly, despite the CPUC finding that San Diego Gas & Electric ("SDG&E") failed to provide sufficient evidence to justify the percent of EEI dues it sought from ratepayers in its 2019 GRC, it nonetheless used the same rejected methodology in making its request to recover EEI dues in its next GRC application.[36] SB 938 addresses utilities' repeated disregard for Commission precedent on this issue and alleviates the need to constantly relitigate the proper ratepayer recovery of membership dues.

SB 938 Increases Confidence that Ratepayers are Not Footing the Bill for a Utility's Promotional Advertising

SB 938 requires utility shareholders to pay for any advertising campaigns that are intended to improve the public image of the company and creates a disclosure requirement that would

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[32] *See* D.15-11-021, *Decision on Test Year 2015 General Rate Case for Southern California Edison Company*, at 364–366 (Nov. 12, 2015), https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M155/K759/155759622.PDF (disallowing $462,000 of SCE's request for EEI dues to remove costs associated with political activities not captured in the "Lobbying" category).

[33] D.14-08-032, *supra* note 30; D.15-11-021, *supra* note 32. *See also* D.20-07-038, *Order Modifying Decision (D.) 19-09-051 And Denying Rehearing, As Modified*, at 7 (July 20, 2020), https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M344/K013/344013426.PDF (finding the two EEI invoices provided by the utility, each containing a footnote generally referencing the percentage of dues used for lobbying activities, insufficient evidence to support ratepayer funding of all remaining dues, and disallowing an additional 50% of base year dues).

[34] *See, e.g.,* D.19-05-020, *Decision on Test Year 2018 General Rate Case for Southern California Edison Company*, at 250 (May 24, 2019), https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M293/K008/293008003.PDF ("We agree with SCE that EEI may provide some beneficial services. ... The EEI invoice however, is insufficient evidence to establish the portion of the invoice which should be recovered from ratepayers. SCE has failed to present supporting evidence which would enable us to determine how much EEI's beneficial services should cost ratepayers. We find that SCE has not met its burden to establish any portion of the EEI dues are recoverable from ratepayers.").

[35] A.19-08-013, Opening Brief of The Utility Reform Network, at 166–171 (Sept. 11, 2020), https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M347/K127/347127665.PDF.

[36] D.20-07-038 at 6–7, *supra* note 33; A.22-05-015, Opening Brief of The Utility Reform Network (Public Version), at 327–28 (Aug. 15, 2023), https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M517/K616/517616425.PDF.

require any utility public message to clearly and conspicuously identify whether shareholders or ratepayers funded the message. These measures will provide more transparency around expensive advertising campaigns and give utility customers the peace of mind that they are not funding advertisements intended primarily to improve the reputation of a utility to which they are a captive customer.

Longstanding Commission precedent prohibits utilities from collecting customer money to fund "institutional advertising."[37] This bill memorializes in statute that utilities can't charge customers for "brand" advertising designed to boost the image of the company. California's utilities are given the incredible privilege of having monopolies, which means they are largely protected from competitors. They have no need to spend millions of dollars on slick ad campaigns to boost their image. If they want to do that, they can, but the advertisements should be funded by shareholders and not baked into customers' monthly bills. Utility failure to comply with these restrictions would be met with the penalties discussed above.

To provide needed transparency to ensure the utilities are complying with the bill's requirements, the bill also establishes that utilities must clearly indicate in every advertisement whether customers or investors are funding the ad. This provides intervenors and the regulator a spot check on any advertisement they see that it is properly shareholder or ratepayer funded. Further, it provides transparency to customers who may see expensive advertising campaigns and be concerned that a portion of their increasingly unaffordable rates is funding the ads they see while watching their favorite sports team. Under SB 938, ads serving to bolster the public's opinion of the utility would be clearly labeled as paid for by shareholders; meanwhile, advertisements the utility is directed to publish as well as "public messages providing information on safety measures, emergency conditions or safety interruptions," both explicitly allowed under the bill, would be labeled as paid for by ratepayers.

SB 938 Funds the Enforcement of Its Provisions and Will Result in Better Use of Commission and Intervenor Resources

As noted above, SB 938 includes strict penalties ranging from $10,000 to $100,000 per violation with each day a continuing violation of the act.[38] A quarter of the penalties collected will fund the enforcement of the bill's provisions, with the remaining three-quarters funding low-income customers' transition off of polluting fuels.[39]

Beyond presenting only a limited initial impact on Commission resources mitigated by the funding of enforcement efforts, the adoption of the bill will streamline review of the GRC and utility compliance with its provisions. By creating clear rules, reporting and disclosure

[37] See D.15-11-021, *supra* note 32, at 523.
[38] SB 938, Sec. (f)(1).
[39] SB 938, Sec. (g).

requirements the bill creates transparency that allows intervenors and the Commission to focus time and resources on other issues rather than policing utility compliance with Commission precedent.

We are proud to sponsor SB 938 and we thank you for authoring this important legislation to protect Californians against utilities misusing ratepayer dollars.

Matt Vespa
Senior Attorney
Earthjustice

Katy Morsony
Legislative Attorney
The Utility Reform Network