

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

In the Matter of the Application of Southern
California Gas Company (U 904 G) Requesting
Reauthorization of the Customer Incentive Program.

A.16-12-010
(Filed December 21, 2016)

REPLY BRIEF OF SOUTHERN CALIFORNIA GAS COMPANY (U 904 G)

JOHNNY Q. TRAN

Attorney for:
SOUTHERN CALIFORNIA GAS COMPANY
555 West Fifth Street, Suite 1400, GT14E7
Los Angeles, California 90013
Telephone: (213) 244-2981
Facsimile: (213) 629-9620
E-Mail: JQTran@SempraUtilities.com

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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. PREPONDERANCE OF EVIDENCE IS THE APPROPRATE STANDARD OF PROOF FOR SOCALGAS’ APPLICATION.	2
III. THE CIP IS A SHAREHOLDER FUNDED CUSTOMER INCENTIVE PROGRAM NOT A PERFORMANCE BASED RATEMAKING PROGRAM.	3
IV. BOTH SCGC AND ORA USE THE INCORRECT THRESHOLD TO DETERMINE WHETHER THE CIP WILL INCREASE GAS LOAD.	3
V. THERE IS NO EVIDENCE IN THE RECORD THAT THE CIP WILL EXACERBATE SYSTEM RELIABILITY CONCERNS.....	4
VI. SCGC IS CORRECT THAT NO CUSTOMER IS LIKELY TO PARTICIPATE IN THE CIP UNLESS THEY ARE CERTAIN THEY CAN MEET THE MAQ.	5
VII. THE COMMISION SHOULD NOT IMPOSE THE SAME SGIP REQUIREMENTS TO THE CIP FOR CHP PROJECTS.....	6
VIII. ORA’S OPENING BRIEF CONTAINS NUMEROUS MISSTATEMENTS OF THE RECORD AND STATEMENTS THAT HAVE NO EVIDENTIARY SUPPORT.	6
IX. SCGC INAPPROPRIATELY ATTEMPTS TO INTRODUCE NEW INFORMATION FOR THE FIRST TIME IN ITS OPENING BRIEF.	10
X. CONCLUSION.....	11

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I. INTRODUCTION.

Pursuant to Rule 13.11 of the Rules of Practice and Procedure of the California Public Utilities Commission (CPUC or Commission), Southern California Gas Company (SoCalGas) hereby submits its reply to the Opening Briefs filed by the Office of Ratepayer Advocates (ORA) and Southern California Generation Coalition (SCGC).

Both ORA and SCGC argue in their Opening Briefs that the Commission should reject the Customer Incentive Program (CIP). ORA and SCGC argue that the CIP will increase gas throughput. However, their argument is based on using an incorrect threshold as a basis for comparison (i.e., a customer's historical 24 month usage). The proper evaluation would be to compare the natural gas throughput of the customer with the CIP technology against what the customer would have chosen to do without the CIP. As SoCalGas explains, SoCalGas anticipates that with the modifications incorporated into the CIP, the net effect resulting from the proper calculation would be a decrease in natural gas throughput. Moreover, SoCalGas provided evidence that even if the net effect was an increase in natural gas throughput, the increase would be de minimis and should not exacerbate current system reliability concerns. On the other hand, ORA and SCGC provide no substantiated evidence that the CIP will increase gas throughput. ORA and SCGC did not provide any evidence of how much load growth would occur because of the CIP or whether the amount of load growth would reduce system reliability.

II. PREPONDERANCE OF EVIDENCE IS THE APPROPRIATE STANDARD OF PROOF FOR SOCALGAS' APPLICATION.

ORA incorrectly argues that the appropriate standard of proof for this application is “clear and convincing evidence.”¹ ORA cites three cases in support of its position (D.03-09-021, D.04-07-022, and D.00-02-046).² However, in more recent decisions, the Commission has clearly stated that the “preponderance of the evidence” standard is the default standard in civil and administrative law cases³ and is the appropriate standard for ratesetting proceedings.⁴ ORA similarly unsuccessfully argued that the clear and convincing evidence should be applied in ratesetting proceedings.⁵ In that proceeding, the Commission unequivocally rejected ORA’s contention and held that preponderance of evidence is the proper standard.⁶ The Commission stated, “No statute or Court decision mandates use of the clear and convincing standard in Commission ratesetting proceedings. Rather, case law affirms the preponderance standard is lawful in civil cases such as administrative proceedings.”⁷

The Commission explained that “[p]reponderance of the evidence usually is defined ‘in terms of probability of truth, e.g. such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth.’ ”⁸ In other words, “[p]reponderance of the evidence standard requires a party to have more weighty evidence on its side than there is on the other side.”⁹ The difference between preponderance of evidence and clear and convincing evidence is that “a preponderance calls for probability, while clear and convincing proof demands a *high probability*.”¹⁰

As such, the appropriate standard of proof for this application is preponderance of evidence and SoCalGas has clearly met this burden through its application, testimony, and briefs.

¹ ORA’s Opening Brief, pp. 2-3.

² *Id.*, at p. 2.

³ D.08-12-058, p. 290 (Conclusion of Law (COL) 2).

⁴ D.16-12-063, p. 9 (preponderance of evidence is standard for ratesetting proceedings); D.15-11-021, pp. 8-9 (preponderance of evidence is standard for general rate cases).

⁵ D.15-07-044, pp. 28-30.

⁶ *Id.*

⁷ D.15-07-044, p. 29 (citations omitted).

⁸ *Id.*, at p. 30.

⁹ D.09-07-024, p. 3.

¹⁰ Util. Consumers’ Action Network v. Pub. Utilities Comm’n of State of California, 187 Cal. App. 4th 688, 698 (2010) (original emphasis).

III. THE CIP IS A SHAREHOLDER FUNDED CUSTOMER INCENTIVE PROGRAM NOT A PERFORMANCE BASED RATEMAKING PROGRAM.

The CIP is a shareholder funded incentive program aimed at providing customers the opportunity to acquire natural gas technology that will be more energy efficient or improve GHG or criteria air pollutant emissions than an alternative option the customer would have otherwise chosen. It is not a Performance Based Ratemaking (PBR) program. ORA incorrectly argues that simply because the CIP evolved from programs that at one point were part of PBR that the CIP is a PBR program by association.¹¹ It is undisputable that the CIP's goals of encouraging the use of energy efficient technology and the use of cleaner technology are consistent with current State policies.¹² This should be the focus of the Commission in this proceeding. The historical background concerning the transition of utility ratemaking from traditional cost-of-service to PBR back to traditional cost-of-service while educational is irrelevant to whether the CIP will provide energy efficient benefits or reduce GHG/criteria air pollutant emissions.

IV. BOTH SCGC AND ORA USE THE INCORRECT THRESHOLD TO DETERMINE WHETHER THE CIP WILL INCREASE GAS LOAD.

Both SCGC and ORA argue that the CIP will increase gas load without any quantitative forecast or load analysis that proves the CIP will increase *net* natural gas throughput. Instead, both SCGC and ORA argue that the CIP will increase gas load at the customer site based on the incorrect comparison to a customer's "baseline load," which is specifically defined for the CIP.¹³ For the purposes of the CIP, baseline load means "the customer's average consumption for the previous 24 months."¹⁴ It is a historical, backward-looking calculation intended to set the baseline to calculate the incentive amount.¹⁵ It is not a forward-looking calculation to determine whether the CIP will increase or decrease net gas throughput.

The CIP incentivizes customers to install a natural gas technology that is more energy efficient or would reduce GHG/criteria air pollution emissions instead of a technology that is less

¹¹ In fact, Rule 38, one of the programs that make up the Current Programs, existed before the PBR era.

¹² SoCalGas' Opening Brief, pp. 6-10.

¹³ SCGC's Opening Brief, p. 13; ORA's Opening Brief, pp. 13-14.

¹⁴ SCG-03, p. 5, ln. 13-14.

¹⁵ SCGC appears to suggest that SoCalGas arbitrarily selects a rate of return to calculate the incentive amount. This is incorrect. SoCalGas will use its authorized rate of return to calculate the incentive amount. See SCG-02, p. 8, ln. 4-5; SCG-05, p. 3, ln. 19 - p. 4, ln. 4. For the example in Mr. Nguyen's Testimony, SoCalGas used a rounded number of 8% instead of a fraction of a percentage in order to simplify the example.

energy efficient or dirty. For example, the CIP incentivizes customers to install an energy efficient technology that is at least 10% more efficient than the lower cost alternative. In this example, a customer would either install a more energy efficient technology or a less energy efficient technology. In either scenario, the customer's gas load will increase at the site going forward as compared to the historical baseline. Therefore, the question is whether the net gas throughput will increase more or less with the CIP. Clearly, in this example, if the customer participates in the CIP, the gas load will increase at least 10% less than it would have without the CIP. Similarly, as explained in SoCalGas' Opening Brief, where a customer installs an onsite CHP, the gas load may increase at the customer site as compared to the historical baseline, it would increase less than it would have had the customer installed less efficient technology. Moreover, where a customer installs an onsite CHP, the onsite CHP will more often than not displace less efficient fossil fuel generation on the electric grid thereby reducing fossil fuel generation.¹⁶

In addition, SCGC and ORA argue that the CIP will necessarily increase gas load because that is how SoCalGas will make its money.¹⁷ As explained in SoCalGas' Opening Brief, this argument is based on a flawed understanding of the purpose and the mechanism of the Minimum Annual Quantity (MAQ).¹⁸ As such, SoCalGas has met its burden of showing by preponderance of evidence that with the modifications incorporated into the CIP, the anticipated net effect would be a decrease in natural gas throughput.

V. THERE IS NO EVIDENCE IN THE RECORD THAT THE CIP WILL EXACERBATE SYSTEM RELIABILITY CONCERNS.

There is no evidence in the record that the CIP will further exacerbate system reliability concerns. ORA and SCGC did not provide any quantitative analysis as to how much load growth would occur as a result of the CIP nor did they provide any quantitative analysis as to whether the amount of alleged load growth from the CIP would reduce system reliability.

Instead, ORA states "an increase in gas load *could* also reduce system reliability and result in reduced service reliability due to customer curtailments."¹⁹ There is no evidence in the record to support this statement and ORA cites none.

¹⁶ SoCalGas' Opening Brief, pp. 7-8.

¹⁷ SCGC's Opening Brief, p. 12; ORA's Opening Brief, p. 13.

¹⁸ SoCalGas' Opening Brief, pp. 11-13.

¹⁹ ORA's Opening Brief, p. 36 (emphasis added).

SCGC relies on a number of temporary line outages and the Commission's efforts to reduce gas load through "device-based demand response program" to argue that the CIP is inconsistent with Commission policy.²⁰ SCGC's reliance on the temporary line outages is short-sighted. Temporary pipeline outages are not permanent. The Commission should not reject the CIP based on temporary line outages and risk missing out on longer term energy efficient benefits.

On the other hand, SoCalGas provided evidence that the CIP would not materially impact reliability through: (1) its analysis that the net effect of the CIP would likely decrease natural gas throughput which can further support the Commission's efforts to reduce overall gas throughput; (2) its analysis that any potential increase in annual gas throughput from the CIP (based on historical high-end estimates) would only be approximately 0.2% of the total throughput; and (3) its analysis that this potential increase in daily gas throughput from the CIP (based on historical high-end estimates) would be 15 times less than the average daily fluctuation on SoCalGas' system in 2017.²¹ Therefore, SoCalGas has met its burden of showing by preponderance of evidence to the extent that even if there is a potential slight increase in gas throughput as a result of the CIP, the potential increase should not exacerbate current reliability concerns as the increase would be de minimis.

VI. SCGC IS CORRECT THAT NO CUSTOMER IS LIKELY TO PARTICIPATE IN THE CIP UNLESS THEY ARE CERTAIN THEY CAN MEET THE MAQ.

SoCalGas explains in its Opening Brief how the program controls, including the MAQ, will deter free rider.²² In its Opening Brief, SCGC affirms that the MAQ would be an effective free rider deterrence. SCGC states that "[n]o customer is likely to enter into a contract with the MAQ unless the customer is quite certain that he will consume enough volumes to cover the MAQ."²³ This is exactly why SoCalGas has this program control in the CIP. The MAQ requires the customer to operate the CIP technology in accordance with how the customer represented to

²⁰ At evidentiary hearings, SCGC also raised the potential for an emergency moratorium on new gas service interconnections for commercial and industrial customers. To date, the potential emergency moratorium has not been adopted by the Commission. However, as SoCalGas testified, to the extent that a lawful emergency moratorium is adopted, SoCalGas will comply. Transcript Vol. II (T.Nguyen), p. 156, ln. 26 - p. 157, ln. 19.

²¹ See SoCalGas' Opening Brief, pp. 13-14.

²² SoCalGas' Opening Brief, pp. 18-19.

²³ SCGC's Opening Brief, p. 13.

SoCalGas the technology would be operated in order to obtain the CIP incentive. The MAQ will require the customer to deliver on the anticipated energy efficiency or GHG/criteria air pollutant emissions reduction. This program control addresses both the Commission’s free rider concern and specifically addresses ORA’s concern that “once a customer becomes eligible, and obtains the CIP funds” the customer is not required to deliver “on energy efficiency and GHG emissions reduction goals or is merely a free rider availing itself of the CIP for additional funds.”²⁴

VII. THE COMMISSION SHOULD NOT IMPOSE THE SAME SGIP REQUIREMENTS TO THE CIP FOR CHP PROJECTS.

As SoCalGas explained in its Opening Brief, the Commission should not impose the Self-Generation Incentive Program (SGIP) requirements on the CIP for CHP projects since the CIP is intended to not only bridge the gap but to also fill the gap left behind by the underutilized programs such as SGIP.²⁵ To require that the CIP have the same eligibility requirements as SGIP and DERS will defeat these two purposes. This is particularly true since, as SoCalGas pointed out, the SGIP GHG emissions calculations are flawed.²⁶ Since the adoption of the flawed GHG emissions calculation, no SGIP generation projects have been approved. In addition, SCGC incorrectly describes the SGIP requirements in their Opening Brief.

VIII. ORA’S OPENING BRIEF CONTAINS NUMEROUS MISSTATEMENTS OF THE RECORD AND STATEMENTS THAT HAVE NO EVIDENTIARY SUPPORT.

In addition to those discussed above, ORA relies on numerous misstatements of the record or statements that have no evidentiary support in its Opening Brief. SoCalGas briefly addresses these statements below.

- In ORA’s Summary of Recommendations, ORA states: “There is no point or benefit in the proposed CIP being shareholder funded, as most of the program would not require upfront cash outlay by shareholders, but would require ratepayer funded embedded employee costs above and beyond any initial shareholder investment.”²⁷ First, there is no evidence in the record that most of the CIP would not require upfront cash outlay by shareholders. The CIP provides customers with the option to elect either: (1) a One-Time Payment Incentive, or (2) a Rate

²⁴ ORA’s Opening Brief, p. 35.

²⁵ SoCalGas’ Opening Brief, pp. 14-18.

²⁶ See SoCalGas’ Opening Brief, p. 16.

²⁷ ORA’s Opening Brief, p. 1.

Discount.²⁸ There is no evidence in the record that most of the customers who will participate in the CIP will elect the Rate Discount instead of the One-Time Payment Incentive. In fact, other than making this unsupported statement in the Summary of Recommendations section, ORA does not even address this contention in its Opening Brief. Second, SoCalGas has made it clear in its application that SoCalGas' shareholders, not ratepayers, will bear the cost of development, implementation, and administering the CIP.²⁹

- ORA states that “SoCalGas admits that the proposed new CIP has all the elements of the old CFPF and NCCLGOP [Noncore Competitive Load Growth Opportunities Program], in addition to some new modifications.”³⁰ ORA misstates the record. While certain components of the Current Programs remain as part of the CIP,³¹ the CIP's eligibility criteria are clearly more restrictive than the Current Programs' eligibility criteria. Based on the more restrictive eligibility criteria, certain projects that may have qualified under the Current Programs will no longer qualify under the CIP. For example, Ms. Prince testified that emerging technology that do not meet the CIP's new eligibility criteria will not be eligible for the CIP.³²

- ORA states that “experts admit that the proposed CIP program provides no ratepayer benefits.”³³ This is incorrect. Ratepayer benefits include energy efficiency, GHG emissions reductions, criteria air pollutant emissions reduction, bridging and filling the gap of under-utilized programs, and SoCalGas shareholders will contribute to the PPP account any shortfalls from the expected PPP revenue.³⁴ The CIP will also encourage future job growth³⁵ and enable customers to remain competitive in the ever-expanding global marketplace.³⁶ ORA ignores the evidence in the record and instead inappropriately relies on two quotes from Ms. Prince's testimony that are taken out of context. The first quote states:

²⁸ SCG-02, p. 5, ln. 4-6.

²⁹ SCG-03, p. 5, ln. 3-17; SCG-05, p. 13, ln 5, fn. 49.

³⁰ ORA's Opening Brief, p. 14.

³¹ For example, SoCalGas continued the 59 month contract term because it avoids the uncertainty for customers of whether the contract will be approved by the Commission. Transcript Vol. 1 (T.Nguyen), p. 131, ln. 10-28.

³² Transcript Vol. I (R.Prince), p. 21, ln. 10-19.

³³ ORA's Opening Brief, p. 14.

³⁴ SCG-02, pp. 9-11; SCG-04, p. 8, ln. 17-19.

³⁵ SCG-02, at p. 11, ln. 10-11.

³⁶ SCG-01, p. 5. ln. 16-18.

Q And then what are the specific dollar benefits that this program provides to ratepayers?

A I'm not aware that there's a quantification as to the specific dollar impact.

Q So it's fair to say that you have not done any calculations to show that there is a cost benefit to ratepayers?

A I have not.

This quote clearly states that Ms. Prince is not aware of any *quantification* as to specific dollar benefits that the CIP will provide to ratepayers. This is entirely different from whether there are *any* ratepayer benefits.

The second quote ORA relies on states: “[i]n addition, Ms. Prince stated that she does ‘not know of any specific costs and benefits of these programs to ratepayers,’ when referencing the CIP program compared to other California programs...” A review of the transcript shows that Ms. Prince’s statement that she does not know of any specific cost benefits of these programs to ratepayers are made in response to the question of whether she had any studies to show how the CIP will add to the existing State programs or deal with some of the shortfalls of other programs. It does not stand for the proposition that the CIP has no ratepayer benefits.

- ORA states: “Indeed, ORA’s review of SoCalGas’ *publicly available* Advice Letter filings for the current Programs did not find any information on the amount of increased gas consumption or any corresponding energy efficiency benefits of the projects funded by the CPFPP and the NCCLGOP.”³⁷ While the statement is true, it is entirely disingenuous of ORA to make such a statement knowing that the projected energy efficiency benefits for the Current Programs were presented in the confidential version of the Advice Letter filing. The confidential version of the Advice Letter filing was provided to ORA.³⁸ In fact, ORA cited to the confidential version of the Advice Letter filing in its own prepared testimony acknowledging that SoCalGas provided the projected energy efficiency savings information for the projects signed after Resolution G-3515.³⁹ Moreover, the fact that SoCalGas did not project energy savings for projects signed before Resolution G-3515 is not evidence that those projects did not have energy savings. It simply means they were not projected since SoCalGas was not required to project

³⁷ ORA’s Opening Brief, p. 21 (emphasis added).

³⁸ ORA-01-SA, Response to ORA-07 Question 1(g), pdf p. 205.

³⁹ ORA-01, p. 34, ln. 11 - p. 35, ln. 2.

them. As part of this proceeding, SoCalGas did provide estimated energy efficiency benefits from cogeneration projects for 2014-2016.⁴⁰ Again, ORA referenced this estimated energy efficiency benefits in its prepared testimony.⁴¹

- ORA contends “[t]he proposed CIP would incentivize increased gas usage in the energy sector with a bonus incentive for the use of RNG on top of the CIP discount incentive. Such a proposal would undermine SB 1383.”⁴² It is entirely unclear from ORA’s Opening Brief how the CIP’s incentive to increase demand for RNG undermines the goals of SB 1383. SB 1383 requires a 40% methane reduction below 2013 levels by 2030.⁴³ The legislation focuses on capturing waste methane from organic sources such as livestock, dairies, and landfills and putting the captured methane to use.⁴⁴ The CIP includes a RNG adder for biomethane injected into SoCalGas’ pipelines.⁴⁵ By offering the RNG adder, SoCalGas can support achievement of the SB 1383 methane reduction goals by helping to create increased demand for RNG.⁴⁶

- ORA cites to D.97-07-054, pages 57-60, to argue that “Mr. Austria...was unaware that D.97-07-054 required PBR programs to be audited or have costs tracked at some time during the life of the PBR program.” D.97-07-054, pages 57-60, do not require the Commission or SoCalGas to audit the Current Programs. It requires SoCalGas to provide annual advice letter filings, which SoCalGas has done.

- ORA cites to D.15-06-028 in support of its statement that “the Commission has made it clear that California is close to meeting its GHG requirements...” and that “CHP resources have a significant potential to contribute to the over-generation concern.”⁴⁷ D.15-06-028 is a decision addressing the QF/CHP settlement. The decision sets out CHP procurement targets for the parties involved in the settlement -- the electric utilities. SoCalGas was not a party to the proceeding or the settlement and D.15-06-028 did not set any CHP procurement target for SoCalGas. ORA withdrew its questioning of whether D.15-06-028 set CHP procurement targets for SoCalGas at evidentiary hearings based on objections by SoCalGas and ALJ Atamturk’s

⁴⁰ See SoCalGas Opening Brief, p. 10.

⁴¹ ORA-01, p. 23.

⁴² ORA’s Opening Brief, p. 26.

⁴³ SCG-01, p. 3, ln. 8-9.

⁴⁴ *Id.*, at p. 3, ln. 9-11.

⁴⁵ *Id.*, at p. 3, ln. 14-15.

⁴⁶ *Id.*, at p. 3, ln. 16-17.

⁴⁷ ORA’s Opening Brief, p. 28.

request that ORA explain how D.15-06-028 was applicable to SoCalGas.⁴⁸ It is disingenuous for ORA to pursue this line of argument again in its Opening Brief. Furthermore, D.15-06-028 is limited to that proceeding and is not as broad as ORA portrays it to be. For example, D.15-06-028's concern of potential overgeneration caused by CHPs relates to CHPs that are selling electricity to the electric grid. As SoCalGas explained in its Opening Brief, most onsite CHPs that may be eligible for the CIP do not sell electricity to the electric grid.⁴⁹

- ORA contends that the CIP “may potentially have some duplication or overlap with programs such as the California Advanced Homes Program (CAHP)...”⁵⁰ ORA is incorrect. The CAHP is a program for residential customers. Residential customers are not eligible for the CIP.⁵¹ Therefore, there is no duplication or overlap between the CIP and CAHP.

- ORA contends that “SoCalGas’ most recent submission to the Commission indicates the adequacy of its backbone transmission capacity and the presence of slack capacity on the transmission system. However, it is unclear SoCalGas has considered the uncertainty and reduced capacity of Aliso Canyon with its request to continue these programs.”⁵² ORA relies on this uncertainty to argue that the CIP could cause reliability concerns.⁵³ ORA is mistaken. Aliso Canyon has no bearing on SoCalGas’ backbone transmission capacity and slack capacity analysis because it is only a measure of SoCalGas’ capacity to receive supplies from interstate pipelines and local California natural gas producers. Gas storage capacity is not included as part of that analysis. Further, Advice Letter No. 5022, clearly shows that there is enough capacity to cover any potential increase in gas throughput from the CIP.⁵⁴ As SoCalGas has shown, even if the CIP results in a net increase of natural gas throughput, the increase would be too small to present any reliability concerns.

IX. SCGC INAPPROPRIATELY ATTEMPTS TO INTRODUCE NEW INFORMATION FOR THE FIRST TIME IN ITS OPENING BRIEF.

SCGC improperly introduces for the first time in its Opening Brief a report entitled “Energy and Environmental Economics and the Deep Decarbonization Pathways Project.” This

⁴⁸ Transcript Vol. I (R.Prince), p. 26, ln. 1 - p. 28, ln. 8.

⁴⁹ SoCalGas’ Opening Brief, p. 7.

⁵⁰ ORA’s Opening Brief, p. 33.

⁵¹ SCG-05, p. 9, ln. 15-18.

⁵² ORA’s Opening Brief, p. 31.

⁵³ *Id.*

⁵⁴ ORA-01-SA, SoCalGas Advice Letter No. 5022, pp. 2-3, pdf pp. 250-251.

