

No. _____

**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA**

SECOND APPELLATE DISTRICT, DIVISION ____

SOUTHERN CALIFORNIA GAS COMPANY,

Petitioner,

v.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA,

Respondent.

**EXHIBITS TO THE PETITION FOR WRIT OF REVIEW,
MANDATE, AND/OR OTHER APPROPRIATE RELIEF, MOTION
FOR EMERGENCY STAY OR OTHER INJUNCTIVE RELIEF**

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IMMEDIATE RELIEF REQUESTED BY MARCH 16, 2021

Judicial Review Sought in A2012011, Resolution ALJ-391, and
Discovery Disputes between Public Advocates Office and Southern
California Gas Company, May 2020, CAL ADVOCATES-TB-SCG-2020-
03, and October 2019, CALADVOCATES-SC-SCG-2019-05 (not in a
proceeding)

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

**SOUTHERN CALIFORNIA GAS COMPANY'S (U 904 G) REPLY IN SUPPORT OF ITS
MOTION FOR RECONSIDERATION/APPEAL TO THE FULL COMMISSION
REGARDING ADMINISTRATIVE LAW JUDGE'S RULING IN THE DISCOVERY
DISPUTE BETWEEN PUBLIC ADVOCATES OFFICE AND SOUTHERN
CALIFORNIA GAS COMPANY, OCTOBER 7, 2019
(NOT IN A PROCEEDING)**

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CALIFORNIA GAS COMPANY, OCTOBER 7, 2019
(NOT IN A PROCEEDING)**

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Consistent with California Public Utilities Commission (“Commission” or “CPUC”) procedure, SoCalGas submitted its Motion for Reconsideration/Appeal on December 2, 2019. CalPA filed its Response on December 17, 2019. With the permission of Administrative Law Judge (“ALJ”) Regina DeAngelis, SoCalGas now respectfully submits this Reply in Support of its Motion for Reconsideration/Appeal.¹

I. INTRODUCTION

CalPA’s response primarily relies on its claim that it is statutorily entitled to demand whatever information it wants from SoCalGas as a regulated utility as long as CalPA deems it necessary. However, CalPA fails to recognize that the fundamental constitutional rights at issue here prevail over any statute, regulation, or rule. There is a higher authority than the Public Utilities Code—the United States and California Constitution—and any interpretation of CalPA’s statutory authority cannot render constitutional protections meaningless.

SoCalGas submitted four separate declarations showing that its compelled disclosures to CalPA and the likelihood of CalPA’s additional demands for disclosure have chilled people’s willingness to associate with SoCalGas to pursue political expression. The harm here is real. Rather than respond to this evidence raising constitutional concerns about free speech, free association, and the right to privacy, CalPA dismisses it all in one sentence as “self-serving.” (Resp. at p. 13.) Similarly, CalPA does not address at all the merits of the broadening harm to other regulated utilities such as San Diego Gas & Electric Company (“SDG&E”) and the other data requests demonstrating continued harm via CalPA’s ever-widening investigation into constitutionally protected materials. CalPA relegates its dismissal of this harm to just one footnote discussing only procedure. CalPA is silent on addressing the fact that the reason CalPA even received the constitutionally protected materials under protest by SoCalGas and SDG&E on an entirely different set of contracts was because of CalPA’s claim of entitlement to those materials under ALJ DeAngelis’ November 1 Ruling.

¹ On December 19, ALJ DeAngelis granted SoCalGas permission to file this reply. See ALJ DeAngelis’ email granting SoCalGas permission attached hereto as Attachment A.

To be clear, SoCalGas does not assert that CalPA may never conduct discovery into shareholder-funded activities; indeed, SoCalGas has turned over such material during the course of CalPA’s investigation. However, where—as here—the discovery impinges on SoCalGas’ (and others’) constitutionally protected rights, CalPA must demonstrate that its demands are justified by a compelling interest and show how they are narrowly tailored. Instead of making this required showing, CalPA rests on Public Utilities Code Sections 309.5 and 314, which it claims entitles it “to inspect all regulated utilities’ books and records “in their entirety” without any qualification, so long as CalPA itself “deems it necessary” to do so. (*Id.* at p. 17.)

When constitutionally protected material is at issue—regardless of whether it reflects ratepayer- or shareholder-funded activity—that statutory language does not shield CalPA from avoiding the government’s burden (which CalPA cannot meet) under the Constitution. CalPA has cited no legal authority supporting such a vague and sweeping interpretation that would not only read out of the statute the requirement that CalPA’s inquiry must be linked to its statutorily-defined scope of duties, but also read out constitutional protections as long as CalPA unilaterally “deems it necessary.” The full Commission should not endorse this breathtaking interpretation, which would effectively render CalPA’s authority unbounded by the Constitution.

Even now, CalPA is unwilling to commit to exactly what compelling interest its document demands serve. CalPA contends that it has a right to inspect the contracts in the course of its duties to determine whether the contracts were ratepayer- or shareholder-funded. (*Id.* at p. 16.) However, as SoCalGas has repeatedly explained, the contracts at issue here are 100% shareholder funded and do not state their source of funding. Nothing in those contracts indicates whether ratepayer funds were used. As noted in the initial meet and confer, in order to determine whether ratepayer funds were used, CalPA would need to look at accounting records, rather than the contents of these contracts. But CalPA still indiscriminately demanded the disclosure of copies of those contracts, purportedly to ensure “certainty” and “thoroughness.” (*Id.* at p. 10.)

CalPA also vaguely claims, without evidence, that disclosures of the contracts are necessary to ensure that contracted-for activities are consistent with “statutory and Commission requirements.” (*Id.* at p. 8.) However, CalPA has not specifically cited and explained any alleged statutory or Commission requirements at issue. In fact, CalPA acknowledges (as it must) that shareholder-funded contracts and communications are not improper or prohibited.

CalPA’s interpretation of its discovery power is so broad and arbitrary as to be meaningless. Among several vague justifications about “potential improprieties,” CalPA purports to carry its constitutional burden by citing ratepayers’ interests in “achieving a least-cost-path to meeting the state’s decarbonization goals.” (*Id.*) These purported justifications demonstrably establish the over-breadth and vagueness of the statutes on which CalPA relies. SoCalGas can only guess what goals CalPA is talking about and how CalPA’s demands implicate a “least-cost-path” to meeting them. More importantly, CalPA offers no evidence to substantiate its arguments and justify its intrusion on SoCalGas’ and others’ constitutional rights.

CalPA’s assumption that it can evade constitutional limitations based on whatever incomprehensible link to ratepayers it can devise is a dangerous assertion of unchecked state power. The resulting harm is even more acute in a non-proceeding that is largely devoid of procedural protections. CalPA has a constitutional obligation to do much more to justify its demands. Its failure to do so means that SoCalGas’s motion for reconsideration should be granted.

II. ARGUMENT

A. CalPA Embraces the View That It Has Limitless Authority to Seek “Any Information” It Deems Necessary from SoCalGas.

CalPA’s assertion of authority is as astonishing as it is overbroad. According to CalPA, it has the “power to inquire into *any aspect* of regulated utilities’ records.” (Resp. at p. 9, italics added.) It can compel SoCalGas to disclose “*any information*,” and it can do so “at *any time*.” (*Id.*, italics added.) Remarkably, this “right” is “not qualified.” (*Id.*) In short, CalPA’s authority is apparently unbounded, as it interprets Public Utilities Code Sections 309.5(e) and 314 to

“grant that authority,” to require the production of whatever CalPA wants, even if that “delve[s] into SoCalGas’ political affiliations and communications.” (*See id.* at pp. 10-11.)

CalPA asserts that its authority is derived from the “plain language of Pub. Util. Code § 309.5(e).” (*Id.* at p. 16.) But under CalPA’s interpretation, what qualifies as “necessary to perform its duties” knows no real bounds.² CalPA contends that “*all* of SoCalGas’ books and records” must be inspected “to ensure ratepayers are not being harmed” (*Id.* at p. 12, italics added), as do all of SoCalGas’ constitutionally protected lobbying activities, which “*may* have affected” various “ratepayer[] interests.” (*Id.* at p. 8, italics added.) But presumably *everything* SoCalGas does “may,” in CalPA’s view, affect “ratepayer interests.”³ Thus, CalPA effectively re-writes § 309.5(e), rendering the phrase “to perform its duties” surplusage. (See *Hudec v. Superior Court* (2015) 60 Cal.4th 815, 828 [“surplusage” “is, of course, to be avoided if possible,” citing *People v. Hudson* (2006) 38 Cal.4th 1002, 1020].) In fact, CalPA admits it has done as much when it stated that it “may seek ‘any’ information it deems necessary, whether that be information related to ratepayer funded activities or shareholder funded activities.” (Reply of the Public Advocates Office to Response of SoCalGas in Discovery Dispute Between Public Advocates Office and Southern California Gas Company, October 2019 (filed October 31, 2019) (“Reply to Motion to Compel”), at p. 4 (footnote omitted).) CalPA also asserts that once it determines, at its sole discretion, that certain information is necessary to perform its duties, then there is no limitation on the type of information it can seek. (*Id.*) Based on this reasoning, the only real distinction between what CalPA has access to and what it does not is whether CalPA has demanded it yet.⁴

² In fact, CalPA repeatedly asserts that it does not even have to provide any justification as to how the information is necessary to perform its duties. (See, e.g., Resp. at p. 7 fn. 22.)

³ Indeed, when confronted with the fact that this same broad logic would justify the disclosure of SoCalGas’ employees’ voting preferences, CalPA simply says that such an example is “entirely different.” (Resp. at p. 15). Yet CalPA does not (and cannot) explain *how* it is different—a sign that CalPA’s interpretation of its authority is far too broad.

⁴ Just as CalPA arrogates to itself the authority to say what is and is not “necessary,” so too does it claim such boundless authority to say what information is and is not “relevant.” In a lawyerly turn of phrase, CalPA does not deny that it has funneled information to SoCalGas’ litigation adversaries and

Such unfettered access to constitutionally protected speech is directly at odds with core constitutional principles. “The constitutional right of free expression” was “designed and intended to *remove* governmental restraints from the arena of public discussion,” not impose them (*Cohen v. California* (1971) 403 U.S. 15, 24, italics added), and “*all* speech” is “presumptively protect[ed]” “against government interference.” (*United States v. Alvarez* (9th Cir. 2010) 617 F.3d 1198, 1205, *aff’d* (2012) 567 U.S. 709 [“[T]he government [must] demonstrate, either through a well-crafted statute or case-specific application, the historical basis for or a compelling need to remove some speech from protection.”].) CalPA’s boundless definition of its authority would bypass such protections, leaving “the protection of [SoCalGas’] freedoms to the whim” of CalPA. (*Stanford v. State of Tex.* (1965) 379 U.S. 476, 485.) In effect, CalPA seeks the “opportunity for [its] officers to rummage” through SoCalGas’ “files” in order to “intrude into or to deter normal”—and constitutionally protected—“decisions.” (*Zurcher v. Stanford Daily* (1978) 436 U.S. 547, 566.) The First Amendment does not allow for such sweeping assertions of state power at the expense of individuals’ freedom of association, expression, and petitioning of the government.⁵

CalPA asserts that its “contentions are grounded in the plain language of [the] statute and [it] is not broadening the interpretation of the statute beyond this plain language.” (Resp. at p. 16.) But no matter how many times CalPA reiterates that its powers are statutorily derived (*Id.*

the media, but states that it has “not provided any privileged or irrelevant information to” other parties. (Resp. at p. 13, bold and italics added.) But what qualifies as “privileged” or “irrelevant,” of course, is up to CalPA, and given how broadly CalPA has defined what is “relevant” to its mandate, it is difficult to conceive of what remains as “irrelevant information” it has not funneled to SoCalGas’ litigation adversaries and the media. Furthermore, CalPA ignores the point that was made by SoCalGas’ Motion for Reconsideration/Appeal: that CalPA is depriving SoCalGas of due process by abusing its uniquely-held authority when it conducts discovery outside of any proceeding and provides information to litigation adversaries and media who would not have otherwise been able to obtain this information in any formal proceeding since it has no relevance to any formal proceeding.

⁵ CalPA asserts that its discovery requests to SDG&E are irrelevant here. (Resp. at p. 3 fn. 6.) But in the same breath it concedes that SDG&E’s objection requires a similar analysis—asserting that the Commission should deny it on the “same grounds.” (*Id.*) In any event, CalPA’s SDG&E requests indicate that CalPA has no intention to halt its infringement of First Amendment rights—whether those of SoCalGas or others—unless the Commission or a court requires it to.

at pp. 4, 9, 10, 13-16), statutes must yield to the Constitution.⁶ And CalPA seemingly concedes (see *id.* at pp. 4, 11-12, 20) the “well established” fact “that corporations such as [SoCalGas] have the right to freedom of speech.” (*Pac. Gas & Elec. v. Pub. Utils. Comm’n* (2000) 85 Cal.App.4th 86, 93, citation omitted.) If it were the case that—as CalPA contends—“SoCalGas’ status as a regulated, public entity *mandates* that its records and books be subject to inspection” without limit (Resp. at p. 13), then those First Amendment protections would be presumptively eviscerated, not just for SoCalGas but for the entities and persons with which it associates to engage in political expression. Standing solely on its power to regulate an industry, the government could compel disclosure of membership in an organization engaged in advocacy of particular beliefs, which the Supreme Court has held to be “of the same order” as requiring adherents of particular religious faiths or political parties to wear identifying arm-bands. (*NAACP v. Alabama* (1958) 357 U.S. 449, 462.)

To avoid an unconstitutional result—and a reading of § 309.5 that would render part of it surplusage—the only way to interpret the statute is as a *restriction* on CalPA’s authority. CalPA cannot simply compel the production of any information it wants. It only has the authority to compel the production of documents “necessary to perform its duties,” and those “duties” must be clearly articulated and authorized by statute. Moreover, when CalPA *does* seek the production of constitutionally protected speech, it must show *why* the information it seeks is “necessary” to a compelling government interest—as the United States Supreme Court, the Ninth Circuit, and the California Supreme Court have all held. (See *NAACP, supra*, 357 U.S. at pp. 460-461; *Perry v. Schwarzenegger* (9th Cir. 2010) 591 F.3d 1147, 1161; *Britt v. Super. Ct.* (1978) 20 Cal.3d 844, 855-856.)

⁶ CalPA cites D.06-12-029 for the proposition that it “has the right to inspect the books and records of a utility holding company.” (Resp. at p. 10 fn. 29.) However, D.06-12-029 revised the affiliate transaction rules and General Order 77-L and does not address CalPA’s discovery authority, nor did any constitutionally protected materials appear to be at issue.

B. CalPA’s Cursory Response in No Way Refutes SoCalGas’ Contention That Its (and Others’) First Amendment Rights Have Been Infringed.

CalPA admits that “SoCalGas is entitled to First Amendment protections.” (Resp. at p. 13.)⁷ SoCalGas must therefore demonstrate a “prima facie showing of arguable first amendment infringement” (*Perry, supra*, 591 at p. 1160, citations omitted), which it has plainly done in this dispute. CalPA’s argument that SoCalGas’ evidence is “self-serving” is unavailing, as are CalPA’s attempts to demonstrate that the information sought is narrowly tailored to serve a compelling governmental interest.

1. SoCalGas Has Made a Prima Facie Showing of First Amendment Infringement.

SoCalGas has made its prima facie showing of First Amendment infringement, demonstrating that CalPA’s demands have *already* resulted in “(1) harassment, membership withdrawal, or discouragement of new members, or (2) other consequences which objectively suggest an impact on, or ‘chilling’ of,” speech and association by not only SoCalGas itself, but also those with whom it has attempted to associate. (*Perry, supra*, 591 F.3d at p. 1160, citation omitted.) SoCalGas provided sworn declarations from SoCalGas Vice President Sharon Tomkins (Declaration of Sharon Tomkins), the head of a government-relations and public-affairs firm (Declaration 5), and two other government-relations professionals (Declaration 4; Declaration 6)—all of whom speak to the chilling effect of compliance. Direct statements from third parties that the government’s actions will, for instance, “drastically alter how [they] associate with SoCalGas in the future” are more than enough to establish a prima facie case and constitute evidence that the issue is ripe. (Declaration 4 ¶ 5.)

⁷ CalPA seems to imply that SoCalGas waived its First Amendment argument by not including it in a response to a Data Request made “prior to the filing of the first motion to compel.” (Resp. at pp. 6-7.) But arguments in CPUC proceedings are not waived as long as “[t]he CPUC ha[s] a sufficient opportunity to address” them, even if they are not raised until a “motion for rehearing.” (*Pac. Bell v. Pac W. Telecomm, Inc.* (9th Cir. 2003) 325 F.3d 1114, 1129.) SoCalGas has given the Commission ample opportunity to address its First Amendment arguments in both its opposition to the October 7, 2019 Motion to Compel, its November 4, 2019 Emergency Motion to Stay, and its current Motion for Reconsideration/Appeal. (See also *Brookhart v. Janis* (1966) 384 U.S. 1, 4 [“There is a presumption against the waiver of constitutional rights.”].)

CalPA’s response that these declarations are “self-serving” does nothing to show otherwise. For starters, three of the four declarations were submitted by outside third parties whose contracts are at issue. And even if those declarations *were* “self-serving,” that would hardly make a difference as far as the constitutional analysis is concerned: courts routinely find “self-serving” declarations to be sufficient. (See, e.g., *Dole v. Serv. Employees Union, AFL-CIO, Local 280* (9th Cir. 1991) 950 F.2d 1456, 1458-1459 [holding that union made a prima facie case by submitting declarations primarily from union members and employees]).

In fact, in *Perry v. Schwarzenegger*, the court relied on nearly identical language from one declaration (“will drastically alter how I communicate in the future”), stating that such evidence was “consistent with the self-evident conclusion that important First Amendment interests are implicated by the plaintiffs’ discovery request.” (*Perry, supra*, 591 F.3d at p. 1163). There, as here, the evidence created a “reasonable inference that disclosure would have the practical effects of discouraging political association and inhibiting internal . . . communications that are essential to effective association and expression.” (*Id.*)

There is also no merit to CalPA’s argument that First Amendment infringement did not occur because CalPA “is not prohibiting SoCalGas from using shareholder funds to pursue its lobbying activities.” (Resp. at p. 4.) CalPA does not have to *actually prevent* SoCalGas from speaking or associating to violate SoCalGas’ (and others’) rights under the First Amendment. If that were true, the entire concept of “chilling” speech and association—not to mention the Supreme Court’s vagueness and overbreadth doctrines—would vanish. (See, e.g., *NAACP, supra*, 357 U.S. at pp. 460-461.)

SoCalGas has made its showing, and CalPA must therefore demonstrate that the information it demands is narrowly tailored to serve a compelling governmental interest.

2. CalPA Has Failed to Satisfy its Evidentiary Burden to Demonstrate a Compelling State Interest.

CalPA has once again failed to prove that its discovery requests further a compelling state interest. (*Citizens United v. FEC* (2010) 558 U.S. 310, 340; *Governor Gray Davis Committee v.*

Am. Taxpayers Alliance (2002) 102 Cal.App.4th 449, 464.) As an initial matter, CalPA wholly ignores its “evidentiary burden” to show a rational relationship between the information it seeks and its supposed compelling interest. (*Perry, supra*, 591 F.3d at p. 1161, citation omitted.) CalPA, in other words, has not shown—because it cannot—how the benefits from the disclosure of these particular contracts could possibly outweigh the harm to SoCalGas’ (and others’) fundamental rights. (See *id.* [courts must balance whether the interest in disclosure outweighs the harm].) Indeed, the contracts that CalPA demands do not provide any indication as to their source of funding, which CalPA acknowledges is what drove its inquiry in the first place. (Resp. at pp. 5, 11-12, 15.)

Instead, CalPA asserts—in a wholly conclusory and insufficient manner—what its other supposed compelling governmental interests are. Those interests purportedly include ensuring that: (1) the state achieves “a least-cost-path to meeting the state’s decarbonization goals,” (2) “whether the content of the contracts reveals any potential wrongdoing,” (3) “the entities created by SoCalGas...[were] not created to advocate against ratepayer interests,” and (4) “all relevant statutes and Commission rules have been followed.” (*Id.* at pp. 8, 12, 14.) But CalPA makes little effort at attempting to show what these interests actually are, let alone that they are *compelling* ones. The Supreme Court in *Elrod v. Burns* (1976) 427 U.S. 347 reiterated the well-established rule that proving a merely legitimate state interest—as opposed to a paramount and vital one—is not enough to survive “exacting scrutiny.” (*Id.* at p. 362.) CalPA’s vague justifications are wholly insufficient to meet the “exacting scrutiny” standard.

Moreover, CalPA asserts that it is not targeting SoCalGas because of the content of the contracts and the underlying message of the contracts are not at issue. (Resp. at pp. 12, 15.) CalPA then contradicts itself by asserting that the “problematic issue” is “whether the *content* of these contracts reveals any potential wrongdoing” such as whether entities created by SoCalGas were created to *advocate* against ratepayer interests. (Resp. at pp. 12, 14 (*italic added*)). CalPA is clearly investigating the underlying message of the contracts, as well as contracts with other entities beyond CalPA’s inquiry into C4BES’ founding and funding. Those entities have

declared how they, not just SoCalGas, have been harmed by the chilling effect of the disclosures demanded by CalPA. Further, CalPA has failed to identify any ratepayer interest that SoCalGas is allegedly advocating against. SoCalGas’ advocacy for natural gas solutions—including renewable natural gas, hydrogen, and fuel cells—is entirely consistent with State policy, including CalPA’s stated interest in a “least-cost path to meeting the state’s decarbonization goals.” (Motion for Reconsideration/Appeal at p. 17, fn. 16.)

CalPA relies on just one case—*Buckley v. Valeo* (1976) 424 U.S. 1, 66-67—in which the Supreme Court held that certain disclosure requirements served the sufficiently compelling interest of aiding voters in evaluating political candidates and deterring corruption. (Resp. at p. 14 & fn. 43.) Leaving aside, of course, that this dispute does not concern political candidates, the Supreme Court in *Citizens United, supra*, 558 U.S. 310, expressly held both that the government cannot “ban political speech simply because the speaker is an association that has taken on the corporate form” and that *Buckley*’s anti-corruption rationale provided insufficient justification to chill corporate speech. (*Id.* at pp. 349, 357.) And *Buckley*’s concern about *quid pro quo* corruption involving political candidates and officeholders has no bearing here on relationships including private entities—not just the regulated utility—exercising core associational and speech rights. (*Id.* at p. 359.) Accordingly, CalPA has failed to demonstrate the existence of compelling governmental interests that could justify its expansive and intrusive discovery demands.

Additionally, that kitchen-sink approach betrays CalPA’s true position: because it has a “statutory duty[] to protect ratepayer interests” (Resp. at p. 15), it has a compelling interest in *whatever* discovery it seeks. Under CalPA’s interpretation, its statutory power to seek discovery from regulated utilities under §§ 309.5(e) and 314 is essentially unbounded and subject to whatever CalPA deems necessary. (See *supra* section II.A.) But that contention runs up against the “exacting scrutiny” for constitutionally protected association and speech, which—statute or not—cannot be circumvented by a regulatory body vaguely invoking “ratepayer interests.” (Resp. at p. 15.)

3. CalPA's Data Requests Are Not Narrowly Tailored to Achieve the State's Interest.

Even if the Commission concludes that CalPA has proved that its discovery requests serve a compelling state interest (it has not), those requests are *not* narrowly tailored. (See *Citizens United, supra*, 558 U.S. at p. 30; *Britt, supra*, 20 Cal.3d at p. 864; see also *NAACP v. Button* (1963) 371 U.S. 415, 433 [First Amendment freedoms may be regulated “only with narrow specificity”].) CalPA's two-sentence narrow-tailoring analysis can be boiled down to the following: we could have sought more “lobbying” contracts, but we haven't yet. (See Resp. at p. 15.) That, however, is not the relevant standard. The government's action, though it “need not be the least restrictive means of furthering” a compelling interest, “may not burden substantially more speech than necessary to further [those] interests.” (*United States v. Baugh* (1999) 187 F.3d 1037, 1043.)

CalPA's own assertions undermine any notion that its discovery demands satisfy that exacting standard. Indeed, CalPA argues in part that its demands are not aimed at “investigating the message of the contracts, but SoCalGas' activities related to the funding of those contracts.” (Resp. at p. 15.) But if CalPA truly wants to figure out how SoCalGas funds its lobbying activities, it need not look to the *content* of those contracts, as opposed to SoCalGas' “accounts and books,” pursuant to the authority it also claims under § 314.⁸ CalPA clearly recognizes this fact when it states “[CalPA] is investigating the SoCalGas' role and funding in lobbying activities; whether such activities are shareholder or ratepayer funded, and the historical financial data regarding whether such activities were ever ratepayer funded. The utility's financial records

⁸ CalPA dismisses as “dicta” (Resp. at p. 20) the Commission's implicit recognition that it is not concerned with SoCalGas' *shareholder*-funded political activities. (Application of SDG&E (U902M) for Authority, Among Other Things, to Update Its Electric and Gas Revenue Requirement and Base Rates Effective on Jan. 1, 2019 (Cal.P.U.C. Sept. 26, 2019) 2019 WL 5079235 [D.19-09-051] at p. *205 [recognizing that to the extent a regulated utility is using *ratepayer* funds on potentially inappropriate political activity, “the Commission will address such activities in the appropriate proceeding.”].) But even if dicta, it hardly follows that such well-considered restraint by the Commission itself, in contrast to CalPA's own position, is not something the Commission should continue to adhere to in this dispute, particularly given the absence of narrow tailoring in CalPA's improper, expansive, and intrusive discovery demands.

related to such activities are necessary to fully investigate the utility’s actions.” (Resp. at p. 16.) Here, CalPA demands substantially more information than necessary to satisfy its stated interest. As such, its demands are not narrowly tailored.

Further, CalPA’s claim that its request for contracts is narrowly tailored because it only sought contracts in the Balanced Energy IO and not all “lobbying” contracts is belied by CalPA’s other data requests demanding production of more of SoCalGas’ and SDG&E’s contracts, including 100% shareholder-funded contracts: PubAdv-SDG&E-001-SCS to SDG&E and PubAdv-SCG-001-SCS to SoCalGas. After meet and confers, CalPA clarified that as part of the data requests it was seeking “contracts related to Communications, Advocacy and Public Outreach aimed at local, state and federal government audiences.”⁹ As noted by SoCalGas’ Motion for Reconsideration/Appeal, CalPA used the ALJ Ruling to force both SoCalGas and SDG&E to produce all contracts under protest, including 100% shareholder-funded contracts,¹⁰ that are responsive to those separate data requests.¹¹

⁹ See SoCalGas’ and SDG&E’s responses to the data requests for the full clarification provided by CalPA, including some limitations. SoCalGas’ supplemental response to PubAdv-SCG-001-SCS, Question 01, excluding attachments, and SDG&E’s supplemental response to PubAdv-SDG&E-001-SCS, Question 01, excluding attachments, are attached to the Reply Declaration of Sharon Cohen attached hereto as Attachment B. Additionally, if the Commission deems it necessary to review additional material that SoCalGas has not attached either here or to the Motion to Reconsider/Appeal—for example, related to SDG&E—SoCalGas will work to provide additional evidence, declarations, or argument.

¹⁰ While not all the contracts produced under protest are necessarily related to “lobbying,” the production included sensitive, strategic documents relating to SoCalGas’ and/or SDG&E’s 100% shareholder-funded activities, including political association and free expression related to petitioning governmental bodies.

¹¹ In footnote 6 of its Response, CalPA fails to address the real harm to SoCalGas and SDG&E by using procedural arguments where it benefits its own position, but threatening sanctions when the same arguments are used by the utility to defend against CalPA’s conflation of distinct parties, data requests, and disputes. (See Reply to Motion to Compel, at p. 9.) Moreover, CalPA’s argument that the data request to SDG&E is “irrelevant” contradicts CalPA’s own reasoning and course of action. In meet and confers, whenever both SoCalGas and SDG&E tried to use reasoning similar to CalPA’s footnote 6 that these issues should be treated as separate data requests and disputes, CalPA was not willing to treat them as such, relying on the November 1 ALJ Ruling as a blunt instrument, even when SDG&E was not part of its order. Given the threat of sanctions in not complying with an ALJ’s order, SoCalGas and SDG&E felt they had no choice but to produce separate materials at issue under protest. Thus, the ever-widening harm is real and ripe for the Commission’s attention.

Clearly CalPA has not narrowly tailored its data requests because CalPA believes it does not need to, armed with the ALJ Ruling and given its breathtaking interpretation of its discovery authority. Because CalPA cannot meet its burden of justifying its intrusion into the associational, speech, and constitutional rights of SoCalGas and those with whom it has associated (and of SDG&E for the same reasons), the Commission should strike the relevant demands.

C. CalPA’s Response Confirms The Lack of Procedural Safeguards That Violates SoCalGas’ Due Process Rights.

As CalPA’s Response plainly indicates, these (non)proceedings lack the procedural guardrails necessary to protect SoCalGas against the excesses of the unlimited authority CalPA asserts. As SoCalGas has explained in its Motion for Reconsideration/Appeal, both the California Constitution and the Commission’s own Code of Conduct mandate that parties—even regulated entities—are entitled to due process. (Cal. Const. art. XII, § 2; CPUC, *Strategic Directives, Governance Process Policies, and Commission-Staff Linkage Policies* (Feb. 20, 2019) at p. 21; see also U.S. Const. amend. XIV.) And of course the need for those procedural protections is heightened where, as here, fundamental freedoms like political association and speech are threatened. (See *NAACP v. Button*, *supra*, 371 U.S. at p. 438.)

CalPA’s conclusory claims that “adequate due process has at all times been provided” here (Resp. at p. 18) cannot be squared with the facts of what has transpired so far. CalPA acknowledges, as it must, that the Commission’s rules do not apply to this matter “outside of a formal proceeding.” (*Id.* at p. 6.) Yet CalPA argues that is of no concern because an ALJ determined that SoCalGas should turn over the documents and because SoCalGas may now appeal that decision to the full Commission.¹² (*Id.* at p. 18.) But an ALJ ruling providing no

¹² CalPA further dismisses SoCalGas’ constitutional concerns by arguing that it can “protect any confidential information by designating it as such.” (Resp. at pp. 13, 18 [citing no case law].) But again, even the production of material subject to a confidentiality restriction does not overcome the First Amendment’s prohibition on the chilling of expressive and associational freedoms. (See, e.g., *Perry*, *supra*, 591 F.3d at p. 1160 fn. 6 [“The mere assurance that private information will be narrowly rather than broadly disseminated . . . is not dispositive.”].)

reasoning and resulting in SoCalGas being forced (on pain of incurring significant daily fines) to disclose the contracts at issue within two business days—in violation of its free-association and free-speech rights—hardly amounts to proper due process. The ability to appeal does not change that calculus, for if it did, that would negate most if not all procedural due process claims.

Moreover, CalPA’s continued leveraging of that ALJ ruling to force the production of additional constitutionally protected material from SoCalGas (and others, such as SDG&E) is a further attempt to bypass due process. CalPA has made clear that it does not take kindly to SoCalGas asserting its due process rights, which further compounds the lack of procedural safeguards when asserting constitutional protections. CalPA has already unfairly characterized SoCalGas’ objections and oppositions to CalPA’s data requests and motions to compel as “frivolous” and “obstructive” and has threatened sanctions: “Should SoCalGas continue to make stale and frivolous arguments that obstruct the Public Advocates Office’s investigation, the Commission should adopt traditional civil court remedies to address and dissuade such continued abuses of process.” (Reply to Motion to Compel, at p. 9.) This further compounds the chilling on SoCalGas’ (and others’) free speech and association, as they must protect their rights under threat of sanctions each time they just object, rendering even the meet and confer process rife with risks if the utility does not succumb to CalPA’s demands.

CalPA claims it seeks “documents that it is [statutorily] entitled to obtain” (Resp. at p. 18), which—given how broadly CalPA interprets its statutory authority—effectively means *any material it wants*. The Commission should step in to ensure CalPA cannot exploit the lack of procedural protections in order to continue to restrain and infringe upon the constitutionally protected associational, expressive, and political activities of SoCalGas and others.

III. CONCLUSION

The Commission should therefore strike the data requests at issue, require CalPA to return or destroy the materials SoCalGas (and SDG&E) were required to produce, require CalPA to prove to a neutral decisionmaker that any future demands impinging on constitutional

freedoms are narrowly tailored to further a compelling interest, and (if necessary) set a briefing schedule for any further filings the Commission deems necessary or appropriate before SoCalGas petitions the California Court of Appeal for a writ of review or other appropriate judicial relief.

Respectfully submitted on behalf of SoCalGas,

By:



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JOHNNY Q. TRAN

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December 27, 2019

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ATTACHMENT A

Document received by the CA 2nd District Court of Appeal.

Carman, Teresa A

From: DeAngelis, Regina <regina.deangelis@cpuc.ca.gov>
Sent: Thursday, December 19, 2019 9:55 AM
To: Tran, Johnny Q
Cc: Sierzant, Corinne M; Lee, Shawane L; Buch, Daniel; Castello, Stephen; Vorpe, Rebecca M.; Randolph, Liane; Guzman Aceves, Martha; Rechtschaffen, Cliff; Shiroma, Genevieve; Batjer, Marybel
Subject: [EXTERNAL] RE: SoCalGas' Request to Reply to Public Advocates Office's Response to SoCalGas' Motion for Reconsideration/Appeal in the Discovery Dispute Between Public Advocates Office and Southern California Gas Company, October 2019 (not in a proceed...

*** EXTERNAL EMAIL - Be cautious of attachments, web links, and requests for information ***

Your request to file a reply is granted.

Regina M. DeAngelis
Administrative Law Judge
California Public Utilities Commission
415.703.2011
regina.deangelis@cpuc.ca.gov

Notice: This communication may contain confidential and/or legally privileged information for the use of the intended recipient(s). Unauthorized use or disclosure is prohibited. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

From: Tran, Johnny Q <JQTran@socalgas.com>
Sent: Wednesday, December 18, 2019 5:17 PM
To: DeAngelis, Regina <regina.deangelis@cpuc.ca.gov>
Cc: Sierzant, Corinne M <CSierzant@socalgas.com>; Lee, Shawane L <SLee5@socalgas.com>; Buch, Daniel <Daniel.Buch@cpuc.ca.gov>; Castello, Stephen <Stephen.Castello@cpuc.ca.gov>; Vorpe, Rebecca M. <Rebecca.Vorpe@cpuc.ca.gov>; Randolph, Liane <Liane.Randolph@cpuc.ca.gov>; Guzman Aceves, Martha <Martha.GuzmanAceves@cpuc.ca.gov>; Rechtschaffen, Cliff <Cliff.Rechtschaffen@cpuc.ca.gov>; Shiroma, Genevieve <Genevieve.Shiroma@cpuc.ca.gov>; Batjer, Marybel <Marybel.Batjer@cpuc.ca.gov>
Subject: SoCalGas' Request to Reply to Public Advocates Office's Response to SoCalGas' Motion for Reconsideration/Appeal in the Discovery Dispute Between Public Advocates Office and Southern California Gas Company, October 2019 (not in a proceeding)

Judge DeAngelis,

Southern California Gas Company (SoCalGas) respectfully requests approval to file its Reply to Public Advocates Office's Response to SoCalGas' Motion for Reconsideration/Appeal by no later than December 27, 2019 (10 days from service of Public Advocates Office's Response).

Johnny Q. Tran
Senior Counsel
Southern California Gas Company | Law Department
555 West Fifth Street, Suite 1400
Los Angeles, California 90013
Tel: (213) 244-2981
Email: JQTran@socalgas.com

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ATTACHMENT B

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REPLY DECLARATION OF SHARON L. COHEN

I, Sharon L. Cohen, declare and state as follows:

1. I am a resident of California over 18 years of age, and my statements herein are based on personal knowledge.
2. I am employed by San Diego Gas & Electric Company (SDG&E) as Senior Counsel – Regulatory.
3. I am submitting this Reply Declaration in Support of Southern California Gas Company’s (SoCalGas) Reply in Support of its Motion for Reconsideration/Appeal to the Full Commission of Administrative Law Judge’s Ruling in the Discovery Dispute Between Public Advocates Office and Southern California Gas Company, October 7, 2019 (Not in a Proceeding) issued on November 1, 2019.
4. On December 4, 2019, SoCalGas and SD&E served their supplemental response to Public Advocates Office (“CalPA”) data requests PubAdv-SCG-001-SCS, Question 01 and PubAdv-SDG&E-001-SCS, Question 01, respectively, and produced 100% shareholder funded contracts under protest. A true and correct copy of SoCalGas’ supplemental response to PubAdv-SCG-001-SCS, Question 01, without attachments, are attached hereto as Exhibit 1. A true and correct copy of SDG&E’s supplemental response to PubAdv-SDG&E-001-SCS, Question 01, without attachments, are attached hereto as Exhibit 2.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 26, 2019.



Sharon L. Cohen

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EXHIBIT 1

Document received by the CA 2nd District Court of Appeal.

PubAdv DATA REQUEST
PubAdv-SCG-001-SCS Q1 Partial
DATE RECEIVED: AUGUST 26, 2019
DATE RESPONDED: NOVEMBER 1, 2019
DATE SUPPLEMENTED: DECEMBER 4, 2019

Subject: Communications, Advocacy & Public Outreach

Please provide the following:

1. Please provide a list of all contracts active in the last 18 months associated with communications, advocacy, and/or public outreach. For each contract, include: scope of work, contract number, expense to date, account (cost center) where cost was recorded, and designation of whether that account was originally recorded to a ratepayer or shareholder funded account. For each contract, indicate whether the contract was competitively bid. If not competitively bid, please provide the sole-source justification documentation, and a copy of the executed contract. Please see attached Excel template.

SoCalGas Original Response 01 Dated November 1, 2019

The same data request was served on both SoCalGas and SDG&E. Since August 26, 2019, the date this data request was initially propounded, SDG&E/SoCalGas has conferred with the Public Advocates Office and its counsel about clarifications to the scope of the data request, as well as extensions of time to respond. SDG&E/SoCalGas appreciates the courtesy afforded by the Public Advocates Office in clarifying the data request and granting the extensions of time to respond.

In accordance with the discussions between the Public Advocates Office and SDG&E/SoCalGas dated August 30, September 25, September 30, and October 8, 2019, the contracts within scope of this data request were determined based on the following clarifications:

“We discussed the focus of the three categories sought. The utilities do not organize their contracts by O&M, but rather by the type of materials or services and by the contract owner organization. You agreed to eliminate a search by O&M, and to instead focus on contracts relating to Communications, Advocacy and Public Outreach aimed at local, state and federal government audiences. This would include contracts related to those government audiences for departments performing Public Affairs, Public Relations, Government Relations, and Community Relations activities, as well as for Monitoring and Reporting activities; but would not include contracts related to franchise-related activities, to mandated or customer programs or services or information to third parties such as contractors (*e.g.*, 811 sessions and materials). With respect to Marketing Services and Production activities in connection with Public Outreach, contracts related to activities promoting a new idea (such as commenting on proposed legislation or public policy) or to changes in public opinion would be responsive to the request; however, activities related to customer programs and services (*e.g.*, promoting potential customer qualification for a program or rate) are not requested.”

In addition, contracts with a value under \$100,000 as well as contracts associated with representation in California Public Utilities Commission proceedings are not within the scope of this data request.

Document received by the CA 2nd District Court of Appeal.

PubAdv DATA REQUEST
PubAdv-SCG-001-SCS Q1 Partial
DATE RECEIVED: AUGUST 26, 2019
DATE RESPONDED: NOVEMBER 1, 2019
DATE SUPPLEMENTED: DECEMBER 4, 2019

SoCalGas objects to this request to the extent it seeks documents and information that are not within the statutory authority delegated to the Public Advocates Office by Pub. Util. Code §§ 309.5 and 314. Subject to and without waiving this objection, SoCalGas responds as follows:

Information contained in the Attached Excel template response PubAdv-SCG-001-SCS Excel Template Question 1 and responsive Contract attachments are confidential and provided pursuant to PUC Section 583, GO 66-D, D.17-09-023 and the accompanying declaration.

Please see the attached Excel template: PubAdv-SCG-001-SCS Excel Template Question 1.

The expenses shown in this attachment were derived by looking at the expenses recorded to the cost centers within the External Affairs & Environmental Strategy organization over the last 18 months (April 1, 2018 – September 30, 2019) as they were originally charged.

With respect to contracts responsive to this Request, a single contract may be utilized by multiple organizations, programs, or initiatives within SoCalGas. Materials and services provisioned under a contract are paid by the appropriate account, as determined by the employee who obtained the materials and services. Contracts that are exclusively shareholder funded have no nexus to ratepayer interests. SoCalGas will produce contracts that have been utilized by ratepayer funded accounts and contracts that have been utilized by both shareholder and ratepayer funded accounts; however, based on the objection stated above, SoCalGas will not produce contracts that are exclusively shareholder funded.

SoCalGas Supplemental Response 01 Dated December 4, 2019:

SoCalGas is producing one 100% shareholder funded contract in response to DR-01, Question 1 under protest based on the Public Advocates Office's assertions that the Administrative Law Judge's Ruling in the Discovery Dispute Between Public Advocates Office and Southern California Gas Company, October 7, 2019 (not in a proceeding) issued on November 1, 2019 (ALJ Ruling) is applicable to this data request. SoCalGas does not agree with the Public Advocates Office that the ALJ Ruling necessarily applies to this data request, as the ALJ Ruling was issued as a result of a dispute between the Public Advocates Office and SoCalGas concerning an entirely different data request. SoCalGas is appealing the ALJ Ruling to the full Commission based on First Amendment and Due Process violations, which applies equally to this data request. As such, SoCalGas does not believe that it should be required to produce the documents until its appeal is heard and resolved. However, in an abundance of caution and in an effort to stay in compliance with the ALJ Ruling if it were deemed to cover more than the specific data request at issue, SoCalGas is producing these documents under protest without waiving any of its rights. Further, one other contract responsive to this request was previously produced to the Public Advocates Office under protest in response to CalAdvocates-SC-SCG-2019-05, Question 8 on November 5, 2019 (Document name "5660056525_Confidential.pdf"). **The information contained in the attachments are confidential and provided pursuant to PUC Section 583, GO 66-D, D.17-09-023, and the accompanying declaration.** As such, these documents are confidential and should not be shared outside of the Public Advocates Office.

Document received by the CA 2nd District Court of Appeal.

EXHIBIT 2

Document received by the CA 2nd District Court of Appeal.

PubAdv DATA REQUEST
PubAdv-SDGE-001-SCS Q1 Partial
DATE RECEIVED: AUGUST 26, 2019
DATE RESPONDED: NOVEMBER 1, 2019
DATE SUPPLEMENTED: DECEMBER 4, 2019

Subject: Communications, Advocacy & Public Outreach

Please provide the following:

1. Please provide a list of all contracts active in the last 18 months associated with communications, advocacy, and/or public outreach. For each contract, include: scope of work, contract number, expense to date, account (cost center) where cost was recorded, and designation of whether that account was originally recorded to a ratepayer or shareholder funded account. For each contract, indicate whether the contract was competitively bid. If not competitively bid, please provide the sole-source justification documentation, and a copy of the executed contract. Please see attached Excel template.

SDG&E Original Response 01 Dated November 1, 2019:

The same data request was served on both SDG&E and SoCalGas. Since August 26, 2019, the date this data request was initially propounded, SDG&E has conferred with the Public Advocates Office and its counsel about clarifications to the scope of the data request, as well as extensions of time to respond. SDG&E appreciates the courtesy afforded by the Public Advocates Office in clarifying the data request and granting the extensions of time to respond.

In accordance with the discussions between the Public Advocates Office and SDG&E/SoCalGas dated August 30, September 25, September 30, and October 8, 2019, the contracts within scope of this data request were determined based on the following clarifications:

“We discussed the focus of the three categories sought. The utilities do not organize their contracts by O&M, but rather by the type of materials or services and by the contract owner organization. You agreed to eliminate a search by O&M, and to instead focus on contracts relating to Communications, Advocacy and Public Outreach aimed at local, state and federal government audiences. This would include contracts related to those government audiences for departments performing Public Affairs, Public Relations, Government Relations, and Community Relations activities, as well as for Monitoring and Reporting activities; but would not include contracts related to franchise-related activities, to mandated or customer programs or services or information to third parties such as contractors (*e.g.*, 811 sessions and materials). With respect to Marketing Services and Production activities in connection with Public Outreach, contracts related to activities promoting a new idea (such as commenting on proposed legislation or public policy) or to changes in public opinion would be responsive to the request; however, activities related to customer programs and services (*e.g.*, promoting potential customer qualification for a program or rate) are not requested.”

In addition, contracts with a value under \$100,000 as well as contracts associated with representation in California Public Utilities Commission proceedings are not within the scope of this data request.

Document received by the CA 2nd District Court of Appeal.

PubAdv DATA REQUEST
PubAdv-SDGE-001-SCS Q1 Partial
DATE RECEIVED: AUGUST 26, 2019
DATE RESPONDED: NOVEMBER 1, 2019
DATE SUPPLEMENTED: DECEMBER 4, 2019

SDG&E objects to this request to the extent it seeks documents and information that are not within the statutory authority delegated to the Public Advocates Office by Pub. Util. Code §§ 309.5 and 314. Subject to and without waiving this objection, SDG&E responds as follows:

Information contained in the Attached Excel template response PubAdv-SDG&E-001-SCS Excel Template Question 1 and responsive Contract attachments are confidential and provided pursuant to PUC Section 583, GO 66-D, D.17-09-023 and the accompanying declaration.

Please see the attached Excel template: PubAdv-SDG&E-001-SCS Excel Template Question 1.

The expenses shown in this attachment were derived by looking at the expenses recorded to the cost centers within the External Affairs organization over the last 18 months (April 1, 2018 – September 30, 2019) as they were originally charged.

With respect to contracts responsive to this Request, a single contract may be utilized by multiple organizations, programs, or initiatives within SDG&E. Materials and services provisioned under a contract are paid by the appropriate account, as determined by the employee who obtained the materials and services. Contracts that are exclusively shareholder funded have no nexus to ratepayer interests. SDG&E will produce contracts that have been utilized by ratepayer funded accounts and contracts that have been utilized by both shareholder and ratepayer funded accounts; however, based on the objection stated above, SDG&E will not produce contracts that are exclusively shareholder funded.

SDG&E Supplemental Response 01 Dated December 4, 2019:

SDG&E is producing 100% shareholder funded contracts in response to DR-01, Question 1 under protest based on the Public Advocates Office's assertions that the Administrative Law Judge's Ruling in the Discovery Dispute Between Public Advocates Office and Southern California Gas Company, October 7, 2019 (not in a proceeding) issued on November 1, 2019 (ALJ Ruling) is applicable to this data request. SDG&E does not agree with the Public Advocates Office that the ALJ Ruling necessarily applies to this data request, as the ALJ Ruling was issued as a result of a dispute between the Public Advocates Office and SoCalGas concerning an entirely different data request. SoCalGas is appealing the ALJ Ruling to the full Commission based on First Amendment and Due Process violations, which applies equally to this data request. As such, SDG&E does not believe that it should be required to produce the documents until the SoCalGas appeal is heard and resolved. However, in an abundance of caution and in an effort to stay in compliance with the ALJ Ruling if it were deemed to cover more than the specific data request at issue, SDG&E is producing these documents under protest without waiving any of its rights. The information contained in the attachments are confidential and provided pursuant to PUC Section 583, GO 66-D, D.17-09-023, and the accompanying declaration. As such, these documents are confidential and should not be shared outside of the Public Advocates Office.

Document received by the CA 2nd District Court of Appeal.

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

**SOUTHERN CALIFORNIA GAS COMPANY’S (U 904 G) MOTION TO SUPPLEMENT
THE RECORD AND REQUEST FOR EXPEDITED DECISION BY THE FULL
COMMISSION ON MOTION FOR RECONSIDERATION/APPEAL REGARDING
ADMINISTRATIVE LAW JUDGE’S RULING IN THE DISCOVERY DISPUTE
BETWEEN THE PUBLIC ADVOCATES OFFICE AND SOUTHERN CALIFORNIA
GAS COMPANY, OCTOBER 7, 2019 (NOT IN A PROCEEDING) IF THE MOTION IS
NOT GRANTED TO QUASH PORTION OF THE SUBPOENA TO PRODUCE ACCESS
TO CERTAIN MATERIALS IN ACCOUNTING DATABASES AND TO STAY
COMPLIANCE UNTIL THE MAY 29TH COMPLETION OF SOFTWARE SOLUTION
TO EXCLUDE THOSE PROTECTED MATERIALS IN THE DATABASES
(NOT IN A PROCEEDING)**

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May 22, 2020

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COMPLIANCE UNTIL THE MAY 29TH COMPLETION OF SOFTWARE SOLUTION
TO EXCLUDE THOSE PROTECTED MATERIALS IN THE DATABASES’
(NOT IN A PROCEEDING)**

Southern California Gas Company (“SoCalGas”) files this motion to supplement the record and request expedited decision by the full California Public Utilities Commission (“CPUC” or “Commission”) on its Motion for Reconsideration/Appeal Regarding Administrative Law Judge’s Ruling (“ALJ Ruling”) in the Discovery Dispute Between The Public Advocates Office and Southern California Gas Company, October 7, 2019 (Not in a Proceeding) (“Motion for Reconsideration/Appeal” or “Appeal”), if SoCalGas’s Motion to Quash Portion of the Subpoena to Produce Access to Privileged Materials in Accounting Databases and to Stay Compliance Until the May 29th Completion of Software Solution to Exclude Those Protected Materials in the Databases (“Motion to Quash”) is not granted.¹

I. INTRODUCTION

The November 1, 2020 ALJ Ruling ordered SoCalGas to produce contracts from a 100% shareholder-funded account, the BALANCED ENERGY IO. Those contracts are associated with SoCalGas’s 100% shareholder-funded activities, including political association and free

¹ Pursuant to the email approval from ALJ DeAngelis on May 22, 2020, this is a substitute filing for the May 20, 2020, filing of substantially the same motion.

expression related to advocating for natural gas, renewable natural gas, and green gas as a part of the solution to achieving the State's decarbonization goals in rulemakings and petitioning other governmental bodies. In its December 2, 2019 Motion for Reconsideration/Appeal to the full Commission, SoCalGas expressed grave concern that intrusion into its constitutional rights would continue if the ALJ Ruling was not reversed. (Motion for Reconsideration/Appeal, at p. 17 ["If the Commission . . . does not reverse the ALJ Ruling, it would set a dangerous precedent that could empower Cal Advocates to subjectively and arbitrarily investigate and dictate what investor-owned utilities may and may not say and who they may and may not associate with, regardless of any nexus to ratepayer funding."].)

Regrettably, SoCalGas's fears have come true. At the request of the Public Advocates Office ("Cal Advocates"), the Commission's Executive Director issued a Subpoena seeking real-time access to all information contained in SoCalGas's SAP accounting system, and Cal Advocates is using that Subpoena to demand access to information associated with SoCalGas's 100% shareholder-funded accounts. SoCalGas takes seriously its obligations as a regulated entity to make its books and records available to the Commission and Cal Advocates on request, and it is working as quickly as practicable to grant Cal Advocates access promptly. But the SAP accounting system includes (among other protected materials) information protected from disclosure under the First Amendment of the U.S. Constitution, as well as its California Constitution counterparts. This includes not only information pertaining to the vendors whose contracts are the subject of the Motion for Reconsideration/Appeal, but also information that identifies consultants with whom SoCalGas works to petition the government and regulators, and invoices that in some instances identify the scope of work that the consultants have performed and reflect the strategic deliberations underlying their work.

Cal Advocates' latest incursion into SoCalGas's First Amendment rights is squarely relevant to the issue raised in the Motion for Reconsideration/Appeal. Accordingly, by this Motion SoCalGas makes two specific requests of the Commission: (1) to supplement the record with its briefing (including with declarations) on its recently submitted Motion to Quash related to the accounting database (SAP system) dispute; and (2) to expedite its decision on the Appeal if SoCalGas's Motion to Quash (served May 19, 2020) is not granted—which seeks to stay compliance with the Subpoena on protected materials and until May 29 for the rest of the SAP system, when SoCalGas's technical solution to prevent Cal Advocates from accessing the First Amendment-protected material (and privileged material) in the SAP system will be complete and SoCalGas can provide Cal Advocates with access to the remainder of its SAP system. If the stay is granted, SoCalGas can provide remote access to the SAP database in a manner that prevents Cal Advocates from accessing its First Amendment-protected material, and to protect that material until the protected status of such information is finally resolved by the full Commission. If the stay is not granted, this second request in this instant motion is important for the Commission to take quick action, as it is clear from Cal Advocates' latest email responding to SoCalGas's submission of the Motion to Quash that absent "full read-only remote access to its accounts and records – including access to all attachments in its accounting system – no later than this Friday, May 22, 2020, . . . Cal Advocates will, among other things, move for sanctions against SoCalGas for violation of the subpoena." (Declaration of Elliott S. Henry ("Henry Decl. ISO Motion to Supplement"), Exh. A.)

II. SUMMARY OF ARGUMENT

A. **By Seeking Information Protected Under the First Amendment In SoCalGas's SAP System, Cal Advocates Has Opened Up a New Threat to SoCalGas's Constitutional Rights**

Cal Advocates has opened up another front on its efforts to obtain production of sensitive, strategic material relating to SoCalGas's 100% shareholder-funded activities, including political association and free expression related to advocating for natural gas, renewable gas, and green gas solutions in rulemakings and petitioning other governmental bodies. As detailed below, Cal Advocates now seeks to obtain information protected by the First Amendment that is stored in SoCalGas's accounting database—its SAP accounting system. Both the United States and California constitutions significantly limit the disclosure of such materials. The ALJ Ruling at issue in the Appeal has emboldened Cal Advocates to continue to assert unlimited authority to investigate SoCalGas's political associations and free expression, even when ratepayer funds are not at issue. That, in turn, has had a substantial chilling effect on SoCalGas's and others' exercise of their constitutional rights to associate with each other, petition the government, and engage in free speech. As SoCalGas noted in its December 2, 2019 Motion for Reconsideration/Appeal, this activity demonstrably runs afoul of the "exacting" scrutiny mandated by the U.S. Supreme Court and the "particularly heavy" burden imposed on the government by the California Supreme Court. (*Britt v. Super. Ct.* (1978) 20 Cal.3d 844, 855.)

B. **The Record on SoCalGas's December 2, 2019 Motion for Reconsideration/Appeal Should be Supplemented to Include a Full Record of Cal Advocates' Latest Effort to Infringe SoCalGas's First Amendment Rights**

As detailed in the May 19, 2020 Motion to Quash, attached hereto in its entirety as Attachment A, Cal Advocates secured a subpoena seeking access to all information and materials accessible in SoCalGas's accounting system. In meet and confers concerning the Subpoena, Cal

Advocates has made it clear that it insists on gaining access to information associated with SoCalGas's 100% shareholder-funded accounts, despite its knowledge that the Motion for Reconsideration/Appeal—which concerns whether Cal Advocates can lawfully obtain information on such accounts—is pending before the full Commission. In fact, Cal Advocates has specifically identified such material as a category of information in which it is particularly interested. (Attachment A [Declaration of Elliott S. Henry in Support of Motion to Quash ["Henry Decl. ISO MTQ"], Exh. F, p. 1 [E-mail from T. Bone to E. Henry dated May 8, 2020]). These continued and increasingly invasive efforts by Cal Advocates to pry into SoCalGas's protected materials are material to the Commission's review of this issue in the Appeal because they show this is a live issue, that Cal Advocates is increasingly emboldened to target the exact material protected by the First Amendment, and that SoCalGas is being denied adequate procedural protections to vindicate its rights as Cal Advocates leverages the threat of huge daily fines to force SoCalGas to acquiesce to Cal Advocates' improper demands.

C. This Latest Controversy Demonstrates The Importance of Resolving the December 2, 2019 Motion for Reconsideration/Appeal on An Expedited Basis, If SoCalGas's Motion to Quash Is Not Granted

Until SoCalGas's Motion to Quash is granted or the Commission grants SoCalGas's December 2, 2019 Motion for Reconsideration/Appeal, whichever is sooner, SoCalGas will continue to suffer harm by being forced to unfairly choose between compliance with Cal Advocates' ever-expanding demands or preserving its fundamental rights. Cal Advocates should not be given free rein to use discovery tools as blunt instruments to force waiver of such rights. To be clear, SoCalGas takes very seriously its compliance with such tools, including the Subpoena at issue, which is why it promptly brought this issue to the Commission's attention once it was clear that efforts at informal resolution were at an impasse over a small scope of materials in this SAP dispute. As exemplified by Cal Advocates' investigations into SoCalGas's

SAP accounting system, SoCalGas will continue to face attempts by Cal Advocates to force disclosure of – and chill – its First Amendment activities. While SoCalGas recognizes that Cal Advocates has broad powers, those powers are not unlimited. If the Motion to Quash is not granted, an expedited ruling on SoCalGas’s Appeal is needed so that a definitive determination can be made – ultimately by the California Court of Appeal or higher courts, if necessary – as to whether SoCalGas should continue to endure Cal Advocates’ ongoing assault on its constitutional rights and to avoid compounding a significant compliance and monetary risk that SoCalGas has every reason to want to avoid.

III. FACTUAL BACKGROUND

A. The Motion for Reconsideration/Appeal

Because the SAP database contains information protected under the First Amendment, the Subpoena raises the same constitutional issues and some of the same content present in the Appeal filed by SoCalGas pending before the full Commission. The Appeal also involves Cal Advocates’ efforts to obtain information on SoCalGas’s 100% shareholder-funded activities.

On August 13, 2019, CalPA served SoCalGas with a data request seeking “all contracts (and contract amendments) covered by the WOA which created the BALANCED ENERGY IO.” (Motion for Reconsideration/Appeal, at p. 5.) In response, SoCalGas produced contracts funded by both SoCalGas ratepayers and shareholders, but it objected to producing its 100% shareholder-funded contracts on the grounds that it exceeded the scope of Cal Advocates’ duties under Public Utilities Code §§ 309.5 and 314. (*Id.*) On October 7, 2019, Cal Advocates moved to compel production of the 100% shareholder-funded contracts. (*Id.* at 6.) In opposition, SoCalGas argued that this request could have a chilling effect on SoCalGas’s First Amendment rights. The ALJ nevertheless granted Cal Advocates motion to compel on November 1, 2019, ordering SoCalGas to produce the documents at issue within *two* business days. On November 4, 2019,

SoCalGas filed an Emergency Motion to Stay the ALJ Ruling. (*Id.* at 8.) But with no ruling on that motion and facing significant potential fines of up to \$100,000 a day (see Pub. Util. Code § 2107), SoCalGas produced the 100% shareholder-funded contracts at issue on November 5, 2019, under protest, and reserved its right to appeal the decision. (*Id.*)

Consistent with Commission precedent establishing the proper procedure to alert the full Commission of an appeal for its consideration where a ruling from an ALJ “may present possible ramifications in other proceedings and/or the issue concerns constitutional rights,” on December 2, 2019, SoCalGas submitted its Motion for Reconsideration/Appeal. (*Id.*) There, SoCalGas explained why the 100% shareholder-funded contracts are entitled to First Amendment protection, and how Cal Advocates failed to meet its evidentiary burden of demonstrating both that it had a compelling government interest in requesting the contracts and that its request was narrowly tailored to achieve that interest. (*Id.* at 10-25.)

B. Cal Advocates’ Data Request and Subpoena Seeking Access to SoCalGas’s Accounting Databases

On May 1, 2020, Cal Advocates served SoCalGas with a data request seeking “[r]emote access to the SoCalGas SAP system to a Cal Advocates auditor no later than May 8, and sooner if possible” and “[i]f remote access is not possible, identify a time and place where the auditor may access the SoCalGas SAP system no later than May 11, 2020.” (Attachment A, [Henry Decl. ISO MTQ, Exh. C [Data Request No. CalAdvocates-TB-SCG-2020-03]].) The Request also sought “[t]raining and assistance for the auditor” to, among other things, “access all SoCalGas accounts” and “to access information regarding all contracts, invoices, and payments made to third parties.” (*Id.*) The data request further demanded a meet-and-confer conference call on May 6, 2020, only three business days after the request was served. (*Id.*)

On May 5, 2020—just two business days after Cal Advocates served its request, and before SoCalGas even had a chance to respond to the data request, much less meet and confer about it—counsel for Cal Advocates sent the Subpoena to SoCalGas via email. (*Id.* at Exh. A .) The Subpoena ordered SoCalGas to provide Cal Advocates (as well as “staff and consultants working on its behalf”) “access to all databases associated in any manner with the company’s accounting systems,” including “both on-site and remote access; on-site access [to] be provided at the times and locations requested by CalPA” “no later than three business days after service of this Subpoena,” that is, by May 8, 2020. (*Id.* at p. 1.) The Subpoena contained no substantive limit to the material Cal Advocates could access in SoCalGas’s accounting systems. The Subpoena was apparently issued based on a one-page declaration, in which the entirety of the good cause justifying the Subpoena was one sentence long. (*Id.* at pp. 2-3.)²

C. SoCalGas’s SAP System

SoCalGas’s SAP accounting system is a vast financial database which includes nearly all financial transactions made by the company, including but not limited to accounting and invoice information on approximately 2,000 vendors. (Attachment A ,[Declaration of Dennis Enrique [“Enrique Decl.”] ¶ 4].) It captures a wide variety of transactions, from invoices with vendors, payments made to third parties, worker’s compensation payments, and individual employee reimbursements. (*Id.* at ¶ 5) Because the system covers all these transactions, it includes a great deal of sensitive information. (*Id.*) The system allows for different levels of access, but those levels of access are generally very broad, and currently cannot be restricted to just certain vendors or discrete categories of information. (Attachment A, Declaration of Kelly Contratto

² The entirety of the purported “good cause” was that “SoCalGas’ responses to data requests in the investigation have been incomplete and untimely.” SoCalGas disputes this substantially oversimplified representation of events.

["Contratto Decl."] ¶ 7].)³ There is no current "out-of-the-box" means of excluding a user from accessing only information and entries for specific vendors, such as law firms or shareholder-funded consultants. (*Id.*) Information protected under the First Amendment affects approximately 20 of the thousands of vendors used by SoCalGas in SAP for any given year. (Attachment A, [Henry Decl. ISO MTQ ¶ 10].)

D. Cal Advocates Leverages the Subpoena to Demand Access To Information Protected By the First Amendment⁴

On May 6, 2020, the parties held a meet-and-confer conference call to discuss the May 1 data request and the Subpoena. During that call, SoCalGas explained that, as a result of the ongoing COVID-19 pandemic, the various legal, accounting, and IT professional personnel required to provide onsite access are primarily working from home, and requiring them to travel to SoCalGas's offices to facilitate such access would pose significant risk to those employees. (Attachment A [Henry Decl. ISO MTQ, Exh. E [Ltr. from J. Wilson to T. Bone dated May 7, 2020]].) SoCalGas also informed Cal Advocates that if it identified specific organizations and cost centers it sought to investigate, SoCalGas could likely provide remote access to those portions of the database in a couple of days, but that in light of the impacts of the COVID-19 pandemic, providing full remote access would take additional time. (*Id.*) Undeterred, Cal Advocates insisted that SoCalGas should make its full SAP database available online as quickly as possible, and even requested whether onsite access could be provided in San Francisco, which

³ Historically, Cal Advocates has requested and received a fixed copy of information pulled from SAP at a certain access level and without attachments. Those productions therefore do not raise the issues presented by the Subpoena and the level of access Cal Advocates is demanding. (Henry Decl. ISO MTQ ¶ 11.)

⁴ SoCalGas's Motion to Quash, submitted on May 19, 2020, contains a full discussion of the meet-and-confer history concerning the Subpoena. (A true and correct copy of the Motion to Quash is attached as Attachment A to this motion.) This section summarizes the key aspects of that history relevant to the First Amendment issues presented in the Appeal.

is subject to its own safer-at-home ordinance generally requiring non-essential employees to work from home. (Henry Decl. ISO Motion to Supplement, ¶ 3.)⁵

Two days later, in an email dated May 8, counsel for Cal Advocates identified eleven accounts for SoCalGas to produce “fixed databases”—that is, copies of the data contained in the SAP database for those accounts. (Attachment A [Henry Decl. ISO MTQ, Exh. F, at p. 1 [Email from T. Bone to E. Henry dated May 8, 2020]].) In that same email, though, counsel for CalPA also asked SoCalGas to produce fixed databases for “all accounts that are 100% shareholder funded,” and “all accounts housing costs for activities related to influencing public opinion on decarbonization policies,” and for SoCalGas to identify “all accounts housing costs for lobbying activities related to decarbonization policies.” (*Id.* at 1-2.) This email first put SoCalGas on notice that Cal Advocates sought to obtain information on 100% shareholder-funded accounts and on accounts related to SoCalGas’s advocacy for natural gas and renewable natural gas as a part of the solution to achieving the State’s decarbonization goals, despite its knowledge that such content protected under the First Amendment is the subject of the Motion for Reconsideration/Appeal. SoCalGas timely asserted its First Amendment objections (as well as objection on other grounds) orally during the meet and confer, and further in its objections to Cal Advocates May 1 companion data request also seeking access to the SAP database. (Henry Decl. ISO MTQ at Exh. G; Henry Decl. ISO Motion to Supplement at Exh. B.)

⁵ Cal Advocates’ demand for onsite access is consistent with its unsupported belief, based only on its “own experience” dealing with the COVID-19 crisis, that SoCalGas’s assertions that the crisis is impairing its ability to respond promptly to Cal Advocates’ discovery requests are “not credible.” (Attachment B, March 24, 2020 Declaration of Johnny Tran in Support of Emergency Protective Order, Exh. C [Email from T. Bone to J. Tran dated March 24, 2020]). It appears Cal Advocates’ belief has not changed, in light of its repeated requests to obtain *onsite* access to SoCalGas’s SAP system, despite the fact that the employees necessary for facilitating such access are working from consistent with the State of California, and the County & City of Los Angeles’s safer-at-home orders.

Three days later, in a letter dated May 11, 2020, SoCalGas informed Cal Advocates that, given Cal Advocates’ request for real-time access, it was investigating how to provide Cal Advocates with such access “without waiving issues it has on appeal related to First Amendment protections conferred on its fully shareholder-funded contracts.” (Attachment A [Henry Decl. ISO MTQ, Exh. G, at p. 1 [Ltr. from J. Wilson to T. Bone dated May 11, 2020]].)

On May 13, 2020, the parties conducted a third meet and confer concerning the Subpoena. (*Id.* at Exh. J [Ltr. from J. Wilson to T. Bone dated May 18, 2020].) SoCalGas informed Cal Advocates that it had identified a potential solution to provide Cal Advocates with real-time access to its SAP database while also preventing Cal Advocates from accessing information protected by the First Amendment. (*Id.*) Specifically, SoCalGas proposed that “access to attachments and invoices [in the SAP system] could be shut off [by default] but could be requested by CalPA’s auditor,” and then “[a]n attorney would then be able to quickly review requested invoices and provide . . . non-appeal-related ones to the auditor.” (*Id.*) CalPA rejected that offer out of hand, stating that it was “not a workable solution”—even though it would have facilitated Cal Advocates’ access to the database more quickly—and that its auditor “needed instantaneous access to all attachments and invoices,” despite Cal Advocates’ knowledge that the database contained material protected by the First Amendment. (*Id.*) Further, despite rejecting SoCalGas’s proposal, which would have facilitated Cal Advocates’ getting access sooner, counsel for Cal Advocates insisted on getting some level of access “pronto,” that the need to prevent Cal Advocates from accessing protected material was the company’s “problem,” and that the company needed to “fix” the issue “permanently and quickly.” (Henry Decl. ISO Motion to Supplement ¶ 4.)

In a letter dated May 18, 2020, counsel for SoCalGas proposed yet another solution to protect SoCalGas's privileged information from disclosure to Cal Advocates. (Attachment A [Henry Decl. ISO MTQ. at Exh. J, p. 2].)) Specifically, SoCalGas stated that it was (and is) writing a special computer program which will prevent Cal Advocates from accessing its material protected by attorney-client privilege and the First Amendment, and that after implementing that program it can provide remote access by May 29, 2020. (*Id.*)

On May 18, 2020, the parties held a fourth meet and confer concerning the Subpoena. (Attachment A [Henry Decl. ISO MTQ ¶ 13].) During that meet and confer, counsel for Cal Advocates did not agree to SoCalGas's request to extend the compliance deadline to May 29. (*Id.*) Instead, it proposed that SoCalGas provide its staff real-time access to the database by the following day, with an agreement that Cal Advocates staff would not look at invoices of law firm accounts. (*Id.*) Cal Advocates further stated that they were not inclined to wait until May 29 for this data, that in their view failure to provide remote access by Tuesday, May 19 would put SoCalGas in violation of the subpoena,⁶ and would recommend "some sort of motion" to obtain access sooner. (*Id.*) Although they requested that SoCalGas continue with their planned software solution, Cal Advocates also stated that the parties were at an impasse with respect to the disclosure of the fully shareholder-funded information and that would only be resolved via motion practice. (*Id.*) Cal Advocates also refused to await resolution of the Appeal before moving forward with seeking access to such information. (*Id.*)

On May 19, 2020, SoCalGas submitted its Motion to Quash. (Attachment A.)

⁶ Cal Advocates had granted extensions to respond, a few additional days at a time, up to and including May 19. (Attachment A [Henry Decl ISO MTQ., Exh. E, [Ltr. from J. Wilson to T. Bone dated May 18, 2020].)

IV. ARGUMENT

A. The Commission Should Permit SoCalGas to Supplement the Record on Appeal with the Factual Information Related to the Accounting Database Dispute.

One of the issues presented in SoCalGas’s Motion for Reconsideration/Appeal (filed on December 2, 2019) is identical to that raised in the current dispute related to SoCalGas’s accounting databases—namely, whether Cal Advocates can lawfully compel the production of information related to SoCalGas’s 100% shareholder-funded activities, including political association and free expression related to advocating for natural gas solutions in rulemakings and petitioning other government bodies. (Appeal, at p.2; Attachment A.)

SoCalGas acknowledges that Cal Advocates has “broad authority and rights with respect to access to utility information, including the utility’s books and records.” (*In re Pacific Gas & Elec. Co.*, 199 P.U.R. 4th 177, 2000 WL 289723 (Cal. P.U.C. 2000).) However, Cal Advocates’ authority to access SoCalGas’s information is not unbounded. SoCalGas, even as a regulated corporation, has First Amendment rights to freedom of speech, association, and the right to petition the government for redress of its grievances.⁷ Through the Subpoena, Cal Advocates has requested access to databases that contain sensitive information and documents about SoCalGas’s 100% shareholder-funded activities advocating for natural gas, renewable natural

⁷ It is “well established that corporations such as PG&E [and SoCalGas] have the right to freedom of speech,” as the “inherent worth of the speech in terms of its capacity for informing the public does not depend on the identity of its source.” (*Pac. Gas & Elec. Co. v. Pub. Utils. Comm’n* (2000) 85 Cal. App. 4th 86, 93). Indeed, the United States Supreme Court has long rejected the notion that a corporation’s status as a regulated entity “lessens its right to be free from state regulation that burdens its speech.” (*See Pac. Gas & Elec. Co. v. Pub. Utils. Comm’n of Cal.* (1986) 475 U.S. 1, 17 fn. 14, plurality opinion; see also *Consol. Edison Co. of N.Y., Inc. v. Pub. Serv. Comm’n of N.Y.* (1980) 447 U.S. 530, 534 fn. 1 [plaintiff’s status as a regulated utility “does not decrease the informative value of its opinions on critical public matters”].) The First Amendment therefore secures to SoCalGas (like other persons) the freedom of speech, association, and the right to petition the government for redress of its grievances, as does its California constitutional counterpart. (U.S. Const. amends. I, XIV; Cal. Const., art. I, §§ 2(a), 3(a).)

gas, and green gas solutions in rulemakings and petitioning other government bodies—that is, material reflecting core First Amendment activity. (Attachment A [Henry Decl. ISO MTQ, Exh. A, ¶¶ 9, 11, 13].)

Materials accessible through SoCalGas’s SAP database include, among other things, the identities of the contracting parties and vendors without contracts, invoices, line-item descriptions of activities, the scope of activity contemplated by the agreements related to free expression in support of natural gas solutions, the duration of their agreements, and SoCalGas expenditures. (Attachment A [Enrique Decl. ¶ 6].) Those materials concern not only the two contracts that were the subject of the Motion for Reconsideration/Appeal, but also for other vendors performing 100% shareholder-funded activities related to SoCalGas’s advocacy for natural gas and other solutions reflecting its political views on the State’s energy policy. (*See id.*) The information in the database would further reveal to Cal Advocates other entities and persons with which it associated in furtherance of that expression. (*Id.* ¶¶6-7) They therefore strike at the very heart of SoCalGas’s freedoms under the First Amendment and are entitled to its protections from compelled disclosure to the government. (See, e.g., *Britt, supra*, 20 Cal.3d at p. 861; *Perry, supra*, 591 F.3d at pp. 1162-1163; *AFL-CIO, supra*, 333 F.3d at pp. 168, 170, 177-178).

Because the issues present in the accounting database dispute mirror the issues already before the Commission, the Commission should grant SoCalGas’s request to supplement the record in the Motion for Reconsideration/Appeal. Cal Advocates’ increasingly invasive efforts by Cal Advocates to pry into SoCalGas’s protected information are material to the Commission’s review of this issue in the Appeal because they show this is a live issue, that Cal Advocates is increasingly emboldened to target the exact material protected by the First Amendment, and that SoCalGas is being denied adequate procedural protections to vindicate its rights as Cal

Advocates leverages the threat of fines to force SoCalGas to acquiesce to Cal Advocates' demands. SoCalGas therefore specifically asks all records attached hereto (including the Henry Decl., and Attachments A-D), be added to the record on the December 2, 2019 Motion for Reconsideration/Appeal.

B. SoCalGas Respectfully Requests That the Commission Expedite Its Decision on the December 2, 2019 Motion for Reconsideration/Appeal If the Motion to Quash is not Granted

The new dispute regarding First Amendment materials in SoCalGas's accounting database demonstrates the need for an expedited resolution of its December 2, 2019 Motion for Reconsideration/Appeal. While the Motion for Reconsideration/Appeal concerned contracts associated with the BALANCED ENERGY IO, the Subpoena would permit Cal Advocates to access additional SAP information related to those same BALANCED ENERGY IO contracts, as well as learn the names and scope of work information for additional vendors involved in SoCalGas's advocacy for natural gas and renewable natural gas as a part of the solution to achieving the State's decarbonization goals. (Attachment A, [Enrique Decl. ¶ 6].) As explained in the Motion for Reconsideration/Appeal and the May 19, 2020 Motion to Quash, these materials are protected under the First Amendment. Yet because the Commission has not rendered a ruling on that issue, SoCalGas faces a dilemma: It could comply with the Subpoena as issued and disclose materials to Cal Advocates, resulting in a severe chilling effect on its First Amendment associational rights, or it can potentially risk fines of up to \$100,000 a day for refusing to comply. (*See* Cal. Pub. Utils. Code §§ 2107, 2018.) Prompt relief via either granting the Motion to Quash or resolution of the Motion for Reconsideration/Appeal, whichever is sooner, would resolve this dilemma.

The "chilling effect" associated with public disclosure of SoCalGas's 100% shareholder-funded political activities has already been occurring. As Andy Carrasco, Vice President,

Strategy and Engagement and Chief Environmental Officer for SoCalGas attests in his recently submitted declaration:

The sensitive nature of [SoCalGas's] discussions goes beyond the substance of the communications or strategy. It encompasses the identity of the consultant, partner or vendor with whom SoCalGas contracts or engages with. In the political arena, alliances are strategic, and, depending on the circumstance, the disclosure of the identity of the organization or individual with whom SoCalGas associates could negatively impact how SoCalGas – or how the consultant, partner or vendor – is perceived or treated by public officials and other public policy stakeholders. As a result of even the December disclosures of several 100% non-ratepayer funded Balanced Energy IO contracts, the information regarding these associations disclosed to Cal Advocates has altered how SoCalGas and its consultant, partner or vendor associates interact with each other, and it has had a chilling effect on these associations. Such a result has (and would further) unduly impinge upon SoCalGas's constitutional right to free association, and to associate with organizations and individuals of its choosing in exercise of its right to petition the government and advocate its position relating to natural gas, renewable natural gas, and green gas solutions.

(Attachment A, Declaration of Andy Carrasco [“Carrasco Decl.”], ¶ 6.)

Proof of this “chilling effect” also comes from SoCalGas's vendors. For example, one vendor that has contracted with SoCalGas to, among other things, create public and internal communications and develop messaging for the use of natural gas technologies and the advancement of natural gas and renewable gas solutions in the State of California, and has indicated that if the nature of the public affairs work it is doing is disclosed to Cal Advocates, it would drastically alter how it communicates with SoCalGas going forward. (*Id.* at ¶8.) That contractor further states they would be less willing to contract with SoCalGas knowing that its non-public association with SoCalGas may be disclosed. (*Id.*) That vendor notes that disclosure to Cal Advocates will cause it to suffer negative consequences, the breach of confidentiality its clients require for its services, the cost of responding to inquiries, and the breach of privacy which would hinder the work it does with SoCalGas. (*Id.*) That vendor would be reluctant to

continue associating with SoCalGas if its information was shared, and would seriously considering limiting its association with SoCalGas in the future. (*Id.*)

Another vendor/contactor that works with government entities has serious concerns about their business being affected. (*Id.*) They have even indicated that they would not have done business with SoCalGas if they had known their information and contact details would have been disclosed. (*Id.*) Indeed, they stated that due to the compelled contract disclosures that SoCalGas previously made, and the specter of additional compelled disclosures from the company's accounting database concerning 100% non-ratepayer-funded activities, SoCalGas is being forced to reconsider its decisions relating to political activities and associations. (*Id.* at ¶ 9.) Going forward, SoCalGas will be less willing to engage in contracts and communications knowing that its non-public association and communications with consultants, business partners and others on SoCalGas's political interests if they would be subject to compulsory disclosure. (*Id.*)

That Cal Advocates has already obtained materials on 100% shareholder-funded activities through prior objected-to data requests heightens the perceived risk in associating with SoCalGas. This conduct further chills SoCalGas's political expression, making people and companies less willing to associate with SoCalGas. (*Id.*) Compelling SoCalGas to provide unfettered access to such materials violates SoCalGas's freedoms of speech and association, as well as its right to petition the government.

Absent prompt intervention, as demonstrated by the database dispute, Cal Advocates' increasing incursion on SoCalGas's First Amendment rights will continue unabated. Prompt intervention by the Commission is necessary and appropriate to rectify this forced disclosure which "may present possible ramifications in other proceedings and/or the issue concerns constitutional rights." (*Application of PG&E (U 39 E) for Commission Approval Under PUC*

Section 851 of an Irrevocable License for Use of Utility Support Structure and Equipment Sites to ExteNet Systems (Cal.) LLC (Cal. P.U.C. Oct. 27, 2016) 2016 WL 6649336, at p. *11, citing *Re Alternative Regulatory Frameworks for Local Exchange Carriers* (1994) 55 Cal.P.U.C.2d 672, 680.) It is likewise needed to halt Cal Advocates' continuing demands in reliance on the ALJ Ruling, which are already resulting in widening, unchecked harm to SoCalGas's (and others') constitutional rights.

Further, the ongoing COVID-19 pandemic underscores the need for a prompt decision from the Commission on the December 2, 2019 Motion for Reconsideration/Appeal if the Motion to Quash is not granted. With the significant First Amendment issues unresolved, SoCalGas has had to press its personnel to try to prioritize responding to Cal Advocates' subpoena, notwithstanding the challenges that the pandemic and the Safer-at-Home Orders requiring all residents of the State of California to stay at home as much as possible and to avoid all non-essential travel. (Attachment A [Carrasco Decl. ¶ 10]; *Id.* [Enrique Decl. ¶ 8].)⁸ Of note, Andy Carrasco, who serves as Vice President, Strategy and Engagement and Chief Environmental Officer for SoCalGas, has been assigned during the COVID-19 pandemic to also serve as the Public Information Officer (PIO) for SoCalGas's Incident Command Structure (ICS). (Attachment A [Carrasco Decl. ¶ 10]; see also Attachment C). Mr. Carrasco's attention, his organization's resources, and other support staff resources have been diverted from these critical COVID-19 efforts to support SoCalGas's ever-increasing discovery demands. (*Id.*; see also Attachment C). SoCalGas has previously explained these challenges to Cal Advocates and in briefing earlier this year. See Attachments B, C, and D.

⁸ These orders arose from Governor Gavin Newsom's proclamation of a State of Emergency in the State of California, in which the incident response level to COVID-19 has been raised to Level 1, the highest level.

[PROPOSED] ORDER

On May __, 2020, Southern California Gas Company (“SoCalGas”) Filed A Motion To Supplement The Record And Request For Expedited Decision By The Full Commission On Motion For Reconsideration/Appeal Regarding Administrative Law Judge’s Ruling In The Discovery Dispute Between The Public Advocates Office And Southern California Gas Company, October 7, 2019 (Not In A Proceeding) If The Motion Is Not Granted To Quash Portion Of The Subpoena To Produce Access To Privileged Materials In Accounting Databases And To Stay Compliance Until The May 29th Completion Of Software Solution To Exclude Those Protected Materials In The Databases’ (Not In A Proceeding) (“Motion To Supplement”). The Motion to Supplement requests an order (1) permitting SoCalGas to supplement the record before the Commission on Motion for Reconsideration/Appeal to the Full Commission Regarding Administrative Law Judge’s Ruling in the Discovery Dispute Between Public Advocates Office and Southern California Gas Company, October 7, 2019 (Not in a Proceeding) (the “Motion for Reconsideration/Appeal”); and (2) expeditiously deciding the Appeal if SoCalGas’s Motion to Quash (served May 19, 2020) is not granted. Upon due consideration, SoCalGas’ Motion to Supplement is granted.

ORDER

The Motion to Supplement is granted. It, and the exhibits attached thereto, are considered part of the record associated with the Motion for Reconsideration/Appeal. SoCalGas’s December 2, 2019 Motion for Reconsideration/Appeal is granted.

SO ORDERED

Dated: _____, 2020

**DECLARATION OF
ELLIOTT S. HENRY**

Document received by the CA 2nd District Court of Appeal.

DECLARATION OF ELLIOTT S. HENRY

I, Elliott S. Henry, declare and state as follows:

1. I am a Senior Counsel in the Regulatory Group for the Southern California Gas Company (SoCalGas). My responsibilities in this position include handling legal aspects of regulatory proceedings and providing legal advice to SoCalGas employees. I have been employed at SoCalGas for almost three years.

2. I have personal knowledge of the facts set forth in this declaration, except as to those matters that are stated on belief or understanding, and as to those matters I believe them to be true. If called as a witness, I could and would testify competently as to the following:

3. On May 6, 2020, SoCalGas and the Public Advocates Office (Cal Advocates) held a meet and confer concerning the Subpoena to Produce Access to Company Accounting Databases served on May 5, 2020 (the "Subpoena"). During that meet and confer, counsel for Cal Advocates stated that SoCalGas should make its SAP database (its accounting system) available online as quickly as possible, and requested whether onsite access could be provided in San Francisco, which is subject to its own safer-at-home ordinance generally requiring non-essential employees to work from home.

4. On May 13, 2020, SoCalGas and Cal Advocates held an additional meet and confer concerning the Subpoena. During that meet and confer, counsel for Cal Advocates insisted on getting some level of access "pronto," that the need to prevent Cal Advocates from accessing protected material was the company's "problem," and that the company needed to "fix" the issue permanently and quickly.

5. On March 25, 2020, SoCalGas filed an Emergency Motion for a Protective Order Staying All Pending and Future Data Requests from the California Public Advocates Office Served Outside of Any Proceeding (Relating to the Building Decarbonization Matter), and Any Motions and Meet and Confers Related Thereto, During California Government COVID-19 Emergency "Safer at Home" Orders (Emergency Motion). That motion explained how the pending COVID-19 emergency has caused key employees involved in SoCalGas's response to

Cal Advocates' discovery requests to be busy leading significant parts of SoCalGas's relief efforts that are critical to the public, or are juggling work responsibilities while providing childcare assistance due to school and day care closures.

6. Johnny Q. Tran, a Senior Counsel – Regulatory for SoCalGas, submitted a declaration in support of the March 24, 2020 Emergency Motion Emergency Motion). (A true and correct copy of the declaration is included as Attachment B to the accompanying Motion to Supplement (Motion to Supplement).) Mr. Tran explains in his declaration the challenges he was facing in the current pandemic and how his ability to work is limited because of those challenges. Other SoCalGas Employees involved in responding to Cal Advocates' data requests have also been assigned key roles in SoCalGas's COVID-19 relief efforts or are managing childcare and other personal duties. Four of them submitted declarations, two of which are attached to the Motion to Supplement as Attachments C (Declaration of Andy Carrasco in Support of Emergency Motion) and D (Declaration of Shawane Lee in Support of Emergency Motion).

7. As shown by the Declarations of Mr. Tran and Ms. Lee and the exhibits thereto, Cal Advocates has been generally dismissive of the impacts the COVID-19 pandemic has had on SoCalGas's ability to timely respond to Cal Advocates plethora of discovery requests. Ms. Bone has also asked why SoCalGas could not provide onsite access to SoCalGas's SAP system, despite the fact that the State of California, as well as the County and City of Los Angeles, have put in place Safer at Home Orders generally requiring all residents of the State of California to remain at home as much as possible and to avoid non-essential travel.

8. On May 20, 2020, Traci Bone, counsel for Cal Advocates, sent an email to me, informing SoCalGas that if it does not provide Cal Advocates with full remote access to its accounts and records by this Friday, May 22, Cal Advocates will, among other things, seek sanctions against SoCalGas. (A true and correct copy of this email is attached as Exhibit A.)

9. On May 15, 2020, SoCalGas served its objections and responses to Data Request No. CalAdvocates-TB-SCG-2020-02 outside of a proceeding. (A true and correct copy of the data request objections and responses is attached as Exhibit B.)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 20, 2020.


Elliott S. Henry
Senior Counsel
Southern California Gas Company

EXHIBIT A

Document received by the CA 2nd District Court of Appeal.

Henry, Elliott S

From: Bone, Traci <traci.bone@cpuc.ca.gov>
Sent: Wednesday, May 20, 2020 1:15 PM
To: Henry, Elliott S; DeAngelis, Regina
Cc: Carman, Teresa A; Simon, Anne; Ward, Alec; Castello, Stephen; Sierzant, Corinne M; Tran, Johnny Q; Prusnek, Brian C; jwilson@willenken.com; Farrar, Darwin; Serizawa, Linda; Campbell, Michael; Hovsepian, Melissa A
Subject: [EXTERNAL] RE: SoCalGas (U 904 G) Motion to Quash and Motion to File Under Seal

*** EXTERNAL EMAIL - Be cautious of attachments, web links, and requests for information ***

Elliott:

Cal Advocates requests that pursuant to the subpoena issued by the Commission's Executive Director and served May 5, 2020, SoCalGas provide Cal Advocates with full read-only remote access to its accounts and records – including access to all attachments in its accounting system – no later than this Friday, May 22, 2020. Absent SoCalGas providing such access, Cal Advocates will, among other things, move for sanctions against SoCalGas for violation of the subpoena.

In addition, SoCalGas' refusal to provide the confidential versions of the declarations provided to support its motions served May 19, 2020 is unacceptable. Confidential versions of all documents should immediately be provided to all Commission staff who were previously served, including Cal Advocates staff. Absent such information, Cal Advocates, for one, will be prejudiced in its ability to respond.

Traci Bone, Attorney
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From: Henry, Elliott S <EHenry@socalgas.com>
Sent: Wednesday, May 20, 2020 10:45 AM
To: Bone, Traci <traci.bone@cpuc.ca.gov>; DeAngelis, Regina <regina.deangelis@cpuc.ca.gov>
Cc: Carman, Teresa A <TCarman@socalgas.com>; Batjer, Marybel <Marybel.Batjer@cpuc.ca.gov>; Simon, Anne <anne.simon@cpuc.ca.gov>; Ward, Alec <Alec.Ward@cpuc.ca.gov>; Castello, Stephen <Stephen.Castello@cpuc.ca.gov>; Sierzant, Corinne M <CSierzant@socalgas.com>; Tran, Johnny Q <JQTran@socalgas.com>; Prusnek, Brian C <BCPrusne@socalgas.com>; jwilson@willenken.com; Farrar, Darwin <darwin.farrar@cpuc.ca.gov>; Serizawa, Linda <linda.serizawa@cpuc.ca.gov>; Campbell, Michael <Michael.Campbell@cpuc.ca.gov>; DeAngelis, Regina <regina.deangelis@cpuc.ca.gov>; Randolph, Liane <Liane.Randolph@cpuc.ca.gov>; Guzman Aceves, Martha <Martha.GuzmanAceves@cpuc.ca.gov>; Rechtschaffen, Cliff <Cliff.Rechtschaffen@cpuc.ca.gov>; Shiroma, Genevieve <Genevieve.Shiroma@cpuc.ca.gov>; Hovsepian, Melissa A <MHovsepian@socalgas.com>
Subject: RE: SoCalGas (U 904 G) Motion to Quash and Motion to File Under Seal

ALJ DeAngelis,

We would initially note that litigation and argument via email is improper and inadequate. Any legal arguments Cal Advocates wishes to make should be raised in a responsive brief. In the interest of at least briefly addressing Ms. Bone's comments, we request that you please consider the following.

Because Cal Advocates has chosen to act outside of any proceeding, there are no clear procedural rules, which is why SoCalGas is seeking leave to file two motions so that it can preserve fundamental attorney-client and attorney work product privileges and First Amendment rights. As you are aware, the non-proceeding procedures for the CPUC are largely undefined, but we have consulted Chief ALJ Simon's instructions dated October 29, 2019 for this non-proceeding. If Your Honor deems this the inappropriate procedure for resolution of such matter, we appreciate your guidance in clarifying the procedural path to preserve our rights as appropriate. The motion has already been tendered and states that "SoCalGas has no recourse but to seek the Commission's intervention" (p.4 of Motion to Quash), which does not specify who should ultimately rule on it from the Commission. The second motion to supplement the record for the December 2 appeal and request an expedited ruling if the first motion is not granted is explicitly addressed to the full Commission. Either of these motions can be readily provided to the appropriate decisionmakers (the full Commission is included on the service list).

With respect to whether your Honor has authority to rule on the motion to quash itself, as mentioned above, Commission President Batjer referred this matter to Chief ALJ Simon who designated your Honor to handle this matter going forward. Thus, beyond seeking leave to file from your Honor for purposes of submission to the Docket Office, you have authority to rule on these matters through that authority conferred on you. Furthermore, the propriety of a motion in these circumstances is, coincidentally, supported by comments Ms. Bone has made several times in meet and confers. Ms. Bone has stated more than once that if SoCalGas would not provide access in the manner Cal Advocates wanted, then Cal Advocates would file a motion to compel (which is discussed in the motion served yesterday). If a motion to compel could be brought to your Honor, then surely a motion to modify or interpret a subpoena must also be appropriate for your consideration – because the power to deny a motion to compel for a subpoena is tantamount to the power to modify or quash a subpoena.

As for the claim that the motion is untimely, as an initial matter, SoCalGas not only raised the issues in the motion in a meet and confer by even the initial deadline for the subpoena, but SoCalGas also timely made these objections in response to the companion data request sent for the subpoena. Moreover, Cal Advocates again cites no authority to support its contention that where compliance with a subpoena is extended all potential objections are implicitly waived. Nor did Cal Advocates provide any such instruction to SoCalGas. Such a rule would certainly be problematic, would force premature and unnecessary motions to quash, and discourage the informal resolution of disputes. Perhaps more importantly, Cal Advocates never stated that SoCalGas had to waive its right to quash in exchange for additional time to comply.

The issues raised in the motion are serious. They concern fundamental rights concerning attorney client privileges and protections afforded by the First Amendment. SoCalGas requests that the motion (and the companion motion being to be filed) be considered and ruled on.

Thank you for your consideration.

Ms. Bone,

With respect to the confidential versions of the documents, as noted in our email to Judge DeAngelis yesterday which you were copied on, we will tender a confidential hard copy for filing within a week. As shown by what is discussed in the brief, because the confidential information in the declarations overlaps with information we are requesting not to disclose to Cal Advocates in response to the Subpoena, the confidential versions will not be provided to Cal Advocates.

If you have further questions of this nature, please feel free to contact me directly instead of the entire service list.

Respectfully,
Elliott Henry

Elliott S. Henry
Senior Counsel, Regulatory
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From: Bone, Traci <traci.bone@cpuc.ca.gov>
Sent: Tuesday, May 19, 2020 6:22 PM
To: DeAngelis, Regina <regina.deangelis@cpuc.ca.gov>
Cc: Hovsepian, Melissa A <MHovsepian@socalgas.com>; Carman, Teresa A <TCarman@socalgas.com>; Batjer, Marybel <Marybel.Batjer@cpuc.ca.gov>; Simon, Anne <anne.simon@cpuc.ca.gov>; Ward, Alec <Alec.Ward@cpuc.ca.gov>; Castello, Stephen <Stephen.Castello@cpuc.ca.gov>; Sierzant, Corinne M <CSierzant@socalgas.com>; Tran, Johnny Q <JQTran@socalgas.com>; Prusnek, Brian C <BCPrusne@socalgas.com>; Henry, Elliott S <EHenry@socalgas.com>; jwilson@willenken.com; Farrar, Darwin <darwin.farrar@cpuc.ca.gov>; Serizawa, Linda <linda.serizawa@cpuc.ca.gov>; Campbell, Michael <Michael.Campbell@cpuc.ca.gov>; DeAngelis, Regina <regina.deangelis@cpuc.ca.gov>; Randolph, Liane <Liane.Randolph@cpuc.ca.gov>; Guzman Aceves, Martha <Martha.GuzmanAceves@cpuc.ca.gov>; Rechtschaffen, Cliff <Cliff.Rechtschaffen@cpuc.ca.gov>; Shiroma, Genevieve <Genevieve.Shiroma@cpuc.ca.gov>
Subject: [EXTERNAL] RE: SoCalGas (U 904 G) Motion to Quash and Motion to File Under Seal

*** EXTERNAL EMAIL - Be cautious of attachments, web links, and requests for information ***

Judge DeAngelis:

Southern California Gas Company's (SoCalGas') motion to partially quash and for extension provided in the email below is in response to a subpoena signed by the Executive Director on May 4, 2020 and issued May 5, 2020, requiring SoCalGas to provide remote or onsite access to all of its accounts no later than May 8, 2020. copy of that subpoena is attached hereto. Rather than address the numerous and significant misrepresentations made by SoCalGas in its motion, this email serves to draw your attention to two significant legal issues that warrant consideration and argue against any ruling being issued.

Because the subpoena is an order of the Commission issued pursuant to the Executive Director's statutory authority, it is not clear, and SoCalGas has made no attempt to establish, that the Administrative Law Judge Division has the authority to either quash the subpoena or grant an extension of the subpoena. This significant legal question does not address the equally important policy question of whether the Administrative Law Division should act in contravention of an Executive Director's order. In addition, any SoCalGas objections to

the subpoena must be deemed waived as untimely. SoCalGas should have raised any such objections prior to the date it was required to perform under the subpoena, which was more than ten days ago. While the Public Advocates Office (Cal Advocates) has agreed to several extensions that SoCalGas requested in order to comply with the subpoena, at no point did Cal Advocates agree to extend the time for SoCalGas to raise substantive objections to the subpoena. At this point, any ruling on SoCalGas' instant motion would serve only to encourage non-compliance with Commission orders and revitalize the right to appeal the subpoena which SoCalGas has otherwise already waived.

For these reasons, Cal Advocates proposes that you reserve action on the SoCalGas motion. Cal Advocates will inform SoCalGas that it must comply with the Commission's subpoena and make unrestricted remote read-only access fully available no later than this Friday, May 22, 2020. Should SoCalGas fail to do so, Cal Advocates will file a request for penalties and sanctions against SoCalGas shortly thereafter.

Traci Bone, Attorney
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tbo@cpuc.ca.gov

From: Carman, Teresa A <TCarman@socalgas.com>

Sent: Tuesday, May 19, 2020 5:00 PM

To: Batjer, Marybel <Marybel.Batjer@cpuc.ca.gov>; Simon, Anne <anne.simon@cpuc.ca.gov>; Bone, Traci <traci.bone@cpuc.ca.gov>; Ward, Alec <Alec.Ward@cpuc.ca.gov>; Castello, Stephen <Stephen.Castello@cpuc.ca.gov>; Sierzant, Corinne M <CSierzant@socalgas.com>; Tran, Johnny Q <JQTran@socalgas.com>; Prusnek, Brian C <BCPrusne@socalgas.com>; Henry, Elliott S <EHenry@socalgas.com>; jwilson@willenken.com; Farrar, Darwin <darwin.farrar@cpuc.ca.gov>; Serizawa, Linda <linda.serizawa@cpuc.ca.gov>; Campbell, Michael <Michael.Campbell@cpuc.ca.gov>; DeAngelis, Regina <regina.deangelis@cpuc.ca.gov>; Randolph, Liane <Liane.Randolph@cpuc.ca.gov>; Guzman Aceves, Martha <Martha.GuzmanAceves@cpuc.ca.gov>; Rechtschaffen, Cliff <Cliff.Rechtschaffen@cpuc.ca.gov>; Shiroma, Genevieve <Genevieve.Shiroma@cpuc.ca.gov>

Cc: Hovsepian, Melissa A <MHovsepian@socalgas.com>

Subject: SoCalGas (U 904 G) Motion to Quash and Motion to File Under Seal

Judge DeAngelis,

Pursuant to my email to you earlier today requesting approval to file a Motion to Quash in Part / Motion to Stay Cal Advocates' May 5 subpoena (Subpoena), Southern California Gas Company (SoCalGas) is tendering the attached Motion (with several attachments and accompanying Motion To File Under Seal) for service to the service list today. As noted in my prior email, Chief ALJ Simon's instructions related to the DISCOVERY DISPUTE BETWEEN THE PUBLIC ADVOCATES OFFICE AND SOUTHERN CALIFORNIA GAS COMPANY, OCTOBER 2019 (NOT IN A PROCEEDING) instructed to request such leave to file. The Subpoena at issue compels SoCalGas to provide unrestricted remote access to SoCalGas's financial database which includes information covered by SoCalGas' Motion for Reconsideration/Appeal (Appeal) filed on December 2, 2019. Based on meeting and confers with Cal Advocates, the deadline for SoCalGas to comply with the Cal Advocates subpoena is today. To meet this unprecedented request, SoCalGas has explained that it needs until May 29 to create a custom program that will give access to all of the database other than materials protected by attorney client and attorney work product privileges, as well as materials implicating the same First Amendment issues currently on Appeal related to the October 2019 discovery dispute. Overall, Cal Advocates has indicated that

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it is unwilling to agree to these limitations, and is prepared to file a motion to compel (in particular with respect to protecting the issues on Appeal). Because SoCalGas currently must comply by today or potentially be in violation of the subpoena, and because of Cal Advocates' position, SoCalGas must seek relief to preserve its rights.

As indicated in my earlier email today, we are also requesting permission to file a motion to supplement the record for the Appeal that is still pending before the Commission based on the overlapping legal and factual issues that have arisen since the briefing was completed.

This transmission is being sent in several parts. This is part 1.

The service list has been updated to reflect current counsel for Cal Advocates and SoCalGas.

Terri Carman
Senior Legal Administrative Associate
Southern California Gas Company / Law Department
555 West Fifth Street, GT-14E7
Los Angeles, CA 90013
Ph: 213.244.2967; Fax: 213.629.9620
Email: tcarman@socalgas.com

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EXHIBIT B

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SOUTHERN CALIFORNIA GAS COMPANY
(DATA REQUEST CALADVOCATES-TB-SCG-2020-03)
DATE RECEIVED: May 1, 2020
DATE SUBMITTED: May 15, 2020

GENERAL OBJECTIONS AND OBJECTIONS TO “INSTRUCTIONS”

1. SoCalGas objects to the Instructions and Definitions submitted by Cal Advocates on the grounds that they are overbroad and unduly burdensome. Special interrogatory instructions of this nature are expressly prohibited by California Code of Civil Procedure Section 2030.060(d). Further, SoCalGas objects to the Instructions to the extent they purport to impose requirements exceeding that required by GO 66-D or the Discovery Custom and Practice Guidelines provided by the CPUC.
2. The Request purports to require that SoCalGas provide “Access to Accounts” by “[n]o later than May 8, 2020 for remote access” and “if remote access is not available, no later than May 11, 2020 for physical access.” SoCalGas objects to the time frame allotted for SoCalGas’s provision of the demanded access as unduly burdensome and unreasonable, particularly to the extent that it seeks physical access to SoCalGas computer systems located in Los Angeles or would require SoCalGas employees working from home to travel to SoCalGas’s offices to facilitate physical or remote access while government-issued Safer at Home Orders requiring residents of the state of California and City of Los Angeles to stay at home as much as possible and to avoid all non-essential travel are still in effect. See Executive Order N-33-20, *available at* <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf> (ordering “all individuals living in the state of California to stay home or at their place of residence” (subject to limited exceptions)); Public Order Under City of Los Angeles Emergency Authority dated March 19, 2020, *available at* https://www.lamayor.org/sites/g/files/wph446/f/article/files/SAFER_AT_HOME_ORDER2020.03.19.pdf (subject only to certain exceptions, “all persons living within the City of Los Angeles are hereby ordered to remain in their homes”); see *also* Safer at Home Order for Control of COVID-19, *available at* http://file.lacounty.gov/SDSInter/lac/1070029_COVID19_SaferAtHome_HealthOfficerOrder_20200319_Signed.pdf (prohibiting all indoor and private gatherings and all outdoor public and private events within a confined space, where at least 10 people are expected to attend).
3. The highlighted paragraph under “Responses” purports to require SoCalGas identify “the person providing the answer to each question and his/her contact information.” SoCalGas objects to this instruction because it has no basis in the Commission’s Rules of Practice and Procedure and exceeds that required by the Discovery Custom and Practice Guidelines provided by the CPUC.
4. The highlighted portion of the paragraph under “Requests for Clarification” purports to require SoCalGas to notify Cal Advocates “within five (5) business days” if “a request, definition, or an instruction is unclear”; the highlighted paragraph under “Objections” purports to require SoCalGas to “submit specific objections, including the specific legal basis to the objection . . . within five (5) business days”; and the highlighted portion of the paragraph under “Assertions of Privilege” in the “Instructions” section of this Request further purports to require SoCalGas to “assert any privilege for documents

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responsive to this data request . . . within five (5) business days.” SoCalGas objects to these requirements as unduly burdensome and unreasonable as SoCalGas cannot determine which aspects of the Request need clarification, formulate objections or identify privileged information and documents until SoCalGas has otherwise completed its investigation and prepared its response to the Request.

5. The highlighted paragraph under “Sensitive Personal Identifying Information” purports to exclude from the category of properly redacted information the names of SoCalGas employees. SoCalGas objects to this request on the grounds that it is inconsistent with GO 66-D and unilaterally pre-judges the outcome of the GO 66-D procedures.
6. The first highlighted paragraph under “Signed Declaration” purports to require SoCalGas to provide “a signed declaration from a responsible officer or an attorney under penalty of perjury that [SoCalGas has] used all reasonable diligence in preparation of the data response, and that to the best of [his or her] knowledge, it is true and complete.” SoCalGas objects to this instruction because it has no basis in the Commission’s Rules of Practice and Procedure. SoCalGas further objects to the extent it purports to limit SoCalGas from amending its responses should additional information be later discovered. SoCalGas reserves its right to amend its responses to these requests should additional information relevant to SoCalGas’s responses is discovered at a later date.
7. SoCalGas objects to the second highlighted paragraph under “Signed Declaration” to the extent it purports to impose requirements exceeding the process for submitting confidential information to the Commission outlined in GO 66-D § 3.
8. SoCalGas objects to the time period of information sought as overbroad.
9. SoCalGas objects to the extent the requests call for information that is protected by attorney-client privilege, and does not allow time to sufficiently respond in a manner that would not violate that privilege by making such information accessible.
10. SoCalGas objects to the extent the requests call for information that is protected by SoCalGas’s rights which are currently the subject of the appeal (filed December 2, 2019), and does not allow time to sufficiently respond in a manner that would not violate those rights by making such information accessible.
11. SoCalGas objects to the request to review SAP data related to Reach Codes. Whether SoCalGas has ever used ratepayer funds to advocate against local government’s adoption of reach codes has been ordered as within the scope of the Order to Show Cause Directing SoCalGas to Address Shareholder Incentives for Codes and Standards Advocacy Expenditures in R.13-11-005 (OSC). (See March 25, 2020 Email Ruling from Administrative Law Judge Valerie Kao Clarifying Scope of Order to Show Cause and Providing Further Instructions for Hearing). In particular, ALJ Kao’s ruling provides that among the factual question to be decided in the OSC is “Whether Respondent ever used ratepayer funds, regardless of the balancing account or other accounting mechanism to which such funds were booked, to advocate against local governments’ adoption of reach codes.” (*Id.*) Because there is an open and ongoing proceeding concerning SoCalGas’ reach code activity and the use of ratepayer funds, any discovery related to such activity should be served and addressed within the OSC in R.13-11-005. Addressing discovery related to the same

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issue both inside an ongoing proceeding and outside of a proceeding is inefficient, wastes resources, and risks inconsistent outcomes to the extent any disputes on such discovery result in motion practice and rulings by the Commission. For SAP accounts related to the OSC, for purpose of formality and distinction, SoCalGas will be treating that portion of this data request as related to the OSC proceeding, including for purposes of applying Rule 10.1 of the Commission's Rules of Practice and Procedure and resolving any discovery disputes that may arise related to those SAP accounts through the SoCalGas personnel handling that proceeding and the assigned administrative law judge (ALJ Kao).

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QUESTION 1:

Remote access to the SoCalGas SAP system to a Cal Advocates auditor no later than May 8, and sooner if possible. If remote access is not possible, identify a time and place where the auditor may access the SoCalGas SAP system that is no later than May 11, 2020.

RESPONSE 1:

SoCalGas objects to this Request on the grounds that it is overly broad, vague, and ambiguous in failing to define the characteristics of the “[r]emote access” or “access” to the “SoCalGas SAP system” to which Cal Advocates seeks. SoCalGas further objects to this Request to the extent that it seeks to provide CalAdvocates’ auditor to access to SoCalGas’ 100% shareholder-funded accounts as an illegal infringement of SoCalGas’ rights under the United States and California Constitutions. See Southern California Gas company’s (U 904 G) Motion for Reconsideration/Appeal to the Full Commission Regarding Administrative Law Judge’s Ruling in the Discovery Dispute between Public Advocates Office and Southern California Gas Company, October 7, 2019 (Not in a Proceeding) (filed Dec. 2, 2019; pending before the Commission).

SoCalGas further objects to this Request as unduly burdensome to the extent that it seeks physical access to SoCalGas computer systems located in Los Angeles or would require SoCalGas employees working from home to travel to SoCalGas’ offices to facilitate physical or remote faccess while government-issued Safer at Home Orders requiring residents of the state of California and City of Los Angeles to stay at home as much as possible and to avoid all non-essential travel are still in effect. See Executive Order N-33-20, *available at* <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf> (ordering “all individuals living in the state of California to stay home or at their place of residence” (subject to limited exceptions)); Public Order Under City of Los Angeles Emergency Authority dated March 19, 2020, *available at* https://www.lamayor.org/sites/g/files/wph446/f/article/files/SAFER_AT_HOME_ORDER2020.03.19.pdf (subject only to certain exceptions, “all persons living within the City of Los Angeles are hereby ordered to remain in their homes”); see *also* Safer at Home Order for Control of COVID-19, *available at* http://file.lacounty.gov/SDSInter/lac/1070029_COVID19_SaferAtHome_HealthOfficerOrder_20200319_Signed.pdf (prohibiting all indoor and private gatherings and all outdoor public and private events within a confined space, where at least 10 people are expected to attend). Requiring SoCalGas employees working from home to travel to SoCalGas’s offices solely to provide or facilitate the access demanded by Cal Advocates imposes an unnecessary risk of being exposed to and contracting the novel coronavirus, which is well known to pose severe health risks including death.

Notwithstanding these objections and the Objections to the Instructions which are expressly incorporated herein, SoCalGas responds as follows: SoCalGas intends to provide access to

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SAP information and any assistance needed in navigating the system as soon as it is able to adequately protect its privileged information, its rights indicated in the December 2, 2019 appeal, and its confidential information. As SoCalGas has stated in several meet and confer calls, the level of access requested by the CalPA has never been provided to the CPUC before and there are unique and serious issues with allowing such access that SoCalGas is working diligently to resolve. SoCalGas has agreed to provide in the interim specific requested financial data identified by CalPA on May 8, 2020 (see below), in a similar fashion to how such information has been disclosed to CalPA previously (subject to the foregoing objections).

ACCOUNT	DESCRIPTION
IO 300796601	Related to Balanced Energy
Cost Center 2200-2204	
Cost Center 2200-0811	Public Affairs Manager, LA
CTR F426400G	Exp-Civic & Related
IO FG9200002200	Administrative and General Salaries
CTR F920000G	A&G Salaries
IO FG9215632200	Public Affairs Administration - NonLabor
IO FG90800002200	
Cost Center 2200-2504	Public Policy and Planning
Cost Center 2200-0942	Related to Reach Codes
IO FG8706502200	Related to Reach Code

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QUESTION 2:

Access to SoCalGas' SAP system, whether remote or physical, equivalent to the highest quality and functionality available to SoCalGas accountants and auditors – whether employees or contractors.

RESPONSE 2:

SoCalGas objects to this Request on the grounds that it is overly broad, vague, and ambiguous in failing to define the characteristics of the “[a]ccess to SoCalGas' SAP system, whether remote or physical” which Cal Advocates seeks. SoCalGas further objects to this Request on the grounds that the phrase “equivalent to the highest quality and functionality available to SoCalGas accountants and auditors” is vague and ambiguous. SoCalGas further objects to this Request to the extent that it seeks to provide CalAdvocates' auditor to access to SoCalGas' 100% shareholder-funded accounts as an illegal infringement of SoCalGas' rights under the United States and California Constitutions. See Southern California Gas company's (U 904 G) Motion for Reconsideration/Appeal to the Full Commission Regarding Administrative Law Judge's Ruling in the Discovery Dispute between Public Advocates Office and Southern California Gas Company, October 7, 2019 (Not in a Proceeding) (filed Dec. 2, 2019; pending before the Commission).

SoCalGas further objects to this Request as unduly burdensome to the extent that it seeks physical access to SoCalGas computer systems located in Los Angeles or would require SoCalGas employees working from home to travel to SoCalGas' offices to facilitate physical or remote access while government-issued Safer at Home Orders requiring residents of the state of California and City of Los Angeles to stay at home as much as possible and to avoid all non-essential travel are still in effect. See Executive Order N-33-20, *available at* <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf> (ordering “all individuals living in the state of California to stay home or at their place of residence” (subject to limited exceptions)); Public Order Under City of Los Angeles Emergency Authority dated March 19, 2020, *available at* https://www.lamayor.org/sites/g/files/wph446/f/article/files/SAFER_AT_HOME_ORDER2020.03.19.pdf (subject only to certain exceptions, “all persons living within the City of Los Angeles are hereby ordered to remain in their homes”); see *also* Safer at Home Order for Control of COVID-19, *available at* http://file.lacounty.gov/SDSInter/lac/1070029_COVID19_SaferAtHome_HealthOfficerOrder_20200319_Signed.pdf (prohibiting all indoor and private gatherings and all outdoor public and private events within a confined space, where at least 10 people are expected to attend). Requiring SoCalGas employees working from home to travel to SoCalGas's offices solely to provide or facilitate the access demanded by Cal Advocates imposes an unnecessary risk of being exposed to and contracting the novel coronavirus, which is well known to pose severe health risks including death.

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Notwithstanding these objections and the Objections to the Instructions which are expressly incorporated herein, SoCalGas responds as follows: See response to Request No. 1.

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QUESTION 3:

Training and assistance for the auditor to allow the auditor to determine the following in SAP related to adjustments to the Marathon Communications contract referred to in the SoCalGas July 12, 2019 amended response to Data Request (DR) CALPA-SCG-051719.

- a. The date those adjustments were made, if it is different from the June 14, 2019 date reported in the August 13, 2019 response to Question 5 of DR CAL ADVOCATES SCG-2019-03.
- b. The dollar amounts of adjustments made and the time period over which those dollars were incurred.
- c. All subsequent entries in SAP related to the Marathon Communications contract up to the present time that demonstrate that those costs will not be mingled with ratepayer funded accounts.
- d. Access to the "... separate invoice/order that is not ratepayer funded accounts for all work done by Marathon to found and support Californians for Balanced Energy Solutions" as referred to in response to Data Request CalAdvocates-SC-SCG-2019-02, Question 6(b).
- e. The Modified Submission dated August 13, 2019 to Data Request CALPA-SCG-051719, Question 3 states "...that all of George Minter's and Ken Chawkins's time from May 1, 2018 through the present would be shareholder funded (i.e., this time is booked to a distinct invoice (I/O) that is not ratepayer funded)." Please provide the auditor with the amounts actually recorded from May 1, 2018 to present and access to SAP to verify that those amounts are recorded in a distinct SAP account that is not ratepayer funded.
- f. Please also provide access to all of George Minter's and Ken Chawkins's time entries for accounting purposes from January 1, 2017 to the present.

RESPONSE 3:

SoCalGas objects to this Request on the grounds that it is overly broad, vague, and ambiguous in failing to specify what "[t]raining and assistance" Cal Advocates requests that SoCalGas provide to its auditor. SoCalGas further objects on the grounds that the phrase "mingled with ratepayer funded accounts" in subsection (c) of this Request is vague, ambiguous, and overly broad. SoCalGas further objects to the phrase "recorded in a distinct SAP account that is not ratepayer funded" in subsection (e) of the Request as vague, ambiguous, and to the extent it misstates SoCalGas' response to Data Request CALPA-SCG-0517179, Question 3, in which SoCalGas stated that "all of George Minter's and Ken Chawkins's time from May 1, 2018 through the present would be shareholder funded (i.e., this time is booked to a distinct *invoice* (I/O) that is not ratepayer funded" (emphasis added). SoCalGas further objects to the phrase "for accounting purposes" in subsection (f) of the request as vague and ambiguous. SoCalGas further objects to this Request to the extent that it seeks access to documents or information about SoCalGas' 100% shareholder-funded

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activities as an illegal infringement of SoCalGas' rights under the United States and California Constitutions. See Southern California Gas company's (U 904 G) Motion for Reconsideration/Appeal to the Full Commission Regarding Administrative Law Judge's Ruling in the Discovery Dispute between Public Advocates Office and Southern California Gas Company, October 7, 2019 (Not in a Proceeding) (filed Dec. 2, 2019; pending before the Commission).

Notwithstanding these objections and the Objections to the Instructions which are expressly incorporated herein, SoCalGas responds as follows: See response to Request No. 1.

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QUESTION 4:

Training and assistance for the auditor to access all SoCalGas accounts, including FERC accounts.

RESPONSE 4:

SoCalGas objects to this Request on the grounds that it is overly broad, vague, and ambiguous in failing to specify what “[t]raining and assistance” Cal Advocates requests that SoCalGas provide to its auditor. SoCalGas further objects to this Request to the extent that it seeks “[t]raining and assistance” to facilitate CalAdvocates’ auditor’s access to SoCalGas’ 100% shareholder-funded accounts as an illegal infringement of SoCalGas’ rights under the United States and California Constitutions. See Southern California Gas company’s (U 904 G) Motion for Reconsideration/Appeal to the Full Commission Regarding Administrative Law Judge’s Ruling in the Discovery Dispute between Public Advocates Office and Southern California Gas Company, October 7, 2019 (Not in a Proceeding) (filed Dec. 2, 2019; pending before the Commission).

Notwithstanding these objections and the Objections to the Instructions which are expressly incorporated herein, SoCalGas responds as follows: See response to Request No. 1.

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QUESTION 5:

Training and assistance for the auditor to access information regarding all contracts, invoices, and payments made to third parties.

RESPONSE 5:

SoCalGas objects to this Request on the grounds that it is overly broad, vague, and ambiguous in failing to specify what “[t]raining and assistance” Cal Advocates requests that SoCalGas provide to its auditor. SoCalGas further objects to this Request on the grounds that its request to access information regarding “*all* contracts, invoices, and payments made to third parties” is vague, ambiguous, and unduly burdensome. SoCalGas further objects to this Request to the extent that it seeks “[t]raining and assistance” to facilitate CalAdvocates’ auditor’s access to SoCalGas’ 100% shareholder-funded “contracts, invoices, and payments made to third parties” for SoCalGas’ 100% shareholder-funded activities as an illegal infringement of SoCalGas’ rights under the United States and California Constitutions. See Southern California Gas company’s (U 904 G) Motion for Reconsideration/Appeal to the Full Commission Regarding Administrative Law Judge’s Ruling in the Discovery Dispute between Public Advocates Office and Southern California Gas Company, October 7, 2019 (Not in a Proceeding) (filed Dec. 2, 2019; pending before the Commission).

Notwithstanding these objections and the Objections to the Instructions which are expressly incorporated herein, SoCalGas responds as follows: See response to Request No. 1.

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QUESTION 6:

Training and assistance for the auditor to access and identify the allocation of a specific employee's labor expenses for every activity that they support and access to relevant cost centers, internal orders, and expense types or cost elements. See SoCalGas Response to CALADVOCATES-TB-SCG-2020-02, Question 6 which refers to these same terms.

RESPONSE 6:

SoCalGas objects to this Request on the grounds that it is overly broad, vague, and ambiguous in failing to specify what "[t]raining and assistance" Cal Advocates requests that SoCalGas provide to its auditor. SoCalGas further objects to this Request to the extent it misstates or mischaracterizes SoCalGas' response to CALADVOCATES-TB-CG-2020-02, Question 6. SoCalGas further objects to this Request to the extent that it seeks "[t]raining and assistance" to facilitate CalAdvocates' auditor's access to SoCalGas' 100% shareholder-funded "contracts, invoices, and payments made to third parties" for SoCalGas' 100% shareholder-funded activities as an illegal infringement of SoCalGas' rights under the United States and California Constitutions. See Southern California Gas company's (U 904 G) Motion for Reconsideration/Appeal to the Full Commission Regarding Administrative Law Judge's Ruling in the Discovery Dispute between Public Advocates Office and Southern California Gas Company, October 7, 2019 (Not in a Proceeding) (filed Dec. 2, 2019; pending before the Commission).

Notwithstanding these objections and the Objections to the Instructions which are expressly incorporated herein, SoCalGas responds as follows: See response to Request No. 1.

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QUESTION 7:

Training and assistance for the auditor to be able to determine whether an account is intended to be shareholder costs or ratepayer costs, or a combination of the two, and how to determine which specific internal orders will be excluded from SoCalGas' General Rate Case.

RESPONSE 7:

SoCalGas objects to this Request on the grounds that it is overly broad, vague, and ambiguous in failing to specify what "[t]raining and assistance" Cal Advocates requests that SoCalGas provide to its auditor. SoCalGas further objects to this Request to the extent it misstates or mischaracterizes SoCalGas' response to CALADVOCATES-TB-CG-2020-02, Question 6. SoCalGas further objects to this Request to the extent that it seeks "[t]raining and assistance" to facilitate CalAdvocates' auditor's access to SoCalGas' 100% shareholder-funded "contracts, invoices, and payments made to third parties" for SoCalGas' 100% shareholder-funded activities as an illegal infringement of SoCalGas' rights under the United States and California Constitutions. See Southern California Gas company's (U 904 G) Motion for Reconsideration/Appeal to the Full Commission Regarding Administrative Law Judge's Ruling in the Discovery Dispute between Public Advocates Office and Southern California Gas Company, October 7, 2019 (Not in a Proceeding) (filed Dec. 2, 2019; pending before the Commission).

Notwithstanding these objections and the Objections to the Instructions which are expressly incorporated herein, SoCalGas responds as follows: See response to Request No. 1.

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QUESTION 8:

Training and assistance so that the auditor can record their findings, including downloading, and screen shot applications.

RESPONSE 8:

SoCalGas objects to this Request on the grounds that it is overly broad, vague, and ambiguous in failing to specify what “[t]raining and assistance” Cal Advocates requests that SoCalGas provide to its auditor.

Notwithstanding these objections and the Objections to the Instructions which are expressly incorporated herein, SoCalGas responds as follows: See response to Request No. 1.

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

**SOUTHERN CALIFORNIA GAS COMPANY'S (U 904 G) MOTION TO QUASH
PORTION OF THE SUBPOENA TO PRODUCE ACCESS TO CERTAIN MATERIALS
IN ACCOUNTING DATABASES AND TO STAY COMPLIANCE UNTIL THE MAY
29TH COMPLETION OF SOFTWARE SOLUTION TO EXCLUDE THOSE
PROTECTED MATERIALS IN THE DATABASES
(NOT IN A PROCEEDING)**

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May 22, 2020

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

**SOUTHERN CALIFORNIA GAS COMPANY’S (U 904 G) MOTION TO QUASH
PORTION OF THE SUBPOENA TO PRODUCE ACCESS TO CERTAIN MATERIALS
IN ACCOUNTING DATABASES AND TO STAY COMPLIANCE UNTIL THE MAY
29TH COMPLETION OF SOFTWARE SOLUTION TO EXCLUDE THOSE
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(NOT IN A PROCEEDING)**

Pursuant to Rules 11.1 and 11.3(a) of the California Public Utilities Commission’s (“Commission”) Rules of Practice and Procedure,¹ Southern California Gas Company (“SoCalGas”) moves for an order to quash portions of the Subpoena to Produce Access to Company Accounting Databases served on SoCalGas on May 5, 2020 (the “Subpoena”), and to stay compliance until the May 29, 2020 completion of a software solution to exclude those protected materials in the databases.²

¹ Rule 11.3(a) of the Commission’s Rules of Practice and Procedure permit motions to limit discovery. But neither the Commission’s Rules of Practice and Procedure nor the California Public Utilities Code directly address motions to quash. In such circumstances, the Commission has typically relied on the California Code of Civil Procedure as instructive authority. *See Pac-W Telecomm, Inc. (U5266C) v. Comcast Phone of California, LLC (U5698C)* (Feb. 12, 2015), D.15-02-011, 2015 WL 781078, at *1 (“Particularly with respect to procedural matters that are not the subject of specific rules under the Public Utilities code, the Commission has historically looked to the Civil Code and/or the Code of Civil Procedure for guidance.”). Section 1987.1 of the Code of Civil Procedure provides that “upon motion reasonably made” by any party, a court may issue an “order quashing the subpoena entirely, modifying it, or directing compliance with it upon those terms or conditions as the court shall declare, including protective orders.” *Id.*

² Pursuant to the email approval from ALJ DeAngelis on May 22, 2020, this is a substitute filing for the May 19, 2020, filing of substantially the same motion.

I. INTRODUCTION

The Subpoena requires SoCalGas to provide to the Public Advocates Office (“Cal Advocates”) immediate access to “all databases associated in any manner” with SoCalGas’s “accounting systems.”³ SoCalGas’s accounting database contains, among other things, documents and information protected from disclosure under the attorney-client privilege, the attorney work-product doctrine, and the First Amendment. SoCalGas takes seriously its obligations as a regulated entity to make its books and records available to the Commission and Cal Advocates on request, and it is working to provide Cal Advocates the requested access as quickly as practicable. But it must comply with its obligations in a manner that protects its privileged and constitutionally protected information from disclosure to Cal Advocates.

SoCalGas has worked diligently to find a solution to implement as quickly as possible to provide Cal Advocates with access to its accounting system as required by the Subpoena while preventing Cal Advocates from accessing SoCalGas’s protected material. The SAP software used by SoCalGas as its accounting system lacks an automated function to prevent Cal Advocates from accessing protected material, so SoCalGas initially proposed a solution whereby counsel for SoCalGas could review in real time information identified by Cal Advocates in the database that was potentially protected from disclosure. Cal Advocates rejected that solution, however, insisting that that its auditor needs “instantaneous access to all attachments and invoices” accessible in the database. As an alternative, SoCalGas is developing a custom software solution, for which it anticipates it will need until May 29 to complete. But Cal Advocates has declined to agree to this reasonable extension, even though ALJ Regina DeAngelis’s most recent ruling admonished the parties that, considering the “extraordinary

³ Declaration of Elliott Henry (“Henry Decl.”), Exh. A, at p.1.

times,” the parties should “work together to find a schedule [for discovery in this investigation] that is *mutually agreeable* and *accommodates the additional demands resulting from the COVID-19 shelter-in-place directive*.” (emphasis added).⁴ SoCalGas has no recourse but to seek the Commission’s intervention.

In this Motion, SoCalGas seeks two forms of relief. *First*, it seeks an order quashing the portion of the Subpoena that would permit access to SoCalGas’s material protected from disclosure under the attorney-client privilege and attorney work product privilege, and an extension of the compliance deadline for the Subpoena until May 29 so that SoCalGas may complete its software solution to exclude those protected materials. It is well-established that such materials should not be disclosed. Cal Advocates admits that it should not have access to this material,⁵ so the Subpoena should be quashed to exclude it. The only dispute on this issue is whether SoCalGas can have until May 29 to implement its software solution. A stay of the compliance date until May 29 is warranted, particularly because absent a stay SoCalGas risks irreparable harm from unwarranted disclosure of its privileged information to Cal Advocates, while Cal Advocates would suffer no harm under a stay. There is no open proceeding or any deadline for Cal Advocates’ informal investigation that it has been conducting for an entire year, and there is no actual urgency requiring Cal Advocates’ immediate access to the system.

Second, the Motion seeks a stay of the Subpoena with respect to Cal Advocates’ access to information and documents for SoCalGas’s 100% shareholder-funded activities that are protected by the First Amendment, such as those related to its advocacy for natural gas, renewable natural gas, and green gas as a part of the solution to achieving the State’s

⁴ Henry Decl., Exh. B. ALJ DeAngelis’s Ruling dated April 6, 2020 denied SoCalGas’s Emergency Motion to Stay Cal Advocates’ discovery for a 60-day period in light of the COVID-19 pandemic’s constraints.

⁵ Henry Decl., Exh. J [Ltr. from J. Wilson to T. Bone dated May 18, 2020].

decarbonization goals. With respect to these materials, SoCalGas seeks a stay that lasts until May 29 to implement its software solution, and until the issue of whether such information is (as it should be) protected. If a stay is not granted, SoCalGas will be seeking alternative relief via another motion for the Commission to expeditiously resolve SoCalGas's December 2, 2019 Motion for Reconsideration/Appeal regarding an ALJ ruling rendered on November 1, 2019.

A stay is warranted for several reasons. This very issue is the subject of a Motion for Reconsideration/Appeal of an ALJ ruling that has been pending before the Commission for over five months. Because the Commission has yet to issue a ruling on that matter, SoCalGas faces a dilemma here: It can comply with the Subpoena as issued and disclose material subject to the appeal, or it can risk fines of up to \$100,000 a day for refusing to comply. On the merits, SoCalGas is likely to prevail on its First Amendment argument, because Cal Advocates cannot satisfy its "particularly heavy" burden of showing that the Subpoena is "rationally related to a compelling government interest" and the "least restrictive means of obtaining the desired information." (*Perry v. Schwarzenegger* (9th Cir. 2010) 591 F.3d 1147, 1161; see also *Britt v. Super. Ct.* (1978) 20 Cal.3d 844, 855.) The balance of harms tips sharply in SoCalGas's favor, because disclosure of its First Amendment-protected material will have a chilling effect on its right of association under the First Amendment, and by contrast Cal Advocates would not be harmed by a delay. Finally, due process augurs in favor of a stay. Cal Advocates should not be permitted to exploit the timing of the Commission's consideration of the appeal by compelling SoCalGas to disclose First Amendment-protected information under threat of contempt and fines.

In short, SoCalGas recognizes Cal Advocates' authority to inspect its SAP database, but the subpoena as enforced by Cal Advocates infringes SoCalGas attorney client/ attorney work

privileges and rights under the First Amendment. With respect to the materials protected by the attorney-client and attorney work product privileges, SoCalGas requests a stay to May 29, 2020, when a technical solution would be in place. Cal Advocates does not contend it is entitled to view attorney-client or attorney work product privilege protected material so there is no reason for Cal Advocates to oppose this modest stay. With respect to the material protected by the First Amendment, SoCalGas also requests a stay to May 29, 2020, when a technical solution would be in place, so that SoCalGas can provide remote access to the SAP database in a manner that prevents Cal Advocates from accessing its First Amendment-protected material, and to protect that material until the protected status of such information is finally resolved. Alternatively, if the stay is not granted, SoCalGas will be requesting via separate motion that the Commission expeditiously resolves its December 2, 2019 Motion for Reconsideration/Appeal. The instant motion should be granted.

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

A. Cal Advocates' Data Request and Subpoena Seeking Access to SoCalGas's Accounting Databases

On May 1, 2020, Cal Advocates served SoCalGas with a data request seeking “[r]emote access to the SoCalGas SAP system to a Cal Advocates auditor no later than May 8, and sooner if possible” and “[i]f remote access is not possible, identify a time and place where the auditor may access the SoCalGas SAP system no later than May 11, 2020.” (Henry Decl., Exh. C, at p. 5 [Data Request No. CalAdvocates-TB-SCG-2020-03].) The Request also sought “[t]raining and assistance for the auditor” to, among other things, “access all SoCalGas accounts” and “access information regarding all contracts, invoices, and payments made to third parties.” (*Id.* at p. 6, emphasis added.) The data request demanded a meet-and-confer conference call no later than May 6, 2020, only three business days after the request was served. (*Id.* at p.1.)

On May 5, 2020—just two business days after Cal Advocates served its request, and before SoCalGas even had a chance to respond to the data request, much less meet and confer about it—counsel for Cal Advocates sent the Subpoena to SoCalGas via email. (Henry Decl., Exh. D.) The Subpoena attached to the email ordered SoCalGas to provide Cal Advocates (as well as “staff and consultants working on its behalf”) “access to all databases associated in any manner with the company’s accounting systems,” including “both on-site and remote access; on-site access [to] be provided at the times and locations requested by Cal Advocates” “no later than three business days after service of this Subpoena,” that is, by May 8, 2020. (Henry Decl., Exh. A, at p. 1) The Subpoena contained no substantive limit to the material Cal Advocates could access in SoCalGas’s accounting systems. (See *id.*) The Subpoena was apparently issued based on a roughly one-page declaration, in which the entirety of the good cause justifying the Subpoena was one sentence long. (*Id.* at pp. 2-3.)⁶

B. SoCalGas’s SAP System

SoCalGas’s SAP accounting system is a vast financial system which includes nearly all financial transactions made by the company, including but not limited to accounting and invoice information for over 2,000 vendors. (Declaration of Dennis Enrique (“Enrique Decl.”), at ¶ 4.) It captures a wide variety of transactions, from invoices with vendors, payments made to third parties, worker’s compensation payments, and individual employee reimbursements. (*Id.* at ¶ 5.) Because the system covers all these transactions, it includes a great deal of sensitive information. (*Id.*) The system allows for different levels of access, but those levels of access are generally very broad, and currently cannot be restricted to just certain vendors or discrete categories of

⁶ The entirety of the purported “good cause” was that “SoCalGas’ responses to data requests in the investigation have been incomplete and untimely.” (*Id.*) SoCalGas disputes this substantially oversimplified representation of events.

information. (Declaration of Kelly Contratto (“Contratto Decl.”) at ¶ 7)⁷ There is no current “out-of-the-box” means of excluding a user from accessing only information and entries for specific vendors, such as law firms or shareholder-funded consultants. (*Id.*) Information protected under the attorney-client privilege, the attorney work product doctrine, and the First Amendment affects approximately 70 of the 2,000 vendors used by SoCalGas in any given year. (Henry Decl. at ¶ 10.)

C. The Parties’ Meet and Confers Regarding the Subpoena

On May 6, 2020, the parties held a meet-and-confer conference call to discuss the May 1 data request and the Subpoena. During that call, the parties focused primarily on discussing technical issues associated with providing Cal Advocates with the remote access to SoCalGas’s SAP system. (Henry Decl., Exh. E [Ltr. from J. Wilson to T. Bone dated May 7, 2020], at 1.) SoCalGas explained that, as a result of the ongoing COVID-19 pandemic, the various legal, accounting, and IT professional personnel required to provide onsite access are primarily working from home, and requiring them to travel to SoCalGas’s offices to facilitate such access would pose risk to those employees. (*Id.*) SoCalGas further provided Cal Advocates with options for providing remote access to the SAP system, one of which was to produce a copy of the SAP database to Cal Advocates. (*Id.*) SoCalGas also informed Cal Advocates that if it identified the specific organizations and cost centers it sought to investigate, SoCalGas could likely provide remote access to those portions of the database in a couple of days. (*Id.*) Although the parties briefly discussed the logistics associated with providing Cal Advocates “read-only” access to the entire database, SoCalGas understood that Cal Advocates’ focus at the time was to obtain copy

⁷ Historically, Cal Advocates has requested and received a fixed copy of information pulled from SAP at a certain access level and without attachments. (Henry Decl., at ¶ 11.) Those productions therefore do not raise the issues presented by the Subpoena and the level of access Cal Advocates is demanding.

access—similar to the arrangement Cal Advocates typically uses in the General Rate Case audit. (*Id.* at pp. 1-2.)

In an email dated May 8, counsel for Cal Advocates identified eleven accounts for SoCalGas to produce “fixed databases”—that is, copies of the data contained in the SAP database for those accounts. (Henry Decl., Exh. F [Email from T. Bone to E. Henry dated May 8, 2020].) From this inquiry, as well as the discussion at the May 6 meet and confer, SoCalGas understood that Cal Advocates recognized getting real-time access would take time and that Cal Advocates was willing to take interim production of fixed data from the SAP system. In the same May 8 email, counsel for Cal Advocates also asked SoCalGas to produce fixed databases for all accounts that are “100% shareholder funded,” that “house[] costs for activities related to influencing public opinion on decarbonization policies,” and that “house[] costs for lobbying activities related to decarbonization policies.” (*Id.*) This email first put SoCalGas on notice that Cal Advocates sought to obtain information on 100% shareholder-funded accounts and on accounts related to SoCalGas’s advocacy for natural gas and renewable natural gas as a part of the solution to achieving the State’s decarbonization goals—that is, content protected under the First Amendment that is the subject of a pending appeal to the Commission.

The parties held a second meet and confer conference call about the Subpoena later that same day. (Henry Decl., Exh. G [Ltr. from J. Wilson to T. Bone dated May 11, 2020].) During that call, counsel for Cal Advocates stated that despite her requests for copies of fixed databases, Cal Advocates still was insisting on real-time access, not merely access to copies of the SAP database. (*Id.*) (In a second email sent later that day, counsel for Cal Advocates noted that, based on her first email requesting the “fixed databases,” she could “understand how SoCalGas got the impression that Cal Advocates was no longer seeking remote access,” and she “apologi[zed] for

any misunderstanding.” (Henry Decl., Exh. H [e-mail from T. Bone to E. Henry dated May 8, 2020].) During the meet and confer, SoCalGas also explained that the unrestricted access to SAP sought by Cal Advocates exceeded the scope of access previously provided to Cal Advocates as a part of the standard General Rate Case process—and, indeed, had never been granted before to the CPUC—so the security and privilege issues posed by the request were novel for the company. (Henry Decl. ¶ 11.)⁸

In a letter dated May 11, 2020, SoCalGas informed Cal Advocates that, given Cal Advocates’ clarified request for real-time access, it was investigating how to provide Cal Advocates with the access to the SAP database “without waiving issues it has on appeal related to First Amendment protections conferred on its fully shareholder-funded contracts.” (Henry Decl., Exh. G at pp. 1-2.) SoCalGas further explained that providing the real-time access presented “a potential additional complication with respect to privileged material as well, as SAP may have work descriptions or bills themselves from outside counsel accessible to a user.” (*Id.* at p.3.) (The May 8 meet and confer and Cal Advocates’ clarification on May 8 that it still sought real-time, unlimited access to the SAP database, not merely copy access to fixed databases for particular accounts, prompted SoCalGas to memorialize these concerns in this letter and look into them further. (Henry Decl., ¶ 9))

On May 13, 2020, the parties conducted a third meet and confer concerning the Subpoena. (Henry Decl., Exh. J [Ltr. from J. Wilson to T. Bone dated May 18, 2020].) SoCalGas explained that the process of securing the copy and remote access to the SAP database has been slowed significantly due to the fact that several employees involved in facilitating the access are

⁸ SoCalGas explained in a later communication that the one time it is aware of that access had been granted to SAP externally it was to a contractor – issues regarding privilege and other protected rights were therefore not implicated in the same way as for Cal Advocates’ access. (Henry Decl., Exh. I [e-mail from E. Henry to T. Bone dated May 12, 2020]).

working from home, and onsite processes related to the access are slower via VPN. (*Id.* at p.1.) SoCalGas also informed Cal Advocates that it had identified a potential solution to provide Cal Advocates with real-time access to its SAP database while also preventing Cal Advocates from accessing privileged information. (*Id.*) Specifically, SoCalGas proposed that “access to attachments and invoices [in the SAP system] could be shut off [by default] but could be requested by Cal Advocates’ auditor,” and then “[a]n attorney would then be able to quickly review requested invoices and provide nonprivileged ones to the auditor.” (*Id.*) Although counsel for Cal Advocates conceded that it should not gain access to material protected by the attorney-client privilege, they indicated Cal Advocates would not accept this as a complete solution to the issue because “the auditor needed instantaneous access to all attachments and invoices.” (*Id.*)

In a letter dated May 18, 2020, counsel for SoCalGas proposed yet another solution to protect SoCalGas’s privileged information from disclosure to Cal Advocates. (Henry Decl., Exh. J at p. 2.) Specifically, SoCalGas stated that it was (and is) writing a special computer program that will prevent Cal Advocates from accessing its material protected by attorney-client privilege and the First Amendment, and that after implementing that program it can provide remote access by May 29, 2020. (*Id.*) Later that same day, SoCalGas produced fixed copies of two years of SAP data (2016-2017) for accounts specifically identified by Cal Advocates. (Henry Decl. ¶ 13.)

On May 18, 2020, the parties held a fourth meet and confer concerning the Subpoena. (Henry Decl., ¶ 13.) During that meet and confer, counsel for Cal Advocates did not agree to the SoCalGas’s request to extend the compliance deadline to May 29. (*Id.*) Instead, it proposed that SoCalGas provide its staff real-time access to the database by the following day, with an agreement that CalPA staff would not look at invoices of law firm accounts. (*Id.*) Cal Advocates further stated that they were not inclined to wait until May 29 for this data, that in their view

failure to provide remote access by Tuesday, May 19 would put SoCalGas in violation of the subpoena,⁹ and would recommend “some sort of motion” to obtain access sooner. (*Id.*) Although they requested that SoCalGas continue with their planned software solution, Cal Advocates also stated that the parties were at an impasse with respect to the confidentiality of the fully shareholder-funded information and that would only be resolved via motion practice. (*Id.*) Cal Advocates also refused to await resolution of the appeal before moving forward with seeking access to such information. (*Id.*)

D. SoCalGas’s Pending Appeal Of A Ruling That Erroneously Permits Access to Information Protected By the First Amendment

Because the SAP database contains information protected under the First Amendment, the Subpoena raises the same constitutional issues present in an appeal filed by SoCalGas pending before the full Commission. That appeal also involves Cal Advocates’ efforts to obtain information on SoCalGas’s 100% shareholder-funded activities.

On August 13, 2019, Cal Advocates served SoCalGas with a data request seeking “all contracts (and contract amendments) covered by the WOA which created the BALANCED ENERGY IO.” (Mot. to Compel Responses from Southern California Gas Company to Question 8 of Data Request CalAdvocates-SC-SCG-2019-05 (Not in a Proceeding) (Oct. 7, 2019) at pp. 2, 6.) In response, SoCalGas produced contracts funded by both SoCalGas ratepayers and shareholders, but it objected to producing its 100% shareholder-funded contracts on the grounds that it exceeded the scope of Cal Advocates’ duties under Public Utilities Code §§ 309.5 and 314. On October 7, 2019, Cal Advocates moved to compel production of the 100% shareholder-funded contracts. In opposition,

⁹ Cal Advocates had granted extensions to respond, a few additional days at a time, up to and including May 19. Henry Decl., Exh. J [Ltr. from J. Wilson to T. Bone dated May 18, 2020]

SoCalGas argued that this request could have a chilling effect on SoCalGas’s First Amendment rights. (Henry Decl., Exh. K [Response of SoCalGas Pursuant to October 7, 2019 Motion to Compel Further Responses from Southern California Gas Company to Data Request—Cal Advocates-SC-SCG-2019-05 (Not in a Proceeding)].) The ALJ nevertheless granted Cal Advocates motion to compel on November 1, 2019, ordering SoCalGas to produce the documents at issue within *two* business days. (Henry Decl., Exh. L [ALJ Ruling].) On November 4, 2019, SoCalGas filed an Emergency Motion to Stay the ALJ Ruling. But with no ruling on that motion and facing significant potential fines of up to \$100,000 a day (see Pub. Util. Code § 2107), SoCalGas produced under protest the 100% shareholder-funded contracts at issue on November 5, 2019 but reserved its rights to appeal the decision. (Henry Decl., Exh. M [Motion for Reconsideration/Appeal], at p.8.)

On December 2, 2019, SoCalGas filed a Motion for Reconsideration/Appeal to the Full Commission Regarding Administrative Law Judge’s Ruling in the Discovery Dispute Between Public Advocates Office and Southern California Gas Company, October 7, 2019 (Not in a Proceeding) (“Motion for Reconsideration/Appeal”). (*Id.*) There, SoCalGas explained why the 100% shareholder-funded contracts are entitled to First Amendment protection, and that Cal Advocates failed to meet its evidentiary burden demonstrating that it had a compelling government interest in requesting the contracts, and that its request was narrowly tailored to achieve that interest. (*Id.* at 10-25).

As of the date of this Motion, the Motion for Reconsideration/Appeal has been pending before the Commission for over five months.

III. LEGAL STANDARD

A. Motion to Quash

The Subpoena cites as legal authority (among other statutes) Section 311 of the Public Utilities Code, which permits the Executive Director to “issue subpoenas for the . . . production of papers, waybills, books, accounts, [and] documents . . . in any inquiry, investigation, hearing, or proceeding in any part of the state.” (Henry Decl., Exh. A, at p.1.) Neither the Commission’s Rules of Practice and Procedure nor the California Public Utilities Code address the standard for motions to quash such a subpoena, and in such circumstances the Commission has relied on the Code of Civil Procedure as instructive authority.¹⁰ Section 1987.1(a) of the California Code of Civil Procedure provides that, “upon motion reasonably made” by any party, a court may issue an “order quashing the subpoena entirely, modifying it, or directing compliance with it upon those terms or conditions as the court shall declare, including protective orders.” Motions to quash subpoenas should be granted where they encompass material protected under the attorney-client privilege, (see *Bank of America, N.A. v. Super. Ct.* (2013) 212 Cal.App.4th 1076, 1102); the attorney work-product privilege (see *Aetna Casualty & Surety Co. v. Super. Ct.* (1984) 153 Cal.App.3d 467, 479); and for information protected by the First Amendment (*Krinsky v. Doe 6* (2008) 159 Cal.App.4th 1154, 1180 [reversing order denying motion to quash subpoena requiring disclosure of identity of online user asserting First Amendment rights in his anonymity].)

¹⁰ *Pac-W. Telecomm, Inc. (U5266C) v. Comcast Phone of California, LLC (U5698C)* (Feb. 12, 2015), D.15-02-011, 2015 WL 781078, at *1 (“Particularly with respect to procedural matters that are not the subject of specific rules under the Public Utilities Code, the Commission has historically looked to the Civil Code and/or the Code of Civil Procedure for guidance.”).

B. Motion to Stay

The Commission's Rules of Practice and Procedure and the California Public Utilities Code do not address the standards applicable to a motion to stay the compliance date for a subpoena issued by the Executive Director. In the context of whether to grant a stay pending rehearing of its own decisions, the Commission considers (1) whether the moving party will suffer serious or irreparable harm if the stay is not granted; (2) whether the moving party is likely to prevail on the merits; (3) a balance of the harm to the moving party if the stay is not granted and the decision reversed, against the harm to the other parties if the stay is granted and the decision affirmed; and (4) other factors relevant to a particular case. (*Order Granting Motion for Stay of Decision 10-12-056*, D. 11-05-050, 2011 WL 2158839 (Cal. P.U.C. 2011), at *1). The Commission has further determined that a "due process allegation is a unique other factor . . . which merits preliminary and independent consideration." (*Order Granting Motion for Stay of Decision (D.) 08-01-031, Denying Rehearing, and Ordering Defendant to Answer the Complaint*, D. 08-04-044, 2008 WL 1841051 (Cal. P.U.C. 2008).

IV. ARGUMENT

A. The Subpoena Should Be Quashed In Part To Exclude From Its Scope Material Subject To Attorney-Client and Attorney-Work-Product Privilege, and The Subpoena's Compliance Date Should Be Stayed Until May 29 To Allow SoCalGas To Complete Software Solution To Protect Such Material Accessible Through Its Accounting Database

SoCalGas's SAP database contains documents and information protected from disclosure under SoCalGas's attorney-client privilege and/or the attorney work product privilege, such as invoices for at least 70 law firms providing legal services to SoCalGas. (Henry Decl. ¶ 10.) The invoices contain, among other things, detailed descriptions of legal work performed for SoCalGas. (Enrique Decl. ¶ 6.)

Such material is protected from disclosure, (*see, e.g., Los Angeles County Bd. of Supervisors v. Super. Ct.* (2016) 2 Cal. 5th 282, 300 [legal invoices are privileged if they “communicate information for the purpose of legal consultation or risk exposing information that was communicated for such a purpose”]), and Cal Advocates agrees that it should not have access such material, (Henry Decl. ¶ 9.) The Subpoena should be quashed to the extent that it encompasses this clearly privileged information. (*See, e.g., Bank of America, N.A., supra*, 212 Cal.App.4th at p. 1102 [reversing trial court’s order denying motion to quash on the ground that doing so would “result in the production of privileged materials.”].)

Further, a stay of the Subpoena’s compliance deadline until May 29, when SoCalGas will have completed its software solution to prevent Cal Advocates from accessing SoCalGas’s privileged material and can provide real-time access to the SAP database, is warranted. *First*, SoCalGas will suffer serious and irreparable harm absent a stay, because providing access to the SAP database without proper software controls would permit Cal Advocates to access SoCalGas’s privileged information. *Second*, Cal Advocates agrees that it should not be able to access privileged material.

Third, Cal Advocates will suffer no harm if the stay is granted. There is no active proceeding before the Commission imposing a deadline by which the information sought by the Subpoena must be obtained. Nor does Cal Advocates need the information for any testimony, evidentiary hearing or other scheduled event. Rather, Cal Advocates’ ongoing investigation of SoCalGas’s accounting practices and other activities is being conducted outside of a proceeding, with no end date.¹¹ Moreover, Cal Advocates’ asserted basis for the need for accessing the

¹¹ That said, the Subpoena seeks access to accounts related to local reach codes and decarbonization activity that is within the scope of an existing order to show cause. SoCalGas objects to the request to review SAP data related to Reach Codes. Whether SoCalGas has ever used ratepayer funds to advocate

databases is that SoCalGas’s responses to data requests served previously in this investigation have purportedly been “incomplete and untimely.” (Henry Decl., Exh. A [Subpoena], at p. 3 ¶ 4 (sic).) While SoCalGas disputes the drastically oversimplified summary of a vast amount of discovery, it is not a basis for needing privileged and protected information nor is it a reason that immediate access is required. (Indeed, SoCalGas has been working diligently to address the multitude of questions and expansive follow up about its prior responses to data requests that have been raised by Cal Advocates, even during the COVID-19 pandemic’s challenging circumstances where SoCalGas’s resources are diverted to this Cal Advocates’ matter outside a proceeding. (See Declaration of Andy Carrasco (“Carrasco Decl.”), ¶ 10.)) Cal Advocates’ claimed urgency is manufactured; its informal investigation has been ongoing for over an entire year, and in any event, it is not a sufficient reason to prevent SoCalGas from taking the necessary technical steps to block Cal Advocates’ access to undisputedly privileged information in response to this unprecedented request.

against local government’s adoption of reach codes has been ordered as within the scope of the Order to Show Cause Directing SoCalGas to Address Shareholder Incentives for Codes and Standards Advocacy Expenditures in R.13-11-005 (OSC). (See Henry Decl., Exh. N [March 25, 2020 Email Ruling from Administrative Law Judge Valerie Kao Clarifying Scope of Order to Show Cause and Providing Further Instructions for Hearing]). In particular, ALJ Kao’s ruling provides that among the factual question to be decided in the OSC is “Whether Respondent ever used ratepayer funds, regardless of the balancing account or other accounting mechanism to which such funds were booked, to advocate against local governments’ adoption of reach codes.” (*Id.*) Because there is an open and ongoing proceeding concerning SoCalGas’s reach code activity and the use of ratepayer funds, any discovery related to such activity should be served and addressed within the OSC in R.13-11-005. Addressing discovery related to the same issue both inside an ongoing proceeding and outside of a proceeding is inefficient, wastes resources, and risks inconsistent outcomes to the extent any disputes on such discovery result in motion practice and rulings by the Commission. For SAP accounts related to the OSC, for purpose of formality and distinction, SoCalGas will be treating that portion of this data request as related to the OSC proceeding, including for purposes of applying Rule 10.1 of the Commission’s Rules of Practice and Procedure and resolving any discovery disputes that may arise related to those SAP accounts through the SoCalGas personnel handling that proceeding and the assigned administrative law judge (ALJ Kao).

Fourth, additional relevant factors merit a stay. The duration of the requested stay is until May 29—a week from the filing of this Motion. SoCalGas is in the process of developing custom-built software that would limit Cal Advocates’ access to information subject to attorney-client privilege or attorney work product privilege on a record-by-record or categorical basis, in real time. (Contratto Decl. ¶ 7.) Moreover, as a result of the ongoing COVID-19 pandemic and the Safer at Home Orders requiring all residents of the State of California to stay at home as much as possible and to avoid all non-essential travel, the employees necessary to facilitate access to SoCalGas’s SAP system are working from home. (Carrasco Decl. ¶ 10; Enrique Decl. ¶ 8.) This slows SoCalGas’s ability to secure copy and remote access to its SAP database, because performing the technical processes to access the database are slower via VPN than onsite. (*E.g.* Enrique Decl. ¶ 8.) All SoCalGas needs is a modest amount of additional time to make that happen.

B. Cal Advocates’ Access To Material Protected By The First Amendment Should Be Stayed Until Ongoing Litigation Presenting That Issue Is Resolved

On December 2, 2019, SoCalGas filed its Motion for Reconsideration/Appeal. (Henry Decl., Exh. L.) The Motion for Reconsideration/Appeal raises one of the same issues present here and on some of the same content—namely, whether Cal Advocates can lawfully compel the production of information related to SoCalGas’s 100% shareholder-funded activities, including political association and free expression related to advocating for natural gas, renewable natural gas, and green gas solutions in rulemakings and petitioning other government bodies. (*Id.*, at p.2.) As of the date of this Motion, the Motion for Reconsideration/Appeal is still pending before the Commission. Because the Commission has yet to rule on the Appeal, enforcement of the Subpoena should be stayed until the May 29th completion of the technical solution, so that

SoCalGas’s First Amendment-protected materials can be excluded from Cal Advocates’ access.¹² Weighing the relevant factors, a stay is merited here.

i. SoCalGas Will Suffer Irreparable Harm Absent a Stay

If SoCalGas’s First Amendment-protected material is disclosed to Cal Advocates, it will have a chilling effect on its associational rights. Indeed, consultants that advise SoCalGas in furtherance of its efforts to influence the State’s decarbonization policy have declared that disclosure to the government of their identities will cause them to be more reluctant to associate with SoCalGas in the future. For example, one vendor that has contracted with SoCalGas to, among other things, create public and internal communications, and develop messaging for the use of natural gas technologies and the advancement of natural gas and renewable gas solutions in the State of California, has declared that if the nature of the public affairs work it is doing is disclosed to Cal Advocates, it will “drastically alter” how it communicates with SoCalGas going forward. (Carrasco Decl., ¶8.) That contractor further declares that it is “less willing” to contract with SoCalGas “knowing that its non-public association with SoCalGas” may be disclosed. (*Id.*) That vendor notes that disclosure to Cal Advocates will cause it to “suffer negative consequences—including financial and strategic information being released to its competitors, the breach of confidentiality its clients require for its services, the cost of responding to inquiries, and the breach of privacy” which “will hinder” the work it does with SoCalGas. (*Id.*) That vendor concludes that compelled disclosure of its information to Cal Advocates will make it reluctant to continue associating with SoCalGas and it is seriously considering limiting its association with SoCalGas in the future. (*Id.*)

¹² Given this overlap in issues and content, SoCalGas incorporates the briefing on the Appeal here by reference.

Indeed, the “chilling effect” associated with public disclosure of SoCalGas’s 100% shareholder-funded political activities has already been occurring. As Andy Carrasco, Director of Regional Public Affairs in the Strategy and Engagement, and Environmental group for SoCalGas attests in a concurrently filed declaration:

The sensitive nature of [SoCalGas’s] discussions goes beyond the substance of the communications or strategy. It encompasses the identity of the consultant, partner or vendor with whom SoCalGas contracts or engages with. In the political arena, alliances are strategic, and, depending on the circumstance, the disclosure of the identity of the organization or individual with whom SoCalGas associates could negatively impact how SoCalGas – or how the consultant, partner or vendor – is perceived or treated by public officials and other public policy stakeholders. As a result of even the December disclosures of several 100% non-ratepayer funded Balanced Energy IO contracts, the information regarding these associations disclosed to Cal Advocates has altered how SoCalGas and its consultant, partner or vendor associates interact with each other, and it has had a chilling effect on these associations. Such a result has (and would further) unduly impinge upon SoCalGas’s constitutional right to free association, and to associate with organizations and individuals of its choosing in exercise of its right to petition the government and advocate its position relating to natural gas, renewable natural gas, and green gas solutions.

(Carrasco Decl., ¶ 6)

Irreparable harm associated with unjustified disclosure of SoCalGas’s 100% shareholder-funded political activities related to decarbonization has already occurred. On November 5, 2019, SoCalGas produced, under protest and to avoid sanctions, various 100% shareholder funded contracts relating to its political activities. (*Id.* ¶ 7.) As a result, at least one vendor/contractor that works with government entities has serious concerns about their business being affected. (*Id.* at ¶ 8.) They have even indicated that they would not have done business with SoCalGas if they had known their information and contact details would have been disclosed. (*Id.*) Indeed, “due to the compelled contract disclosures that SoCalGas previously made, and the specter of additional compelled disclosures from the company’s accounting database concerning 100% non-ratepayer-funded activities, SoCalGas is being forced to

reconsider its decisions relating to political activities and associations.” (*Id.* at ¶ 9.) Going forward, “SoCalGas will be less willing to engage in contracts and communications knowing that its non-public association and communications with consultants, business partners and others on SoCalGas's political interests may be required to be disclosed.” (*Id.*)

The only means of preventing the additional irreparable harm from the “chilling effect” resulting from disclosure of more of its 100% shareholder-funded political activities is to prevent Cal Advocates from accessing the material. SoCalGas requires a stay until May 29 so it can take the technical steps necessary to make that happen, while at the same time providing Cal Advocates access to material not protected under the First Amendment.

ii. SoCalGas Will Likely Succeed on the Merits

1. Material Accessible In The SAP Database Is Protected Under The First Amendment

Although SoCalGas acknowledges that Cal Advocates has “broad authority and rights with respect to access to utility information, including the utility’s books and records,” (*In re Pacific Gas & Elec. Co.*, 199 P.U.R. 4th 177, 252 2000 WL 289723 (Cal. P.U.C. 2000)), SoCalGas has First Amendment rights that must be considered in connection with Cal Advocates’ inspection of its records.¹³ Longstanding Supreme Court precedent recognizes that the United States Constitution guarantees the “right to associate for the purpose of engaging in

¹³ It is “well established that corporations such as PG&E [and SoCalGas] have the right to freedom of speech,” as the “inherent worth of the speech in terms of its capacity for informing the public does not depend on the identity of its source.” (*Pac. Gas & Elec. Co. v. Pub. Utils. Comm’n* (2000) 85 Cal. App. 4th 86, 93). Indeed, the United States Supreme Court has long rejected the notion that a corporation’s status as a regulated entity “lessens its right to be free from state regulation that burdens its speech.” (*See Pac. Gas & Elec. Co. v. Pub. Utils. Comm’n of Cal.* (1986) 475 U.S. 1, 17 fn. 14, plurality opinion; see also *Consol. Edison Co. of N.Y., Inc. v. Pub. Serv. Comm’n of N.Y.* (1980) 447 U.S. 530, 534 fn. 1 [plaintiff’s status as a regulated utility “does not decrease the informative value of its opinions on critical public matters”].) The First Amendment therefore secures to SoCalGas (like other persons) the freedom of speech, association, and the right to petition the government for redress of its grievances, as does its California constitutional counterpart. (U.S. Const. amends. I, XIV; Cal. Const., art. I, §§ 2(a), 3(a).)

those activities protected by the First Amendment”; this is the “freedom of expressive association.” (*Roberts v. U.S. Jaycees* (1984) 468 U.S. 609, 618; see also *Golden Gateway Center v. Golden Gateway Tenants Assn.* (2001) 26 Cal.4th 1013, 1019 [given its “more definitive and inclusive” language, the California Constitution’s free-speech clause is interpreted even “more expansive[ly]” than the First Amendment, citation omitted].) The United States Supreme Court has repeatedly underscored the fundamental importance of the right to associate for political purposes. (See *NAACP v. Alabama*, 357 U.S. 449, 460 (it is “beyond debate” that the freedom to engage with others to advance “beliefs and ideas is an inseparable aspect of the ‘liberty’” protected by the Constitution.); *Buckley v. Valeo*, 424 U.S. 1, 14 (the First Amendment constitutes a “profound national commitment” to the idea that debating public issues “should be uninhibited, robust, and wide-open.” (quoting *New York Times v. Sullivan* (1964) 376 U.S. 254, 270); see also *Governor Gray Davis Committee v. Am. Taxpayers Alliance* (2002) 102 Cal.App.4th 449, 464 [the right to free association is “fundamental”].)

Accordingly, courts have found that demands for the production of materials furthering political association and expression encroach on constitutionally protected activity. (See *Britt v. Super. Ct.*, 20 Cal.3d at p. 861 (the forced “revelation of . . . details of [an] association’s finances and contributions” is far more detrimental to First Amendment interests than the compelled disclosure of “organizational affiliations which ha[d] routinely been struck down” before.); see also *In re GlaxoSmithKline plc* (Minn. 2007) 732 N.W.2d 257, 267-269 [associational freedom protects an organization’s external interactions and internal communications].) These cases reflect the principle that organizations cannot be forced to disclose “strategy and messages” that advance a certain political viewpoint, position, or belief, because those organizations have a right to associate and exchange such ideas in private. (*Perry, supra*, 591 F.3d at pp. 1162-1163; see

AFL-CIO v. FEC (D.C. Cir. 2003) 333 F.3d 168, 170, 177-178 [substantial First Amendment interests implicated by forcing release of “political groups’ strategic documents and other internal materials”].)

Here, the SAP database contains information and documents for its 100% shareholder-funded activities related to its advocacy for natural gas, renewable natural gas, and green gas solutions reflect its political views on the State’s energy policy and reveal other entities and persons with which it associated in furtherance of that expression. (Enrique Decl., ¶ 6.) Aside from those identities of its political consultants, vendors, and partners, the SAP database contains invoices from third-parties which may reveal the type of work undertaken, and other information related to SoCalGas’s political advocacy. (*Id.*) Those materials strike at the very heart of SoCalGas’s freedoms under the First Amendment and are entitled to its protections from compelled disclosure to the government. (*See, e.g., Britt, supra*, 20 Cal.3d at p. 861; *Perry, supra*, 591 F.3d at pp. 1162-1163; *AFL-CIO, supra*, 333 F.3d at pp. 168, 170, 177-178).

2. SoCalGas Can Show Arguable First Amendment Infringement

To determine whether a government agency may compel disclosure of information protected under the First Amendment, a court applies a two-step framework. At step one, “[t]he party asserting the [First Amendment] privilege ‘must demonstrate . . . a prima facie showing of arguable first amendment infringement’ by showing that enforcing the discovery request will result in “(1) harassment, membership withdrawal, or discouragement of new members, or (2) other consequences which objectively suggest an impact on, or ‘chilling’ of, the members’ associational rights.” (*Perry, supra*, 591 F.3d at p. 1160.) If the objector can make the *prima facie* showing, then at step two the “evidentiary burden” shifts to the government to “demonstrate that the information sought” through the discovery is “rationally related to a

compelling government interest” and the “least restrictive means of obtaining the desired information.” (*Id.* at p. 1161, citation omitted.)

Here, at step one, evidence shows that disclosure to the government of the identities and strategies of SoCalGas’s contractors with which it associates to influence public policy on natural gas solutions—which, again, is entirely 100% funded by SoCalGas’s shareholders—will have a “chilling” effect on SoCalGas’s associational rights. As explained above, see Section IV.B.i, *supra*, the compelled disclosure of SoCalGas’s First Amendment-protected information is already having such an effect. (Carrasco Decl., ¶¶ 6-9.) Simply put, “SoCalGas will be less willing to engage in contracts and communications knowing that its non-public association and communications with consultants, business partners and others on SoCalGas’s political interests may be subject to compulsory disclosure.” (*Id.* ¶ 9.) Likewise, government-relations and public-affairs professionals have sworn that these disclosures have not only made them less willing to work and associate with SoCalGas in the future, but also make them seriously consider whether to associate with SoCalGas in future initiatives, rulemaking, or any other political processes at all. (*Id.* ¶ 8.)

3. Cal Advocates Cannot Demonstrate A Compelling Government Interest In Obtaining SoCalGas’s First Amendment-Protected Material, Nor That Unrestricted Access to SAP Is The Least Restrictive Means Of Infringing On SoCalGas’s First Amendment Rights

Because SoCalGas has made a prima facie showing of arguable First Amendment infringement, the “evidentiary burden” shifts to Cal Advocates to demonstrate that the Subpoena is (a) “rationally related to a compelling government interest” and (b) is the “least restrictive means of obtaining the desired information.” (*Perry, supra*, 591 F.3d at p. 1161, citation omitted; see also *NAACP v. Alabama, supra*, 357 U.S. at pp. 460-461 [government action curtailing freedom of association “is subject to the closest scrutiny”]; *Citizens United v. FEC*

(2010) 558 U.S. 310, 340 [infringements of the First Amendment, to be valid, must (1) further a compelling interest and (2) be narrowly tailored to achieve that interest]; *Governor Gray Davis Committee, supra*, 102 Cal.App.4th at p. 464 [same]; *Britt, supra*, 20 Cal.3d at p. 864 [government has a “particularly heavy” burden to justify infringements of First Amendment rights].)

Here, Cal Advocates cannot show a compelling government interest in accessing documents and information reflecting SoCalGas’s 100% shareholder-funded activities undertaken in furtherance of its First Amendment rights. Cal Advocates’ statutorily defined purpose is to “obtain the lowest possible rate for service consistent with reliable and safe service levels.” (Cal. Pub. Utils. Code § 309.5.) 100% shareholder-funded activities are, by definition, not funded by ratepayers, and have no impact on the “rate for service” charged by SoCalGas to its ratepayers. Moreover, Cal Advocates has not articulated how information on SoCalGas’s 100% shareholder-funded activities has any connection to the rates charged to ratepayers for SoCalGas services.¹⁴

In support of its request for the Subpoena, Cal Advocates cited Section 314(a) of the Public Utilities Code, which authorizes it to “inspect the accounts, books, papers, and documents of any public utility.” (Henry Decl., Exh. A, at 3 ¶ 3.) But this state statute cannot trump the protections afforded by the First Amendment, and in turn cannot vanquish SoCalGas’s protections against unwarranted invasions of its First Amendment-protected information. Moreover, to prevail Cal Advocates must produce evidence that it has a compelling government

¹⁴ Cal Advocates’ declaration in support of the Subpoena also demonstrates its overreach in seeking these materials: Cal Advocates is “currently conducting an investigation of Southern California Gas Company’s (SoCalGas’) accounting practices, use of ratepayer monies to fund activities related to the adoption of anti-decarbonization and gas throughput policies, *and other activities potentially contrary to state policies.*” (Henry Decl., Exh. A, at 3 ¶ 4.)

interest in seeking information protected by the First Amendment and that it is using the least restrictive means of obtaining that information. (See *Perry*, *supra*, 591 F.3d at p. 1161 [noting the government’s “evidentiary burden”].) Cal Advocates has not shown a compelling government interest in accessing SoCalGas’s materials protected by the First Amendment, and it has not articulated how the unrestricted access to the SAP database sought by Cal Advocates is not the “least intrusive means” of accessing information that would infringe on SoCalGas’s First Amendment rights. It therefore has not carried its burden to permit compelled production of First Amendment-protected material.

iii. The Balance Of Harms Tips In SoCalGas’s Favor

The balance of harms weighs heavily in favor of SoCalGas. On one hand, absent a stay, SoCalGas would face an impossible choice: It could comply with the Subpoena as issued and disclose material to Cal Advocates, which would have a severe chilling effect on its First Amendment associational rights, or it can risk fines of up to \$100,000 a day for refusing to comply. (See Cal Pub. Utils. Code §§ 2107, 2108.) On the other hand, Cal Advocates will suffer no harm if the stay is granted by the ALJ’s order permitting disclosure of First Amendment-protected information is affirmed. Cal Advocates is seeking this material outside of any proceeding, and therefore there are no deadlines imposing urgency on Cal Advocates obtaining the information. Furthermore, Cal Advocates is receiving access to nearly the entirety of SoCalGas’s financial transaction information with thousands of vendors—the carveout for a small handful of parties has minimal to no impact on their investigation of the use of ratepayer funds.

iv. Other Factors Weigh In Favor of a Stay

Due process concerns also weigh in favor of granting the stay. Cal Advocates—knowing that SoCalGas has appealed to the full Commission regarding its First Amendment-protected

[PROPOSED] ORDER

On May 22, 2020, Southern California Gas Company (“SoCalGas”) filed a Motion To Quash Portion Of The Subpoena To Produce Access To Privileged Materials In Accounting Databases And To Stay Compliance Until the May 29th Completion Of Software Solution To Exclude Those Protected Materials In The Databases (“Motion to Quash”), requesting an order (1) quashing the portion of the Subpoena that would permit access to SoCalGas’s material protected from disclosure under the attorney-client privilege, attorney work product privilege; (2) staying the Subpoena with respect to Cal Advocates’ access to information and documents for SoCalGas’s 100% shareholder-funded activities that are protected by the First Amendment; and (3) extending the compliance deadline for the Subpoena until May 29, 2020 so that SoCalGas can implement a software solution that would prevent Cal Advocates from accessing SoCalGas’s protected material. Upon due consideration, SoCalGas’s Motion to Quash is granted.

ORDER

(1) The portion of the Subpoena To Produce Access To Privileged Materials In Accounting Databases issued May 5, 2020 (the “Subpoena”) is quashed to the extent it would permit access to SoCalGas’s material protected from disclosure under the attorney-client privilege, and the attorney work product privilege;

(2) The Subpoena is stayed with respect to Cal Advocates’ access to information and documents for SoCalGas’s 100% shareholder-funded activities that are protected by the First Amendment until final resolution of the protected status of such information; and

(3) The compliance deadline for the Subpoena is extended through and including May 29, 2020 to permit SoCalGas to implement a software solution that would prevent Cal Advocates from accessing SoCalGas’s material protected under the attorney-client privilege, the attorney work-product privilege, and the First Amendment.

SO ORDERED

Dated: _____, 2020

Document received by the CA 2nd District Court of Appeal.

**DECLARATION OF
ANDY CARRASCO**

Document received by the CA 2nd District Court of Appeal.

**DECLARATION OF ANDY CARRASCO IN SUPPORT OF SOUTHERN CALIFORNIA
GAS COMPANY’S (U 904 G) MOTION TO QUASH PORTION OF THE SUBPOENA
TO PRODUCE ACCESS TO CERTAIN MATERIALS IN ACCOUNTING DATABASES
AND TO STAY COMPLIANCE UNTIL THE MAY 29TH COMPLETION OF
SOFTWARE SOLUTION TO EXCLUDE THOSE PROTECTED MATERIALS IN THE
DATABASES**

I, Andy Carrasco, declare and state as follows:

1. I am a resident of California over 18 years of age, and my statements herein are based on personal knowledge.

2. I am employed by Southern California Gas Company (SoCalGas) as Vice President, Strategy and Engagement and Chief Environmental Officer. My business unit is known as the Strategy and Engagement. I have worked for SoCalGas since 2001. In my current role, my responsibilities include environmental services and developing and delivering the information that meets customers' energy needs and supports state environmental and social policy objectives.

3. I am submitting this Declaration in Support of Southern California Gas Company’s (SoCalGas) (U 904 G) Motion to Quash Portion of the Subpoena to Produce Access to Certain Materials in Accounting Databases and to Stay Compliance Until the May 29th Completion of Software Solution to Exclude Protective Materials.

4. SoCalGas engages in non-public, 100% non-ratepayer funded activities with partners, consultants and vendors regarding its political activities and communications to advance and advocate for natural gas, renewable natural gas, and green gas solutions. If in response to the Public Advocates Office’s subpoena SoCalGas is required to disclose information concerning these non-public activities – such as the identities of the contracting parties and vendors, the nature of the activities carried out by these parties related to SoCalGas’s free expression in support of natural gas solutions, and SoCalGas’s expenditures for the same – it will alter how SoCalGas and its partners, consultants, and vendors work together and communicate in the future regarding matters of shared political interest.

5. In connection with SoCalGas’s political activities and communications to advance natural gas, renewable natural gas, and green gas solutions, SoCalGas engages and contracts with consultants, partners, and vendors to, among other things, formulate strategies for effective

lobbying, communications and messaging. These include highly sensitive discussions regarding public officials, pending legislation, as well as recommendations that others become involved with SoCalGas in the political process.

6. The sensitive nature of these discussions goes beyond the substance of the communications or strategy. It encompasses the identity of the consultant, partner or vendor with whom SoCalGas contracts or engages with. In the political arena, alliances are strategic, and, depending on the circumstance, the disclosure of the identity of the organization or individual with whom SoCalGas associates could negatively impact how SoCalGas – or how the consultant, partner or vendor – is perceived or treated by public officials and other public policy stakeholders. As a result of even the December disclosures of several 100% non-ratepayer funded Balanced Energy IO contracts, the information regarding these associations disclosed to Cal Advocates has altered how SoCalGas and its consultant, partner or vendor associates with each other, and it has had a chilling effect on these associations. Such a result has (and would further) unduly impinge upon SoCalGas’s constitutional right to free association, and to associate with organizations and individuals of its choosing in exercise of its right to petition the government and advocate its position relating to natural gas, renewable natural gas, and green gas solutions.

7. This chilling effect is not a mere abstraction; it has already progressed since SoCalGas was forced to produce some 100% non-ratepayer funded documents. On November 5, 2019, SoCalGas produced, under protest, various 100% non-ratepayer funded contracts relating to its political activities. This was in response to a prior document request issued by Cal Advocates.” SoCalGas objected to this demand to the extent it sought the 100% non-ratepayer funded contracts. I understand that SoCalGas’s objections were overruled by an Administrative Law Judge (ALJ). Although SoCalGas moved for an emergency stay of the ALJ’s ruling, the ALJ did not take any action. In order to avoid the imposition of sanctions, SoCalGas then produced the 100% non-ratepayer funded contracts under protest. Nearly six months have passed, but the Commission has yet to take up SoCalGas’s Motion for Reconsideration/Appeal (Appeal).

8. During this interim period, due to the compelled disclosure of the 100% non-ratepayer funded contracts, SoCalGas’s constitutional rights to free association and to petition have already been – and continue to be – infringed or chilled. SoCalGas included one

declaration showing this in support of the Appeal. In conjunction with the present Motion, SoCalGas has received information from four (4) consultants or vendors who attest to the deleterious and chilling effect that compelled disclosure has and would continue to have. It is my understanding that the ALJ in this non-proceeding indicated that if confidential versions of the declarations from these consultants or vendors were going to be submitted in support of the accompanying motion, then the confidential versions would have to be provided to Cal Advocates. For this reason, I'm explaining in as much detail as possible without revealing confidential information what those attestations would have stated. One of these consultants is a company that contracted with SoCalGas to provide strategic business consultation, create public and internal communications, and develop messaging for the use of natural gas technologies and the advancement of natural gas and renewable natural gas solutions in the State of California. This consultant often communicates with SoCalGas and its employees to help formulate strategy regarding SoCalGas's public and internal messaging, and communicates with others within SoCalGas about this strategy. The consultant indicated that if the non-public contract it has with SoCalGas regarding the public affairs work it is doing with the company is ordered to be disclosed in response to the demand of the California Public Advocates Office, it will drastically alter how that consultant communicates in the future with SoCalGas. Additionally, the consultant represents that if details of its contract with SoCalGas is disclosed to the California Public Advocates Office, it will be less willing to work and associate with SoCalGas in the future. According to this consultant, in the future it will be less willing to engage in such contracts and communications with SoCalGas knowing that its non-public association with SoCalGas has been or will be disclosed simply because of its association with SoCalGas in connection with its efforts to create public messaging for new and emerging gas technologies, the future of renewable natural gas, and various natural gas solutions. As a result, the consultant is also seriously considering whether to associate with SoCalGas in the future regarding its services. The consultant reiterates that it entered into a contract with SoCalGas in furtherance of public affairs and strategic marketing and communication services. But, because of the forced disclosure of its contract to the California Public Advocates Office, it is concerned it will suffer negative consequences—including financial and strategic information being released to its competitors, the breach of confidentiality its clients require for its services, the cost of responding to inquiries, and the breach of privacy that comes with disclosure of its contract.

Further according to this consultant, the disclosure also will hinder the strategic guidance, communication and messaging plans and goals it shares with SoCalGas. As a consequence of the disclosures to the California Public Advocates Office (and likelihood of its additional demands for disclosure), the consultant is reluctant to continue associating with SoCalGas and is seriously considering limiting its association with SoCalGas in the future. A second consultant has a business relationship with SoCalGas, and, as part of that relationship, helps create public messaging and coalitions for the use of natural gas and renewable natural gas solutions in the State of California. In connection with SoCalGas's public messaging for renewable gas and natural gas solutions, this consultant often communicates with SoCalGas and its employees, and helps formulate strategy regarding SoCalGas's public messaging, and communicates with others within SoCalGas about this strategy. This consultant indicates that if the non-public business relationship it has with SoCalGas regarding the public affairs work it is doing with the company is ordered to be disclosed in response to the demand of the California Public Advocates Office, it will drastically alter how it communicates in the future. According to this consultant, if details of the business relationship are disclosed to the California Public Advocates Office, it will also be less willing to work and associate with SoCalGas in the future. Specifically, the consultant represents that going forward it will be less willing to engage in such business relationships and communications knowing that its non-public association with SoCalGas have been disclosed simply because of its association with SoCalGas in connection with its efforts to create public messaging for renewable natural gas and natural gas solutions. As a result, this consultant is also seriously considering whether to associate with SoCalGas at all in the future regarding public affairs work. The consultant reiterates that it entered into the business relationship with SoCalGas in furtherance of public affairs messaging. But, because of the forced disclosure of this relationship to the California Public Advocates Office, it is concerned it will suffer negative consequences—including financial and strategic information being released to its competitors, the cost of responding to inquiries, and the breach of privacy that comes with disclosure of its relationship. Of course, this disclosure also will hinder the public affairs messaging goals it shares with SoCalGas. As a consequence of the disclosures to the California Public Advocates Office (and likelihood of its additional demands for disclosure), the consultant emphasizes that it is reluctant to continue associating with SoCalGas and is seriously considering limiting its association with SoCalGas in the future. A third consultant contracted with SoCalGas to help

create and lead a strategic public affairs campaign that focuses on education and advocacy to improve stakeholder understanding of the benefits of renewable natural gas and of a balanced energy approach. As part of its responsibilities, this consultant often communicates with SoCalGas and its employees to help formulate strategy regarding SoCalGas's public messaging and communicated with others within SoCalGas about this strategy. This consultant indicates that if the non-public contract it has with SoCalGas regarding the public affairs work it is doing with the company is ordered to be disclosed in response to the demand of the California Public Advocates Office, it will drastically alter how it communicates in the future. Specifically, if details of the contract are disclosed to the California Public Advocates Office, this consultant represents that it will be less willing to work and associate with SoCalGas in the future. According to this consultant, going forward it will be less willing to engage in such contracts and communications knowing that its non-public association with SoCalGas has been disclosed simply because of its association with SoCalGas in connection with its efforts to create public messaging for renewable natural gas and natural gas solutions. The consultant is also seriously considering whether to associate with SoCalGas at all in the future regarding public affairs work. The consultant entered into a contract with SoCalGas in furtherance of public affairs messaging. But, because of the forced disclosure of its contract to the California Public Advocates Office, it is concerned it will suffer negative consequences—including financial and strategic information being released to its competitors, the cost of responding to inquiries, and the breach of privacy that comes with disclosure of its contract. Of course, the contractor emphasizes, this disclosure also will hinder the public affairs messaging goals it shared with SoCalGas. As a result of the disclosures to the California Public Advocates Office (and likelihood of its additional demands for disclosure), the contractor reiterates that it is reluctant to continue associating with SoCalGas and is seriously considering limiting my association with SoCalGas in the future. A fourth contractor is engaged by SoCalGas to create public messaging and coalitions for the use of natural gas and renewable natural gas solutions in the State of California. In connection with SoCalGas's public messaging for renewable gas and natural gas solutions, this contractor often communicates with SoCalGas and its employees, to help formulate strategy regarding SoCalGas's public messaging and communicates with others within SoCalGas about this strategy. This consultant indicates that if the non-public contract it has with SoCalGas regarding the public affairs work it is doing with the company is ordered to be disclosed in response to the

demand of the California Public Advocates Office, it will drastically alter how it communicates in the future. Specifically, if details of the contract are disclosed to the California Public Advocates Office, this consultant represents that it will be less willing to work and associate with SoCalGas in the future. The consultant reiterates that, going forward, it will be less willing to engage in such contracts and communications knowing that its non-public association with SoCalGas has been disclosed simply because of its association with SoCalGas in connection with its effort to create public messaging for renewable natural gas and natural gas solutions. The contractor further says it is also seriously considering whether to associate with SoCalGas at all in the future regarding public affairs work. The contractor emphasizes that it entered into a contract with SoCalGas in furtherance of public affairs messaging. But, because of the forced disclosure of this contract to the California Public Advocates Office, this contractor is concerned it will suffer negative consequences – including financial and strategic information being released to its competitors, the cost of responding to inquiries, and the breach of privacy that comes with disclosure of its contract. The contractor underscores that this disclosure also will hinder the public affairs messaging goals it shares with SoCalGas. As a result of the disclosures to the California Public Advocates Office (and likelihood of additional demands for disclosure), this contractor indicates it is reluctant to continue associating with SoCalGas and is seriously considering limiting its association with SoCalGas in the future. All four (4) of these consultants represented to SoCalGas that the compelled disclosure of their identity, relationship, contracts and activities in connection with SoCalGas would render them reluctant to continue associating with SoCalGas, and, as a result, they are seriously considering limiting their association with SoCalGas. Furthermore, one of the four (4) above-described contractors also works with government entities. It has indicated to SoCalGas that it has serious concerns about its business being affected. It has even indicated that it would not have done business with SoCalGas if it had known its information and contact details would have been disclosed. Consequently, if Cal Advocates’ sweeping subpoena is enforced so as to include the compelled disclosure of information relating to 100% non-ratepayer funded activities from SoCalGas’s accounting database, SoCalGas’s constitutional rights will assuredly be further impaired.

9. The forced disclosure is also impacting SoCalGas directly. Part of my responsibility is to support SoCalGas’s engagement of strategic consultants, partners and vendors to advise and assist the company in exercising its constitutionally protect right to advocate policy

positions concerning natural gas solutions. However, due to the compelled contract disclosures that SoCalGas previously made, and the specter of additional compelled disclosures from the company's accounting database concerning 100% non-ratepayer funded activities, SoCalGas is being forced to reconsider its decisions relating to political activities and associations. The company is effectively compelled to choose between, on the one hand, complying with the subpoena to avert sanctions, and, on the other hand, substantially curtailing the exercise of its First Amendment right to political expression and association. Specifically, SoCalGas will be less willing to engage in contracts and communications knowing that its non-public association and communications with consultants, business partners and others on SoCalGas's political interests may be subject to compulsory disclosure.

10. Additionally, my staff and other support organizations within SoCalGas have been working diligently to address extensive data requests by Cal Advocates and numerous follow-up items raised by Cal Advocates. This has been particularly challenging during the COVID-19 pandemic where I serve as the Public Information Officer (PIO) for SoCalGas's Incident Command Structure (ICS). On March 4, 2020, Governor Gavin Newsom proclaimed a State of Emergency in response to the outbreak of novel coronavirus, COVID-19. On March 6, 2020, the State of California elevated its COVID-19 incident response level to Level 1 (the highest level). To align with and facilitate SoCalGas's ability to coordinate with state, local and federal agencies and generally be prepared for different contingencies and scenarios, SoCalGas stood up an ICS and activated the Emergency Operations Center (EOC) on March 9, 2020. I continue to serve as the PIO within the ICS structure and my organization and other support organization's resources have been diverted away from crucial COVID-19 work to support the ever-increasing demands by Cal Advocates, including the SAP access at issue.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 22, 2020 at Los Angeles, California.



ANDY CARRASCO
Vice President, Strategy and Engagement and
Chief Environmental Officer

**DECLARATION OF
DENNIS ENRIQUE**

Document received by the CA 2nd District Court of Appeal.

DECLARATION OF DENNIS ENRIQUE

I, Dennis Enrique, declare and state as follows:

1. I am a resident of California over 18 years of age, and my statements herein are based on personal knowledge.
2. I am currently employed by Southern California Gas Company (SoCalGas) as a Financial Systems and Client Support Manager. I have worked for Sempra Energy (SoCalGas's parent company) since 1999, and for SoCalGas since 2010. In my current position, my responsibilities include managing SoCalGas's financial accounting system, which utilizes the SAP enterprise software. I am familiar with the types of information and records which are accessible through the SAP financial accounting system.
3. I am submitting this Declaration in Support of Southern California Gas Company's (SoCalGas) (U 904 G) Motion to Quash Portion of the Subpoena to Produce Access to Certain Materials in Accounting Databases and to Stay Compliance Until Completion of Software Solution to Exclude Those Protected Materials in the Databases.
4. SoCalGas's SAP system is a vast financial database which includes nearly all financial transactions made by the company. It captures a wide variety of transactions, including payments made to contractors and other third parties, workers compensation payments, and individual employee reimbursements. To my understanding, the database references and contains information relating to over 2,000 unique payees (or "vendors") of SoCalGas.
5. SoCalGas's SAP financial accounting system does not merely record and disclose sums of payment. It contains a wide breadth of identifying and descriptive information and records. A few illustrative examples demonstrate this point. Specifically, the system contains a variety of information relating to the payments, including sensitive information such as payee bank account numbers. The system also contains fields which identify each vendor, both by name and assigned number, and discloses the addresses associated with them.
6. The database also has line item records attachments. This means a user can access a record of the corresponding invoice for a particular payment made. These invoices may include the vendor's description of the services provided and other narrative information about the work they performed for SoCalGas. With respect to an outside law firm, for example, its invoice containing descriptions of the legal work performed for SoCalGas can be viewed and accessed via the SAP database. Similarly, for a political consulting firm, an invoice that includes

a description of the sensitive lobbying or political work it performed for SoCalGas can be viewed and accessed via the SAP system.

7. The system additionally contains a "Line Item Text" field, wherein narrative descriptions can be entered when a transaction record is created. This field may contain information reflecting the name of the vendor as well as descriptive information about the nature of its relationship with SoCalGas or the services it provides. The system further contains journal entry line items. These are entered when adjustments or corrections need to be made in connection with financial transactions. Such line item entries sometimes contain descriptions that reflect or reveal the identity of a vendor to which the adjustment or correction pertains.

8. I understand that Cal Advocates has made a request to obtain exported data from, and gain live access to, the entirety of SoCalGas's SAP underlying accounting database. I have been assisting in preparing exports from SAP in order to provide responsive data to Cal Advocates. This work has been delayed in part because the accounting department must remotely download and upload data contained within SAP via SoCalGas's virtual private network while working from home, as mandated by relevant state and local safer-at-home guidelines during the current Covid-19 pandemic.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 19, 2020 at Porter Ranch, California.



DENNIS ENRIQUE

Document received by the CA 2nd District Court of Appeal.

**DECLARATION OF
KELLY CONTRATTO**

Document received by the CA 2nd District Court of Appeal.

DECLARATION OF KELLY CONTRATTO

I, Kelly Contratto, declare and state as follows:

1. I am a resident of California over 18 years of age, and my statements herein are based on personal knowledge.
2. I am employed by San Diego Gas & Electric Company (SDG&E) as its IT Software Development Manager in the Utility Operations and Financial Applications organization. I am also shared employee with Southern California Gas Company (SoCalGas), an affiliate of SDG&E. As such, I provide support to both SoCalGas and SDG&E. I have been employed by Sempra Energy (the parent company of SoCalGas and SDG&E) or one of its companies since 1991. In my current role, I, along with my team, are responsible for, amongst other things, supporting SoCalGas's accounting databases, which utilize the SAP enterprise software. I also oversee a team of security professionals relating to developing and granting access roles to users in SAP.
3. I am submitting this Declaration in Support of Southern California Gas Company's (SoCalGas) (U 904 G) Motion to Quash Portion of the Subpoena to Produce Access to Certain Materials in Accounting Databases and to Stay Compliance Until the May 29th Completion of Software Solution to Exclude Those Protected Materials in the Databases.
4. I understand that Cal Advocates has made a request to obtain exported data from, and gain live access to, the entirety of SoCalGas's SAP accounting system. I am supporting SoCalGas's efforts to accommodate Cal Advocates' request to gain live access to SoCalGas's SAP accounting system. However, I understand that certain concerns have been raised in this regard, because the system allows access to information that SoCalGas maintains should be excluded from Cal Advocates' view as a matter of law, including certain privileged and other protected information. Although I am not familiar with the specific nature of the dispute between SoCalGas and Cal Advocates concerning the proper scope of access, I can shed some light on certain aspects of the underlying technical issues.
5. SoCalGas's SAP system is a vast financial system which includes all financial transactions made by the company. It captures a wide variety of transactions, as well as information and records related to the transactions. For example, the system identifies SoCalGas's vendors by name, and it allows a user to access records relating to the vendors, including invoices issued by them to SoCalGas, and the payments it made to said vendors.

6. I understand SoCalGas is concerned about granting Cal Advocates access to information and records related to a select number of vendors that transacted business with SoCalGas. In other words, although SoCalGas has agreed to grant Cal Advocates broad access to SoCalGas's SAP accounting system, its access to records pertaining to certain specific vendors and their transactions with SoCalGas needs to be suppressed or excluded.

7. However, providing this type of customized access to SoCalGas's SAP accounting system presents a technical challenge. My understanding is that we have never provided the CPUC with live, remote access before and we have never had a need to provide external access with these limitations in the past.. While SoCalGas's accounting system allows for different levels of access, those levels of access are generally very broad. In particular, as currently configured, there is no "out-of-the-box" way to exclude or suppress Cal Advocates' access to certain vendors, or the records related to their transactions with SoCalGas. In order to institute these limitations, SoCalGas will have to design and code a customized program.

8. My team and I have been tasked with creating this customized program. We have identified this as a priority task, and we are currently working on the solution. Two people from my team have been assigned to work full-time on this solution, and I am overseeing their work. I estimate that, allotting a reasonable amount of time for us to create and test the program, we will be able to grant Cal Advocates the above-described customized access to SoCalGas's SAP accounting system by May 29, 2020. I will note that Sempra IT standards require that to move the custom solution into the SAP system it has to pass functional testing by IT and key business users (i.e. the assigned accounting users), which, if the testing identified a significant defect, it could potentially delay production until the defect is resolved. Even with that, I am confident we can meet the May 29 deadline.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 19 2020 at Escondido, California.



KELLY CONTRATTO

**DECLARATION OF
ELLIOTT S. HENRY**

Document received by the CA 2nd District Court of Appeal.

DECLARATION OF ELLIOTT S. HENRY

I, Elliott S. Henry, declare and state as follows:

1. I am a Senior Counsel in the Regulatory Group for the Southern California Gas Company (SoCalGas). My responsibilities in this position include handling legal aspects of regulatory proceedings and providing legal advice to SoCalGas employees. I have been employed at SoCalGas for almost three years.

2. I have personal knowledge of the facts set forth in this declaration, except as to those matters that are stated on belief or understanding, and as to those matters I believe them to be true. If called as a witness, I could and would testify competently as to the following:

3. On May 5, 2020, SoCalGas was served with a Subpoena to Produce Access to Company Accounting Databases dated May 4, 2020, signed by Alice Stebbins, Executive Director of the California Public Utilities Commission (the "Subpoena"). (A true and correct copy of the Subpoena is attached as Exhibit A.)

4. On April 6, 2020, Administrative Law Judge Regina M. DeAngelis issued a decision concerning SoCalGas's Emergency Motion to File Under Seal and Motion for a Protective Order (Not in a Proceeding). (A true and correct copy of this ruling is attached as Exhibit B.)

5. On May 1, 2020, the Public Advocates Office (Cal Advocates) served SoCalGas with Data Request No. CalAdvocates-TB-SCG-2020-03 outside of a proceeding. (A true and correct copy of the data request is attached as Exhibit C.)

6. On May 5, 2020, Traci Bone, counsel for Cal Advocates, transmitted the Subpoena to SoCalGas via email. (A true and correct copy of the email is attached as Exhibit D.)

7. On May 6, 2020, SoCalGas and Cal Advocates held a meet and confer conference call concerning the Subpoena and the May 1 data request. Jason Wilson, counsel for SoCalGas in relation to this matter, sent a letter dated May 8, 2020 to Traci Bone, counsel for Cal Advocates, summarizing this call. (A true and correct copy of the letter is attached as Exhibit E.)

Document received by the CA 2nd District Court of Appeal.

8. On May 8, 2020 at 9:45 AM, Traci Bone sent an email to me, copying two Cal Advocates staff members and several members of SoCalGas's legal team concerning this matter. (A true and correct copy of the email is attached as Exhibit F.)

9. On May 8, 2020, SoCalGas and Cal Advocates held a second meet and confer conference call concerning the Subpoena. Jason Wilson, counsel for SoCalGas in relation to this matter, sent a letter to Traci Bone dated May 11, 2020 summarizing this call. (A true and correct copy of the letter is attached as Exhibit G.) This call and the subsequent email (*see below*) prompted concerns about information protected from disclosure under the attorney-client privilege, the attorney work-product privilege, and the First Amendment that would be accessible in SAP. CalPA indicated on this call that it agreed that it should not have access to attorney-client privileged information.

10. Later on May 8, 2020, Traci Bone, counsel for Cal Advocates, sent an email to me, copying two Cal Advocates staff members and several members of SoCalGas's legal team concerning this matter, following up on the May 8 meet and confer. (A true and correct copy of the email is attached as Exhibit H.) It is my understanding that the SAP system contains information concerning approximately 71 law firms that have provided legal services to SoCalGas.

11. During the May 8 conference call, counsel for SoCalGas explained to Cal Advocates' counsel and others from Cal Advocates that the unrestricted access to SAP sought by Cal Advocates through the Subpoena exceeded the scope of access previously provided to Cal Advocates as a part of the standard General Rate Case process. To my knowledge, that level of access had never been granted before to the CPUC. Later, I sent Ms. Bone an email further explaining that the one instance where SoCalGas provided external access to SAP was to a hired contractor, and so the privilege and First Amendment issues raised by Cal Advocates' request were not present then. (A true and correct copy of my email is attached as Exhibit I.)

12. On May 13, 2020, SoCalGas and Cal Advocates held a third meet and confer conference call concerning the Subpoena. Jason Wilson, counsel for SoCalGas in relation to this

matter, sent a letter to Traci Bone dated May 18, 2020 summarizing this call. (A true and correct copy of the letter is attached as Exhibit J.)

13. On May 18, 2020, SoCalGas and Cal Advocates held a fourth meet and confer conference call concerning the Subpoena. I was present for this meet and confer. During the call, counsel for SoCalGas requested that the compliance deadline for the Subpoena be extended until May 29, 2020, so that SoCalGas could implement a custom-built software solution necessary to provide Cal Advocates with access to the SAP system in a manner that did not permit it access to SoCalGas's material protected under the attorney-client privilege, the attorney work-product doctrine, and the First Amendment. Counsel for Cal Advocates did not agree to this request, and instead suggested that SoCalGas provide its staff with real-time access to the database no later than the following day. Cal Advocates further explained that in its view SoCalGas's failure to provide remote access by that date would cause SoCalGas to be in violation of the Subpoena, and that it would recommend filing "some sort of motion" to obtain access as soon as possible. Counsel for Cal Advocates also stated that the parties were at an impasse regarding the confidentiality of the 100% shareholder-funded information, and that the dispute would be resolved only via motion practice. Cal Advocates also refused under any circumstances to await resolution of SoCalGas's pending appeal to the full Commission regarding whether Cal Advocates can lawfully obtain SoCalGas's First Amendment-protected material. Although Cal Advocates' counsel mentioned discussing the deadline with her client and told SoCalGas to continue with creating a program, Cal Advocates has not granted an extension to the Subpoena deadline as of the filing of this Motion and has not indicated that Cal Advocates is no longer seeking immediate access to information subject to the Appeal. Because today is the last day to comply and there is a clear impasse on certain issues, SoCalGas is filing the Motion. Later that same day, SoCalGas produced fixed copies of two years of SAP data (2016-2017) for accounts specifically identified by Cal Advocates.

14. On October 7, 2019, Cal Advocates moved to compel production of certain 100% shareholder-funded contracts associated with a SoCalGas account termed the BALANCED

ENERGY IO. On October 17, 2019, SoCalGas filed its Response of SoCalGas Pursuant to October 7, 2019 Motion to Compel Further Responses from Southern California Gas Company to Data Request—Cal Advocates-SC-SCG-2019-05 (Not in a Proceeding). (A true and correct copy of this filing is attached as Exhibit K.)

15. On November 1, 2019, Administrative Law Judge Regina DeAngelis issued a ruling granting Cal Advocates motion to compel. (A true and correct copy of this order is attached as Exhibit L.) On December 2, 2019, SoCalGas filed a Motion for Reconsideration/Appeal to the Full Commission Regarding Administrative Law Judge’s Ruling in the Discovery Dispute Between Public Advocates Office and Southern California Gas Company, October 7, 2019 (Not in a Proceeding), seeking reversal of the November 1, 2019 order. (A true and correct copy of this filing is attached as Exhibit M.)

16. On March 25, 2020, SoCalGas received an Email Ruling from Administrative Law Judge Valerie Kao Clarifying Scope of Order to Show Cause and Providing Further Instructions for Hearing concerning whether SoCalGas has ever used ratepayer funds to advocate against local government’s adoption of reach codes. (A true and correct copy of this filing is attached as Exhibit N.)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 19, 2020 at San Gabriel, California.

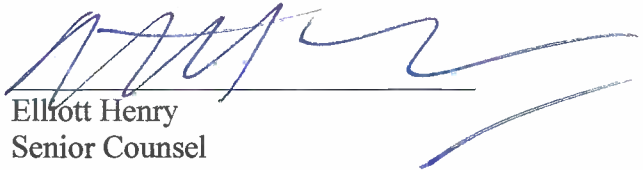

Elliott Henry
Senior Counsel
Southern California Gas Company

EXHIBIT A

Document received by the CA 2nd District Court of Appeal.

PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

IN THE MATTER OF THE PUBLIC
ADVOCATES OFFICE INVESTIGATION
PERTAINING TO SOUTHERN CALIFORNIA
GAS COMPANY'S ACCOUNTING
PRACTICES, USE OF RATEPAYER
MONIES TO FUND ACTIVITIES RELATED
TO THE ADOPTION OF ANTI-
DECARBONIZATION AND GAS
THROUGHPUT POLICIES, AND OTHER
ACTIVITIES POTENTIALLY CONTRARY
TO STATE POLICIES

**SUBPOENA TO PRODUCE ACCESS TO
COMPANY ACCOUNTING DATABASES**

**Public Utilities Code Sections 311, 314, 314.5,
314.6, 581, 582, 584, 701, 702, and 771**

THE PEOPLE OF THE STATE OF CALIFORNIA,
TO: **SOUTHERN CALIFORNIA GAS COMPANY**

1. Pursuant to sections 311(a), 314, 314.5, 314.6, 581, 582, 584, 701, 702, and 771 *et seq.* of the California Public Utilities Code, you are ordered to make available to the Public Advocates Office at the California Public Utilities Commission (Cal Advocates), and staff and consultants working on its behalf, access to all databases associated in any manner with the company's accounting systems no later than three business days after service of this Subpoena.
2. Such access shall include both on-site and remote access; on-site access shall be provided at the times and locations requested by Cal Advocates.
3. Both on-site and remote access shall be as near to identical in quality as the access provided to the company's own employees and/or auditors, including, without limitation, any instructional materials or access to persons knowledgeable about the databases, including knowledge about both on-site and remote access to those databases.
4. IF YOU HAVE ANY QUESTIONS ABOUT THIS SUBPOENA, CONTACT THE FOLLOWING PERSON:

Name: Traci Bone

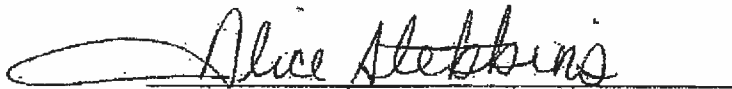
E-Mail: tbo@cpuc.ca.gov

Telephone: 415-703-2048

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COMMISSION.

By order of the Public Utilities Commission of the State of California.

Dated this 4th day of May, 2020.



By: Alice Stebbins

Title: Executive Director

Document received by the CA 2nd District Court of Appeal.

DECLARATION IN SUPPORT OF SUBPOENA

I, TRACI BONE, declare as follows:

1. I am an attorney duly licensed to practice before all courts of the State of California and am employed as a staff attorney for the California Public Utilities Commission (Commission). My business address is 505 Van Ness Avenue, San Francisco, California, 94102.
2. The California Constitution and the Public Utilities Code confer jurisdiction on the Commission to regulate public utilities in California in a number of areas, including, without limitation, cost, safety and maintenance of facilities.
3. The Public Utilities Code provides for an independent Public Advocate's Office to represent and advocate on behalf of the interests of public utility customers and subscribers within the jurisdiction of the Commission.
4. The Commission's Public Advocates Office is currently conducting an investigation of Southern California Gas Company's (SoCalGas') accounting practices, use of ratepayer monies to fund activities related to the adoption of anti-decarbonization and gas throughput policies, and other activities potentially contrary to state policies.
3. Section 314(a) of the Public Utilities Code, and others, authorize the Commission and persons employed by the Commission to inspect the accounts, books, papers and documents of any public utility. Section 311 authorizes the Commission, each Commissioner, the executive director, and the assistant executive directors to issue subpoenas for, among other things, accounts and documents in any investigation in any part of the state.
4. SoCalGas' responses to data requests in the investigation have been incomplete and untimely. Consequently, good cause exists for SoCalGas to be ordered to produce both

remote and on-site access to its accounting databases so that the Public Advocates Office, its staff and/or consultants may conduct their own examination of the utility's records.

Executed under penalty of perjury under the laws of the State of California, on this 5th day of May, 2020, at San Francisco, California.



Traci Lynn Bone
Staff Counsel

Document received by the CA 2nd District Court of Appeal.

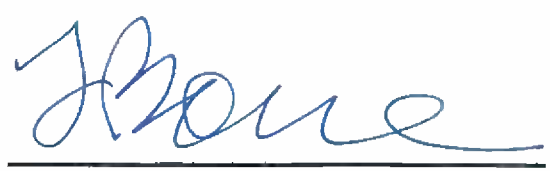
PROOF OF SERVICE

I am employed with the California Public Utilities Commission and I am over 18 years of age. My business address is 505 Van Ness Ave., San Francisco, CA 94102

On May 5th, 2020, I electronically served the attached **SUBPOENA TO PRODUCE ACCESS TO COMPANY ACCOUNTING DATABASES** on the following representatives for Southern California Gas Company:

- Johnny Tran - JQTran@socalgas.com
- Corinne Sierzant - CSierzant@socalgas.com
- Brooke Holland - AHolland@socalgas.com
- Elliot Henry - EHenry@socalgas.com
- Jason Wilson – jwilson@willenken.com
- Sherin Varghese – svarghese@willenken.com

Executed under penalty of perjury of perjury under the laws of the State of California, on this 5th day of May 2020, at San Francisco, California.



Traci Lynn Bone

Document received by the CA 2nd District Court of Appeal.

EXHIBIT B

Document received by the CA 2nd District Court of Appeal.

From: DeAngelis, Regina <regina.deangelis@cpuc.ca.gov>
Sent: Monday, April 6, 2020 10:34 AM
To: Bone, Traci; Trujillo, Leslie A; Batjer, Marybel; Simon, Anne; Ward, Alec; Castello, Stephen; Prusnek, Brian C; Sierzant, Corinne M; Lee, Shawane L; Tran, Johnny Q; Fohrer, Jeffrey B; Henry, Elliott S
Cc: Farrar, Darwin; Serizawa, Linda; Campbell, Michael
Subject: [EXTERNAL] RE: SoCalGas Emergency Motion to File Under Seal and Motion for a Protective Order (Not in a Proceeding)

*** EXTERNAL EMAIL - Be cautious of attachments, web links, and requests for information ***

Commission Staff, including California Public Advocates, has statutory rights to inspect the accounts, books, papers, and documents of any public utility at any time. Further, Public Utilities Code section 309.5(e) allows California Public Advocates Office to compel the production or disclosure of any information if there are any objections to any request for information. This code section does not provide such relief to regulated entities. SoCalGas' Emergency Motion for a Protective Order Staying all Pending and Future Data Requests from California Public Office of Advocates is asking the Commission to act contrary to California law both in substance and form. No further consideration of SoCalGas' motion is warranted.

However considering such extraordinary times, I ask the parties to work together to find a schedule that is mutually agreeable and accommodates the additional demands resulting from the COVID-19 shelter-in-place directive.

Thank you.

Regina M. DeAngelis
Administrative Law Judge
California Public Utilities Commission
415.703.2011
regina.deangelis@cpuc.ca.gov

Notice: This communication may contain confidential and/or legally privileged information for the use of the intended recipient(s). Unauthorized use or disclosure is prohibited. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

From: Bone, Traci <traci.bone@cpuc.ca.gov>
Sent: Thursday, March 26, 2020 12:02 PM
To: Trujillo, Leslie A <LTrujillo@socalgas.com>; Batjer, Marybel <Marybel.Batjer@cpuc.ca.gov>; Simon, Anne <anne.simon@cpuc.ca.gov>; Ward, Alec <Alec.Ward@cpuc.ca.gov>; Castello, Stephen <Stephen.Castello@cpuc.ca.gov>; Prusnek, Brian C <BPrusnek@semprautilities.com>; Sierzant, Corinne M <CSierzant@socalgas.com>; Lee, Shawane L <SLee5@socalgas.com>; Tran, Johnny Q <JQTran@socalgas.com>; Fohrer, Jeffrey B <JFohrer@socalgas.com>; Henry, Elliott S <EHenry@socalgas.com>
Cc: Farrar, Darwin <darwin.farrar@cpuc.ca.gov>; Serizawa, Linda <linda.serizawa@cpuc.ca.gov>; Campbell, Michael <Michael.Campbell@cpuc.ca.gov>; DeAngelis, Regina <regina.deangelis@cpuc.ca.gov>
Subject: RE: SoCalGas Emergency Motion to File Under Seal and Motion for a Protective Order (Not in a Proceeding)

Ms. Trujillo:

The Public Advocates Office is in receipt of SoCalGas' Motion and will be filing a Reply in Opposition to the Motion, which will be served on all of the people on this email, and any others listed on the SoCalGas Certificate of Service.

We ask that SoCalGas follow the same protocol for all future filings regarding this Motion.

Traci Bone, Attorney
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Work: (415) 703-2048
Cell: (415) 713-3599
tbo@cpuc.ca.gov

From: Trujillo, Leslie A <LTrujillo@socalgas.com>
Sent: Wednesday, March 25, 2020 4:51 PM
To: Batjer, Marybel <Marybel.Batjer@cpuc.ca.gov>; Simon, Anne <anne.simon@cpuc.ca.gov>; Bone, Traci <traci.bone@cpuc.ca.gov>; Ward, Alec <Alec.Ward@cpuc.ca.gov>; Castello, Stephen <Stephen.Castello@cpuc.ca.gov>; Prusnek, Brian C <BPrusnek@semprautilities.com>; Sierzant, Corinne M <CSierzant@socalgas.com>; Lee, Shawane L <SLee5@socalgas.com>; Tran, Johnny Q <JQTran@socalgas.com>; Fohrer, Jeffrey B <JFohrer@socalgas.com>; Henry, Elliott S <EHenry@socalgas.com>
Subject: SoCalGas Emergency Motion to File Under Seal and Motion for a Protective Order (Not in a Proceeding)

Sent on Behalf of Attorney Johnny Tran

Dear President Batjer,

Attached please find *Southern California Gas Company's (SoCalGas) Emergency Motion for a Protective Order Staying All Pending and Future Data Requests from the California Public Advocates Office Served Outside of any Proceeding (Relating to the Building Decarbonization Matter), and any Motions and Meet and Confers Related Thereto, During California Government COVID-19 Emergency "Safer at Home" Orders (Emergency Motion), and the accompanying Motion to File Under Seal.* This discovery dispute is not part of any open Commission proceeding, therefore SoCalGas is submitting this motion to the President's office per Public Utilities Code § 309.

Due to the current Coronavirus (COVID-19) health crisis, accordingly, pursuant to CPUC COVID-19 Temporary Filing and Service Protocol for Formal Proceedings, paper copies of these documents are not being filed at this time, and will not be mailed to the Administrative Law Judge or to parties on the service list, and the sealed documents will be delivered to the Docket Office by April 14, 2020 or as directed by the assigned judge.

Sincerely,

Leslie Trujillo

Leslie Trujillo
Legal Administrative Associate
Southern California Gas Company | Law Department
555 West 5th Street, GT14E7 | Los Angeles, CA 90013
Tel: 213.244.2972 | Fax: 213.629-9620 | E-mail: LTrujillo@socalgas.com



Document received by the CA 2nd District Court of Appeal.

EXHIBIT C

Document received by the CA 2nd District Court of Appeal.



Public Advocates Office
California Public Utilities Commission

505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-2544
Fax: (415) 703-2057

<http://publicadvocates.cpuc.ca.gov>

PUBLIC ADVOCATES OFFICE DATA REQUEST
No. CalAdvocates-TB-SCG-2020-03

Date: May 1, 2020

Conference Call: No later than May 6, 2020

Access to Accounts: No later than May 8, 2020 for remote access; if remote access is not available, no later than May 11, 2020 for physical access

To: **Corinne Sierzant**
Regulatory Affairs for SoCalGas
CSierzant@semprautilities.com

Phone: (213) 244-5354
Email:

Johnny Q. Tran
Attorney for SoCalGas

Phone: (213) 244-2981
Email: JQTran@semprautilities.com

Shawane Lee
Attorney for SoCalGas

Phone: (213) 244-8499
Email: SLee5@socalgas.com

Stacy Van Goor
Sempra Energy

Email: SVanGoor@sempra.com

From: **Traci Bone**
Attorney for the
Public Advocates Office

Phone: (415) 713-3599
Email: Traci.Bone@cpuc.ca.gov

James Wuehler
Accountant for the
Public Advocates Office

Phone: (415) 703-2671
Email: James.Wuehler@cpuc.ca.gov

INSTRUCTIONS

General:

You are instructed to answer the following Data Requests in the above-captioned proceeding, with written, verified responses pursuant to Public Utilities Code §§ 309.5

and 314, and Rules 1.1 and 10.1 of the California Public Utilities Commission's Rules of Practice and Procedure within ten (10) business days.

Each Data Request is continuing in nature. Provide your response as it becomes available, but no later than the due date noted above. If you are unable to provide a response by the due date, notify the Public Advocates Office within five (5) business days, with a written explanation as to why the response date cannot be met and a best estimate of when the information can be provided. If you acquire additional information after providing an answer to any request, you must supplement your response following the receipt of such additional information.

This data request does not diminish or excuse any pending written or oral data requests to you.

The Public Advocates Offices expects you to respond to this data request in a timely manner and with the highest level of candor

Responses:

Responses shall restate the text of each question prior to providing the response, identify the person providing the answer to each question and his/her contact information, identify all documents provided in response to the question, and clearly mark such documents with the data request and question number they are responsive to.

Responses should be provided both in the original electronic format, if available, and in hard copy. (If available in Word format, send the Word document and do not send the information as a PDF file.) All electronic documents submitted in response to this data request should be in readable, downloadable, printable, and searchable formats, unless use of such formats is infeasible. Each page should be numbered. If any of your answers refer to or reflect calculations, provide a copy of the supporting electronic files that were used to derive such calculations, such as Excel-compatible spreadsheets or computer programs, with data and formulas intact and functioning. Documents produced in response to the data requests should be Bates-numbered, and indexed if voluminous.

Requests for Clarification:

If a request, definition, or an instruction, is unclear, notify the people listed above in writing within five (5) business days, including a specific description of what you find unclear and why, and a proposal for resolving the issue. In any event, unless directly otherwise by the people listed above, answer the request to the fullest extent possible, explain why you are unable to answer in full, and describe the limitations of your response.

Objections:

If you object to any of portion of this Data Request, please submit specific objections, including the specific legal basis for the objection, to the people listed above within five (5) business days.

Assertions of Privilege:

If you assert any privilege for documents responsive to this data request, please provide within five (5) business days to the people listed above a privilege log identifying each withheld document, and: (a) a summary description of the document; (b) the date of the document; (c) the name of each author or preparer; (d) the name of each person who received the document; and (e) the legal basis for withholding the document.

Assertions of Confidentiality:

If you assert confidentiality for any of the information provided, please identify the information that is confidential with highlights and provide a specific explanation of the basis for each such assertion. Assertions of confidentiality will be carefully scrutinized and are likely to be challenged absent a strong showing of the need for confidentiality, with the exception of the confidentiality for sensitive personal identifying information as described below.

Sensitive Personal Identifying Information:

Any sensitive personal identifying information other than an employee's name shall be fully redacted unless otherwise directed. Sensitive personal identifying information includes, without limitation:

- Social security numbers.
- Bank account numbers.
- Passport information.
- Healthcare related information.
- Medical insurance information.
- Student information.
- Credit and debit card numbers.
- Drivers license and State ID information.

Signed Declaration:

The data response shall include a signed declaration from a responsible officer or an attorney under penalty of perjury that you have used all reasonable diligence in preparation of the data response, and that to the best of their knowledge, it is true and complete.

In addition, any claim of confidentiality or privilege shall be supported by a declaration from your attorney stating that your attorney is familiar with the relevant case law and statutes pertaining to claims of confidentiality and privilege such that there is a good faith basis for the claim.

DEFINITIONS

- A. As used herein, the terms “you,” “your(s),” “Company,” “SCG,” and “SoCalGas” mean Southern California Gas Company and any and all of its respective present and former employees, agents, consultants, attorneys, officials, and any and all other persons acting on its behalf.
- B. The terms “and” and “or” shall be construed either disjunctively or conjunctively whenever appropriate in order to bring within the scope of these Data Requests any information or documents which might otherwise be considered to be beyond their scope.
- C. Date ranges shall be construed to include the beginning and end dates named. For example, the phrases “from January 1 to January 31,” “January 1-31,” “January 1 to 31,” and “January 1 through January 31” should be understood to include both the 1st of January and the 31st of January. Likewise, phrases such as “since January 1” and “from January 1 to the present” should be understood to include January 1st, and phrases such as “until January 31,” “through January 31,” and “up to January 31” should also be understood to include the 31st.
- D. The singular form of a word shall be interpreted as plural, and the plural form of a word shall be interpreted as singular whenever appropriate in order to bring within the scope of these Data Requests any information or documents which might otherwise be considered to be beyond their scope.
- E. The term “communications” includes all verbal and written communications of every kind, including but not limited to telephone calls, conferences, notes, correspondence, and all memoranda concerning the requested communications. Where communications are not in writing, provide copies of all memoranda and documents made relating to the requested communication and describe in full the substance of the communication to the extent that the substance is not reflected in the memoranda and documents provided.
- F. The term “document” shall include, without limitation, all writings and records of every type in your possession, control, or custody, whether printed or reproduced by

any process, including documents sent and received by electronic mail, or written or produced by hand.

- G. “Relate to,” “concern,” and similar terms and phrases shall mean consist of, refer to, reflect, comprise, discuss, underlie, comment upon, form the basis for, analyze, mention, or be connected with, in any way, the subject of these Data Requests.
- H. When requested to “state the basis” for any analysis (including studies and workpapers), proposal, assertion, assumption, description, quantification, or conclusion, please describe every fact, statistic, inference, supposition, estimate, consideration, conclusion, study, and analysis known to you which you believe to support the analysis, proposal, assertion, assumption, description, quantification, or conclusion, or which you contend to be evidence of the truth or accuracy thereof.
- I. Terms related in any way to “lobbying,” lobbyist,” “lobbying firm” and “lobbyist employer” shall, without limitation, be construed broadly and, without limitation, to be inclusive of how those terms are used in the Sempra Energy Political Activities Policy (Policy) and the California Political Reform Act (Act). For purposes of this data request, the Act’s definitions shall be understood to include all manner of state, regional, and local governments or agencies.¹

DATA REQUEST

Public Advocates Office (Cal Advocates) requests a conference call with SoCalGas by no later than Wednesday, May 6, 2020 to arrange for SoCalGas’ provision of the following to Cal Advocates:

1. Remote access to the SoCalGas SAP system to a Cal Advocates auditor no later than May 8, and sooner if possible. If remote access is not possible, identify a time and place where the auditor may access the SoCalGas SAP system that is no later than May 11, 2020.
2. Access to SoCalGas’ SAP system, whether remote or physical, equivalent to the highest quality and functionality available to SoCalGas accountants and auditors – whether employees or contractors.

¹ The Sempra Energy Political Activities Policy defines lobbying broadly on page 3 as: “any action intended to influence legislative or administrative action, including activities to influence government officials, political parties, or ballot measures. Lobbyists can be individual employees or the company that employees them, referred to as a Lobbyist-Employer.”

3. Training and assistance for the auditor to allow the auditor to determine the following in SAP related to adjustments to the Marathon Communications contract referred to in the SoCalGas July 12, 2019 amended response to Data Request (DR) CALPA-SCG-051719.
 - a. The date those adjustments were made, if it is different from the June 14, 2019 date reported in the August 13, 2019 response to Question 5 of DR CAL ADVOCATES SCG-2019-03.
 - b. The dollar amounts of adjustments made and the time period over which those dollars were incurred.
 - c. All subsequent entries in SAP related to the Marathon Communications contract up to the present time that demonstrate that those costs will not be mingled with ratepayer funded accounts.
 - d. Access to the "...separate invoice/order that is not ratepayer funded accounts for all work done by Marathon to found and support Californians for Balanced Energy Solutions" as referred to in response to Data Request CalAdvocates-SC-SCG-2019-02, Question 6(b).
 - e. The Modified Submission dated August 13, 2019 to Data Request CALPA-SCG-051719, Question 3 states "...that all of George Minter's and Ken Chawkins's time from May 1, 2018 through the present would be shareholder funded (i.e., this time is booked to a distinct invoice (I/O) that is not ratepayer funded)." Please provide the auditor with the amounts actually recorded from May 1, 2018 to present and access to SAP to verify that those amounts are recorded in a distinct SAP account that is not ratepayer funded.
 - f. Please also provide access to all of George Minter's and Ken Chawkins's time entries for accounting purposes from January 1, 2017 to the present.
4. Training and assistance for the auditor to access all SoCalGas accounts, including FERC accounts.
5. Training and assistance for the auditor to access information regarding all contracts, invoices, and payments made to third parties.
6. Training and assistance for the auditor to access and identify the allocation of a specific employee's labor expenses for every activity that they support and access to relevant cost centers, internal orders, and expense types or cost elements. See SoCalGas Response to CALADVOCATES-TB-SCG-2020-02, Question 6 which refers to these same terms.

7. Training and assistance for the auditor to be able to determine whether an account is intended to be shareholder costs or ratepayer costs, or a combination of the two, and how to determine which specific internal orders will be excluded from SoCalGas' General Rate Case.
8. Training and assistance so that the auditor can record their findings, including downloading, and screen shot applications.

At a minimum, SoCalGas should be prepared to identify the following information on the conference call:

- The date remote access to the SAP system will be provided, and if not feasible, the specific reasons why it is not feasible, including confirmation of whether or not any SoCalGas employees or auditors have remote access to the SAP system.
- If remote access is not available, the date and location for a site visit so that the auditor can access the SAP system.
- At least two primary points of contact to ensure that the Cal Advocates auditor is able to access the SAP system and any accounts the auditor seeks to review. These contacts must be highly knowledgeable about SoCalGas' SAP system and available to answer questions that will facilitate Cal Advocates' inquiry.
- An afterhours contact to resolve SAP issues if such a contact exists for SoCalGas employees or auditors.
- Any other SAP resources available to SoCalGas employees or auditors.

END OF REQUEST

EXHIBIT D

Document received by the CA 2nd District Court of Appeal.

From: Bone, Traci <traci.bone@cpuc.ca.gov>
Sent: Tuesday, May 5, 2020 1:49 PM
To: Jason Wilson
Cc: Ward, Alec; Castello, Stephen; JQTran@socalgas.com; EHenry@socalgas.com; CSierzant@socalgas.com; AHolland@socalgas.com; Campbell, Michael; Sherin Varghese
Subject: Proposed Agenda for Cal Advocates / SoCalGas 11:00 Conference Call on Wednesday, May 6, 2020
Attachments: Subpoena to SoCalGas for Accounting Database Access - Service Copy.pdf

Jason:

In preparation for our call tomorrow, please find attached hereto a Subpoena to Produce Access To Company Accounting Databases signed by the Commission's Executive Director. The subpoena is consistent with the data request we served on Friday, May 1, 2020. While a subpoena is not a prerequisite to obtaining access to a utility's accounts, given our history with SoCalGas on this investigation, the Public Advocates Office (Cal Advocates) opted for the additional authority provided by a subpoena.

Consistent with Friday's data request and our goal to obtain access to SoCalGas' accounts as soon as practicable, we propose to focus our discussion at tomorrow's scheduled meeting on how and when our staff will be able to access SoCalGas' accounting systems both remotely and on-site. As the Friday data request explained:

At a minimum, SoCalGas should be prepared to identify the following information on the conference call:

- The date remote access to the SAP system will be provided, and if not feasible, the specific reasons why it is not feasible, including confirmation of whether or not any SoCalGas employees or auditors have remote access to the SAP system.
- If remote access is not available, the date and location for a site visit so that the auditor can access the SAP system.
- At least two primary points of contact to ensure that the Cal Advocates auditor is able to access the SAP system and any accounts the auditor seeks to review. These contacts must be highly knowledgeable about SoCalGas' SAP system and available to answer questions that will facilitate Cal Advocates' inquiry.
- An afterhours contact to resolve SAP issues if such a contact exists for SoCalGas employees or auditors.
- Any other SAP resources available to SoCalGas employees or auditors.

In addition, while I had committed to provide a list of questions related to the SoCalGas/Sempra "Lobbying Activity Tracking System" or "LATS" on the same call, it appears that many of the documents provided by SoCalGas regarding LATS training, which would inform that discussion, have been redacted, and several appear to be missing pages of information that would have been in the original version. In addition, as communicated to you yesterday, the list of LATS data fields provided in response to DR #13, Question 2 appears to be incomplete. Consequently, we should plan to address those issues – is data missing and why are there redactions?

Regarding the redactions, we understand that these documents were provided by Sempra, but that does not excuse the failure to properly mark information claimed to be confidential with highlights –

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rather than blackouts – or the failure to provide declarations identifying the legal basis for any confidentiality claims pursuant to General Order (GO) 66. Further, to the extent this information has been redacted because of assertions of privilege, SoCalGas/Sempra should provide a privilege log.

For context, you should understand that these are all issues that were raised in Cal Advocates' first Motion to Compel, which was granted. Consequently, Cal Advocates is understandably troubled by the fact that we are revisiting these issues now.

Given these concerns, we propose to address the LATS issues as follows:

- That SoCalGas and/or Sempra provide no later than this Friday, May 8, 2020, full and complete copies of all of the LATS training materials (including Appendices) with no redactions unless you or a SoCalGas attorney is willing to provide a declaration that there is a good faith basis for any claims or privilege or confidentiality asserted. In that case, any confidential information should be highlighted as provided in previous data requests, rather than redacted.
 - We note that SoCalGas and/or Sempra clearly have ready access to these documents and so producing them without the unjustified redactions should be easily accomplished.
 - We also note that the current black outs appear to be names of Sempra or SoCalGas employees. Please be advised that such information is not confidential absent other personal identifying information such as a social security number, bank account number, or medical information – in which case that personal identifying information (but not the employee's name) should be redacted consistent with the instructions in DR #13.
- That SoCalGas answer the question I posed yesterday, which is whether the list of LATS data fields provided in response to DR #13, Question 2 is complete and lists all LATS data fields, as requested.
- That, consistent with yesterday's request, a SoCalGas and/or Sempra employee knowledgeable about the LATS system, including how it works, what it contains, and when it is required to be used, be available for the Wednesday, May 6, 2020 scheduled conference call. These are the basic questions that need to be answered. In addition, employees should be available to explain the reasons for the redactions and whether information is missing from the LATS training documents. If such a person (or persons) is not available on Wednesday, they should be made available for the conference call we currently have scheduled for this Friday, May 8.

We look forward to SoCalGas' prompt resolution of these matters on tomorrow's conference call.

Traci Bone, Attorney
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Work: (415) 703-2048
Cell: (415) 713-3599
tbo@cpuc.ca.gov

EXHIBIT E

Document received by the CA 2nd District Court of Appeal.

May 7, 2020

VIA E-MAIL ONLY

Traci Bone
Public Advocates Office
505 Van Ness Ave.
San Francisco, CA 94102
Email: tbo@cpuc.ca.gov

Re: *Meet and Confer Regarding Data Requests*

Dear Traci:

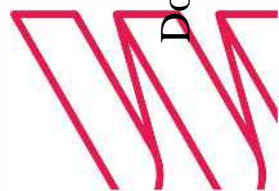
I am writing to confirm our discussion in the meet and confer held on Wednesday, May 6, 2020. We look forward to working together cooperatively to ensure Cal Advocates access to the SAP system. We appreciate and take seriously the subpoena that Cal Advocates has served.

DR 14/Subpoena

Possible Ways Cal Advocates Can Obtain Remote Access

SoCalGas presented two possible options for providing remote access to the SAP system. The first is to essentially copy portions of the database you requested, which would preserve a copy of the database and allow Mr. Wuehler to view the necessary databases without altering the underlying system (“Copy Access”). To our understanding, this is the arrangement used in the GRC with Cal Advocates previously, although such access was previously provided on site. We were made aware that if organizations and cost centers were identified, this process typically takes a couple days, depending on how broad the request is. You noted your concern that Cal Advocates would not know which cost centers it wanted access to until it had a chance to view the full system, so would need access to all cost centers available in SAP. We apprised you that we did not know how long creating a copy of the entire system would take, but that it would be likely to take longer than the “few days” deadline we were given for a limited set of data.

The second option we discussed would be remote access to the database, but with additional controls included (“Read-Only Access”). We informed you that SoCalGas has only completed this task on one other occasion using an RSA token. You asked whether accounting personnel currently had access, and whether the San Francisco computers had access to the SAP system. We answered affirmatively to the former and agreed to look into the other question. However, we noted that both company laptops used by accounting personnel and any other computer would be connected to a live SAP system. As the auditor would undoubtedly need a read-only copy, neither of these are complete options. We are waiting for additional information on how long the process of creating Read-Only Access would take, particularly as we navigate



restrictions due to coronavirus. While we did not discuss in-depth, the parties seemed to agree that this also made physical access more difficult.

Extension of Time to Respond to the Subpoena

In light of the uncertainty as to exactly how long it will take to set up remote access, Cal Advocates agreed to extend SoCalGas' response date to the subpoena accompanying Data Request 14 from Friday, March 8, 2020 to Wednesday, March 13, 2020. SoCalGas appreciates your professional courtesy.

You further agreed that you would discuss with Mr. Wuehler whether any narrowing identification could be provided to expedite Copy Access of the relevant SAP databases.

SoCalGas agreed to continue to obtain additional information about how long broad Copy Access would take to prepare, as well as identify a timeline for Read-Only Access. We further agreed to investigate whether a member of the IT department could answer additional questions regarding RSA tokens and copying data for Cal Advocates to further adjust the timeline, as long as the questioning was limited to those topics. SoCalGas further agreed to investigate and consider your proposal regarding after hours support. We will be prepared to discuss these issues further on Friday.

Preservation of SoCalGas's Confidentiality Objection

Regarding confidential information, you agreed that SoCalGas could review any outputs you desired to use for confidentiality, and that such items would be held securely and branded as confidential to prevent any public release via a CPRA request or any similar requirement to make public records in Cal Advocates' possession.

Regarding technical assistance, you agreed that any party provided to answer questions from Mr. Wuehler would be solely for technical advice and that you personally would not be on calls with this individual. You clarified your request regarding after hours support to indicate that you are only seeking the same level of after-hours support currently available to SoCalGas employees.

DR 13

Regarding our response to DR-13, Question 1, you indicated that employee names and emails should not be redacted but highlighted for confidentiality and should have been provided in native PowerPoint format. You further asked to view trainings from 2019 and 2020, to the extent they were not previously provided.

SoCalGas further explained that while it might have appeared as if pages were missing, the documents were provided in an as-saved format, and those pages never existed as part of the saved presentation.

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SoCalGas also informed you of additional dependent fields that exist in LATS and agreed to amend its response accordingly, as well as to investigate additional fields that you believed might exist.

Cal Advocates noted that it is amenable to narrowing its requests related to LATS by reviewing Ken Chawkins' LATS entries for 2015 through 2020 in the first instance. You proposed this in a follow up email, indicating that Cal Advocates would be satisfied if SoCalGas provided all of Ken Chawkins LATS entries for the past five years.

We agreed to convey your concern regarding native documents and redacted documents to Sempra, as custodian of the documents. We agreed to look into whether there were additional trainings in 2019 and 2020 you had not received and continue to dialogue on this question via email, calls, or the Friday meet and confer. SoCalGas also agreed to amend its response to DR-13, Question 2 by Wednesday, May 13, 2020 to provide dependent fields.

SoCalGas agreed to see if it was feasible to produce Ken Chawkins' LATS entries for a 5-year period quickly.

Other Requests

You requested information about why SoCalGas does not provide the name of a staff member in its responses. We agreed to discuss this internally and provide additional information.

You stated your position that in responding to data requests, SoCalGas should use the LATS training definitions for all responses and define lobbying to include activities that are *either* (1) lobbying OR (2) "influencing" activities. You further sent an email stating that lobbying activity any activity that would be included in LATS and directed us to several pages of a LATS presentation. Accordingly, you state your position that "lobbying" should be defined to be, (1) lobbying activity ("[b]roadly defined as a communication with an elected or appointed official intended to influence legislative or administrative action; (2) administrative testimony; and (3) grassroots lobbying – public outreach.

SoCalGas stated it was working on revised responses which clarify its answers in DR 12.

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Traci Bone
May 7, 2020
Page 4

In addition to talking by phone this Friday, we also scheduled a further meet and confer for Wednesday, May 13, 2020 at 11:30 AM. Please feel free to contact me if you have any questions.

Very truly yours,



Jason H. Wilson

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EXHIBIT F

Document received by the CA 2nd District Court of Appeal.

From: Bone, Traci <traci.bone@cpuc.ca.gov>
Sent: Friday, May 8, 2020 9:45 AM
To: Henry, Elliott S
Cc: Ward, Alec; Castello, Stephen; Tran, Johnny Q; Jason Wilson; Sierzant, Corinne M; Holland, Brooke; Campbell, Michael; Sherin Varghese
Subject: RE: SAP questions

Elliott:

Thank you for arranging for someone familiar with the SAP system to be on the call today. We had a chance to speak with our auditor, James Wuehler (Jim), and he confirmed that Cal Advocates can work with SoCalGas to identify specific databases we want to access, rather than requiring SoCalGas to create a fixed database of the entire SAP system.

First, we propose that SoCalGas make fixed database copies of the following accounts, ideally in the order set forth below:

ACCOUNT	DESCRIPTION
IO 300796601	Related to Balanced Energy
Cost Center 2200-2204	
Cost Center 2200-0811	Public Affairs Manager, LA
CTR F426400G	Exp-Civic & Related
IO FG9200002200	Administrative and General Salaries
CTR F920000G	A&G Salaries
IO FG9215632200	Public Affairs Administration - NonLabor
IO FG90800002200	
Cost Center 2200-2504	Public Policy and Planning
Cost Center 2200-0942	Related to Reach Codes
IO FG8706502200	Related to Reach Code

We are basing this request on account numbers provided in response to SoCalGas data responses. In some instances, we do not have a full description of the account, and there may be typographical errors in those data responses or in our transcription of them. We have tried to associate an account number with a description where one was available to minimize the impact of incomplete or inaccurate information.

Ideally, before our call today, your SAP person could quickly run through these accounts and confirm that we have a working account number. If this is not possible, and if SoCalGas has any problem identifying any of the listed accounts, we ask that you please contact us as soon as practicable so that we can determine what the correct account is. Among other things, we can attempt to direct you to the relevant data response where the account was identified.

Our hope is that you can start providing the fixed databases of these accounts early next week on a rolling basis so that we can start our review immediately. As we review these databases, Jim is likely to send additional queries to his contact at SoCalGas for additional accounts.

Second, we ask that SoCalGas produce fixed databases for all accounts that are 100% shareholder funded.

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Third, we ask that SoCalGas produce fixed databased for all accounts housing costs for activities related to influencing public opinion on decarbonization policies.

Fourth, we ask that SoCalGas identify all accounts housing costs for lobbying activities related to decarbonization policies. For this request, please be sure to identify those accounts housing costs related to CPUC Proceedings R.13-11-005 and R.19-01-011 and explain whether the costs in those accounts are limited to those proceedings, or contain costs for other lobbying activities related to decarbonization policies.

Of course, we reserve the right to request access to additional databases as we continue our audit.

Please let us know as soon as practicable if this start-up proposal is acceptable to SoCalGas and when we can expect to see our first delivery.

We thank you, in advance, for your assistance in this matter,

Traci Bone, Attorney
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Work: (415) 703-2048
Cell: (415) 713-3599
tbo@cpuc.ca.gov

From: Henry, Elliott S <EHenry@socalgas.com>
Sent: Thursday, May 07, 2020 1:23 PM
To: Bone, Traci <traci.bone@cpuc.ca.gov>
Cc: Ward, Alec <Alec.Ward@cpuc.ca.gov>; Castello, Stephen <Stephen.Castello@cpuc.ca.gov>; Tran, Johnny Q <JQTran@socalgas.com>; Jason H. Wilson (jwilson@willenken.com) <jwilson@willenken.com>; Sierzant, Corinne M <CSierzant@socalgas.com>; Holland, Brooke <AHolland@socalgas.com>; Campbell, Michael <Michael.Campbell@cpuc.ca.gov>; Sherin Varghese <svarghese@willenken.com>
Subject: SAP questions

Hello Traci,

We should have someone on tomorrow who is familiar with the SAP system. They probably will not be able to be on the entire time (which I would guess you wouldn't need anyway), but I'll try to let you know their constraints before the meeting. Since different people are more familiar with different aspects of SAP, it would be helpful and most efficient to know what clarifications you are looking to find out ahead of time.

Thank you,
Elliott

Elliott S. Henry
Senior Counsel, Regulatory
Southern California Gas Company | Law Department
555 West 5th Street GT14E7 | Los Angeles, CA 90013
Tel: 213-244-8234 | Fax: 213-629-9620
E-Mail: EHenry@socalgas.com



EXHIBIT G

Document received by the CA 2nd District Court of Appeal.

May 11, 2020

VIA E-MAIL ONLY

Traci Bone
Public Advocates Office
505 Van Ness Ave.
San Francisco, CA 94102
Email: tbo@cpuc.ca.gov

Re: *Meet and Confer Regarding Data Requests*

Dear Traci:

I am writing to confirm our discussion in the meet and confer held on Friday May 8, 2020. We appreciate your continued cooperation in ensuring Cal Advocates is able to access the information it is seeking from SAP.

DR 14 / Subpoena

Based on your email of Friday, May 8, 2020 at 9:45 AM, SoCalGas has focused on providing “Copy Access” (as described in my correspondence to you on May 7, 2020) to you via flash drive of relevant databases. We are confirming the feasibility of providing that information via electronic transfer, which may be difficult as it is likely to be a large volume of data. We hope to provide you an update on when the specific areas you requested will be available by Monday, May 11, 2020.

At your request, we made available Ed Reyes to answer questions related to the accounting system. He was also able to confirm that the combination of cost centers and invoice/orders in your email are in the system and active. He further confirmed that Cost Center 2200-0942 and IO FG8706502200 are described as “Customer Service” within the SAP system, not as “Related to Reach Codes”. Although Mr. Wuehler was again unable to join the call, Mr. Henry confirmed a team of support is being assembled for his needs and that he would provide a primary SAP “superuser” contact no later than Monday to answer additional questions Mr. Wuehler may have about the organization of SAP.

We are further in receipt of your email indicating your desire for fully remote “Read-Only Access”. While SoCalGas provided this in one instance before, it does require significant security work by IT to prepare again as it is read-only access to a live database. We hope to provide an estimate of how long this process would take by early next week. Additionally, SoCalGas is still determining how to provide this access without waiving issues it has on appeal related to First Amendment protections conferred on its fully shareholder-funded contracts.



Although not discussed on the call, we have discovered there is a potential additional complication with respect to privileged material as well, as SAP may have work descriptions or bills themselves from outside counsel accessible to a user.

The deadline of Wednesday, May 13, 2020 for your subpoena is still in force for the eleven specific accounts listed in the paragraph that starts “First” of your 9:45 AM email. We said that we will let you know on Monday if we need more time than Wednesday to obtain these eleven accounts. With respect to the paragraphs that start “Second,” “Third” and “Fourth,” you have agreed that the subpoena date (May 13th) for response will not be enforced while we continue to work cooperatively and provide updates regarding our progress on preparing the various forms of access for Mr. Wuehler’s review. We agreed to continue to provide updates on Monday and Wednesday as we received more information from our IT professionals.

LATS

We agreed to provide an amended answer to DR 13, Question 2 regarding dependent fields in LATS by Wednesday, May 13. We further noted that we believed it would be possible to provide only LATS entries for Ken Chawkins before that date as well. We noted that we would be providing PDFs with confidentiality highlighting instead of redactions from Sempra later on Friday and have done so.

We discussed the difficulties of highlighting for confidentiality in a native format, as it will have to be done outside of our review platform and will alter the metadata of the natives. However, we agreed to convey your concerns to Sempra, as well as investigate whether we could provide highlighting on the native documents. You reiterated your position that you did not believe there was a legal basis for redacting the names of employees below director level and their employment information such as their office phone numbers or email addresses.

Confidentiality

We explained to you we understood that based on conversations between SoCalGas and Mike Campbell, an agreement was reached in September 2019 where Cal Advocates agreed that SoCalGas could mark such information as confidential. We further stated we believed this agreement was memorialized in our response to Data Request 6 and that such an agreement had not been repudiated. (“Pursuant to a September 5, 2019 meeting between SoCalGas (Brian Prusnek, Director – Regulatory Affairs), and Cal Advocates (Mike Campbell, Program Manager), Mr. Campbell indicated the Public Advocates Office is not interested in the names of employees”). You stated your belief that was only related to the marking via highlighting (as opposed to redaction) and not the underlying confidentiality of such information. You further stated that you did not want to resolve this dispute via ADR and made clear your intention to file a motion to compel related to that information and your intention to request that any future designations be supported by an attorney declaration of a good faith basis of those designations.

In turning to the underlying legal standard, we requested Cal Advocates provide the authority on which it was relying for why such information was not protected. You replied that the authority

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Traci Bone
May 11, 2020
Page 3

existed because there were no statutes protecting such information, and that you would not prove a negative by identifying law holding such information to be public. SoCalGas reiterated its belief discussed on previous meet and confers that there were two relevant protections: under General Order 66-D, a party can claim confidentiality under either an applicable provision of the CPRA or a citation to the Government Code Section 6255(a) (the public interest balancing test). In discussing the latter, SoCalGas stated its belief that publicizing names and work email addresses in these contexts ultimately reveals sensitive employment information about its lower-level employees. Further, it subjects them to unnecessary harassment via their work email and office telephone addresses.

We confirmed our meet and confer call for Wednesday, May 13, 2020 at 11:30 AM. Please feel free to contact me if you have any questions.

Very truly yours,



Jason H. Wilson

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EXHIBIT H

Document received by the CA 2nd District Court of Appeal.

From: Bone, Traci <traci.bone@cpuc.ca.gov>
Sent: Friday, May 8, 2020 1:31 PM
To: Henry, Elliott S
Cc: Ward, Alec; Castello, Stephen; Tran, Johnny Q; Jason Wilson; Sierzant, Corinne M; Holland, Brooke; Campbell, Michael; Sherin Varghese
Subject: RE: SAP questions - Follow Up Regarding Read-Only Remote Access

Elliott:

Re-reading my email below, I can understand how SoCalGas got the impression that Cal Advocates was no longer seeking remote access. My apologies for any misunderstanding.

As both Stephen Castello and I clarified on the call today, we anticipate that the procedure described below is only interim, and that Cal Advocates will be provided read-only remote access to SAP as soon as practicable.

We have confirmed that read-only access is a standard feature of SAP and you have represented to us that SoCalGas provided it to the SEC previously (also referred to as "token access"), so we expect that it should not be difficult to implement.

To the extent remote access can be made available next week, we propose that it would be unnecessary to move forward with the first delivery request set forth below.

However, if there is some reason that such remote access cannot be made available next week, we ask that you let us know no later than Tuesday, May 12, and sooner if possible, when remote read-only access can be made available, why it requires more time, and what technical requirements are involved, if any.

We look forward to your timely attention to this matter,

Traci Bone, Attorney
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Work: (415) 703-2048
Cell: (415) 713-3599
tbo@cpuc.ca.gov

From: Bone, Traci
Sent: Friday, May 08, 2020 9:45 AM
To: Henry, Elliott S <EHenry@socalgas.com>
Cc: Ward, Alec <Alec.Ward@cpuc.ca.gov>; Castello, Stephen <Stephen.Castello@cpuc.ca.gov>; Tran, Johnny Q <JQTran@socalgas.com>; Jason H. Wilson (jwilson@willenken.com) <jwilson@willenken.com>; Sierzant, Corinne M <CSierzant@socalgas.com>; Holland, Brooke <AHolland@socalgas.com>; Campbell, Michael <Michael.Campbell@cpuc.ca.gov>; Sherin Varghese <svarghese@willenken.com>
Subject: RE: SAP questions

Elliott:

Document received by the CA 2nd District Court of Appeal.

Thank you for arranging for someone familiar with the SAP system to be on the call today. We had a chance to speak with our auditor, James Wuehler (Jim), and he confirmed that Cal Advocates can work with SoCalGas to identify specific databases we want to access, rather than requiring SoCalGas to create a fixed database of the entire SAP system.

First, we propose that SoCalGas make fixed database copies of the following accounts, ideally in the order set forth below:

ACCOUNT	DESCRIPTION
IO 300796601	Related to Balanced Energy
Cost Center 2200-2204	
Cost Center 2200-0811	Public Affairs Manager, LA
CTR F426400G	Exp-Civic & Related
IO FG9200002200	Administrative and General Salaries
CTR F920000G	A&G Salaries
IO FG9215632200	Public Affairs Administration - NonLabor
IO FG90800002200	
Cost Center 2200-2504	Public Policy and Planning
Cost Center 2200-0942	Related to Reach Codes
IO FG8706502200	Related to Reach Code

We are basing this request on account numbers provided in response to SoCalGas data responses. In some instances, we do not have a full description of the account, and there may be typographical errors in those data responses or in our transcription of them. We have tried to associate an account number with a description where one was available to minimize the impact of incomplete or inaccurate information.

Ideally, before our call today, your SAP person could quickly run through these accounts and confirm that we have a working account number. If this is not possible, and if SoCalGas has any problem identifying any of the listed accounts, we ask that you please contact us as soon as practicable so that we can determine what the correct account is. Among other things, we can attempt to direct you to the relevant data response where the account was identified.

Our hope is that you can start providing the fixed databases of these accounts early next week on a rolling basis so that we can start our review immediately.

As we review these databases, Jim is likely to send additional queries to his contact at SoCalGas for additional accounts.

Second, we ask that SoCalGas produce fixed databases for all accounts that are 100% shareholder funded.

Third, we ask that SoCalGas produce fixed databased for all accounts housing costs for activities related to influencing public opinion on decarbonization policies.

Fourth, we ask that SoCalGas identify all accounts housing costs for lobbying activities related to decarbonization policies. For this request, please be sure to identify those accounts housing costs related to CPUC Proceedings R.13-11-005 and R.19-01-011 and explain whether the costs in those accounts are limited to those proceedings, or contain costs for other lobbying activities related to decarbonization policies.

Of course, we reserve the right to request access to additional databases as we continue our audit.

Please let us know as soon as practicable if this start-up proposal is acceptable to SoCalGas and when we can expect to see our first delivery.

Document received by the CA 2nd District Court of Appeal.

We thank you, in advance, for your assistance in this matter,

Traci Bone, Attorney
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Work: (415) 703-2048
Cell: (415) 713-3599
tbo@cpuc.ca.gov

From: Henry, Elliott S <EHenry@socalgas.com>
Sent: Thursday, May 07, 2020 1:23 PM
To: Bone, Traci <traci.bone@cpuc.ca.gov>
Cc: Ward, Alec <Alec.Ward@cpuc.ca.gov>; Castello, Stephen <Stephen.Castello@cpuc.ca.gov>; Tran, Johnny Q <JQTran@socalgas.com>; Jason H. Wilson (jwilson@willenken.com) <jwilson@willenken.com>; Sierzant, Corinne M <CSierzant@socalgas.com>; Holland, Brooke <AHolland@socalgas.com>; Campbell, Michael <Michael.Campbell@cpuc.ca.gov>; Sherin Varghese <svarghese@willenken.com>
Subject: SAP questions

Hello Traci,

We should have someone on tomorrow who is familiar with the SAP system. They probably will not be able to be on the entire time (which I would guess you wouldn't need anyway), but I'll try to let you know their constraints before the meeting. Since different people are more familiar with different aspects of SAP, it would be helpful and most efficient to know what clarifications you are looking to find out ahead of time.

Thank you,
Elliott

Elliott S. Henry
Senior Counsel, Regulatory
Southern California Gas Company | Law Department
555 West 5th Street GT14E7 | Los Angeles, CA 90013
Tel: 213-244-8234 | Fax: 213-629-9620
E-Mail: EHenry@socalgas.com



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EXHIBIT I

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From: Henry, Elliott S <EHenry@socalgas.com >
Sent: Tuesday, May 12, 2020 7:10 AM
To: Bone, Traci
Cc: Ward, Alec; Castello, Stephen; Tran, Johnny Q; Jason Wilson; Sierzant, Corinne M; Holland, Brooke; Campbell, Michael; Sherin Varghese
Subject: RE: SAP questions - Follow Up Regarding Read-Only Remote Access

Traci,

We are moving forward with getting the SAP access while we also prepare the static data. I am still waiting to hear how long it will take to get the SAP access, but I can't imagine we will be able to provide it this week for at least a couple reasons. Most significantly, having access to SAP allows access to invoices and other details without giving us the ability to review them before you are able to see them. This could potentially disclose information that is similar to that which is the subject of the appeal, such as 100% shareholder funded contracts. Moreover, the access could also disclose privileged information. Full access to SAP would allow access to detailed bills received from outside counsel, which would be privileged. We are trying to determine if access can be granted while walling off certain categories of information or if there is some other workaround, but until we determine that I am not sure what the exact timeline will be. We are looking into walling off all attachments which could be separately requested, but it is possible that information separate from the attachments that would fall into the two sensitive categories above would be visible. We have IT folks looking into these issues and workarounds. To clarify a possible misunderstanding from your below email, the prior audit was *not* conducted by the SEC. It was done by an outside company that we contracted with in relation to certain SEC matters. Therefore, these issues were not present because an auditor that we contracted with stood in a fundamentally different position from Cal Advocates' position here.

The name of the point of contact for you on SAP questions will be Ping Ng (PNg@socalgas.com). There may be another contact to assist Ping – we'll provide that name if/when we get it.

We will be able to provide the files for the discrete data through an email as we have done for larger productions in this matter. We will use that method to send the data, as you requested.

For the discrete sets of data we are trying to push out more quickly, my initial understanding was the information substantially overlapped with what was made available in the GRC before. That would have meant less internal review and QC would have been required. However that's not necessarily the case, so we need to confirm what was previously made available and for those pieces that weren't we need to at least briefly review them before producing them (to check for the above privilege / legal issues and other potential issues). I am optimistic that we will be able to produce some of the categories to you by Wednesday and will update you when I have new information – hopefully later today not at the meet and confer Wednesday. I believe you mentioned 5 years of data for all the SAP info (2015-2019), but if I am recalling incorrectly let us know. I will note that 2019 is taking longer to collect because it is being extracted via VPN since employees are working remotely, so the transfer speeds are slower than they would otherwise be. I will note that there may be overlap with data for different categories when you get these sets of data, but the handler can help with that (and when you get the SAP data you will be able to clarify as well).

We need to have a written agreement on confidentiality. As we discussed previously, an agreement that all materials would be branded confidential if copied/printed/etc. and that nothing would be disclosed prior to notifying us and allowing us to mark for confidentiality should be in place before we produce. I'm not certain how that is impacted by General Order 66-D and if Cal Advocates can essentially contract around that – let me know if you've dealt with such a situation before as I have not had any luck finding an answer on my end.

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On other issues, we will convert the PDF to a searchable document. I'm confused by your request for multiple highlights. You have our new designations and we don't have a document like the one you are requesting.

Best,
Elliott

From: Bone, Traci <traci.bone@cpuc.ca.gov>
Sent: Friday, May 8, 2020 1:31 PM
To: Henry, Elliott S <EHenry@socalgas.com>
Cc: Ward, Alec <Alec.Ward@cpuc.ca.gov>; Castello, Stephen <Stephen.Castello@cpuc.ca.gov>; Tran, Johnny Q <JQTran@socalgas.com>; Jason H. Wilson (jwilson@willenken.com) <jwilson@willenken.com>; Sierzant, Corinne M <CSierzant@socalgas.com>; Holland, Brooke <AHolland@socalgas.com>; Campbell, Michael <Michael.Campbell@cpuc.ca.gov>; Sherin Varghese <svarghese@willenken.com>
Subject: [EXTERNAL] RE: SAP questions - Follow Up Regarding Read-Only Remote Access

*** EXTERNAL EMAIL - Be cautious of attachments, web links, and requests for information ***

Elliott:

Re-reading my email below, I can understand how SoCalGas got the impression that Cal Advocates was no longer seeking remote access. My apologies for any misunderstanding.

As both Stephen Castello and I clarified on the call today, we anticipate that the procedure described below is only interim, and that Cal Advocates will be provided read-only remote access to SAP as soon as practicable.

We have confirmed that read-only access is a standard feature of SAP and you have represented to us that SoCalGas provided it to the SEC previously (also referred to as "token access"), so we expect that it should not be difficult to implement.

To the extent remote access can be made available next week, we propose that it would be unnecessary to move forward with the first delivery request set forth below.

However, if there is some reason that such remote access cannot be made available next week, we ask that you let us know no later than Tuesday, May 12, and sooner if possible, when remote read-only access can be made available, why it requires more time, and what technical requirements are involved, if any.

We look forward to your timely attention to this matter,

Traci Bone, Attorney
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Work: (415) 703-2048
Cell: (415) 713-3599
tbo@cpuc.ca.gov

From: Bone, Traci
Sent: Friday, May 08, 2020 9:45 AM
To: Henry, Elliott S <EHenry@socalgas.com>

Cc: Ward, Alec <Alec.Ward@cpuc.ca.gov>; Castello, Stephen <Stephen.Castello@cpuc.ca.gov>; Tran, Johnny Q <JQTran@socalgas.com>; Jason H. Wilson (jwilson@willenken.com) <jwilson@willenken.com>; Sierzant, Corinne M <CSierzant@socalgas.com>; Holland, Brooke <AHolland@socalgas.com>; Campbell, Michael <Michael.Campbell@cpuc.ca.gov>; Sherin Varghese <svarghese@willenken.com>
Subject: RE: SAP questions

Elliott:

Thank you for arranging for someone familiar with the SAP system to be on the call today. We had a chance to speak with our auditor, James Wuehler (Jim), and he confirmed that Cal Advocates can work with SoCalGas to identify specific databases we want to access, rather than requiring SoCalGas to create a fixed database of the entire SAP system.

First, we propose that SoCalGas make fixed database copies of the following accounts, ideally in the order set forth below:

ACCOUNT	DESCRIPTION
IO 300796601	Related to Balanced Energy
Cost Center 2200-2204	
Cost Center 2200-0811	Public Affairs Manager, LA
CTR F426400G	Exp-Civic & Related
IO FG9200002200	Administrative and General Salaries
CTR F920000G	A&G Salaries
IO FG9215632200	Public Affairs Administration - NonLabor
IO FG90800002200	
Cost Center 2200-2504	Public Policy and Planning
Cost Center 2200-0942	Related to Reach Codes
IO FG8706502200	Related to Reach Code

We are basing this request on account numbers provided in response to SoCalGas data responses. In some instances, we do not have a full description of the account, and there may be typographical errors in those data responses or in our transcription of them. We have tried to associate an account number with a description where one was available to minimize the impact of incomplete or inaccurate information.

Ideally, before our call today, your SAP person could quickly run through these accounts and confirm that we have a working account number. If this is not possible, and if SoCalGas has any problem identifying any of the listed accounts, we ask that you please contact us as soon as practicable so that we can determine what the correct account is. Among other things, we can attempt to direct you to the relevant data response where the account was identified.

Our hope is that you can start providing the fixed databases of these accounts early next week on a rolling basis so that we can start our review immediately.

As we review these databases, Jim is likely to send additional queries to his contact at SoCalGas for additional accounts.

Second, we ask that SoCalGas produce fixed databases for all accounts that are 100% shareholder funded.

Third, we ask that SoCalGas produce fixed databased for all accounts housing costs for activities related to influencing public opinion on decarbonization policies.

Fourth, we ask that SoCalGas identify all accounts housing costs for lobbying activities related to decarbonization policies. For this request, please be sure to identify those accounts housing costs related to CPUC Proceedings R.13-11-

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005 and R.19-01-011 and explain whether the costs in those accounts are limited to those proceedings, or contain costs for other lobbying activities related to decarbonization policies.

Of course, we reserve the right to request access to additional databases as we continue our audit.

Please let us know as soon as practicable if this start-up proposal is acceptable to SoCalGas and when we can expect to see our first delivery.

We thank you, in advance, for your assistance in this matter,

Traci Bone, Attorney
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Work: (415) 703-2048
Cell: (415) 713-3599
tbo@cpuc.ca.gov

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Sent: Thursday, May 07, 2020 1:23 PM
To: Bone, Traci <traci.bone@cpuc.ca.gov>
Cc: Ward, Alec <Alec.Ward@cpuc.ca.gov>; Castello, Stephen <Stephen.Castello@cpuc.ca.gov>; Tran, Johnny Q <JQTran@socalgas.com>; Jason H. Wilson (jwilson@willenken.com) <jwilson@willenken.com>; Sierzant, Corinne M <CSierzant@socalgas.com>; Holland, Brooke <AHolland@socalgas.com>; Campbell, Michael <Michael.Campbell@cpuc.ca.gov>; Sherin Varghese <svarghese@willenken.com>
Subject: SAP questions

Hello Traci,

We should have someone on tomorrow who is familiar with the SAP system. They probably will not be able to be on the entire time (which I would guess you wouldn't need anyway), but I'll try to let you know their constraints before the meeting. Since different people are more familiar with different aspects of SAP, it would be helpful and most efficient to know what clarifications you are looking to find out ahead of time.

Thank you,
Elliott

Elliott S. Henry
Senior Counsel, Regulatory
Southern California Gas Company | Law Department
555 West 5th Street GT14E7 | Los Angeles, CA 90013
Tel: 213-244-8234 | Fax: 213-629-9620
E-Mail: EHenry@socalgas.com



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EXHIBIT J

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May 18, 2020

VIA E-MAIL ONLY

Traci Bone
Public Advocates Office
505 Van Ness Ave.
San Francisco, CA 94102
Email: tbo@cpuc.ca.gov

Re: *Meet and Confer re Cal Advocates' Data Request and Subpoena for SAP Access*

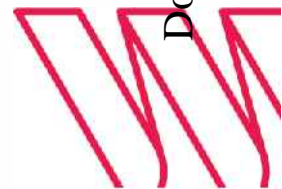
Dear Traci:

I am writing to confirm our meet and confer of Wednesday, May 13, 2020 and to update you on our efforts to provide you with remote access. We once again want to affirm, as we did on our call that we are taking our obligations under the subpoena extremely seriously. We are working diligently to obtain both Copy, or Fixed, Access to the SAP database as well as Remote Access.

We provided updates on our progress in providing the Copy Access, in that we would be rolling out to you fixed copies of the accounts as we had done previously during the GRC process. We further explained that this process had been slowed significantly due to remote work forcing onsite processes to take place over VPN. As noted in an email from SoCalGas late Friday, that information should be available Monday.

We further explained that we had undertaken the process of providing remote access to the live SAP database. As we've explained previously, our team has no previous experience providing remote access to the live database to Cal Advocates, or to any party where doing so would waive privilege. As we began to prepare live access, we encountered two obstacles that we are diligently working to resolve: the ability to access privileged information in the form of bills from outside counsel and access to materials currently subject to an appeal in front of the Commission related to its political associations for 100% shareholder-funded contracts.

On Wednesday's call, SoCalGas proposed a solution in consultation with its SAP and IT teams whereby access to attachments and invoices would be shut off but could be requested by Cal Advocates' auditor. SoCalGas indicated this might not be the entire solution, but a substantial piece of it. An attorney would then able to quickly review requested invoices and provide nonprivileged and non-appeal-related materials to the auditor. You stated this was not a workable solution and that the auditor needed instantaneous access to all attachments and invoices. We therefore stopped pursuing such a solution.



May 18, 2020

Page 2

The solution that SoCalGas proposed Wednesday was based upon the existing functions in the SAP software. After our call Wednesday, we learned that we might be able to create custom software written that gives Cal Advocates remote access while at the same time restricting access to material protected by attorney-client privilege and the 1st Amendment.

Realizing that providing Cal Advocates' remote access is critical, we worked on this issue over the weekend. After speaking with IT specialists, we believe that we can provide Cal Advocates with remote access by May 29, 2020. A special program will be written which will prevent access to attorney-client information and 1st Amendment protected information. SoCalGas has assigned two people from their IT team to work on this custom software until it is completed. The custom software will prevent Cal Advocates from having access on the SAP system to information from the approximately 40 law firms and the 10 consulting shops¹ that have 100% shareholder contracts. We understand that SoCalGas deals with over 2000 vendors a year. Hence, this software fix will be a narrowly targeted one which will affect a tiny fraction of SoCalGas's vendors.

We will maintain close contact with the software development team and let you know if anything happens that negatively affects our target date on May 29, 2020.

In the meantime, we will continue to make available in a fixed format other information from the SAP system.

Over the weekend, we learned the for the first time that it might be possible to access the social security numbers and bank account information of our employees. We are exploring this issue to see if it will have any impact on our target date of May 29, 2020.

As part of our efforts to work cooperatively with Cal Advocates, we will provide an IT expert with knowledge of the SAP System on Monday's meet and confer.

We will also provide an NDA on Monday related to the confidential materials located in SAP. Because this situation is unique, the NDA is not a typical one used by SoCalGas, and we are happy to answer questions and consider revisions you may have for it.

Very truly yours,



Jason H. Wilson

¹ These are initial numbers and may vary. We are providing them to give a sense of the limited amount of protected information within the vendor population.

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EXHIBIT K

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Johnny Q. Tran
Senior Counsel

Office of the General Counsel
555 West Fifth Street, Suite 1400
Los Angeles, California 90013

Tel: (213) 244-2981
Fax: (213) 629-9620
Email: jqtran@socalgas.com

October 17, 2019

President Marybel Batjer
Office of the President of the California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: *Response of SoCalGas Pursuant to October 7, 2019 Motion to Compel Further Responses from Southern California Gas Company to Data Request – CalAdvocates – SC – SCG-2019-05 (Not in a Proceeding)*

Dear President Batjer:

Pursuant to Rule 11.3 of the Rules of Practice and Procedure (“Rules”) of the California Public Utilities Commission (“Commission”), Southern California Gas Company (“SoCalGas”) hereby timely responds to the Public Advocates Office’s (“Cal Advocates”) Motion to Compel Further Responses from Southern California Gas Company to Data Request – CalAdvocates-SC-SCG-2019-05 (“Motion”).

Cal Advocates’ Motion seeks an order from the President of the Commission to compel SoCalGas to produce all contracts (and contract amendments) associated with a Work Order Authorization (“WOA”) that created the 100 percent shareholder funded Balancing Energy Internal Order (“IO”). Cal Advocates’ data request was served outside of any active proceeding pursuant to Public Utilities Code (“Pub. Util. Code”) §§ 309.5(e) and 314. Cal Advocates asserts that it has broad discovery authority under Pub. Util. Code §§ 309.5(e) and 314 and that broad discovery authority requires SoCalGas to produce contracts that are entirely funded by its shareholders. Contrary to Cal Advocates’ assertions, Cal Advocates does not have unfettered access to SoCalGas’ shareholder documents. The plain language of Pub. Util. Code §§ 309.5(e) and 314 makes clear that there are limitations on Cal Advocates’ discovery authority. Here, Cal Advocates has exceeded that authority.

First, Cal Advocates has not been delegated authority by the Commission under Pub. Util. Code § 314 in order to invoke the statutory rights under said code section.

Second, while Cal Advocates’ discovery authority is broad under Pub. Util. Code § 309.5(e) – it is not unfettered. Cal Advocates’ discovery authority is limited to information “necessary to perform its duties.”¹ Here, Cal Advocates has failed to clearly articulate how

¹ Pub. Util. Code § 309.5(e).

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SoCalGas' 100 percent shareholder contracts are necessary for Cal Advocates to perform its statutory duties.

Third, to permit Cal Advocates to inspect shareholder information and documents whenever it so pleases without requiring a showing that the information and document is necessary for Cal Advocates to perform its statutory duties as required by Pub. Util. Code § 309.5(e) could have negative consequences on a utility's constitutionally-protected rights including its First Amendment right to free speech.²

Finally, Cal Advocates failure to meet and confer in good faith pursuant to Commission's Rule of Practice and Procedure, Rule 11.3(a) and shifting theories for needing SoCalGas' 100 percent shareholder contracts deprives SoCalGas of adequate due process.

I. BACKGROUND

Cal Advocates asserts that it "is currently investigating SoCalGas' funding of political lobbying activities, including, among other things, whether and to what extent ratepayer money was used to found and support Californians for Balance Energy Solutions (C4BES)."³ This investigation was initiated based on activity in the Building Decarbonization Rulemaking (R.19-01-011). Cal Advocates alleges that in furtherance of its investigation, Cal Advocates served a series of data requests outside of any active proceeding. The information related to the prior series of data requests are detailed in Cal Advocates' prior motion to compel, SoCalGas' response, and Cal Advocates' reply.⁴

The data request that is the subject of this Motion demands that SoCalGas "[p]rovide all contracts (and contract amendments) covered by the [Work Order Authorization] which created the BALANCED ENERGY IO." An IO is a tool that can be used to track costs associated with particular departments, projects, initiatives, etc. It provides capabilities for planning, monitoring,

² It may also violate SoCalGas' Fourth Amendment rights as the demand for 100 percent shareholder contracts exceeds Cal Advocates' statutory authority. Courts have held that "commercial privacy interests" are protected under the Fourth Amendment, and that a government agency infringes such rights if its investigation exceeds the agency authority. *See v. City of Seattle*, 387 U.S. 541, 544 (1967) (recognizing Fourth Amendment protections for commercial privacy rights); *Brovelli v. Superior Ct. of L.A. Cnty.*, 56 Cal. 2d 524, 529 (1961) (examining whether demand for inspection is "one which the agency demanding production is authorized to make.")

³ Public Advocates Office's Motion to Compel Further Responses from Southern California Gas Company to Data Request – CalAdvocates-SC-SCG-2019-05 (October 7, 2019) ("Motion") at 2.

⁴ *See Attachment A, Cal Advocates Motion to Compel Further Responses from Southern California Gas Company to Data Request - CalAdvocates-SC-SCG-2019-04* (August 14, 2019); *Attachment B, Response of SoCalGas to August 14, 2019 Motion to Compel Further Responses from Southern California Gas Company to Data Request-CalAdvocates-SC-SCG-2019-04* (August 26, 2019); *Attachment C, Reply of the Public Advocates Office to Response of SoCalGas to August 14, 2019 Motion to Compel Further Responses from Southern California Gas Company to Data Request – Cal Advocates-SC-SCG-2019-04 in the Discovery Dispute Between Public Advocates Office and Southern California Gas Company, August 2019 (Not in a Proceeding)* (September 9, 2019).

and allocation of costs. While all IOs are different, the Balanced Energy IO is a broad IO that provides the mechanism for shareholder funding of work related to promoting and supporting a balanced energy approach to achieving California's environmental goals.

On August 27, 2019, SoCalGas objected to the requests as follows:

SoCalGas objects to this request as seeking information that is outside the statutory authority delegated to the Public Advocates Office by Pub. Util. Code § 309.5. The Balanced Energy IO is shareholder funded, not ratepayer funded. Thus, knowing this information will not assist the Public Advocates Office in performing its statutory duties.

On September 16, 2019, SoCalGas and Cal Advocates met and conferred regarding Question 8. Based on the meet and confer, it was SoCalGas' understanding that the reason Cal Advocates were seeking the contracts was to verify whether the contracts are ratepayer or shareholder funded. SoCalGas explained that the contracts will not have that information and in order to verify the funding source, Cal Advocates will need to understand SoCalGas' accounting process. The parties had a subsequent meet and confer on September 27, 2019 whereby SoCalGas' accounting personnel provided Cal Advocates an overview of SoCalGas' accounting processes and procedures to explain how ratepayer and shareholder costs are tracked and funded. Despite SoCalGas personnel answering Cal Advocates' questions, Cal Advocates continued to demand the production of the contracts.

On October 2, 2019, SoCalGas and Cal Advocates had another meet and confer. SoCalGas explained that the September 27 meet and confer should have adequately explained SoCalGas' accounting processes and procedures in order to clarify how the costs tracked in the Balanced Energy IO are shareholder funded. SoCalGas again explained that seeing the actual contracts will not provide Cal Advocates with information as to how the contracts and associated invoices are funded. SoCalGas requested that Cal Advocates explain how seeing the contracts is necessary to fulfill its statutory duties. Cal Advocates asserted that it is entitled to the documents given its broad authority and did not need to provide SoCalGas with a rationale as to why it needed the documents. After SoCalGas asserted that Cal Advocates are not meeting and conferring in good faith and Cal Advocates' continued refusal to provide the rationale would violate SoCalGas' due process rights, Cal Advocates stated that in addition to determining whether the contracts are shareholder or ratepayer funded, it wanted to review the contracts' scope of work to determine whether SoCalGas' shareholders are taking positions that are inconsistent with State policy.

On October 4, 2019, SoCalGas' regulatory case manager left a voicemail message for Cal Advocates to request further discussions to see if there was a way the parties could bridge the gap pertaining to the request for contracts. Without any further meet and confer, Cal Advocates filed its Motion on October 7, 2019. In its Motion, Cal Advocates states for the first time that it is entitled to these contracts to determine how shareholder funded contracts may have affected ratepayers' interests to achieving a least-cost path to meeting the State's decarbonization goals.

It is important to note that contracts are not specific to a WOA and when materials or services are provided under a contract, invoices would then be paid using appropriate accounting information (e.g. cost centers, internal orders, etc.). A single contract may be utilized by multiple organizations, programs, or initiatives. Accordingly, on October 16, 2019, SoCalGas produced contracts that have services or materials utilized by both the Balanced Energy IO and ratepayer funded accounts.⁵ Since ratepayers have utilized the services or materials under these contracts, these contracts are likely within the purview of Cal Advocates. Even though some of the contracts produced are not within Cal Advocates' stated purpose of their investigation (SoCalGas' funding of political lobbying activities), in the interest of transparency, SoCalGas produced them to Cal Advocates. However, SoCalGas maintains its objections as it relates to contracts that are 100 percent shareholder funded. As such, the only contracts in dispute are the contracts that are 100 percent shareholder funded.

II. DISCUSSION

A. Cal Advocates Has Not Been Delegated the Appropriate Authority Under Pub. Util. Code § 314

Cal Advocates asserts it is entitled to the shareholder information under Pub. Util. Code § 314. Cal Advocates argues that Pub. Util. Code §314 is broad in scope and that Cal Advocates has the same scope of authority as any other member of the Commission staff. SoCalGas agrees that Pub. Util. Code § 314 is broad in scope. SoCalGas also agrees that under certain circumstances Cal Advocates may have the same scope of authority as other members of Commission staff. However, Cal Advocates does not have the same scope of authority as a Commissioner or an officer of the Commission.

According to the clear language of the statute: "Any person, other than a commissioner or an officer of the commission, demanding to make any inspection shall produce, under the hand of seal of the commission, authorization to make the inspection." It is undisputed that Cal Advocates is not a Commissioner. To SoCalGas' knowledge Cal Advocates is also not an officer of the Commission. Therefore, in order to avail itself of the broad discovery rights under Pub. Util. Code § 314, Cal Advocates must be delegated the authority by a Commissioner or an officer of the Commission and "produce, under hand and seal of the commission, authorization to make the inspection."

The Commission has determined that under Pub. Util. Code § 314 "the powers it describes can and *must be delegated to be effective*."⁶ The Commission delegates its authority in a variety of contexts and through various means. For example, the Commission has delegated its authority to Commission staff as part of Order Instituting Investigations⁷ and through letters and

⁵ See Attachment D, *E-mail dated October 16, 2019*.

⁶ D.05-06-033, at 41 (emphasis added).

⁷ See Order Instituting Investigation on the Commission's Own Motion to Determine Whether Southern California Gas Company's and Sempra Energy's Organizational Culture and Governance Prioritize Safety (U904G) (issued June 27, 2019) at 14 ("... the Commission hereby confirms that under Pub. Util.

subpoenas signed by an officer of the Commission.⁸ However, SoCalGas is not aware of any delegation of authority to Cal Advocates that pertains to this series of data requests. Cal Advocates has not produced any delegation of authority pursuant to Pub. Util. Code § 314, and therefore, cannot rely on Pub. Util. Code § 314.

B. Cal Advocates' Discovery Rights Under Pub. Util. Code § 309.5(e) Are Not Unfettered

Cal Advocates argues that it has broad discovery authority and is entitled to SoCalGas' shareholder funded contracts under Pub. Util. Code § 309.5(e).⁹ However, the plain language of Section 309.5(e) makes clear that Cal Advocates does not have unlimited rights and authority.

Pub. Util. Code § 309.5(e) provides that "[the] division may compel the production or disclosure of any information that it deems *necessary to perform its duties* from any entity regulated by the commission."¹⁰ It is clear from the language of the statute that Cal Advocates' discovery rights are limited to that information that it deems necessary to perform its duties. Commission decisions have also recognized limitations on Cal Advocates' discovery rights.¹¹ Cal Advocates' duties are defined in Pub. Util. Code § 309.5(a), which states:

There is within the commission an independent Public Advocate's Office of the Public Utilities Commission *to represent and advocate on behalf of the interests of public utility customers* and subscribers within the jurisdiction of the commission. The goal of the office shall be *to obtain the lowest possible rate for service consistent with reliable and safe service levels*. For revenue allocation and rate design matters, the office shall primarily consider the interests of residential and small commercial customers. (Emphasis Added.)

Based on Pub. Util. Code §§ 309.5(e) and 314, Cal Advocates' discovery rights are limited to its statutory duties to represent and advocate on behalf of utility ratepayers and to obtain the lowest possible rate consistent with reliable and safe service. Here, Cal Advocates has failed to clearly articulate how obtaining SoCalGas' 100 percent shareholder funded contacts are necessary for Cal Advocates to perform those statutory duties. Instead Cal Advocates asserts in

Code §§ 313, 314, 314.5, 315, 581, 582, 584, 701, 702, 771, 1794, and 1795, the Commission staff may obtain information from utilities and is already deemed to have the general investigatory authority of the Commission.") available at

<http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=306870841>.

⁸ D.05-06-033, at 43 (The Commission's Executive Director delegated his authority to the Consumer Protection and Safety Division through letters and subpoenas that he signed.)

⁹ Motion, at 2.

¹⁰ Pub. Util. Code § 309.5(e) (emphasis added).

¹¹ D.07-03-014, at 220 (upholding that plain language of the statute which limited DRA's discovery authority).

a meet and confer, and repeats in the Motion,¹² that it is not required to provide a rationale as to how the contracts are necessary to perform its statutory duties. Cal Advocates improperly attempts to expand its scope of authority contravening the express language of Pub. Util. Code § 309.5(e). It is black letter law in California that when interpreting a statute, “[w]e begin with the plain language of the statute, affording the words of the provision their ordinary and usual meaning and viewing them in their statutory context, because the language employed in the Legislature’s enactment generally is the most reliable indicator of legislative intent.’ The plain meaning controls if there is no ambiguity in the statutory language.”¹³ There is no ambiguity in the statute. It is clear from the plain language of the statute that there are limitations on Cal Advocates’ rights. Cal Advocates cannot simply read out the limitation of the statute to suit its purpose.

Cal Advocates first asserted that the contracts were necessary for it to determine whether ratepayer or shareholder funds were used to fund the contracts. After SoCalGas explained its accounting practices to Cal Advocates describing how ratepayer and shareholder costs are funded and that seeing the actual contracts will not serve that purpose, Cal Advocates expressed an additional reasoning for wanting the contracts -- it needed the contracts to determine whether SoCalGas shareholders are taking positions that are inconsistent with State policy. This reasoning is too general and vague for anyone to determine how the contracts are necessary for Cal Advocates to perform its statutory duties. Permitting Cal Advocates to meet its statutory requirements through such general and vague justifications would oblivate the statutory limitation.

In its Motion, Cal Advocates asserts, for the first time, that it needs SoCalGas’ 100 percent shareholder funded contracts to determine how these contracts may have affected ratepayers’ interests to achieving a least-cost path to meeting the State’s decarbonization goals.¹⁴ This reasoning is also vague and ambiguous. Because this reasoning was provided for the first time in the Motion, SoCalGas was not able to meet and confer in order to clarify what Cal Advocates meant by this reasoning.

Cal Advocates has not clearly articulated how obtaining the 100 percent shareholder contracts is necessary to perform its statutory duties. Without this information, the Commission cannot determine whether Cal Advocates is in fact appropriately exercising its authority under Pub. Util. Code § 309.5(e).

C. Permitting Cal Advocates Overly Broad Discovery May Chill SoCalGas’ Shareholders First Amendment Rights

¹² Motion, at 8.

¹³ *Poole v. Orange Cty. Fire Auth.*, 61 Cal. 4th 1378, 1384–85 (2015) citing to *People v. Cornett* 53 Cal.4th 1261, 1265 (2012).

¹⁴ Motion at 8.

Letter to President Batjer

October 17, 2019

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It is clear that utilities are entitled to the full protection of the First Amendment of the United States Constitution.¹⁵ The First Amendment not only protects the right to free speech but also the right to petition. Lobbying the government is a “fully protected” right under the First Amendment.¹⁶ The Ninth Circuit Court of Appeal held that it is unconstitutional when a government official’s actions, even while conducting an investigation, “would chill or silence a person of ordinary fitness from future First Amendment activities.”¹⁷ “It is axiomatic that when the actions of government officials so directly affect citizens’ First Amendment rights, the officials have a duty to take the least intrusive measures necessary to perform their assigned functions.”¹⁸

In *White v. Case*, the Department of Housing and Urban Development (“HUD”) officials were investigating whether a group of individuals that opposed and lobbied against a conversion of a motel into a multi-family housing unit for the homeless engaged in unlawful discriminatory practices.¹⁹ During the course of the investigation, HUD officials took certain actions that the Court deemed to be excessive in breadth including “directing individuals under threat of subpoena to produce all their publications, minutes of relevant meetings, correspondences with other organizations, and the names and address, and telephone numbers of persons who were involved in or had witnessed the alleged discriminatory conduct.”²⁰ The Court found that the breadth of HUD’s investigation and the measures the officials took bore no relationship to the purpose of the investigation.²¹ The Court held that HUD officials’ excessive actions would have chilled or silenced a person of ordinary firmness from engaging in future First Amendment activities.²²

Similarly here, Cal Advocates states in its Motion that it is “currently investigating SoCalGas’ funding of political lobbying activities, including, among other things whether and to what extent ratepayer money was used to found and support Californians for Balanced Energy Solutions (C4BES)”²³ and that its discovery requests are in furtherance of that investigation. Cal Advocates also stated it needed the contracts to determine whether SoCalGas’ shareholders are taking positions that are not consistent with State policy. Therefore, it is clear that Cal Advocates is investigating matters that affect SoCalGas’ shareholders’ First Amendment rights. As such, Cal Advocates must take the least intrusive measures necessary to perform its assigned functions. However, as SoCalGas has explained, obtaining SoCalGas’ 100 percent shareholder contracts are not the least intrusive means since the contracts themselves will not indicate

¹⁵ *Pacific Gas & Elec. Co. v. Pub. Utilities Comm’n of California*, 475 U.S. 1, 17, n. 14 (1986) (plurality opinion); *Consolidated Edison Co. of N.Y. v. Pub. Serv. Comm’n of N.Y.*, 447 U.S. 530, 534 n.1; *Pacific Gas & Elec. Co. v. Pub. Utilities Comm’n*, 85 Cal. App. 4th 86, 93 (2000).

¹⁶ *F.T.C. v. Superior Court Trial Lawyers Ass’n*, 493 U.S. 411, 426 (1990).

¹⁷ *White v. Lee*, 227 F.3d 1214, 1228 (9th Cir. 2000).

¹⁸ *Id.* at 1237.

¹⁹ *Id.* at 1222.

²⁰ *Id.* at 1237-1238.

²¹ *Id.* at 1238.

²² *Id.* at 1229.

²³ Motion, at 2.

whether they are ratepayer or shareholder funded. This would require an accounting exercise reviewing ratepayer accounts, not shareholder accounts, to see what payments are made from those ratepayer accounts. Contracts that are 100 percent shareholder funded bear no relationship to the purpose of Cal Advocates investigation.

Further, Cal Advocates' assertion that it is entitled to the contracts to determine whether SoCalGas' shareholders are taking positions that are not consistent with State policy is not relevant to the question of whether SoCalGas is funding political lobbying activities with ratepayer or shareholder funds. As such, Cal Advocates' demand that SoCalGas produce all 100 percent shareholder funded contracts and amendments is excessive in breadth similar to the actions of HUD's officials that chilled speech. The information in these contracts contain some of the same information as the HUD officials' request such as names, addresses, and telephone numbers of those involved with the contracts. This is particularly concerning in this case since Cal Advocates has previously provided documents that it received as part of this series of data requests to third parties and some of the documents have been posted on social media.²⁴

Therefore, if Cal Advocates is demanding the 100 percent shareholder funded contracts to determine whether the contracts were shareholder or ratepayer funded, then the contracts will not achieve that function. If Cal Advocates is demanding the contracts to determine whether SoCalGas' shareholders are taking actions that are not consistent with State policy, which SoCalGas denies, such actions are unconstitutional as it would have a chilling effect on SoCalGas' shareholders' First Amendment rights.

D. Cal Advocates Failed to Meet and Confer in Good Faith and Deprived SoCalGas Due Process.

As described above, Cal Advocates did not meet and confer in good faith as required by Commission Rules of Practice and Procedure, Rule 11.3(a). Rule 11.3(a) requires a party to meet-and-confer "in a good faith effort to informally resolve the dispute" prior to filing a motion to compel.²⁵ The Commission's Discovery: Custom and Practice Guidelines elaborates:

As a general principle, discovery should proceed in a cooperative and efficient manner, differences should be resolved as much as possible among the parties, and a discovery dispute should be brought before the assigned Administrative Law Judge only as a last resort, after the parties' good faith efforts at resolution of the dispute have failed.²⁶

Cal Advocates has not met and conferred in good faith to resolve the discovery dispute. Cal Advocates refusing to discuss the link or nexus to how the inquiry falls within the scope of

²⁴ See Attachment B, *Response of SoCalGas to August 14, 2019 Motion to Compel Further Responses from Southern California Gas Company to Data Request-CalAdvocates-SC-SCG-2019-04 (August 26, 2019)*, Attachment A: *Twitter publications*.

²⁵ Commission's Rules of Practice and Procedure, Rule 13(a).

²⁶ Discovery: Custom and Practice Guidelines at 1 (available at: http://docs.cpuc.ca.gov/word_pdf/REPORT/117475.pdf).

Cal Advocates' statutory duties and then subsequently providing vague and ambiguous reasoning are not good faith efforts to meet and confer.

Moreover, Cal Advocates providing its reasoning that it needs SoCalGas' 100 percent shareholder funded contracts to determine how these contracts may have affected ratepayers' interests to achieving a least-cost path to meeting the State's decarbonization goals for the first time in its Motion²⁷ deprives SoCalGas of an opportunity to meet and confer as to this reasoning and deprives SoCalGas of the ability to understand and respond to this motion in violation of SoCalGas' due process rights. The Commission has recognized that a utility is entitled to procedural and substantive due process.²⁸ Where, as here, a party is "kept in the dark about the specific charges" made against them, it is a "charade" and "does not serve the public interest."²⁹ In addition to Cal Advocates' general, vague and ambiguous justifications, Cal Advocates shifting theories for needing the contracts deprives SoCalGas of adequate due process. In these circumstances, Courts have reversed Administrative Law Judge's findings on the grounds that the respondent was not accorded adequate due process.³⁰ Cal Advocates' failure to meet and confer in good faith violated SoCalGas' due process rights and is sufficient grounds for the Commission to deny the Motion.

E. This Motion has not been Implicitly Decided in Judge DeAngelis' Prior Ruling.

Cal Advocates claims in its Motion that "this matter had been argued in the prior motion to compel and decided by Judge DeAngelis."³¹ However, in Cal Advocates' reply related to its previous motion to compel, Cal Advocates expressly stated that this exact data request "is not the subject of the pending Public Advocates Office's Motion..."³² Further, Cal Advocate also admits, Judge DeAngelis' Ruling did not state the rationale for granting the motion to compel.³³ Instead, Cal Advocates contends that SoCalGas' arguments were *implicitly rejected* in Judge DeAngelis' September 10, 2019 Ruling³⁴ and if there was any merit to SoCalGas' arguments, Judge DeAngelis would have granted the motion.³⁵ This is entirely speculative. There is no support for the statement that the current discovery dispute was implicitly rejected and decided in the prior ruling. On the contrary, the current data request at issue here was specifically not

²⁷ Motion, at 8.

²⁸ D.86-01-025, *Re Pacific Gas and Elec. Co.*, 20 CPUC 2d 210, 1986 WL 1300926 (Cal.P.U.C.) (1986).

²⁹ *Rosenblit v. Superior Court*, 231 Cal.App. 3d 1434, 1448 (1991)

³⁰ *Smith v. State Bd. of Pharmacy*, 37 Cal.App.4th 229, 232, 245 (1995) (The Court reversed a California State Board of Pharmacy's administrative law judge's decision revoking a pharmacist license on the grounds that respondent was deprive his due process when the Board changed their theory of the case during the hearings.)

³¹ Motion, at 8.

³² See Attachment C, *Reply of the Public Advocates Office to Response of SoCalGas to August 14, 2019 Motion to Compel Further Responses from Southern California Gas Company to Data Request – Cal Advocates-SC-SCG-2019-04 in the Discovery Dispute Between Public Advocates Office and Southern California Gas Company, August 2019 (Not in a Proceeding)* (September 9, 2019), at 9.

³³ See Motion, Exhibit 6.

³⁴ Motion, at 6.

³⁵ Motion, at 9.

included in the prior motion by Cal Advocates. Judge DeAngelis' prior ruling was on a different data request seeking different information with different facts. Here, the data requests are more intrusive and could have broader implications such as chilling SoCalGas' shareholders First Amendment rights.

F. Cal Advocates Request that SoCalGas Produce Documents within 24 Hours of the Ruling on the Motion is Arbitrary.

Cal Advocates requests that SoCalGas be ordered to produce the documents within 24 hours of the ruling on the Motion is arbitrary. This data request is outside the scope of any proceeding. Cal Advocates has not provided any justification for requesting such a short production schedule. Cal Advocates has not presented any pressing need for the contracts. Due to the invasiveness of Cal Advocates data request, should the Commissioner or the assigned Administrative Law Judge grant the Motion, SoCalGas requests that the ruling provide SoCalGas at least two weeks to file an appeal with a concurrent motion to stay enforcement of the ruling.

III. CONCLUSION

Based on the foregoing, Cal Advocates' Motion should be denied. Cal Advocates relies on two statutory provisions to demand SoCalGas' 100 percent shareholder funded contracts. However, neither Pub. Util. Code §§ 309.5(e) or 314 supports Cal Advocates' assertions that it is entitled to the contracts. Further, permitting Cal Advocates to inspect SoCalGas' 100 percent shareholder funded contracts would be unconstitutional as it would have a chilling effect on SoCalGas' shareholders' First Amendment rights.

Submitted on behalf of SoCalGas,

/s/ Johnny Q. Tran

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Attachments A-D

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EXHIBIT L

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**ADMINISTRATIVE LAW JUDGE’S RULING IN THE DISCOVERY DISPUTE
BETWEEN PUBLIC ADVOCATES OFFICE AND SOUTHERN CALIFORNIA
GAS COMPANY, OCTOBER 7, 2019 (NOT IN A PROCEEDING)**

This ruling resolves the discovery dispute between Southern California Gas Company (SoCalGas) and Public Advocates Office of the California Public Utilities Commission (Cal Advocates) by granting Cal Advocates’ October 7, 2019 *Motion to Compel Responses from Southern California Gas Company to Question 8 of Data Request– CalAdvocates-SC-SCG-2019-05*. SoCalGas shall, within two businesses days, provide the information sought in response to Data Request – CalAdvocates-SC-SCG-2019-05 (DR SC-SCG-2019-05) – Question 8.

1. Background

SoCalGas is regulated by the Commission. On October 7, 2019, Cal Advocates sent to the Commission’s President a *Motion to Compel Responses from Southern California Gas Company to Question 8 of Data Request – CalAdvocates-SC-SCG-2019-05 (Not in a Proceeding)*. The data requests referred to in this Motion to Compel were not issued pursuant to any open Commission proceeding. Therefore, no assigned Commissioner exists for this discovery dispute. In this situation, Pub. Util. Code § 309.5(e) provides that the President of the Commission must decide any discovery objections. On October 25, 2019, the President of the Commission referred this dispute to the Chief Administrative Law Judge (ALJ) for resolution. On October 29, 2019, the Chief ALJ designated an ALJ to review and dispose of the dispute.

2. Discussion

The October 7, 2019 Motion to Compel states that SoCalGas responded to Data Request - CalAdvocates-SC-SCG-2019-05 but, regarding Question 8, refused to provide responsive documents in response to Question 8.¹

On October 17, 2019, SoCalGas sent to the President of the Commission the *Response of SoCalGas to the October 7, 2019 Motion to Compel Further Responses from Southern California Gas Company to Data Request (Not in a Proceeding)*. In this Response, SoCalGas objects to the Motion to Compel.

On October 30, 2019, the Administrative Law Judge granted Cal Advocates request to file a Reply. On October 31, 2019, Cal Advocates submitted a Reply to SoCalGas' Responses, *Reply of the Public Advocates Office to Response of SoCalGas to October 7, 2019 Motion to Compel Further Responses From Southern California Gas Company to Data Request-CalAdvocates-SC-SCG-2019-05 (Not in a Proceeding)*.

After reviewing the Cal Advocates' Motion, SoCalGas' Response, and Cal Advocates' Reply, Cal Advocates' Motion to Compel submitted pursuant to Pub. Util. Code § 309.5(e), § 314, and Rule 11.3 of the Commission's Rules of Practice and Procedure is granted.

¹ Prior to filing the Motion to Compel, Cal Advocates and SoCalGas held a meet-and-confer.

IT IS SO RULED that the October 7, 2019 Motion to Compel submitted by Cal Advocates pursuant to Pub. Util. Code § 309.5(e), § 314, and Rule 11.3 of the Commission’s Rules of Practice and Procedure is granted. SoCalGas shall, within two businesses days, provide the information sought in response to Question 8 of Data Request – CalAdvocates-SC-SCG-2019-05.

Dated November 1, at San Francisco, California.

/s/ REGINA M. DEANGELIS

Regina M. DeAngelis
Administrative Law Judge

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INFORMATION REGARDING SERVICE

I have electronically served all persons on the attached.

Administrative Law Judge's Ruling in the Discovery Dispute between
Public Advocates Office and Southern California Gas Company, August 2019
(Not in a Proceeding).

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The list I use is current as of today's date.

Dated November 1, 2019, at San Francisco, California.

/s/ REGINA M. DEANGELIS
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EXHIBIT N

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Sent: Wednesday, March 25, 2020 2:12 PM
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Cc: ALJ_Support ID; ALJ Docket Office; ALJ Process
Subject: [EXTERNAL] R1311005 email ruling clarifying scope of order to show cause and providing further instructions for hearing

*** EXTERNAL EMAIL - Be cautious of attachments, web links, and requests for information ***

To the service list of Rulemaking 13-11-005 (energy efficiency policy rulemaking),

This email ruling clarifies the proceeding scope established in the March 2, 2020 *Assigned Commissioner's Ruling Setting the Scope and Schedule for the Order to Show Cause Against Southern California Gas Company*.

The factual questions to be addressed in this order to show cause (OSC) are:

1. Whether Respondent booked any expenditures to its Demand Side Management Balancing Account, and associated allocated overhead costs, to advocate against more stringent codes and standards during any period of time between 2014 and 2017 (inclusive); and

2. Whether Respondent ever used ratepayer funds, regardless of the balancing account or other accounting mechanism to which such funds were booked, to advocate against local governments' adoption of reach codes.

Additionally, in response to the March 13, 2020 *Joint Comments of the Public Advocates Office and Sierra Club on the Assigned Commissioner's Ruling Setting the Scope and Schedule for the Order to Show Cause Against Southern California Gas Company*, this email ruling confirms that the schedule does not provide for written testimony. Parties may seek admission of material facts via written motion or during evidentiary hearing.

Parties' witness lists and cross examination estimates must be served no later than August 20, 2020 and shall list all exhibits intended to be introduced during evidentiary hearing. A witness shall introduce/sponsor every exhibit. Parties shall serve copies of any exhibits they intend to use during evidentiary hearing no later than August 20, 2020.

IT IS SO RULED.

The Commission's Docket Office shall formally file this email ruling.

[Note: I have divided distribution of this email ruling into segments to avoid rejection by servers.]

Valerie U. Kao

Administrative Law Judge

California Public Utilities Commission

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Pronouns: she, her, hers

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

**RESPONSE OF PUBLIC ADVOCATES OFFICE TO SOUTHERN CALIFORNIA
GAS COMPANY MOTION TO QUASH PORTION OF SUBPOENA, FOR AN
EXTENSION, AND TO STAY COMPLIANCE**

(NOT IN A PROCEEDING)

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June 1, 2020

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- EXHIBIT 16 - Minute Order from a Los Angeles Superior Court Judge in the case *Gandsey v. SoCalGas* (civil litigation related to Aliso Canyon), February 20, 2020
- EXHIBIT 17 - Los Angeles Times, “*SoCalGas Union Leader Threatened Protest ‘Potentially Adding To This Pandemic,’*” by Sammy Roth, May 6, 2020
- EXHIBIT 18 - CalMatters, “*California Officials Should Look Into SoCalGas Threat Of A COVID-19 Protest Against San Luis Obispo,*” by San Luis Obispo Mayor Heidi Harmon, May 22, 2020
- EXHIBIT 19 - SoCalGas Response to CalAdvocates-SC-SCG-2019-07, Q 4

Document received by the CA 2nd District Court of Appeal.

EXHIBIT 20 - SoCalGas Response to CalAdvocates-SC-SCG-2019-08, Q 1

EXHIBIT 21 - Sempra Energy Political Activities Policy, Revised July 23, 2018

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I. INTRODUCTION

Pursuant to Public Utilities (PU.) Code §§ 309.5(e) and 314, and Rule 11.3 of the California Public Utilities Commission’s (Commission’s) Rules of Practice and Procedure (Rules), the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) submits this Response to Southern California Gas Company’s (SoCalGas’) Motion to Quash¹ part of a subpoena executed by the Commission’s Executive Director. That subpoena ordered SoCalGas to provide Cal Advocates with “access to all databases associated in any manner with the company’s accounting systems.”² SoCalGas’ Motion to Quash was served on May 19, 2020, and a substituted Motion was served May 22, 2020.³

SoCalGas’ Motion to Quash represents a direct attack on the Commission’s authority to regulate. It should be met with swift and decisive Commission action not only rejecting SoCalGas’s Motion, but also imposing sanctions on both the company and its representatives for its persistent waste of limited Commission resources during these – as SoCalGas describes them – “challenging circumstances.”⁴

In sum, there is no question that the Commission, be it through Safety and Enforcement Division, Energy Division, Cal Advocates, or otherwise, has not only the authority, but in fact an obligation to audit SoCalGas’ accounts and records as Cal Advocates is attempting to do.⁵ These accounts and records must be made available “at

¹ The Motion to Quash is entitled “Southern California Gas Company’s (U 904 G) Motion to Quash Portion of the Subpoena To Produce Access to Certain Materials in Accounting Databases and to Stay Compliance until the May 29th Completion of Software Solution to Exclude Those Protected Materials in the Databases (Not in a Proceeding).”

² The subpoena served May 5, 2020, is provided in the SoCalGas Motion to Quash, Declaration of Elliott S. Henry, Attachment A.

³ This Response is timely filed consistent with a May 29, 2020, email from ALJ DeAngelis confirming that the Response could be filed on June 1, 2020 based on the date of the filing of the Substitute Motion.

⁴ SoCalGas Motion to Quash, p. 16.

⁵ See, e.g., PU Code §§ 314 & 314.5.

any time,”⁶ and neither the Commission nor its staff have an obligation to explain the reasons why they seek access to the accounts and records or to defer access to a time more convenient to the utility.⁷ Indeed, the very purpose of the Commission’s broad authority in this regard is clearly, in part, because if the Commission were required to explain itself, the utility could modify its accounts and records prior to Commission review in order to hide or otherwise make relevant information unavailable.

Well-aware of this broad authority, and the reasons for it, SoCalGas nevertheless moves this Commission to: (1) modify its validly-issued subpoena and allow SoCalGas the discretion to exclude accounts of its own choosing from Cal Advocates’ review; (2) grant it an extension to implement a method to withhold this information; and (3) allow SoCalGas to withhold information from Cal Advocates until the Commission rules on its appeal of claims that have already been rejected by an Administrative Law Judge (ALJ).⁸ In support of its proposal, SoCalGas misrepresents the facts,⁹ claims that the access ordered by the subpoena is not needed,¹⁰ chastises Cal Advocates for demanding immediate access without explanation,¹¹ and blatantly states that it will defy both Commission rules and the governing statutes as it see fit.¹² In addition, it is now

⁶ PU Code § 314(a).

⁷ This is especially true here, where, as described in more detail below, SoCalGas has the ability to provide almost immediate remote access to its SAP system where its accounts and records are housed.

⁸ The November 1, 2019 ALJ Ruling rejecting SoCalGas’ First Amendment Claims is available at SoCalGas Motion to Quash, Declaration of Elliott Henry, Exhibit L.

⁹ For example, the discussion in ¶ 13 of the Declaration of Elliott Henry, attached to the SoCalGas Motion to Quash does not accurately represent Cal Advocates statements during the May 18, 2020 conference call. Among other things, Cal Advocates representatives never used the word “impasse” and were clear that SoCalGas’ request for an extension needed to be considered by Cal Advocates management. That request was not in any way denied on that call. Nevertheless, SoCalGas sought authorization from ALJ DeAngelis to file its Motion to Quash at 12:23 p.m. the next day – less than 24 hours after the conference call ended. Given the length and breadth of that Motion, it is clear SoCalGas had been planning to file it for many days.

¹⁰ SoCalGas Motion to Quash, p. 16.

¹¹ SoCalGas Motion to Quash, p. 16.

¹² SoCalGas Motion to Quash, pp. 15-16, footnote 11 notifies the Commission that it will not

evident that SoCalGas has wrongly withheld information from Cal Advocates in the filings it made last week, as well as in prior filings, without clearly acknowledging what it was doing.¹³ Once again, SoCalGas has opted to flout well-settled Commission rules and state laws to do exactly as it chooses.

As Cal Advocates explained in an email response to SoCalGas' service of the Motion, it should be rejected as inappropriate and untimely.¹⁴ Indeed, any substantive ruling on the Motion would only serve to encourage SoCalGas' non-compliance with

provide information contained in its accounts and records regarding its opposition to "Reach Codes" to Cal Advocates except as requested in the open proceeding on those issues, R.13-11-005.

¹³ Exhibit 1, E.Henry-ALJ DeAngelis 5-19-20 EMail re Request to File Motions, which explains that SoCalGas would not provide hard copies of the confidential documents with its motions for a week because of COVID-19 related staffing issues. What SoCalGas did not say is that it intended to withhold all confidential versions of its filings from the Cal Advocates:

In light of the ongoing pandemic and stay-at-home orders, SoCalGas does not have its legal staff at the office or in a position to effectively handle a confidential hard copy filing the same day as the public version is served to the service list. We therefore also request permission to file a hard copy within one week of today (consistent with the Commission guidance).

SoCalGas only acknowledged its intent to withhold the confidential versions of its filings from Cal Advocates the next day, after Cal Advocates insisted that SoCalGas immediately provide electronic versions of the confidential documents to the Commission, including itself and the ALJ. When caught, SoCalGas had the nerve to chastise Cal Advocates for including the ALJ and Commissioners on its emails insisting on its rights to review the information. SoCalGas also misrepresented that the reason for its withholding was "discussed in the brief." See Exhibit 2, E.Henry-ALJ DeAngelis 5-20-20 EMail Clarifying Withholding From CalAdvocates:

Ms. Bone,

With respect to the confidential versions of the documents, as noted in our email to Judge DeAngelis yesterday which you were copied on, we will tender a confidential hard copy for filing within a week. As shown by what is discussed in the brief, because the confidential information in the declarations overlaps with information we are requesting not to disclose to Cal Advocates in response to the Subpoena, the confidential versions will not be provided to Cal Advocates.

If you have further questions of this nature, please feel free to contact me directly instead of the entire service list.

¹⁴ Exhibit 3 - T.Bone-ALJ DeAngelis 5-19-20 EMail re Untimely Motion

Commission orders and state laws and, arguably, revitalize its rights to appeal the subpoena, which were waived when it sat on those rights.¹⁵

To the extent the Commission determines that it, or ALJ Division, should rule on the merits of the SoCalGas Motion to Quash, it should reject all three of SoCalGas' requests in the Motion for the following reasons:

- (1) As a Commission-regulated utility, the law requires SoCalGas to provide the Commission and its staff with unfettered access to its books and accounts,¹⁶ as well as those of its unregulated subsidiaries and affiliates.¹⁷ The ability to review a regulated utility's accounts and records to ensure that the resulting rates will be just and reasonable is a fundamental component of the regulatory compact.¹⁸ Deviating from this requirement would set troubling precedent that has the potential to undermine the Commission's authority.
- (2) SoCalGas' First Amendment claims have no merit. Among other things, there is no protected First Amendment right to "associate" with hired lobbyists and consultants. Indeed, such activities are routinely subject to comprehensive reporting requirements, such as California's Political Reform Act.¹⁹
- (3) As the record makes clear, SoCalGas has intentionally and routinely engaged in sharp litigation practices, bad faith discovery, and clear violations of law to obstruct this investigation and other related proceedings. Sanctions against both the company and its representatives are needed to correct this continuing pattern of abuse.

Each of these issues is addressed in detail below.

¹⁵ Id.

¹⁶ See, e.g., California Public Utilities (PU) Code §§ 311, 314, 314.5, 314.6, 581, 582, 584, 701, 702, and 771.

¹⁷ See PU Code § 314(b).

¹⁸ The "Regulatory Compact" as it relates to just and reasonable rates is discussed in the Commission's recent "Decision Modifying The Commission's Rate Case Plan For Energy Utilities," D.20-01-002 (January 2020).

¹⁹ The Political Reform Act is codified at California Government Code §§ 81000-91014.

II. BACKGROUND

A. Cal Advocates' Investigation Into SoCalGas' Use Of Ratepayer Monies To Fund Lobbying And Other Activities Related To Its Anti-Decarbonization Campaigns

For approximately 12 months, Cal Advocates has been investigating SoCalGas' funding and other activities related to its promoting the use of natural and renewable gas, and defeating state and local laws and ordinances proposed to limit the use of these fossil resources. This Cal Advocates investigation has attempted to identify, among other things, the extent to which SoCalGas has used ratepayer money to fund these efforts, including SoCalGas' creation, funding, recruitment for, and participation in the organization Californians for Balanced Energy Solutions (C4BES). SoCalGas' pivotal role in creating and funding C4BES came to light last year in the Commission's "Building Decarbonization" proceeding (Rulemaking (R.) 19-01-011, when Sierra Club filed a Motion to Deny Party Status to C4BES based on its intimate relationship to SoCalGas, which C4BES had not disclosed.²⁰ Sierra Club explained: "Because utility-created front groups have no place in Commission proceedings, the Commission should grant Sierra Club's Motion, and deny party status to C4BES."²¹

As part of this investigation, Cal Advocates has served SoCalGas with 14 data requests that seek to identify SoCalGas' role in numerous anti-decarbonization campaigns, and the source of funding for that work. For example, this discovery has sought consulting contracts associated with those efforts,²² the ratepayer cost of those contracts,²³ the ratepayer cost of SoCalGas employee time spent managing the work

²⁰ The Sierra Club Motion is entitled "Sierra Club's Motion to Deny Party Status to Californians for Balanced Energy Solutions or, in the Alternative, to Grant Motion to Compel Discovery." It was filed May 14, 2019 in R.19-01-011.

²¹ Sierra Club Motion to Deny Party Status, May 14, 2019, R.19-01-011, p. 2.

²² See, e.g., Exhibit 4 hereto, Data Request CalAdvocates-SCG-051719, Question 4; and Exhibit 5 hereto, Data Request CALADVOCATES-AW-SCG-2020-01, Questions 3, 10, 15, 18, and 21.

²³ See Exhibit 4 hereto, Data Request CalAdvocates-SCG-051719, Question 5; and Exhibit 5 hereto, Data Request CALADVOCATES-AW-SCG-2020-01, Questions 2, 4, 5, 9, 11, 12, 14, 16, 17, 19, and 22.

under those contracts and communicating with state and local officials,²⁴ and access to SoCalGas' accounts and records for audit purposes.²⁵

The evidence adduced thus far goes to, among other things, whether SoCalGas paid people to appear and speak during the public comment portion of Commission voting meetings, without disclosing that they were acting on the behalf of SoCalGas. Cal Advocates has found evidence that invoices from SoCalGas consulting contracts have been allocated to accounts traditionally funded by ratepayers, suggesting that the contracts are not "100% shareholder funded," which is the foundation of SoCalGas's First Amendment argument. There is also evidence that SoCalGas may have modified documents provided in response to Cal Advocates' data requests, but this cannot be confirmed absent answers to the currently outstanding data requests.

SoCalGas' determination to flout the Commission's regulatory authority and undermine Cal Advocates' investigation has been well-documented. It has required over fifteen and confer discussions,²⁶ resulted in two Motions to Compel granted in favor of Cal Advocates,²⁷ and most recently SoCalGas' March 25, 2020 motion to stay all investigation discovery for an indefinite period of time, which was denied.²⁸ Similar to the instant Motion to Compel, that motion to stay, comprising over 50 pages, including five declarations with exhibits, was prepared while SoCalGas engaged Cal Advocates in numerous meet and confers where it sought extension after extension.

The Motion to Stay claimed that SoCalGas would "suffer irreparable harm" "[i]f left unable to defend itself in response to Cal Advocates' demands."²⁹ That frivolous

²⁴ See Exhibit 4 hereto, Data Request CalAdvocates-SCG-051719, Question 3; and Exhibit 5 hereto, Data Request CALADVOCATES-AW-SCG-2020-01, Question 2, 9, 14, and 24.

²⁵ See Exhibit 6 hereto, Data Request CalAdvocates-TB-2020-03.

²⁶ Ex. 7, Declaration of Stephen Castello, ¶ 8.

²⁷ See Exhibits 8 and 9, the ALJ Orders granting those Motions to Compel

²⁸ See Exhibit 10, the ALJ April 6, 2020 Order denying SoCalGas' Motion for Emergency Stay.

²⁹ See Exhibit 11 SoCalGas Motion to Stay, p. 2.

motion was summarily denied before Cal Advocates could serve a response. As the Administrative Law Judge’s April 6, 2020 Order (ALJ Order) stated:

SoCalGas’ Emergency Motion for a Protective Order Staying all Pending and Future Data Requests from California Public Office of Advocates is asking the Commission to act contrary to California law both in substance and form. No further consideration of SoCalGas’ motion is warranted.³⁰

That same ALJ Order “ask[ed] the parties to work together to find a schedule that is mutually agreeable and accommodates the additional demands resulting from the COVID-19 shelter-in-place directive.”³¹

B. Events Following Denial Of SoCalGas’ Frivolous Motion To Stay All Investigation Discovery Until The End Of The Stay-At-Home Orders

Since denial of SoCalGas’ Motion to Stay, and consistent with the ALJ’s request to “work together” to determine a mutually agreeable discovery schedule, Cal Advocates has participated in at least seven meet and confers to address its outstanding discovery requests. Notwithstanding these efforts, Cal Advocates still does not have complete responses to *any* of its outstanding data requests.

Faced with SoCalGas’ continuing intransigence to discovery, and recognizing that a forensic audit of SoCalGas’ accounts would be the most direct way for Cal Advocates to understand the breadth of SoCalGas’ apparent misuse of ratepayer funds, on May 1, 2020, Cal Advocates issued a data request to SoCalGas seeking access to all of its accounts and records in order to undertake such an audit.³² Further, given SoCalGas’ history of intransigence and Cal Advocates’ limited window to use existing accounting staff to begin the audit,³³ Cal Advocates requested and obtained a subpoena from the

³⁰ See Exhibit 10, the ALJ April 6, 2020 Order denying SoCalGas’ Motion for Emergency Stay.

³¹ See Exhibit 10, the ALJ April 6, 2020 Order denying SoCalGas’ Motion for Emergency Stay.

³² SoCalGas’ May 15, 2020 response to that data request is available in the SoCalGas Motion to Quash, Declaration of Elliott Henry, Attachment B.

³³ Cal Advocates had access to a retired annuitant that was available to immediately assist with the audit, but his time was limited. This internal time limitation was one of the many reasons Cal

Commission’s Executive Director requiring SoCalGas to provide the requested access within three business days.³⁴ That subpoena was electronically served on SoCalGas on May 5, 2020.

SoCalGas did not timely move to quash the subpoena, never asked Cal Advocates for an extension to quash the subpoena, and never suggested that it was reserving its rights to do so in the future. Instead, SoCalGas repeatedly stated, both in writing and on the numerous conference calls intended to establish a “mutually agreeable” schedule for production of discovery,³⁵ that it was “taking its obligations under the subpoena extremely seriously.”³⁶

After service of the subpoena, SoCalGas and Cal Advocates participated in four conference calls related to: (1) the details of SoCalGas providing access under the subpoena; and (2) identifying dates SoCalGas would provide responses to data requests issued in December, February, and March. During those calls, SoCalGas confirmed that all SoCalGas accounting staff were working from home and had remote access to the utility’s accounts and records through its SAP system.³⁷ SoCalGas also confirmed that it had previously made full remote access available to an auditor.³⁸ Thus, by the time of the last conference call on May 18, 2020, it was clear that SoCalGas could provide nearly immediate remote access to Cal Advocates’ auditors, but that it would continue to withhold remote access from Cal Advocates based on its meritless First Amendment

Advocates sought a subpoena to reinforce its companion data request issued May 1.

³⁴ The subpoena served May 5, 2020, is provided in the SoCalGas Motion to Quash, Declaration of Elliott S. Henry, Attachment A.

³⁵ See Exhibit 10, April 6, 2020 ALJ Order denying SoCalGas’ Motion for Emergency Stay.

³⁶ See e.g. SoCalGas Motion to Quash, p. 2; and Exhibit 12, May 18, 2020 Letter from J. Wilson to T.Bone.

³⁷ Exhibit 7, Declaration of Stephen Castello, ¶¶ 9-10.

³⁸ Exhibit 7, Declaration of Stephen Castello, ¶ 10.

claims, and concerns regarding the disclosure of attorney/client communications or attorney work product.³⁹

At no time did SoCalGas suggest on any of those calls that it sought an extension from Cal Advocates of its right to quash the subpoena, which clearly would not have been granted.⁴⁰ And contrary to the repeated claims in the Motion to Quash,⁴¹ while Cal Advocates readily conceded that it should not and would not seek to review attorney-client or attorney work product information, at no time did Cal Advocates concede that such information would actually be available in SoCalGas' accounts and books, or that it could only review SoCalGas' accounts and books once such material was "walled off."⁴²

During the last call on these matters, on Monday, May 18, 2020, SoCalGas requested that Cal Advocates give it an extension to comply with the subpoena until May 29, 2020, so that it could implement a form of "custom" computer program to wall off its law firm invoices and information it asserts is "protected" by the First Amendment. Cal Advocates did not refuse to provide the extension; rather, it replied that such an extension would need to be considered by its management.⁴³ Cal Advocates observed, among other things, that had its auditors appeared at SoCalGas' offices to review its accounts and records, SoCalGas would have been obligated under the law to provide the auditors immediate on-site access to all of these materials.⁴⁴

Cal Advocates was hesitant to accept any "wall" for access to accounts associated with vendors and consultants that SoCalGas claimed were "protected" by the First Amendment because, among other things, such a wall would prevent Cal Advocates from determining for itself whether these accounts anticipate ratepayer or shareholder funding

³⁹ Exhibit 7, Declaration of Stephen Castello, ¶ 11.

⁴⁰ Exhibit 7, Declaration of Stephen Castello, ¶ 12.

⁴¹ See, e.g. SoCalGas Motion to Quash, pp. 3, 5 & 15.

⁴² Exhibit 7, Declaration of Stephen Castello, ¶ 13.

⁴³ Exhibit 7, Declaration of Stephen Castello, ¶ 14.

⁴⁴ Exhibit 7, Declaration of Stephen Castello, ¶ 15.

of those activities. Indeed, as SoCalGas clearly understood, those are precisely the types of accounts, among others, that Cal Advocates intends to audit.⁴⁵

SoCalGas filed the instant motion the next day, May 19, 2020, before its proposal for “walls” could even be submitted to Cal Advocates management, with no notice to Cal Advocates other than the same notice received by the Commission.

C. SoCalGas’ Claims That Its Delays Are Related To COVID-19 Constraints Must Be Carefully Scrutinized

Significantly, contrary to SoCalGas suggestions that its compounded discovery delays are due to COVID-19 challenges, this is simply not the case. SoCalGas is intentionally flouting this Commission’s prior discovery orders, while casting Cal Advocates as the bad actor committing “invasive” “assaults” on its First Amendment Rights.⁴⁶

Cal Advocates served almost all of the outstanding discovery requests from which SoCalGas continues to withhold responses in December and February, well before the various stay-at-home orders were issued. In addition, during a March 19, 2020 meet and confer, SoCalGas committed to provide information it claimed it already had, but still has not produced.⁴⁷ Instead, of providing this or any other information, SoCalGas filed its

⁴⁵ Exhibit 7, Declaration of Stephen Castello, ¶ 17.

⁴⁶ For example, see its use of the following terms to describe Cal Advocates’ work in its Motion to Supplement: “Cal Advocates’ latest incursion into SoCalGas’s First Amendment rights” at p. 3; “emboldened Cal Advocates” at p. 4, “increasingly invasive efforts by Cal Advocates to pry into SoCalGas’s protected materials” and “emboldened” at p. 5; “ongoing assault” on p. 6.

⁴⁷ See SoCalGas Motion to Stay, Declaration No. 2, Exhibit C, March 24, 2020 email from Ms. Bone to Mr. Tran:

“There is a significant amount of work that SoCalGas employees can perform remotely in response to Cal Advocate’s investigation – and such work should not be unduly burdensome. For example, Ms. Lee has stated that she has a list she could send us of which confidential designations could be lifted. Indeed, she obtained a one week extension for the meet and confer on this issue based on her prior representations that she would be consulting with her clients to identify those portions of the documents which would not require the confidential designations. At this point, review of those documents, lifting the confidential designations, and identifying the legal basis for any remaining confidential designations, can be easily performed remotely, and only requires the review of a

Motion to Stay on March 25, 2020, claiming that it had insufficient resources to answer questions posed by Cal Advocates.

The denial of that Motion to Stay has not improved matters. As described above, heeding the ALJ's instructions to "work together," the Cal Advocates has participated in at least seven conference calls with SoCalGas, which initially represented its desire to "reset" the relationship.⁴⁸ In retrospect, it is evident that SoCalGas made a number of misrepresentations to the Cal Advocates during those calls in an effort to continue to delay its discovery responses, and to prepare the instant motions to further grant itself *more time* to stall the Cal Advocates' investigation of its use of ratepayer monies to fund its anti-decarbonization campaigns.⁴⁹

For example, on the last call on May 18, 2020, when directly asked whether SoCalGas was "slow rolling" responses to the Cal Advocates' outstanding requests, SoCalGas representatives assured Cal Advocates that SoCalGas *was not* slow rolling its responses.⁵⁰ Rather, SoCalGas explained that it was working hard to respond to the data requests and that many things that seemed simple were much more time consuming and were absorbing staff's time.⁵¹ SoCalGas also represented that it was prioritizing compliance with the subpoena so that it was unable to provide other information at the same time, such as the removal of unsupported confidentiality designations that the Cal Advocates had requested more than two months ago, on March 10, 2020.^{52, 53}

single attorney. Similarly, the majority of the questions in data request CalAdvocates-TB-SCG-2020-02 ask SoCalGas to explain how certain procedures work internally, or to provide documents, such as its GO77 filings. This type of information should be readily available and easily obtained through remote communications."

⁴⁸ Exhibit 7, Declaration of Stephen Castello, ¶ 22.

⁴⁹ Exhibit 7, Declaration of Stephen Castello, ¶ 21.

⁵⁰ Exhibit 7, Declaration of Stephen Castello, ¶ 23.

⁵¹ Exhibit 7, Declaration of Stephen Castello, ¶ 23.

⁵² Exhibit 7, Declaration of Stephen Castello, ¶ 23.

⁵³ Exhibit 13 – CalAdvocates-SoCalGas March 10-20, 2020 Emails re: Removal of Unwarranted

The length and breadth of the motions filed in the days immediately following this conference call unequivocally demonstrate that many of the SoCalGas representations made on Monday, May 18, 2020, were false statements intended to mislead Commission staff into providing additional, unnecessary extensions.⁵⁴ Specifically, motions of the type it filed the next day – with multiple declarations – are not prepared overnight. They require many days and many levels of review and coordination. Thus, at the same time that SoCalGas was assuring Cal Advocates that it was working hard to provide responses to the outstanding data requests and subpoena, and seeking extensions to provide outstanding materials, SoCalGas knew that it had instead been delaying discovery to prepare a lengthy Motion to Quash the subpoena and Motion to Supplement its appeal, as well as numerous declarations in support of both motions.

Cal Advocates will not belabor these and other misrepresentations that it is now evident SoCalGas made during the extensive conference calls held between April 16, 2020 and May 18, 2020. Instead, it reserves its rights to submit a motion for sanctions.

III. DISCUSSION

A. SoCalGas’ Motion To Quash Should Be Rejected As Untimely and Invalid

1. SoCalGas Waived Its Rights To File A Motion To Quash

On May 5, 2020, the Commission issued a valid subpoena to SoCalGas to provide “access to all databases associated in any manner with the company’s accounting systems” no later than May 8, 2020. As described in the “Background” section above, Cal Advocates and SoCalGas had four conference calls after issuance

Confidentiality Designations.

⁵⁴ See the Commission’s Rules of Practice and Procedure, Rule 1.1, Ethics, which provides:

Any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law.

of the subpoena to discuss how access would be provided, and SoCalGas represented on nearly every one of those calls that it was “taking its obligations under the subpoena extremely seriously.”⁵⁵

Relying on these SoCalGas representations, and consistent with the ALJ’s request that the parties “work together,”⁵⁶ Cal Advocates granted SoCalGas several extensions to the May 8, 2020 due date. None of those extensions were for SoCalGas to move to quash at some later date, and SoCalGas never suggested that they were. SoCalGas now moves – 14 days after issuance of the subpoena, and 11 days after its compliance was due – to quash the subpoena. The Commission has stated that motions to quash “must be filed at the earliest opportunity.”⁵⁷ To the extent that SoCalGas proposes that the Commission rely upon the California Code of Civil Procedure (CCP) “as instructive authority,”⁵⁸ the Motion to Quash must be rejected. Section 1987.1 of that code requires that such a motion must be “reasonably made.” A motion to quash made *well after* the date that compliance was due is clearly not “reasonably made.” As described in Section III.D below, in retrospect – and based on the timing and breadth of the motions filed – it is now clear that SoCalGas never had any intention of complying with the subpoena, and instead sat on its rights to delay compliance for as long as possible. Through these delays, SoCalGas has, once again, granted itself a reprieve from discovery in this investigation.⁵⁹

⁵⁵ See, e.g. SoCalGas Motion to Quash, p. 2 and Exhibit 12, May 18, 2020 Ltr from J.Wilson to T.Bone.

⁵⁶ See Exhibit 10, the ALJ April 6, 2020 Order denying SoCalGas’ Motion for Emergency Stay.

⁵⁷ See, e.g., 60 CPUC 2d 326, *mimeo* at 7, Decision (D.) 95-06-021 (June 8, 1995) and 61 CPUC 2d 515, *mimeo* at 3-4, D.95-09-076 (September 7, 1995).

⁵⁸ SoCalGas Motion to Quash, p. 13.

⁵⁹ SoCalGas filed a frivolous Motion to Stay all discovery due to the COVID-19 situation. That Motion was denied. See Exhibit 10, ALJ April 6, 2020 Order denying SoCalGas’ Motion for Emergency Stay.

2. SoCalGas' Email Arguments Do Not Change The Fact That It Waived Its Rights To Move To Quash

On May 20, 2020, SoCalGas offered three additional reasons why its Motion to Quash is not untimely in an email to Administrative Law Judge (ALJ) DeAngelis. None have any merit.

(a) Meet and Confer Discussions Do Not Toll The Obligation To Timely File A Motion to Quash

SoCalGas first claimed that its Motion to Quash is timely because SoCalGas “raised the issues” in both a meet and confer discussion before “the initial deadline for the subpoena” and in objections to the companion data request that preceded the subpoena.⁶⁰ Vague claims of having “raised the issues” aside, what SoCalGas does not say in either its Motion to Quash, its Motion to Supplement,⁶¹ or in the multiple declarations and exhibits attached to those Motions, is that it never asked for an extension of time to file its motion to quash or suggested to Cal Advocates that it would file a motion to quash if an extension wasn’t granted. Instead, as SoCalGas acknowledges, discussions between the parties focused on SoCalGas’ “working as quickly as practicable to grant Cal Advocates access promptly.”⁶² SoCalGas also fails to acknowledge in any of its motions or declarations filed last week that:

- (1) The parties were engaged in multiple meet and confers because ALJ DeAngelis asked the parties to “work together” on a discovery production schedule after SoCalGas lost its Motion to Stay all Cal

⁶⁰ See SoCalGas Motion to Supplement, Declaration of Henry Elliott, Exhibit A, 5/20/20 10:45 a.m. email from E.Henry to ALJ DeAngelis.

⁶¹ SoCalGas served a Motion to Supplement on May 20, 2020, and a substitute for that motion on May 22, 2020. That Motion to Supplement is entitled: “Southern California Gas Company’s (U 904 G) Motion To Supplement The Record And Request For Expedited Decision By The Full Commission On Motion For Reconsideration/Appeal Regarding Administrative Law Judge’s Ruling In The Discovery Dispute Between The Public Advocates Office And Southern California Gas Company, October 7, 2019 (Not In A Proceeding) If The Motion Is Not Granted To Quash Portion Of The Subpoena To Produce Access To Certain Materials In Accounting Databases And To Stay Compliance Until The May 29th Completion Of Software Solution To Exclude Those Protected Materials In The Databases (Not In A Proceeding).”

⁶² See SoCalGas Motion to Supplement, p. 2.

Advocates' investigation discovery until the end of the COVID-19 shelter in place directives;⁶³

- (2) At the same time that SoCalGas was seeking discovery extensions from Cal Advocates, it was preparing both its 27 page Motion to Quash, and 20 page Motion to Supplement, both with multiple declarations;
- (3) SoCalGas filed its Motion to Quash the day after it requested the extension that the Public Advocates Office staff agreed to take to its management; and
- (4) Cal Advocates only sought the subpoena after SoCalGas lodged numerous objections to various data requests, repeatedly lost subsequent motions to compel filed by Cal Advocates, and then continued to make the same type of objections to the same type of data requests.⁶⁴

Under these circumstances, SoCalGas' argument that objections raised in the meet and confers somehow toll the time allowed for it to file a motion to quash is nothing short of preposterous. Indeed, taken to its logical conclusion, SoCalGas' argument would allow a utility to refuse to comply with a subpoena through an objection, leaving Commission staff no recourse other than to file a motion to compel, or to seek another subpoena that the utility could again ignore after objections. Current requirements rightly put pressure on the parties to perform or seek relief, and endorsing the approach SoCalGas argues for would only encourage the type of frivolous objections, stalling, and bad faith negotiations experienced here.

(b) SoCalGas Bears The Burden Of Showing That Its Motion To Quash Complies With Applicable Rules

SoCalGas also argued in its email to ALJ DeAngelis that "Cal Advocates cites no authority to support its contention that where compliance with a subpoena is extended all potential objections are implicitly waived."⁶⁵ This SoCalGas argument wrongly attempts to shift its burden as the moving party to show that its Motion to Quash complies with the applicable rules to the Commission. SoCalGas misstates the issue. Cal Advocates does

⁶³ See Exhibit 10, ALJ April 6, 2020 Order denying SoCalGas' Motion for Emergency Stay.

⁶⁴ See discussion in Sections II.B & C and III.C.3.

⁶⁵ SoCalGas Motion to Supplement, Declaration of Henry Elliott, Exhibit A, 5/20/20 10:45 a.m. email from E.Henry to ALJ DeAngelis.

not contend that “where compliance with a subpoena is extended all potential objections are implicitly waived.” What Public Advocates Office contends is that neither SoCalGas’ boilerplate objections nor its discussions about “working as quickly as practicable to grant Cal Advocates access promptly” toll or extend the deadline for filing a motion to quash. Indeed, as explained above, the Commission has stated that motions to quash “must be filed at the earliest opportunity”⁶⁶ and that a motion to quash made *well after* the date that compliance was due is clearly not “reasonably made” as required by CCP § 1987.1. The burden is on SoCalGas, the moving party, to identify the authority for its claims that the deadline for filing a motion to quash is extended by objections and production discussion.

(c) SoCalGas Was On Notice That Motions To Quash Must Be Timely Filed

Finally, SoCalGas argued in its email to ALJ DeAngelis that Cal Advocates “never stated that SoCalGas had to waive its right to quash in exchange for additional time to comply.”⁶⁷ In addition to wrongly assuming that Cal Advocates was somehow obliged to advise SoCalGas on the law and its obligations, and ignoring the fact that SoCalGas was the party requesting the extension, the fact is that SoCalGas was on notice that it could not wait to file a motion to quash a Commission subpoena until the day of performance, or thereafter.

Just a few months ago, counsel for the Commission’s Safety and Enforcement Division (SED) informed SoCalGas that, regardless of its objections and meet and confers, it needed to either perform under a subpoena that had been validly issued by the Commission’s Executive Director, or file a motion to quash by the stated deadline for performance.⁶⁸ SED and Cal Advocates are bound by the same Commission rules in this

⁶⁶ See, e.g., 60 CPUC 2d 326, *mimeo* at 7, Decision (D.) 95-06-021 (June 8, 1995) and 61 CPUC 2d 515, *mimeo* at 3-4, D.95-09-076 (September 7, 1995).

⁶⁷ SoCalGas Motion to Supplement, Declaration of Henry Elliott, Exhibit A, 5/20/20 10:45 a.m. email from E.Henry to ALJ DeAngelis.

⁶⁸ See I.19-06-016, “Safety and Enforcement Division’s Response to Southern California Gas Company’s Motion for Order to Quash the Subpoena of the Safety and Enforcement Division,”

regard. So, while Cal Advocates did not tell SoCalGas that regardless of its objections and meet and confers, it needed to either perform or file a timely motion to quash by the stated deadline for performance, SoCalGas knew or should have known of this requirement. Cal Advocates cannot be expected to advise SoCalGas on litigation strategy.

As explained above and in Cal Advocates' email response to the Motion to Quash, a Commission determination that SoCalGas' Motion to Quash was untimely is appropriate and will defeat SoCalGas' efforts to resurrect any claims that the subpoena was improper.⁶⁹

B. Nothing Allows SoCalGas To Unilaterally “Exclude” Portions Of Its Accounts And Records From The Commission Or Its Staff; Concluding Otherwise Would Undermine The Commission’s Authority

SoCalGas seeks to “wall off” two types of information from Cal Advocates review: (1) what SoCalGas describes as “information and documents for SoCalGas’s 100% shareholder-funded activities that are protected under the First Amendment, such as those related to its advocacy for natural gas, renewable natural gas, and green gas as a part of the solution to achieving the State’s decarbonization goals,”⁷⁰ and (2) law firm invoices and other information in its accounts and records that *might* include privileged attorney/client communications or attorney work product.⁷¹

SoCalGas proposes to establish a “custom software solution” to prevent Cal Advocates from accessing this information that it has unilaterally determined should not

Nov. 19, 2019; and “Motion Of The Safety And Enforcement Division Requesting The Commission Issue An Order To Show Cause Against Southern California Gas Company As To Why It Should Not Be Sanctioned For Being In Contempt Of A Commission Subpoena And Violating Rule 1.1 Of The Commission’s Rules Of Practice And Procedure,” February 21, 2020, pp 1-2.

⁶⁹ Cal Advocates does not intend to suggest that SoCalGas should be barred from seeking notice of the fact that the subpoena was issued.

⁷⁰ SoCalGas Motion to Quash, pp. 3-4.

⁷¹ SoCalGas Motion to Quash, p.3.

be made available to Cal Advocates. There are multiple reasons why this proposal must be rejected.

As described above, the law provides the Commission and its staff with broad authority to review regulated utilities' accounts and records, including those of their unregulated subsidiaries and affiliates.⁷² Thus, contrary to SoCalGas' claims that "100% shareholder-funded activities" are somehow protected from disclosure to its regulator, the law does not make such distinctions. Rather, it expressly gives the Commission and its staff authority to review *all* aspects of a utility's business, regulated or unregulated, and ratepayer or shareholder funded.⁷³ Further, there is nothing in those laws that allow a utility to unilaterally exclude portions of its accounts and records from Commission or staff review. Instead, the law provides meaningful protections against unauthorized disclosure of a utility's confidential information.⁷⁴

Also problematic is that notwithstanding a 26 page motion and 3 declarations including over 100 pages of attachments, SoCalGas has failed to identify with specificity any of the materials it seeks to "wall off" from Cal Advocates review. Instead, as discussed more fully below, SoCalGas provides the Commission with vague speculation about information that only it possesses. For example, SoCalGas does not identify a single instance of an attorney/client communication or attorney work product in its SAP system and it does not identify a single account where the costs for "100% shareholder-funded" activities are booked. Instead, the Motion to Quash merely refers to the *possibility of* attorney/client communications, attorney work product, and only generally describes the materials it claims are protected by the First Amendment. Thus, SoCalGas proposes to exercise its own discretion to determine which materials fall into these

⁷² See, e.g., PU Code §§ 311, 314, 314.5, 314.6, 581, 582, 584, 701, 702, and 771.

⁷³ See, e.g., PU Code § 314.

⁷⁴ See, e.g. PU Code § 583. It is important to note that the Motion to Quash does not suggest that the Commission has improperly released any of the information that it is withholding, and SoCalGas has evidently been willing to provide the information to other parts of the Commission. Instead, SoCalGas specifically objects to providing the information to Cal Advocates.

general categories. Such a proposal would be unacceptable for any utility, but is especially problematic given the current history of SoCalGas discovery abuses and other sharp practices it has deployed in multiple forums, as described in Section III.C below.

1. It Is Not Evident That Any Of SoCalGas' Accounts Or Records Contain Attorney/Client Communications Or Attorney Work Product And Those Privileges Are Not Absolute

SoCalGas urges that “[t]he Subpoena should be quashed to the extent that it encompasses [] clearly privileged information.”⁷⁵ However, SoCalGas does not assert that attorney/client communications or attorney work product is actually contained in the materials SoCalGas seeks to “wall off” from Cal Advocates review. For example, while the Motion to Quash asserts that SoCalGas’ law firm invoices “contain, among other things, detailed descriptions of legal work performed for SoCalGas”⁷⁶ it does not assert that these materials are *actually* attorney/client communications or attorney work product. The declaration cited as support for this claim only explains that an invoice “*may include* the vendor’s description of the services provided and other narrative information about the work they performed for SoCalGas.”⁷⁷ Similarly, that declaration explains that the “‘Line Item Text’ field” allows for “narrative descriptions” to be entered and “*may contain* information reflecting the name of the vendor as well as descriptive information about the nature of its relationship with SoCalGas or the services it provides.”⁷⁸

Not every communication between an attorney and a client is a privileged communication. Rather, an attorney/client communication is generally understood to be a communication between an attorney and a client *relating to the purpose of giving or*

⁷⁵ SoCalGas Motion to Quash at 15.

⁷⁶ SoCalGas Motion to Quash at 14.

⁷⁷ SoCalGas Motion to Quash, Declaration of Dennis Enrique, ¶ 6 (emphasis added).

⁷⁸ SoCalGas Motion to Quash, Declaration of Dennis Enrique, ¶ 7 (emphasis added).

*obtaining legal advice.*⁷⁹ Information in a law firm invoice regarding a law firm's name, its relationship to SoCalGas, how much it is paid, and a *general* description of the services it provided (which should not include advice or strategy) is unlikely to be privileged information.⁸⁰

The definition of attorney work product is similarly limited. As a general rule, it applies primarily to materials prepared in the course of legal representation, especially in preparation for litigation.⁸¹ And even that rule is limited. For example, under Rule 26(b)(3) of the Federal Rules of Civil Procedure, an adverse party may discover or compel disclosure of work product upon a showing of "substantial need" and "undue hardship." And the U.S. Supreme Court has clarified that while it is presumed that an adverse party may not have access to materials prepared by a party's lawyers in anticipation of litigation, this presumption may be overcome when a party has relevant and non-privileged facts which would be essential to the preparation of the adverse party's case.⁸²

Further, in the unlikely event SoCalGas could demonstrate that its accounts and records actually contain something that might qualify under the law as an attorney-client communication or attorney work product, there is the possibility that any privilege has been waived through disclosure to third parties. Indeed, SoCalGas' so-called "association" with contractors, including Marathon Communications (Marathon) and

⁷⁹ For a related but more expansive definition see 8 John Henry Wigmore, *Evidence In Trials At Common Law* § 2292, at 554 (McNaughton 1961 & Supp. 1991).

⁸⁰ See, e.g., *USA v. Keystone Sanitation Co.*, 885 F. Supp. 672 ("there is general agreement that attorney billing statements and time records are protected by the attorney-client privilege *only* to the extent that they reveal litigation strategy and/or the nature of services performed. See, e.g., *Gonzalez Crespo v. The Wella Corp.*, 774 F. Supp. 688, 690 (D.P.R. 1991); *Colonial Gas Co. v. Aetna Cas. & Sur. Co.*, 144 F.R.D. 600, 607 (D. Mass. 1992); *Real v. Continental Group, Inc.*, 116 F.R.D. 211, 213-14 (N.D. Cal. 1986).").

⁸¹ For more information about the attorney work product doctrine see, e.g., Florida State University Law Review, Volume 31, Issue 1, Article 3 (2003) pp. 67-100, "Pulling Skeletons from the Closet: A Look into the Work-Product Doctrine as Applied to Expert Witnesses," by Charles W. Ehrhardt and Matthew D. Schultz.

⁸² *Hickman v. Taylor*, 329 U.S. 495 (1947).

Imprenta Communications Group (Imprenta), may well have waived any pre-existing privilege claims through sharing of information.⁸³ If an attorney/client communication from a law firm was shared with employees at either of these companies, the privilege would be waived. In addition, SoCalGas has admitted that it permitted a contractor full “external access” to its SAP systems,⁸⁴ so that contractor was able to review the SoCalGas law firm invoices, thereby potentially waiving any privilege.

In sum, given the Commission’s clear regulatory authority to audit a regulated utilities’ accounts and records, the absence of any proof that privileged information actually exists in its accounts and records, the fact that the privileges are not absolute under the law, and SoCalGas’ history of improper privilege and confidentiality claims, as discussed in Sections II.B and C above and III.C.1 below, approving SoCalGas’ proposal to implement a “custom software solution” that prevents access to the accounts and books of its choosing is improper. In addition, approving SoCalGas’ “solution” will undermine the Commission’s authority, and waste further Commission resources because SoCalGas’ implementation of this “solution” will likely be overbroad and provide further opportunities to stall discovery. Among other things, SoCalGas’ “solution” would require it to provide a privilege log, and SoCalGas would take months to review and prepare such a log as it has done since before the COVID-19 situation. Then, given SoCalGas’ history of unwarranted privilege claims, the Commission will necessarily be required to perform an *en camera* review of the materials designated as privileged to confirm the validity of SoCalGas’ claims. SoCalGas’ unsupported claims of privilege do not merit such attention, and therefore its proposal to wall off its law firm invoices from Cal Advocates should be rejected.

⁸³ While SoCalGas has routinely marked the names of these two companies as “confidential,” as explained in III.B.2 below, SoCalGas’ association with these companies has been publicly known about since at least May 16, 2019 as a result of a Sierra Club Motion to Deny Party Status in R.10-01-001.

⁸⁴ SoCalGas Motion to Quash, Declaration of Elliott Henry, ¶ 11.

2. SoCalGas’ First Amendment Claims Have No Merit So That A “Custom Software Solution” To Prevent Review Of Its Vendor And Consultant Contracts Is Unnecessary

In parallel with the instant Motion to Quash, SoCalGas also served a Motion to Supplement its December 2, 2019, Motion for Reconsideration to the Commission of the November 1, 2019 ALJ Order denying its First Amendment claims.⁸⁵ Through this Motion to Supplement, SoCalGas now seeks to supplement its fatally flawed Motion for Reconsideration on claims that “the issues present[ed] in the accounting database dispute mirror the issues already before the Commission.”⁸⁶ The issues before the Commission have not changed; they relate to SoCalGas’ use of ratepayer money for its anti-decarbonization campaigns. The subpoena’s focus on accounting will inform this inquiry, providing insight into how or even whether SoCalGas is properly tracking these costs for both ratepayer recovery and lobbying disclosure purposes.

While SoCalGas has endeavored to make this inquiry a First Amendment freedom of association issue to avoid scrutiny on these issues, it has failed to do so. Nothing that SoCalGas proposes to add to its pending Motion for Reconsideration raises new First Amendment concerns or will change the fact that SoCalGas’ First Amendment claims have no merit. However, given SoCalGas’ resurrection of these issues in the instant Motion to Quash, and notwithstanding Cal Advocates’ December 17, 2019 response setting forth the deficiencies in SoCalGas’ original Motion for Reconsideration, it will reiterate and elaborate on some of the key positions requiring rejection of SoCalGas’ claims.

As an initial matter, SoCalGas has failed to make the requisite *prima facie* showing required to claim First Amendment protection. As SoCalGas acknowledges, *Perry v. Schwarzenegger* (9th Cir. 2010) 591 F.3d 1147, 1160, and other cases it relies on, require the entity claiming the First Amendment privilege to “demonstrate that

⁸⁵ See footnote 61 above.

⁸⁶ Motion to Supplement, p. 14.

enforcement of the [discovery requests] will result in (1) harassment, membership withdrawal, or discouragement of new members, or (2) other consequences which objectively suggest an impact on, or ‘chilling’ of, the members’ associational rights.”⁸⁷ SoCalGas fails to make this showing, as described in more detail below. However, even if SoCalGas had been able to make the requisite *prima facie* showing of an intrusion into its First Amendment rights of association – which it has not done – the U.S. Supreme Court has found that the right to association is not absolute, and that compelling governmental interests, such as the need for substantial government regulation of the election process, take precedence over the burden they impose on the freedom to associate.⁸⁸ The Cal Advocates’ legislative mandate, its mission statement, and facts of record establish the Cal Advocates’ has a compelling interest in the purported intrusion.

(a) SoCalGas Fails To Make The *Prima Facie* Showing Required To Claim First Amendment Protection

SoCalGas asserts that it has made a *prima facie* showing on claims that the materials Cal Advocates’ seeks relate to 100% shareholder-funded activity that is constitutionally protected. While often and vociferously stated, the issue SoCalGas presents is not the subject of this dispute.

The record of the dispute makes two things abundantly clear. First, Cal Advocates is focused on “following the money” by asking how much has SoCalGas spent on its anti-decarbonization campaigns, where the money has been booked, and how Cal Advocates can be sure that the activities are 100% shareholder-funded, as SoCalGas has claimed. However, Cal Advocates has not received even remotely complete information to any of these questions. Rather, contrary to SoCalGas’ frequent claims that the accounts at issue are 100% shareholder funded, the investigation discovery thus far suggests there is no evidence for this claim. Though such accounts are needed for tracking purposes – there is, unfortunately for ratepayers, no evidence that SoCalGas

⁸⁷ SoCalGas Motion for Reconsideration, December 2, 2019, p. 11.

⁸⁸ See, e.g., *Buckley v. Valeo*, 424 U.S. 1 (1976).

routinely creates accounts for “100% shareholder-funded activities.”⁸⁹ This explains why SoCalGas has not provided a list of its 100% shareholder funded accounts, even though it has been asked to do so on many occasions, and as recently as May 8, 2020.⁹⁰ Instead, while SoCalGas attorneys stress that these are 100% shareholder funded accounts, the evidence Cal Advocates has obtained shows that the known costs associated with some of SoCalGas’ anti-decarbonization activities were originally recorded to a traditionally ratepayer-funded account and as a result of Cal Advocates inquiries, subsequently moved to a new “shareholder-funded” account on September 21, 2019.⁹¹

SoCalGas also fails to make its *prima facie* showing because SoCalGas is not claiming that the Cal Advocates’ discovery infringes on its right to associate with people, such as members of organizations that share its views. Instead, as the declarations in its Motion for Reconsideration demonstrate,⁹² SoCalGas claims a First Amendment right to protect its ability to “associate” with paid lobbyists, and other consultants and vendors in order to develop a grass roots campaign that will communicate SoCalGas’ message to legislators and the public. SoCalGas thus turns the law on its head in an effort to keep secret the full extent of the money it is spending on hired lobbyists and communications companies. However, SoCalGas has failed to provide any legal support for its position that spending money for “hired guns” to do its bidding is the type of “association”

⁸⁹ SoCalGas Motion to Quash, p. 3.

⁹⁰ Exhibit 14 - T.Bone-E.Henry 5-8-20 EMail re Accounts to Access.

⁹¹ Exhibit 15 - R.13-11-005 -Data Response CalAdvocates-SK-SCG-2020-01 Q4:

Balanced Energy internal order (IO) 300796601 was created in March 2019 for tracking all costs associated with Balanced Energy activities and the intent was to make it a shareholder funded IO. However, an incorrect settlement rule was set up for this IO to FERC 920.0 A&G Salaries, consequently, the costs initially settled to the incorrect FERC account. On September 21, 2019, the SoCalGas Accounting Controller and Accounting Director met with the Strategy, Engagement & Chief Environmental Officer, and confirmed that the Balanced Energy activities should be classified as FERC 426.4 - Expenditures-Civic & Related Activities/Lobbying Costs.

⁹² Cal Advocates never received the confidential versions of the Motion for Reconsideration, but the fact that the declarations are made by vendors to SoCalGas is evident even in the redacted versions.

protected by the First Amendment. Indeed, its own Motion for Reconsideration reiterates that the right to associate, and the harms that must be demonstrate relate to “members” of “associations,” not hired contractors.²³

**(b) The Information SoCalGas Seeks To Hide Is
Similar To The Lobbying And Election Activities
That Are Required To Be Publicly Reported**

As explained above, SoCalGas’ attempts to characterize its funding of lobbyists and consultants hired to develop and convey its anti-decarbonization activities as “associations” protected by the First Amendment. However, these “associations” appear to be more akin to the lobbying and election activities that the Supreme Court has recognized require regulation, and that local, state, and federal election laws require to be tracked and publicly reported. Specifically, SoCalGas explains that it “engages and contracts with consultants, partners, and vendors to, among other things, formulate strategies for effective lobbying, communications and messaging.”²⁴ Indeed, every one of the consultants referred to in SoCalGas’ declarations is a hired consultant. Those consultants are not claiming a right to free speech and association with others who share their views. Rather, they are seeking to protect their business interests by maintaining a cloak of confidentiality over their work for SoCalGas. Their claims of a “chilling effect” are not First Amendment claims; they are concerned their employment opportunities will be “chilled” if their work in support of SoCalGas’ anti-decarbonization message is made public.²⁵

There is also a significant question regarding whether SoCalGas and its consultants have been complying with their lobbying reporting obligations, among others. Consider, for example, California’s Political Reform Act (Act), which applies to lobbying

²³ SoCalGas Motion for Reconsideration, December 2, 2019, p. 11, citing *Perry v. Schwarzenegger*.

²⁴ SoCalGas Motion to Quash, Declaration of Andy Carrasco, ¶ 5 (emphasis added).

²⁵ SoCalGas Motion to Quash, Declaration of Andy Carrasco, ¶ 8.

at the state level, including both the legislature and state agencies like the Commission.⁹⁶ All lobbying information reported under that Act is publicly available on the Secretary of State’s website at <http://cal-access.sos.ca.gov/Lobbying/>. That website succinctly reflects that the purpose of the Act is to require “disclosure of the role of money in California politics.” This includes the disclosure of contributions and expenditures in connection with campaigns supporting or opposing state and local candidates and ballot measures as well as the disclosure of expenditures made in connection with lobbying the State Legislature and attempting to influence administrative decisions of state government, such as the Commission.⁹⁷

Mandated public reporting by both lobbyists and their employers under the Act includes disclosure of lobbyist names, pictures, contact information, and how much they were paid.⁹⁸ The Act also requires reporting from lobbying “coalitions” and the reporting of “grass-roots” lobbying. For example, the Fair Political Practices Commission, which is responsible for enforcing the Act, specifically advises in its lobbying disclosure manual that reporting is required for “grass- roots” lobbying, such as soliciting others to urge this Commission to act in a certain way.⁹⁹

The City of Los Angeles and other jurisdictions have similar, if less comprehensive, requirements. And while these laws may not explicitly require disclosure regarding the consultants SoCalGas has hired to support its anti-decarbonization efforts, absent any clear law on this issue, there no reason to conclude that SoCalGas’ association with such paid consultants is protected as free speech by the First Amendment.

⁹⁶ California Government (Gov’t) Code §§ 81000 – 91014.

⁹⁷ See the Secretary of State’s website at <https://www.sos.ca.gov/campaign-lobbying/> (emphasis added)

⁹⁸ Gov’t Code §§ 86100-86118.

⁹⁹ See the November 2019 Lobbying Disclosure Information Manual, Chapter 5.22, California Fair Political Practices Commission, available at <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Lobbying/Lobbyist-Manual-Folder/Lobbying%20Manual.pdf>

Finally, as explained in Cal Advocates’ December 17, 2019, response to SoCalGas’ appeal of the November 1, 2019 ALJ Ruling, the Supreme Court has held that the disclosure of names of contributors and recipients of campaign funds is valid because such disclosure makes it easier to detect violations of the Federal Election Campaign Act.¹⁰⁰ Similarly here, the inspection of documents related to SoCalGas’ allegedly shareholder-funded activity enables Commission staff to ensure regulated utilities are not violating various state laws or Commission rules, including the Political Reform Act. It also ensures that the Commission and its staff have the ability to thoroughly inspect a regulated entities’ accounts and records, thus permitting the Commission to fulfill its constitutionally-mandated responsibilities.

(c) Some Of The Information SoCalGas Seeks To Protect From Disclosure Is Already In The Public Domaine

Cal Advocates also notes that much of the “First Amendment” information that SoCalGas seeks to protect is already in the public domain. For example, over a year ago, Sierra Club filed a motion to deny party status to C4BES in Rulemaking 19-01-001.¹⁰¹ That Motion to Deny identified both Marathon Communications and Imprenta Communications Group as working with SoCalGas on the activities SoCalGas claims are protected by the First Amendment.¹⁰² Thus, it is already publicly known that SoCalGas has “associated” with these companies for political purposes related to its anti-decarbonization campaigns. Other information, which does not appear to be in the public domain, has already been produced to Cal Advocates,¹⁰³ and to the extent that it has not

¹⁰⁰ *Buckley v. Valeo*, 424 U.S. 1, 66-67 (1976).

¹⁰¹ That motion is entitled: “Sierra Club’s Motion To Deny Party Status To Californians For Balanced Energy Solutions or, In the Alternative, To Grant Motion to Compel Discovery” (Sierra Club Motion to Deny).

¹⁰² Sierra Club Motion to Deny, May 16, 2019, R. 19-01-001, pp. 4-5.

¹⁰³ Exhibit 7, Declaration of Stephen Castello, ¶ 8.

been produced, it should have been. Consequently, there is no basis to now wall off such information from Cal Advocates' review.

(d) The Commission and Cal Advocates Both Have A Foundational, Statutory, And Compelling Interest In Ensuring That Ratepayer Funds Are Spent Lawfully

The Public Advocates Office is an independent organization within the Commission that advocates on behalf of utility ratepayers. Its statutory mission is to obtain the lowest possible rate for service consistent with reliable and safe service levels. As the only State entity charged with this responsibility, Cal Advocates has a critical role in ensuring that consumers are represented at the Commission on matters that affect how much they must pay for utility services and the quality of those services.

Here, Cal Advocates is investigating SoCalGas' role and funding in lobbying activities, whether such activities are shareholder or ratepayer funded, and the historical financial data regarding whether such activities have been ratepayer funded. The utility's financial records related to such activities are necessary to fully investigate the utility's actions. This type of investigation, to ensure that ratepayers are not harmed, is clearly within the scope of the Cal Advocates' Mission Statement, founding legislation, and Pub. Util. Code § 309.5(e).

Rather than show that there is a firewall between ratepayer and shareholder funded accounts or offer any evidence to show that the accounts actually are 100% shareholder-funded, SoCalGas seeks the cover of the First Amendment right to association and insists that both Cal Advocates and the Commission must 'trust without verifying' that ratepayer funds are not being used improperly. This approach is at odds with SoCalGas documented history of deception in this and other proceedings,¹⁰⁴ and would preclude both Cal Advocates and the Commission from fulfilling their statutory obligations.

¹⁰⁴ See, e.g., Section III.C below.

**(e) The Harm SoCalGas Alleges Is Both Self-Inflicted
And *De Minimis***

The record shows that Cal Advocates has gone to great lengths and tried multiple strategies to obtain information regarding SoCalGas’s use of ratepayer funds to support its anti-decarbonization advocacy. SoCalGas has routinely asserted frivolous objections and provided incomplete answers when Cal Advocates has attempted to obtain proof that the accounts at issue were not ratepayer funded. SoCalGas has objected to the use of its own definition of lobbying; continued to object and not provide full and complete answers even after losing motions to compel answers to this question; and agreed to provide Cal Advocates with the requested information then subsequently refused to do so on more than one occasion. Having failed to perform as promised or as required by less intrusive approaches, SoCalGas cannot now be heard on claims that Cal Advocates failed to consider less intrusive means of obtaining information about SoCalGas use of ratepayer funds other than the forensic accounting Cal Advocates now seeks to undertake.

Moreover, existing law requires both Cal Advocates’ and Commission staff to maintain the confidentiality of any information that SoCalGas properly identifies as confidential. Therefore, any harm to SoCalGas or others will be *de minimis*.¹⁰⁵ SoCalGas fails to acknowledge this protection, let alone provide compelling explanations of how it will be harmed by Cal Advocates Office and the rest of the Commission obtaining confidential information that it must keep confidential.

**3. Granting SoCalGas’ Motion Will Harm The
Commission And The Public Interests It Has A
Constitutional Obligation To Protect**

Given the relevant facts and law, what is evident is that SoCalGas will not suffer “irreparable harm” if its Motion to Quash is rejected or denied. And while SoCalGas

¹⁰⁵ SoCalGas has no “members” as contemplated under the First Amendment right to association, and fails to identify a single shareholder claim of harm.

claims “no harm” will reach Cal Advocates,¹⁰⁶ this is not the case. Neither this Commission nor Cal Advocates has access to the type of resources that are available to SoCalGas. However, both this Commission and Cal Advocates have been required to spend innumerable hours over the past twelve months either drafting, responding to, reviewing, or deciding motions in an attempt to require discovery from SoCalGas that should have been provided without objection many months ago.

The discovery received, while useful in some instances, has often been non-responsive and heavily marked with confidentiality claims that cannot be sustained, requiring more motions and further reviews by Commission staff. As the Los Angeles County Superior Court recognized in the Aliso Canyon proceeding before it: “... [SoCalGas], through their counsel, stonewalled over an extended period of this litigation by misusing claims of privilege to attempt to throw Plaintiffs’ counsel off the track with respect to documents to which they were entitled. As a result, Plaintiffs’ counsel were delayed in obtaining documents at a time when they could have been used in deposing Defendants’ current and former employees.”¹⁰⁷

SoCalGas’ continued flaunting of Commission rules and state laws cannot be sustained without further injury to the Commission, its limited resources, and the ratepayers it serves.

C. SoCalGas’ Record Of Discovery Abuses And Sharp Litigation Practices In Multiple Forums Reveals the Need for Decisive Action By The Commission, Including Sanctions

1. SoCalGas Discovery Abuses In The Los Angeles Superior Court’s Aliso Canyon Case Show That SoCalGas Is Well-Versed In Sharp Litigation Practices And Is More Than Willing To Use Them

A February 20, 2020 Minute Order from a Los Angeles Superior Court Judge in the case *Gandsey v. SoCalGas* (civil litigation related to Aliso Canyon) reveals that

¹⁰⁶ SoCalGas Motion to Quash, p. 15.

¹⁰⁷ Exhibit 16, *Gandsey* February 20, 2020 Minute Order, p. 18.

SoCalGas is well-versed in discovery abuse, and only complies when its attorneys are faced with sanctions. That order, Exhibit 16 hereto, found that “[b]ased on the prior history of this case, [SoCalGas’] initial claims of privilege are unsupportable and/or are withdrawn an average of 94 percent of the time.”¹⁰⁸ The Court found that SoCalGas’ “(1) abusive misconduct in discovery; (2) repeated, unmeritorious objections to discovery by assertion of unsubstantiated claims of privilege; (3) repeated failure to provide opposing counsel and the court with legally required information to permit opposing counsel and the court to evaluate Defendants’ claims of privilege; and (4) willful violation of court orders addressing these issues, when taken together, warrant sanctions”¹⁰⁹ The Court observed: “In many ways, what is most upsetting about the litigation tactics of Defendants is that they have only asserted good faith objections when threatened with sanctions or when this court required trial counsel to declare under penalty of perjury that there was a good faith basis for the privilege claims asserted.”¹¹⁰

The Court rejected SoCalGas’ claims that the conduct was unintentional: “The sheer number of privilege assertions that ultimately were unsupportable is evidence that [SoCalGas’] conduct is the result of a concerted policy, and not the hapless mistakes of a few document review attorneys.”¹¹¹ The Court awarded monetary sanctions of \$525,610 against SoCalGas and their counsel jointly for these discovery abuses, among other remedies.¹¹²

¹⁰⁸ Exhibit 16, *Gandsey* February 20, 2020 Minute Order, pp. 2-3 (emphasis added).

¹⁰⁹ Exhibit 16, *Gandsey* February 20, 2020 Minute Order, p. 10.

¹¹⁰ Exhibit 16, *Gandsey* February 20, 2020 Minute Order, pp. 12-13 (emphases added).

¹¹¹ Exhibit 16, *Gandsey* February 20, 2020 Minute Order, p. 20.

¹¹² Exhibit 16, *Gandsey* February 20, 2020 Minute Order, p. 1.

2. Extreme Lobbying Tactics Used To Stall Adoption Of San Luis Obispo’s Energy Code Leads To Mayor’s Request For The Commission To Stop SoCalGas’ Schoolyard Bullying

On May 6, 2020, the Los Angeles Times reported that Eric Hofmann, the Chair of C4BES – the anti-decarbonization organization that the Sierra Club Motion to Deny claims SoCalGas created with assistance from Marathon and Imprenta¹¹³ – threatened officials in the City of San Luis Obispo out of voting on a new energy code limiting the installation of new gas facilities.¹¹⁴ That article is attached as Exhibit 17. It explains that the City Council had previously voted in favor of the code, and that a second vote planned for April 7, 2020, would have finalized adoption of the code. The vote was “scrapped” and had not been rescheduled as of May 6, 2020, due, in part, to Mr. Hofmann’s threats to Michael Codron, the City’s Community Development Director, that if the City Council moved forward with the final vote, Mr. Hofmann would “bus[] in hundreds and hundreds of pissed off people potentially adding to this pandemic.” He assured Mr. Codron that “there will be no social distancing in place.”¹¹⁵ While it remains to be seen whether SoCalGas had a hand in this matter – it appears that the individuals and organizations that SoCalGas has funded and supports are willing to use any tactic necessary to further their anti-decarbonization agenda.

In response to Mr. Hofmann’s threats, CalMatters published a commentary by San Luis Obispo Mayor, Heidi Harmon, attached here as Exhibit 18. Among other things, Mayor Harmon chided the Commission for failing to sanction SoCalGas regarding its association with C4BES; she asserted that the Commission’s failure to act “allowed my

¹¹³ Sierra Club Motion to Deny, pp. 1-7.

¹¹⁴ In addition to being Chair of C4BES, the Los Angeles Times reports that Mr. Hofmann is President of the Utility Workers Union of America, Local 132, representing thousands of SoCalGas employees, and that he is on leave from his job at SoCalGas during his tenure as President of the Union.

¹¹⁵ A screen shot of the full text of the email is available on the article print out, Exhibit 17, p. 7.

city to continue to be bullied.”¹¹⁶ She concluded her commentary by “call[ing] on state leadership to be part of [the] vision for a prosperous California by ensuring that SoCalGas leaves their schoolyard bullying behind and joins us in creating a better world where – in times of crisis – we turn toward each other and not on each other.”¹¹⁷

3. SoCalGas Has Engaged In Discovery Abuse Throughout The Cal Advocates’ Investigation

In its motions and responses to motions, SoCalGas characterizes itself as a hapless victim suffering at the hands of the Cal Advocates unreasonable discovery requests. For Example, SoCalGas’ Motion for Stay served on March 25, 2020 claimed that it has “diligently responded” to each of Cal Advocates’ data requests and has “met and conferred in good faith with Cal Advocates on disputes arising out of those requests.”¹¹⁸ Nothing could be further from the truth. As the litany of sharp practices SoCalGas has recently engaged in demonstrate, it is familiar with those practices and willing to use them.

SoCalGas’ attempts to slow-roll Cal Advocates’ investigation into its apparent misuse of ratepayer monies to fund its anti-decarbonization campaigns has resulted in two Cal Advocates Motions to Compel, both of which were granted, SoCalGas’ frivolous First Amendment appeal which was denied by the ALJ, its equally frivolous Motion to Stay, which was summarily denied before Cal Advocates could file its Response,¹¹⁹ and now its Motion to Quash a validly issued subpoena and Motion to Supplement its First Amendment appeal. The evidence of SoCalGas’ withholding of discovery described in these various motions reveals just the tip of the iceberg of SoCalGas’ intransigence. The utility has routinely engaged in a “cat and mouse” form of discovery abuse which has successfully delayed Cal Advocates’ investigation for the past year.

¹¹⁶ Exhibit 18 - Mayor Harmon CalMatters Commentary, p. 3.

¹¹⁷ Exhibit 18 - Mayor Harmon CalMatters Commentary, p. 4.

¹¹⁸ SoCalGas Motion to Stay, p. 3.

¹¹⁹ See Exhibits 8 and 9, Orders granting Cal Advocates’ Motions to Compel.

For example, Question 4 of data request CalAdvocates-SC-SCG-2019-07 asked SoCalGas to identify the costs associated with lobbying local municipalities that have adopted SoCalGas-prepared “Balanced Energy Resolutions.” SoCalGas responded there were no costs associated with such lobbying, evidently taking the position that “outreach” to local governments to encourage adoption of such resolutions was not “lobbying”:

There are no lobbying costs associated with the municipalities in attachment B that have adopted Balanced Energy Resolutions. It is appropriate for SoCalGas to present our, and our customers’, view with respect to what is happening from an energy perspective in the state. Such discussion allows local governments to take those views into consideration in making informed and balanced decisions.¹²⁰

Question 1 of the next data request - CalAdvocatesSC-SCG-2019-08 - asked for the same information, but omitted the word “lobbying.” This time, SoCalGas objected that the question was “overbroad and unduly burdensome” and declined to answer it on the basis that it does not track such costs and that employees talking to local governments are “salaried”:

SoCalGas objects to this question as overbroad and unduly burdensome, as well as vague with respect to the phrases “total costs to SoCalGas associated with” and “costs associated with.” Subject to and without waiving its objection, SoCalGas responds as follows:

SoCalGas did not track the costs associated with communications between Regional Public Affairs employees and municipalities. The Regional Public Affairs employees who communicated with the municipalities are all salaried employees.¹²¹

While SoCalGas has since identified a small handful of employees working on these matters, it has significantly understated their time committed to these efforts. Among other things, it is clear from recent discovery that SoCalGas has not been tracking and

¹²⁰ Exhibit 19, SoCalGas Response to CalAdvocates-SC-SCG-2019-07, Q 4.

¹²¹ Exhibit 20, SoCalGas Response to CalAdvocates-SC-SCG-2019-08, Q 1.

reporting its lobbying of local governments, in violation of Sempra Energy’s Political Activities Policy. That Policy defines lobbying broadly on page 3 as:

any action intended to influence legislative or administrative action, including activities to influence government officials, political parties, or ballot measures. Lobbyists can be individual employees or the company that employees them, referred to as a Lobbyist-Employer.”¹²²

More recently, SoCalGas has taken to objecting to the definitions provided in Cal Advocates’ data requests and refusing to apply them in its responses.¹²³ For example, when Cal Advocates instructed SoCalGas to use the definition of lobbying provided in the Sempra Energy Political Activities Policy, SoCalGas objected to its own definition of lobbying on claims that the term is “vague and ambiguous.”¹²⁴ SoCalGas also objected that the definition does not apply because it has many other definitions of lobbying for reporting purposes.¹²⁵

As Cal Advocates has repeatedly admonished on its conference calls with SoCalGas – and which SoCalGas already knows – a term in a data request is defined to provide clarity, and can be defined however the requester decides. Thus, SoCalGas objections to using a specific definition because “it does not apply” have no legal basis and simply make no sense, again evidencing SoCalGas’ bad faith when responding to Cal Advocates’ investigation discovery. SoCalGas and Cal Advocates both know what lobbying is for purposes of this investigation, and it is not one definition confined to a

¹²² Exhibit 21, Sempra Energy Political Activities Policy, Revised July 23, 2018, p. 3.

¹²³ In addition to making many spurious objections, it waits to make these objections until the day the responses are due, rather than within the five business days Cal Advocates has requested in its data request instructions.

¹²⁴ See Exhibit 5, SoCalGas Response to CALADVOCATES-AW-SCG-2020-01, Q 1.

¹²⁵ *Id.* The data response explains: “For CPUC accounting purposes, the Federal Energy Regulatory Commission (FERC) definition of lobbying applies. ... Cal Advocates’ request for lobbying activity and costs relate to accounting information and the treatment of costs attributable to ratepayers. Accordingly, the FERC definition is the appropriate definition for the purposes of responding to the data request in question. ... For reporting purposes, SoCalGas uses the definition of lobbying that is consistent with Sempra’s Political Activities Policy...”

specific legal application. To borrow a famous phrase from United States Supreme Court Justice Stewart – “I know it when I see it.”¹²⁶ With regard to lobbying, we all know what is meant.

Unfortunately, while SoCalGas’ motions are ultimately denied, they are nonetheless achieving their goals of distracting Cal Advocates from the real work of following up on, and analyzing, discovery. Indeed, discovery requests issued in December, February, and March remain pending, with little hope that, absent strong and swift action by the Commission, they will ever be honestly responded to. For example, SoCalGas has declined to provide complete responses to CALADVOCATES SC-SCG-2019-11, which was issued on December 11, 2019. Among other things, SoCalGas’ responses failed to include all costs associated with influencing public opinion on the type of buses the Los Angeles County Metropolitan Transportation Authority should acquire, failed to break down those costs by year, failed to disaggregate those costs by requested categories, and perhaps most notably, failed to identify the accounts where those costs were charged.¹²⁷ Most of this information should have been recorded in its Lobbying Activities Tracking System (LATS) consistent with the training manuals SoCalGas has provided. However, all of this information appears to be missing.

SoCalGas has also unreasonably delayed its responses to the Cal Advocates data request issued February 14, 2020. Notwithstanding numerous discussions regarding this data request – the utility insisted on using its own definition of lobbying to answer the questions – Cal Advocates has been waiting more than three months for complete responses.¹²⁸

D. Alternatives To SoCalGas’ Demands

Notwithstanding the fact that the Commission has broad statutory authority to review a utility’s accounts and records, to the extent the Commission seeks to further

¹²⁶ *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring).

¹²⁷ See Exhibit 7, Declaration of Stephen Castello, ¶ 19.

¹²⁸ See Exhibit 7, Declaration of Stephen Castello, ¶ 20.

protect attorney/client communications or attorney work product that *might* reside in SoCalGas’ law firm invoices, Cal Advocates notes that the Commission has two options. The most straightforward option would be to prohibit SoCalGas from installing any “custom software solution” and acknowledge that any Commission review shall not waive SoCalGas’ ability to assert such privileges at a later date. This option would ensure that the Commission has access to all information needed to perform its audits without lengthy proceedings to determine what is and what is not privileged information.

The alternative – which Cal Advocates does not believe is needed – would be to allow SoCalGas to install a “custom software solution” solely to block Commission access to the law firm invoices – called “records attachments” – that would allow the Commission to access a record of the law firm invoice for a particular payment made.¹²⁹ This alternative would require additional undertakings by the utility, including, without limitation:

- (1) A declaration under penalty of perjury from SoCalGas’ Chief Financial Officer that all other access to the law firm information, such as who was paid, how much they were paid, when they were paid, and line item text fields containing narrative descriptions,¹³⁰ would continue to be transparent through the accounting system and that *no other modifications* were made to SoCalGas systems to limit the Commission’s access to its accounts and records.
- (2) SoCalGas’ identification of every law firm it has contracted with over the past five years, including the law firm name, the vendor number, and the nature of the law firm’s work for SoCalGas.
- (3) For any law firms that the Cal Advocates seeks to know more about, SoCalGas would need to provide the invoices within ten business days, but could redact those portions of the invoices that it has a good faith basis in the law to claim a privilege for, and provide a privilege log for each claim of privilege. Similar to the *Gandsey* Court’s solution, for any such claim of privilege, a SoCalGas attorney should be required to provide a declaration under penalty of perjury that the attorney has

¹²⁹ See SoCalGas Motion to Quash, Declaration of Dennis Enrique, ¶ 6.

¹³⁰ See SoCalGas Motion to Quash, Declaration of Dennis Enrique, ¶ 7.

personally reviewed all of the claims of privilege and that each one has a good faith basis in the law.

For the reasons set forth in more herein, Public Advocates prefers the first option because it is consistent with the statutory law providing the Commission full access to all utility accounts and records, and because the alternative potentially establishes an troubling precedent and provides opportunities for utility abuse of process.

IV. CONCLUSION

For all of the reasons set forth above, the Cal Advocates requests that the Commission swiftly reject the SoCalGas Motion to Quash as untimely and order SoCalGas to, within 24 hours, provide remote read-only access to the Cal Advocates with no filters or walls and no requirements such as execution of a non-disclosure agreement¹³¹. Such an order should also require SoCalGas to:

- (1) Identify every 100% shareholder-funded account;
- (2) Identify every account where costs are booked that are associated with the activities that are the subject of its First Amendment appeal;
- (3) Provide a list of all vendors and their identifying numbers;
- (4) Identify all vendors performing shareholder-funded activities, including those activities that are the subject of its First Amendment appeal;
- (5) Provide full access to all Work Orders and identify all of the Work Orders associated with the activities that are the subject of its First Amendment appeal; and
- (6) Provide any other information related to its accounts and records that Cal Advocates requests in no later than five business days.

Only with full access to SoCalGas accounts and records, including this specific information, will the Commission, including the Cal Advocates, be able to determine whether SoCalGas is funding its anti-decarbonization activities with shareholder or ratepayer monies.

¹³¹ While Cal Advocates has previously discussed signing a Non-Disclosure Agreement (NDA) with SoCalGas in order to speed its release of information, such an NDA is unnecessary given the statutory protections provided and Cal Advocates no longer proposes to sign one given that the purpose of the NDA has been defeated by the instant Motion to Quash.

Finally, given SoCalGas' continued intransigence in responding to discovery in this investigation, and its reliance on aggressive litigation tactics that include violations of Commission rules and state law, the Commission should order that SoCalGas: (1) shall respond clearly and completely to all outstanding discovery in the next ten business days; (2) has no more than five business days to object to the publication of any documents obtained through discovery in this investigation based on privilege or confidentiality claims; and (3) in addition to complying with GO-66 to support any privilege or confidentiality claim, SoCalGas shall provide a declaration under penalty of perjury from a SoCalGas attorney that the attorney has reviewed the materials associated with the privilege or confidentiality claims and that such claims have a good faith basis in the law.

Respectfully submitted,

/s/ TRACI BONE

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June 1, 2020

Document received by the CA 2nd District Court of Appeal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE ON THIS DATE SERVED A COPY OF “**RESPONSE OF PUBLIC ADVOCATES OFFICE TO SOUTHERN CALIFORNIA GAS COMPANY MOTION TO QUASH PORTION OF SUBPOENA, FOR AN EXTENSION, AND TO STAY COMPLIANCE (NOT IN A PROCEEDING)**” TO THE FOLLOWING BY ELECTRONIC MAIL:

rmd@cpuc.ca.gov
MHovsepian@socalgas.com
TCarman@socalgas.com
Marybel.Batjer@cpuc.ca.gov
Alec.Ward@cpuc.ca.gov
Stephen.Castello@cpuc.ca.gov
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Executed on **June 1, 2020** at San Francisco, California.

/s/ TRACI BONE

TRACI BONE

Document received by the CA 2nd District Court of Appeal.

PROOF OF SERVICE

I, Ashley Moser, declare as follows:

I am employed in the County of San Francisco, State of California, I am over the age of eighteen years and am not a party to this action; my business address is 555 Mission Street, Suite 3000, San Francisco, CA 94105-0921, in said County and State. On March 8, 2021, I served the following document(s):

PETITION FOR WRIT OF REVIEW, MANDATE, AND/OR OTHER APPROPRIATE RELIEF, MOTION FOR EMERGENCY STAY OR OTHER INJUNCTIVE RELIEF, DECLARATION OF JULIAN W. POON, AND PROPOSED ORDER, AND MEMORANDUM OF POINTS AND AUTHORITIES; IMMEDIATE RELIEF REQUESTED BY TUESDAY, MARCH 16, 2021 OF ORDER BY CALIFORNIA PUBLIC UTILITIES COMMISSION TO PRODUCE CONSTITUTIONALLY PROTECTED MATERIAL

EXHIBITS TO THE PETITION FOR WRIT OF REVIEW, MANDATE, AND/OR OTHER APPROPRIATE RELIEF (VOLUMES 1-10)*

on the parties stated below, by the following means of service:

<p>California Public Utilities Commission</p> <p>Rachel Peterson Executive Director 505 Van Ness Avenue, San Francisco, CA 94102 415-703-3808 Rachel.Peterson@cpuc.ca.gov</p> <p>Arocles Aguilar General Counsel 505 Van Ness Avenue, San Francisco, CA 94102 415-703-2015 Arocles.Aguilar@cpuc.ca.gov</p>	<p>California Advocates</p> <p>Elizabeth Echols Director 505 Van Ness Avenue, San Francisco, CA 94102 415-703-2588 elizabeth.echols@cpuc.ca.gov</p> <p>Darwin Farrar General Counsel 505 Van Ness Avenue, San Francisco, CA 94102 415-703-1599 darwin.farrar@cpuc.ca.gov</p> <p>Traci Bone Counsel 505 Van Ness Avenue, San Francisco, CA 94102 415-703-2048 traci.bone@cpuc.ca.gov</p>
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*Volume 10 was not served on California Advocates for reasons discussed in Petitioner's Application for Leave to File Under Seal, but was served by messenger service to the California Public Utilities Commission and the Court of Appeal.

- BY MESSENGER SERVICE:** I placed a true copy in a sealed envelope or package addressed to the persons at the addresses listed above and provided them to a professional messenger service for delivery before 5:00 p.m. on the above-mentioned date.
- BY ELECTRONIC SERVICE THROUGH TRUEFILING:** I caused the documents to be electronically served through TrueFiling.
- BY ELECTRONIC SERVICE:** On the above-mentioned date at _____ [a.m./p.m] , I caused the documents to be sent to the persons at the electronic notification addresses as shown above.
- (STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 8, 2021.



Ashley Moser