

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application For Rehearing of Resolution
ALJ-391.

Application 20-12-011

**PUBLIC ADVOCATES OFFICE OPPOSITION TO
SOUTHERN CALIFORNIA GAS COMPANY'S MOTION FOR STAY OF
COMPLIANCE WITH RESOLUTION ALJ-391**

Pursuant to Commission Rule of Practice and Procedure 11.1(e), the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) files this Response opposing the stay requested in *Southern California Gas Company's Motion to Stay Resolution ALJ-391, to Shorten Time to Respond to Motion, and Expedited Ruling on the Motion* (Stay Motion) filed December 21, 2020.

Resolution ALJ-391 (ALJ-391) requires Southern California Gas Company (SoCalGas) to comply with Cal Advocates' discovery requests pending for over seven months within the next thirty days. Compliance with ALJ-391 will require the utility to provide Cal Advocates, among other things:

- (1) Access to the utility's SAP system to conduct an audit of the utility's accounts;
- (2) Sufficient information to identify the accounts SoCalGas claims are "100% shareholder-funded" so that Cal Advocates can make that determination for itself;
- (3) A privilege log and attorney declaration supporting any claims of privileged information contained in its SAP system; and
- (4) Three confidential declarations SoCalGas provided to the Commission with its December 2, 2019 motion for reconsideration/appeal.

SoCalGas' claims of "irreparable harm" as a result of providing this information to Cal Advocates are pure fiction founded upon SoCalGas' argument – soundly rejected in

ALJ-391¹ – that Cal Advocates is not entitled to the same information as any other office or division of the Commission.

Contrary to the utility’s arguments, providing this information to Cal Advocates does not require the utility to disclose privileged information – the order requires a privilege log to protect such information.² Nor will it infringe on the utility’s First Amendment rights of association. As ALJ-391 explains, Public Utilities Code § 583 and General Order 66-D provide adequate protection for any confidentiality claims made by the utility.³

Five days ago this Commission found in ALJ-391 that SoCalGas had failed to establish a *prima facie* case of First Amendment infringement.⁴ ALJ-391, which is based on well-settled law, is clear that Cal Advocates is entitled to all of the discovery described above: Cal Advocates has a statutory right to conduct an audit of the utility's accounts,⁵ Cal Advocates is entitled to the privilege log and supporting declarations it has requested,⁶ and Cal Advocates is entitled to the declarations provided to support SoCalGas’ motion for reconsideration/appeal described above.⁷

Nothing has changed in the five days since ALJ-391 was adopted by this Commission. That resolution is legally sound so that it is highly unlikely SoCalGas’ will prevail on appeal. As such, SoCalGas' motion for stay to comply with the requirements

¹ ALJ-391, p. 24 and Findings 2, 6, & 7.

² ALJ-391 Ordering Paragraph 8.

³ ALJ-391 Finding 9.

⁴ ALJ-391 Finding 17.

⁵ ALJ-391, p. 11.

⁶ ALJ-391, p. 24 and Finding 2, 6, & 7. SoCalGas objects to the requirement that any privilege log be accompanied by an attorney declaration “under penalty of perjury by a SoCalGas attorney that the attorney has reviewed the materials associated with the privilege claim and that such privilege claim has a good faith basis in the law, and the specific legal basis, with a citation, for withholding the document.” The utility claims this is an “unprecedented requirement of compelled attorney testimony.” SoCalGas ignores the fact that this is precisely the same requirement imposed on the utility in its civil court proceedings regarding the Aliso Canyon leak. See the discussion at pages 14-17 of the Cal Advocates Comments on Draft ALJ-391, available at <https://www.publicadvocates.cpuc.ca.gov/general.aspx?id=4444>.

⁷ ALJ-391, Ordering Paragraph 2.

set forth in ALJ-391 has no merit; SoCalGas will not be irreparably harmed in any manner through compliance with ALJ-391. Indeed, the harm to the regulatory process in granting the stay is far greater. The California Court of Appeals has expressly endorsed the Commission’s own holdings that “[t]he withholding of relevant information causes substantial harm to the regulatory process, which cannot function effectively unless participants act with integrity at all times.”⁸

For all of these reasons, the utility's Motion for stay should be ruled on quickly, as requested by SoCalGas, and rejected.

Respectfully submitted,

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⁸ *Pacific Gas & Electric Co. v. Public Utilities Com.*, 237 Cal. App. 4th 812, 865 (2015), quoting D.13-09-028, 2013 Cal.P.U.C. Lexis 514 at pp. *51-*52.