

EXHIBIT M

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

**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)**

**PUBLIC VERSION
(Declaration Numbers 3, 4, 5 and 6 Confidential)**

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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	2
II. FACTS AND PROCEDURAL HISTORY	5
A. CalPA’s Data Requests Regarding SoCalGas’ Shareholder-Funded Expenditures and First Motion to Compel.....	5
B. CalPA’s Data Request Regarding SoCalGas’ 100% Shareholder-Funded Contracts and Second Motion to Compel	5
C. CalPA’s Other Data Requests Demanding Production of SoCalGas’ and SDG&E’s 100% Shareholder-Funded Contracts.....	8
D. CalPA’s Apparent Role in Using Its Unique Discovery Authority Outside a Proceeding to Funnel SoCalGas’ Information to Litigants Opposing SoCalGas in Formal Proceedings	9
III. ARGUMENT	10
A. SoCalGas Is Entitled to First Amendment Protection and CalPA Has Not Made the Requisite Showing Justifying Its Infringement on SoCalGas’ (and Others’) Constitutional Rights.....	10
1. SoCalGas Has Made a Prima Facie Showing of Arguable First Amendment Infringement.....	11
a. CalPA’s Discovery Requests (Now and for the Foreseeable Future) Implicate SoCalGas’ (and Others’) Fundamental Constitutional Rights.	11
b. CalPA’s Demands Target and Chill the Exercise of SoCalGas’ (and Others’) Constitutional Rights.....	14
2. CalPA Has Failed to Meet Its Evidentiary Burden of Demonstrating a Compelling State Interest and Proving the Data Requests Are Narrowly Tailored to Achieve That Interest.	15
a. CalPA Cannot Justify Its Incursion on SoCalGas’ Freedom of Association and Speech, as well as Its Right to Petition the Government.	15
b. CalPA’s Interpretation and Application of PUC §§ 309.5 and 314 Are Unconstitutionally Overbroad.....	18
c. CalPA’s Interpretation and Application of §§ 309.5 and 314 Are Unconstitutionally Vague.	19

TABLE OF CONTENTS *(continued)*

	<u>Page</u>
B. The Lack of Procedural Safeguards Gives CalPA Free Rein to Demand Any Material It Wants, in Violation of SoCalGas' Due Process Rights.	22
C. CalPA Continues to Make Intrusive Demands, Leveraging the ALJ Ruling and Lack of Rules to Demand More Constitutionally Protected Material.....	23
IV. CONCLUSION.....	25

TABLE OF AUTHORITIES

	<u>Page(s)</u>
Cases	
<i>AFL-CIO v. FEC</i> (D.C. Cir. 2003) 333 F.3d 168	13
<i>Re Alternative Regulatory Frameworks for Local Exchange Carriers</i> (1994) 55 Cal.P.U.C.2d 672	1, 4
<i>Application of PG&E (U 39 E) for Commission Approval Under PUC Section 851 of an Irrevocable License for Use of Utility Support Structures and Equipment Sites to ExteNet Systems (Cal.) LLC</i> (Cal.P.U.C. Oct. 27, 2016) 2016 WL 6649336	1, 4
<i>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</i> (Cal.P.U.C. Sept. 26, 2019) 2019 WL 5079235	24
<i>In Matter of Application of Southern Cal. Edison Co.</i> (Cal.P.U.C. Jan. 10, 1996) 64 CPUC.2d 241, 1996 WL 33178	6
<i>Britt v. Super. Ct.</i> (1978) 20 Cal.3d 844	3, 11, 12, 15, 16
<i>Buckley v. Valeo</i> (1976) 424 U.S. 1	12
<i>Burton v. Municipal Ct.</i> (1968) 68 Cal.2d 684	20
<i>Citizens United v. FEC</i> (2010) 558 U.S. 310	12, 16
<i>Consol. Edison Co. of N.Y., Inc. v. Pub. Serv. Comm’n of N.Y.</i> (1980) 447 U.S. 530	10
<i>Elrod v. Burns</i> (1976) 427 U.S. 347	16
<i>FSK Drug Corporation v. Perales</i> (2d Cir. 1992) 960 F.2d 6	21
<i>In re GlaxoSmithKline plc</i> (Minn. 2007) 732 N.W.2d 257	13
<i>Golden Gateway Center v. Golden Gateway Tenants Assn.</i> (2001) 26 Cal.4th 1013	12

TABLE OF AUTHORITIES *(continued)*

	<u>Page(s)</u>
<i>Governor Gray Davis Committee v. Am. Taxpayers Alliance</i> (2002) 102 Cal.App.4th 449	12, 16
<i>Heartland Surgical Specialty Hosp., LLC v. Midwest Div., Inc.</i> (D.Kan. Mar. 16, 2007) 2007 WL 852521	13
<i>Humanitarian Law Project v. U.S. Dept. of Treasury</i> (C.D.Cal. 2006) 463 F.Supp.2d 1049	21
<i>Keyishian v. Bd. of Regents</i> (1967) 385 U.S. 589	20
<i>NAACP v. Alabama</i> (1958) 357 U.S. 449	11, 12, 16
<i>NAACP v. Button</i> (1963) 371 U.S. 415	20, 22
<i>NBC Subsidiary (KNBC-TV), Inc. v. Super. Ct.</i> (1999) 20 Cal.4th 1178	24
<i>New York Times v. Sullivan</i> (1964) 376 U.S. 254	12
<i>Order Instituting Rulemaking to Adopt Biomethane Standards and Requirements, Pipeline Open Access Rules, and Related Enforcement Provisions</i> (Cal.P.U.C. June 11, 2015) 2015 WL 3879854	17
<i>Order Instituting Rulemaking to Identify Disadvantaged Communities in the San Joaquin Valley and Analyze Economically Feasible Options to Increase Access to Affordable Energy in those Disadvantaged Communities</i> (Cal.P.U.C. Dec. 13, 2018) 2018 WL 6830165	17
<i>Order Instituting Rulemaking to Implement Dairy Biomethane Pilot Projects to Demonstrate Interconnection to the Common Carrier Pipeline System in Compliance with S.B. 1383</i> (Cal.P.U.C. Dec. 14, 2017) 342 P.U.R.4th 17, 2017 WL 6621850	8
<i>Pac. Gas & Elec. Co. v. Pub. Utils. Comm'n</i> (2000) 85 Cal.App.4th 86	10
<i>Pac. Gas & Elec. Co. v. Pub. Utils. Comm'n of Cal.</i> (1986) 475 U.S. 1	10
<i>People v. Barajas</i> (2011) 198 Cal.App.4th 748	19
<i>People v. Ramirez</i> (1979) 25 Cal.3d 260	22

TABLE OF AUTHORITIES *(continued)*

	<u>Page(s)</u>
<i>Perry v. Los Angeles Police Dep’t</i> (9th Cir. 1997) 121 F.3d 1365	9
<i>Perry v. Schwarzenegger</i> (9th Cir. 2010) 591 F.3d 1147	10, 11, 14, 15, 18
<i>Roberts v. U.S. Jaycees</i> (1984) 468 U.S. 609	11
<i>Rosenberger v. Rector & Visitors of Univ. of Virginia</i> (1995) 515 U.S. 819	21
<i>Snatchko v. Westfield LLC</i> (2010) 187 Cal.App.4th 469	18, 19, 21
<i>Stanford v. Texas</i> (1965) 379 U.S. 476	18
<i>State Bd. of Equalization v. Wirick</i> (2001) 93 Cal.App.4th 411	19
<i>Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.</i> (1982) 455 U.S. 489	20
<i>Virginia v. Hicks</i> (2003) 539 U.S. 113	18
<i>Waters v. Churchill</i> (1994) 511 U.S. 661	22
<i>Wayte v. United States</i> (1985) 470 U.S. 598	21
Constitutional Provisions	
Cal. Const., art. I, § 2(a).....	10
Cal. Const., art. I, § 3(a).....	10
Cal. Const. art. I, § 7	22
Cal. Const. art. XII, § 2.....	21
U.S. Const. amend. I.....	10
U.S. Const. amend. V.....	22
U.S. Const. amend. XIV	10, 22

TABLE OF AUTHORITIES *(continued)*

Page(s)

Statutes

Pub. Util. Code, § 309.5, subd. (e).....20
Pub. Util. Code, § 2107.....8, 22

Other Authorities

CPUC, *Building Decarbonization: Fact vs. Fiction*,
<https://www.cpuc.ca.gov/WorkArea/DownloadAsset.aspx?id=6442462472>17
CPUC, *Strategic Directives, Governance Process Policies, and Commission-Staff
Linkage Policies* (Feb. 20, 2019)22

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Consistent with California Public Utilities Commission (“Commission” or “CPUC”) precedent establishing the proper procedure to alert the full Commission of an appeal for their consideration where a ruling from an Administrative Law Judge (“ALJ”) “may present possible ramifications in other proceedings and/or the issue concerns constitutional rights,”¹ and Chief ALJ Anne Simon’s October 29, 2019 email instructions,² Southern California Gas Company (“SoCalGas”) respectfully submits this Motion for Reconsideration/Appeal³ to the Full Commission Regarding Administrative Law Judge’s Ruling in the Discovery Dispute Between

¹ See, e.g., Application of PG&E (U 39 E) for Commission Approval Under PUC Section 851 of an Irrevocable License for Use of Utility Support Structures 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.

² SoCalGas requested permission from the ALJ to file this Motion on November 22, 2019. On November 25, Commission staff counsel sent an email to counsel for SoCalGas stating in part, “We’re looking into your request” and requested confirmation that the documents have been produced. SoCalGas responded to Commission staff counsel’s question on November 26, 2019. As of the filing of this Motion, SoCalGas has not received any further response from the ALJ or Commission staff counsel. (Declaration of Johnny Q. Tran (“Tran Decl.”) ¶ 5, Exh. C.) Nevertheless, consistent with precedent, and to ensure it has preserved its right to appeal, SoCalGas files this Motion at this time.

³ The Chief ALJ has confirmed that the Commission’s Rules of Practice and Procedure do not directly apply because this matter arose outside of a proceeding. Nonetheless, SoCalGas has attempted to adhere to those rules in appealing to the full Commission given the lack of clear procedures governing this dispute.

Public Advocates Office⁴ and Southern California Gas Company, October 7, 2019 (Not in a Proceeding) issued on November 1, 2019 (“ALJ Ruling”).

The ALJ Ruling required SoCalGas to produce certain 100% shareholder-funded contracts within two business days. In response, SoCalGas filed an Emergency Motion to Stay the following Monday (November 4) pending the Commission’s review. Because the ALJ did not rule on SoCalGas’ emergency motion, SoCalGas had to produce those contracts under protest to avoid being sanctioned. Not content with those contracts, the Public Advocates Office (“CalPA”) has leveraged the ALJ Ruling to demand even more of SoCalGas’ 100% shareholder-funded contracts. CalPA is also using the ALJ Ruling to demand 100% shareholder-funded contracts from San Diego Gas & Electric Company (“SDG&E”). Thus, the ALJ Ruling and CalPA’s demands continue to infringe on SoCalGas’ and others’ First Amendment, Due Process, and other constitutional rights. To uphold those rights secured by the Constitution, the Commission should reverse the ALJ Ruling.

I. INTRODUCTION

With disturbing and increasing frequency, CalPA has demanded—and, using the ALJ Ruling, continues to demand—the production of sensitive, strategic documents relating to SoCalGas’ 100% shareholder-funded activities, including political association and free expression related to advocating for natural gas solutions in rulemakings and petitioning other governmental bodies. Both the United States and California Constitutions significantly limit the disclosure of such materials. The ALJ Ruling has empowered CalPA to continue to assert

⁴ Public Advocates Office’s mission as stated in on its website is as follows: “The Public Advocates Office is an independent organization within the CPUC that advocates solely on behalf of utility ratepayers. Our Director is appointed by the Governor and has its own independent operating budget. Our 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, we have a critical role in ensuring that consumers are represented at the CPUC on matters that affect how much consumers pay for utility services and the quality of those services.” Available at <https://www.publicadvocates.cpuc.ca.gov/>

unbounded authority to investigate SoCalGas' and others' political associations and free expression, even when ratepayer funds are not at issue.

That, in turn, has had a substantial chilling effect on SoCalGas' and others' exercise of their constitutional rights to associate with each other, petition the government, and engage in free speech, particularly given CalPA's assertion that the ALJ Ruling bars SoCalGas from raising any objection to its continuing intrusive data requests seeking 100% shareholder-funded contracts that include strategy, communications, and other materials related to advocating for natural gas solutions in rulemakings and petitioning other governmental bodies.

That 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.) That burden requires CalPA, a government entity, to prove that its demands for the forced disclosure of confidential communications and associational activities are "precisely tailored" to serve a "compelling state interest." (*Id.* at p. 865.) Here, CalPA has not come close to carrying its burden, particularly given its shifting justifications that lack a compelling nexus to ratepayer interests.

CalPA's position boils down to the assertion that Public Utilities Code ("PUC") §§ 309.5(e) and 314 empower CalPA to demand whatever information it deems necessary "to perform its duties." (CalPA's Reply to Response of SoCalGas in the Discovery Dispute, October 2019 (Not in a Proceeding) ("Reply") at p. 4.) But CalPA has no more of a right to intrude on SoCalGas' 100% shareholder-funded activity that includes political association and expression than it does regarding Sierra Club's or anyone else's political activity. Allowing CalPA (or any other governmental agency) to seize the strategic political communications and documents of its litigation adversaries and others with whom it disagrees tramples dangerously on core constitutional rights and is not rationally related to advancing a compelling government interest. And even were there any real link between the 100% shareholder-funded material that CalPA seeks and its statutory authority, PUC §§ 309.5 and 314 would, as applied here, be unconstitutionally overbroad and vague.

These First Amendment harms are compounded by the lack of procedural protections in this non-proceeding, which deprive SoCalGas of its due process rights. CalPA has threatened SoCalGas with sanctions for objecting to the production of its 100% shareholder-funded materials, argued that the ALJ should allow SoCalGas only 24 hours to produce those materials, and used the ALJ Ruling to expressly target more 100% shareholder-funded contracts. Faced with an ALJ Ruling that lacked any reasoning and met with silence on its requested emergency relief from a deadline that would cause irreparable harm, SoCalGas has had no choice but to comply under duress with CalPA's unconstitutional demands or risk sanctions of up to \$100,000 per day.

Absent the full Commission's intervention, CalPA's increasing incursion on the constitutional rights of not just SoCalGas but also others, such as SDG&E, will continue unabated.⁵ Intervention by the Commission is necessary and appropriate to rectify this forced disclosure as the ALJ Ruling "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 stop CalPA's continuing demands in reliance on the ALJ Ruling, which are already resulting in widening, unchecked harm to SoCalGas' (and others') constitutional rights.

SoCalGas therefore requests that the Commission issue an order striking CalPA's improper requests, requiring the return or destruction of constitutionally protected materials that SoCalGas and SDG&E have already produced under protest, and establishing necessary procedures to protect SoCalGas' and others' constitutional rights.⁶

⁵ SDG&E is also being forced to produce, under protest, 100% shareholder-funded contracts.

⁶ The requested relief should also apply to the objected-to data requests directed at SDG&E.

II. FACTS AND PROCEDURAL HISTORY

A. CalPA's Data Requests Regarding SoCalGas' Shareholder-Funded Expenditures and First Motion to Compel

On July 19, 2019, CalPA issued CalAdvocates-SC-SCG-2019-04 to SoCalGas. The data request was not issued pursuant to any Commission proceeding. SoCalGas made a good-faith effort to respond to CalPA's data request and produced responsive documents. However, SoCalGas redacted dollar figures reflecting expenditures for shareholder-funded information in a Work Order Authorization ("WOA"). The WOA created the Balanced Energy Internal Order ("IO")—a 100% shareholder-funded account. SoCalGas objected to producing the shareholder dollar figure on the grounds that the information is not responsive to CalPA's data request and is not necessary for CalPA to discharge its duties under PUC §§ 309.5 and 314.

On August 14, 2019, CalPA submitted a "Motion to Compel Further Responses from Southern California Gas Company to Data Request—CalAdvocates-SC-SCG-2019-04" seeking production of the unredacted WOA. On September 10, ALJ Regina DeAngelis granted the motion without explanation ("ALJ's September Ruling").

B. CalPA's Data Request Regarding SoCalGas' 100% Shareholder-Funded Contracts and Second Motion to Compel

Building upon CalAdvocates-SC-SCG-2019-04, on August 13, 2019, CalPA served SoCalGas with CalAdvocates-SC-SCG-2019-05, which sought "all contracts (and contract amendments) covered by the WOA which created the BALANCED ENERGY IO." (Motion 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) ("Motion to Compel") at pp. 2, 6.) In response, SoCalGas produced contracts that were funded by both SoCalGas ratepayers and shareholders, but objected to the production of its 100% shareholder-funded contracts as outside the scope of CalPA's duties under PUC §§ 309.5 and 314.

These 100% shareholder-funded contracts reflect relationships between, and strategic business choices made by, SoCalGas and others with whom it associates to advocate for and

advance natural gas solutions without the lobbying- and political-activity restrictions that apply *when (unlike here) ratepayer funds are at issue.*⁷ Even though such advocacy can create ratepayer benefits and provide information to SoCalGas' customers, communities, the public, and regulators (as well as other governmental bodies), SoCalGas did not use ratepayer funds precisely because it wished to freely associate and advocate without the restrictions placed on ratepayer-funded activity. But CalPA's discovery demands, and the ALJ Ruling ordering SoCalGas to produce such materials, effectively deprive SoCalGas (and others) of their constitutional right to do so.

On October 7, 2019, CalPA moved to compel production of the 100% shareholder-funded contracts under PUC §§ 309.5 and 314. CalPA first contended that it was seeking to determine whether the contracts were ratepayer-funded (Motion to Compel at p. 7), and subsequently asserted it sought to determine whether SoCalGas' political expression was consistent with State "policy" (Reply at p. 12). CalPA then claimed it was justified in seeking the contracts to determine how they "may have affected ratepayers' interests in issues such as achieving a least-cost path to meeting the state's decarbonization goals" (Motion to Compel at p. 8).⁸ While its justifications evolved, CalPA maintained that "[t]he Public Advocates Office need not disclose to SoCalGas the need for its requests during the course of an investigation." (*Id.* at p. 13.) Moreover, CalPA repeatedly asserted during meet and confers and in its Motion to Compel that the ALJ's September Ruling had already decided this issue and "implicitly rejected

⁷ See, e.g., *In Matter of Application of Southern Cal. Edison Co.* (Cal.P.U.C. Jan. 10, 1996) 64 CPUC.2d 241, 1996 WL 33178, at p. *60 (determining that "[i]f Edison wishes to pursue fuel substitution activities that are not consistent with our [demand-side management] rules, it is free to do so using shareholder funding").

⁸ CalPA and SoCalGas have different views about whether CalPA stated this new justification for the first time during a meet-and-confer discussion (as CalPA claims) or later in the motion to compel itself.

SoCalGas’ reasoning for withholding information related to shareholder funds.” (*Id.* at pp. 6, 10).⁹

According to CalPA, PUC §§ 309.5(e) and 314 entitle it to “seek ‘*any*’ information it deems necessary, whether that be information related to ratepayer funded activities or shareholder funded activities,” as long as that information is “necessary to perform its duties.” (Reply at p. 4, bold and italics added; see also *ibid.* [contending that § 309.5(e) “contains *no limitation* on the type of information that may be sought by the Public Advocates Office once it has determined that the information is necessary to perform its duties,” bold and italics added].)

CalPA further argued that its apparently unbounded authority extends to investigating constitutionally protected activities. It claimed, for example, that “SoCalGas does not have an unfettered right to lobby the government when such lobbying is harmful to ratepayers.” (*Id.* at p. 7.) CalPA also contended that “[i]f SoCalGas shareholders are undermining the interest of ratepayers, [it] has the duty to investigate that conduct and the authority to compel the production of documents deemed necessary in the course of such an investigation.” (*Id.* at pp. 7, 8.)

CalPA submitted its Motion to Compel to Commission President Marybel Batjer, who on October 25, 2019 referred the motion and any further communications to Chief ALJ Anne E. Simon for disposition. On October 29, Chief ALJ Simon designated ALJ DeAngelis to handle the matter. In an email that day, Chief ALJ Simon notified representatives of CalPA and SoCalGas that “[s]ince this discovery dispute occurs outside any formal proceeding, the Commission’s Rules of Practice and Procedure and filing requirements for formal proceedings do not directly apply.” (Tran Decl., Exh. A.)¹⁰

⁹ According to CalPA—which called any suggestion to the contrary “frivolous” and sanctionable—collateral estoppel bars SoCalGas from opposing new demands for different constitutionally protected materials. (Reply at pp. 8-9.)

¹⁰ The email did not provide guidance as to how or when a “party” might pursue an appeal.

The ALJ granted the motion on November 1, 2019, ordering SoCalGas to produce the documents at issue within two business days, despite SoCalGas' request to have "at least two weeks to file an appeal with a concurrent motion to stay enforcement of the ruling." (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) ("Response to Motion to Compel") at p. 10; see also Reply at p. 9 [CalPA's demand for 24-hour turnaround].) As with the ALJ's September Ruling, there was no explanation as to the basis for granting the motion, even though this time CalPA itself explicitly requested a reasoned ruling "addressing the legal issues on the merits in order to avoid further unnecessary litigation on this issue." (Motion to Compel at p. 14.)

SoCalGas filed an Emergency Motion to Stay the ALJ Ruling the following Monday (November 4). 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 timely produced the contracts at issue under protest on November 5 reserving its rights and informing CalPA that it intended to appeal the ALJ Ruling. As of the filing of this Motion/Appeal, the ALJ has not ruled on SoCalGas' Emergency Motion to Stay. Notwithstanding SoCalGas' explicit intent to appeal CalPA's unbounded discovery requests, CalPA has continued to serve SoCalGas with more demands related to 100% shareholder-funded activity, most recently on November 21.

C. CalPA's Other Data Requests Demanding Production of SoCalGas' and SDG&E's 100% Shareholder-Funded Contracts

On August 26, 2019, CalPA served separate data requests on both SoCalGas and SDG&E requesting information from each company including expenditures and contracts associated with communications, advocacy, and public outreach—PubAdv-SDG&E-001-SCS to SDG&E and PubAdv-SCG-001-SCS to SoCalGas. (Declaration of Sharon L. Cohen ("Cohen Decl."), Exhs. A and B.) SoCalGas and SDG&E provided information utilized by ratepayer-funded accounts and contracts paid for by both shareholders and ratepayers. However, both SoCalGas and SDG&E objected to the production of contracts that are exclusively shareholder-funded.

Emboldened by the ALJ Ruling, CalPA again demanded that SoCalGas and SDG&E produce the 100% shareholder-funded contracts and threatened another motion to compel, arguing that the ALJ had already “ruled on this same issue and ordered SoCalGas to provide the contracts it alleged were 100% shareholder funded.” (Cohen Decl., Exh. C.) Pending the full Commission’s decision on this Motion/Appeal, SoCalGas and SDG&E expect that they will have to produce under protest, once again, 100% shareholder-funded contracts in response to PubAdv-SDG&E-001-SCS and PubAdv-SCG-001-SCS, on December 4, 2019.

D. CalPA’s Apparent Role in Using Its Unique Discovery Authority Outside a Proceeding to Funnel SoCalGas’ Information to Litigants Opposing SoCalGas in Formal Proceedings

SoCalGas and Sierra Club are both currently involved in a formal rulemaking regarding building decarbonization. (See Rulemaking Proceeding 19-01-011, filed Jan. 31, 2019.) That proceeding is subject to the Commission’s Rules of Practice and Procedure, and both SoCalGas and Sierra Club have litigated discovery disputes during the course of that rulemaking. CalPA has been providing Sierra Club with material it has obtained from SoCalGas in response to CalPA’s demands in this non-proceeding. (Sierra Club’s Response to Southern California Gas Company’s Motion to Strike Sierra Club’s Reply to Responses to Motion to Deny Party Status to Californians for Balanced Energy Solutions or, in the Alternative, to Grant Motion to Compel Discovery, Rulemaking 19-01-011 (July 25, 2019) (“Sierra Club Resp.”) at p. 1.) This falls outside the terms of the Commission’s Rules of Practice and Procedure, including Commission Rule 10.1’s bar on a party obtaining privileged and irrelevant information.

In fact, CalPA has also used information from SoCalGas’ response to its data requests in that rulemaking proceeding. (See Response of the Public Advocates Office to Southern California Gas Company’s Motion to Strike Sierra Club’s Reply to Responses to Motion to Deny Party Status to Californians for Balanced Energy Solutions or, in the Alternative, to Grant Motion to Compel Discovery, Rulemaking 19-01-011 (July 5, 2019) (“CalPA Resp.”) at p. 1 [citing “SoCalGas’ response to the Public Advocates Office’s data request”].) CalPA has thus

shown a willingness to leverage the lack of any applicable rules to demand and obtain materials from SoCalGas that CalPA and others can then use against SoCalGas in litigation and disseminate at will to the media and public.¹¹

III. ARGUMENT

A. **SoCalGas Is Entitled to First Amendment Protection and CalPA Has Not Made the Requisite Showing Justifying Its Infringement on SoCalGas' (and Others') Constitutional Rights.**

Because SoCalGas can bring an action to vindicate its right to free association and speech,¹² CalPA must therefore justify its intrusion on these rights. The First Amendment 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 counterparts. (U.S. Const. amends. I, XIV; Cal. Const., art. I, §§ 2(a), 3(a).) Indeed, the Supreme Court has long rejected the notion that an entity's status as a regulated utility "lessens its right to be free from state regulation that burdens its speech." (*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 position as regulated monopoly "does not decrease the informative value of its opinions on critical public matters"].)¹³

Accordingly, CalPA must satisfy the "particularly heavy" burden of showing the "narrow specificity" of the demand for disclosure and the "compelling" state purpose served by that

¹¹ See, e.g., <https://www.utilitydive.com/news/california-groups-challenge-sempra-rate-decisions-allowing-recovery-of-cha/567637/>; <https://www.latimes.com/environment/story/2019-10-22/southern-california-gas-climate-change>.

¹² SoCalGas can also represent the interests of its shareholders, even if they are not parties to this (non)action. In *NAACP v. Alabama* (1958) 357 U.S. 449, the Supreme Court rejected the argument that the NAACP lacked standing to assert "constitutional rights pertaining to [its non-party] members." (*Id.* at pp. 458-459; see also *Perry v. Los Angeles Police Dep't* (9th Cir. 1997) 121 F.3d 1365, 1368.)

¹³ Accord *Pac. Gas & Elec. Co. v. Pub. Utils. Comm'n* (2000) 85 Cal.App.4th 86, 93 [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 upon the identity of its source," citation omitted].

disclosure. (*Britt, supra*, 20 Cal.3d at pp. 855-856, citations omitted.) Applying the Ninth Circuit’s two-part framework for evaluating whether the government has carried this burden, it is clear that CalPA has failed to carry its burden.

Under that framework, “[t]he party asserting the privilege ‘must demonstrate . . . a prima facie showing of arguable first amendment infringement.’” (*Perry v. Schwarzenegger* (9th Cir. 2010) 591 F.3d 1147, 1160, internal quotation marks and citation omitted.) “This *prima facie* showing requires appellants to demonstrate that 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.” (*Ibid.*, citation omitted.) If the objector can make the *prima facie* showing, “the evidentiary burden will then shift 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.) “To implement this standard,” a court will “balance the burdens imposed on individuals and associations against the significance of the . . . interest in disclosure.” (*Ibid.*, citation omitted.)

As shown below, CalPA cannot satisfy its “evidentiary burden” to justify its demands, particularly given the severe burden those demands impose on SoCalGas’ constitutional rights. Thus, CalPA’s improper demands should be rejected.

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

a. CalPA’s Discovery Requests (Now and for the Foreseeable Future) Implicate SoCalGas’ (and Others’) Fundamental Constitutional Rights.

The materials related to 100% shareholder-funded activity that CalPA has sought (and continues to seek) from SoCalGas (and others) are constitutionally protected. (See *NAACP v. Alabama* (1958) 357 U.S. 449, 462; see also *Britt, supra*, 20 Cal.3d at p. 857.) They include, among other things, the identities of the contracting parties, 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. (Tran Decl. ¶ 6.) Longstanding Supreme Court precedent recognizes that the United States Constitution guarantees the “right to associate for the purpose of engaging in 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].) In fact, that right of association has been called “an *indispensable* means of preserving other individual liberties,” like the right to engage in political speech. (*Roberts, supra*, 468 U.S. at p. 618, italics added; see also *Buckley v. Valeo* (1976) 424 U.S. 1, 15 [“The First Amendment protects political association as well as political expression.”].)¹⁴

Supreme Court precedent has repeatedly underscored the fundamental importance of the right to associate for political purposes. The Court in *NAACP v. Alabama* held that 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. (357 U.S. at p. 460; *Buckley, supra*, 424 U.S. at p. 14 [noting 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 *Governor Gray Davis Committee v. Am. Taxpayers Alliance* (2002) 102 Cal.App.4th 449, 464 [the right to free association is “fundamental”].)

It follows that official actions—like CalPA’s here—that chill or discourage non-ratepayer-funded expenditures made in furtherance of free political expression also violate the First Amendment. In *Citizens United v. FEC* (2010) 558 U.S. 310, for example, the Supreme Court held that a federal statute’s ban on a corporation’s independent expenditures was a “ban on

¹⁴ The Supreme Court clarified in *Citizens United v. FEC* (2010) 558 U.S. 310, 341, 365, that the First Amendment’s protections are not limited to natural persons but also extend to corporations like SoCalGas.

speech” because restricting money spent on political communications “necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached.” (*Id.* at p. 339, quoting *Buckley, supra*, 424 U.S. at p. 19.)

Likewise, courts have found that demands for the production of materials furthering political association and expression encroach on constitutionally protected activity. In *Britt*, for example, the California Supreme Court recognized that 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. (20 Cal.3d at p. 861; 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”].)

CalPA’s demands strike at the heart of SoCalGas’ (and others’) constitutional freedoms. CalPA has demanded from SoCalGas “all contracts (and contract amendments)” related to the “BALANCED ENERGY IO.” (Data Request CalAdvocates-SC-SCG-2019-05, dated August 13, 2019, at p. 4 [Question 8].) But “advocacy” with the goal of achieving certain political outcomes is a “type of political or economic association that [is] . . . protected by the First Amendment privilege.” (*Heartland Surgical Specialty Hosp., LLC v. Midwest Div., Inc.* (D.Kan. Mar. 16, 2007) 2007 WL 852521, at p. *3.) Several of the 100% shareholder-funded contracts at issue here reflect strategic choices by SoCalGas and its contracting partners to associate in furtherance of freely advocating in support of natural gas solutions. As discussed below,

CalPA's demands for these contracts show "arguable first amendment infringement." (*Perry, supra*, 591 F.3d at p. 1160, citation omitted.)

b. CalPA's Demands Target and Chill the Exercise of SoCalGas' (and Others') Constitutional Rights.

By targeting SoCalGas' and others' confidential materials for compelled disclosure, CalPA has chilled those contracting parties' willingness to associate. As SoCalGas Vice President Sharon Tomkins explains in her accompanying declaration, "[f]orcing SoCalGas to provide the contracts under the threat of penalties has had a chilling effect on SoCalGas and our ability to engage in activities which are lawful." (Declaration of Sharon Tomkins ("Tomkins Decl.") ¶ 5.) Complying with CalPA's discovery demands will "alter how SoCalGas and its partners, consultants, and others work together and communicate in the future regarding matters of shared political interest." (*Id.* ¶ 3.)

It is not just SoCalGas employees making this claim. The head of one government-relations and public-affairs firm states in a concurrently filed declaration that, following the production to CalPA of a contract into which the firm entered with SoCalGas, "I will be less willing to engage in communications knowing that my non-public association with SoCalGas and private discussions and views may be (and have been) disclosed simply because of my association with SoCalGas in connection with its efforts to petition the government on political matters related to, among other things, rulemaking." (Declaration 6 ¶ 5.) Another government-relations professional has "unequivocally state[d] that if [that firm's] non-public communications" with SoCalGas are disclosed "it will drastically alter how [that firm] communicate[s] in the future." (Declaration 4 ¶ 5.) Yet another public affairs professional confirms that the disclosure to CalPA of that professional's contract with SoCalGas "has made me less willing to work and associate with SoCalGas in the future." (Declaration 5 ¶ 4.)

Simply put, "SoCalGas will be less willing to engage in contracts and communications knowing that SoCalGas' non-public association and communication with consultants, business partners and others on SoCalGas' political interests may be required to be disclosed."

(Tomkins Decl. ¶ 9.) Likewise, government-relations and public-affairs professionals have sworn that “[t]hese 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. (Declaration 4 ¶¶ 5, 7; see also Declaration 5 ¶¶ 4, 7, 8; Declaration 6 ¶ 5.)

Moreover, CalPA’s use of materials obtained through the objected-to data requests heightens the perceived risk in associating with SoCalGas. CalPA has funneled and disclosed information it obtained from SoCalGas to litigants (including Sierra Club) opposing SoCalGas in formal proceedings. CalPA has also used that information itself in such proceedings. And CalPA has apparently funneled and disclosed materials to the media to incite public condemnation of SoCalGas. Doing so chills SoCalGas’ (and others’) political expression and makes people less willing to associate with SoCalGas. (See Tomkins Decl. ¶ 11; Declaration 4 ¶ 7; Declaration 5 ¶¶ 4, 7; Declaration 6 ¶ 5.) Thus, forcing SoCalGas to produce these materials—and even the *threat* that CalPA will demand (and potentially publicly disclose) more—violates SoCalGas’ and others’ freedoms of speech and association, as well as their right to petition the government for redress of its grievances.¹⁵

2. CalPA Has Failed to Meet Its Evidentiary Burden of Demonstrating a Compelling State Interest and Proving the Data Requests Are Narrowly Tailored to Achieve That Interest.

a. CalPA Cannot Justify Its Incursion on SoCalGas’ Freedom of Association and Speech, as well as Its Right to Petition the Government.

Because CalPA’s demand for 100% shareholder-funded contracts chills the exercise of SoCalGas’ constitutional rights of speech, association, and petitioning the government for redress of its grievances, CalPA must carry a “particularly heavy” burden to justify its highly intrusive demands—one subject to exacting scrutiny. (*Britt, supra*, 20 Cal.3d at p. 856; see

¹⁵ Even production of these materials subject to a confidentiality agreement would not eliminate the chilling of First Amendment freedoms, particularly given CalPA’s exceedingly broad view of its authority to demand additional materials. (See *Perry*, 591 F.3d at p. 1160 fn. 6 [“The mere assurance that private information will be narrowly rather than broadly disseminated . . . is not dispositive.”].)

NAACP v. Alabama, *supra*, 357 U.S. at pp. 460-461 [government action curtailing freedom of association “is subject to the closest scrutiny”].) CalPA’s proffered reasons do not meet that burden.

To survive that scrutiny, the government must prove the restriction (1) furthers a compelling interest and (2) is narrowly tailored to achieve that interest. (*Citizens United*, *supra*, 558 U.S. at p. 340; see also *Governor Gray Davis Committee*, *supra*, 102 Cal.App.4th at p. 464 [same]; *Britt*, *supra*, 20 Cal.3d at p. 864 [same].) The “encroachment” *cannot* be justified “upon a mere showing of a legitimate state interest,” but only one that is “paramount” and of “vital import[.]” (*Elrod v. Burns* (1976) 427 U.S. 347, 362, plurality opinion, citations omitted.) Only then can the government overcome the “presumptive[] immun[ity] from inquisition” afforded to “private association affiliations and activities,” like those at issue here. (*Britt*, *supra*, 20 Cal.3d at p. 855, citation omitted.)

But CalPA contends that it is not even required to show any “legitimate interest”—let alone a “compelling” one—in exercising its alleged authority under PUC §§ 309.5 and 314 to force SoCalGas to disclose 100% shareholder-funded contracts. (See *Elrod*, *supra*, 427 U.S. at p. 362.) Even when CalPA provided its rationale, the rationales were deficient and shifted over the short course of the present dispute.

SoCalGas attempted through several meet and confers to gain some understanding of how the request relates to CalPA’s duties under PUC §§ 309.5 and 314. But SoCalGas’ efforts did little to move the dispute toward resolution. While CalPA asserts that it is not required to provide any justification and may simply seek “any” information it wants (Reply at p. 4), CalPA first asserted that it was seeking the contracts to verify whether they are ratepayer-funded or shareholder-funded (Motion to Compel at 7). After SoCalGas explained that the contracts contained no information as to the source of their funding, CalPA then asserted that it was seeking to determine whether SoCalGas’ political expression was consistent with State “policy.” (Reply at p. 12.) Finally, CalPA contended that it was entitled to see the contracts to determine

how they “may have affected ratepayers’ interests in issues such as achieving a least-cost path to meeting the state’s decarbonization goals.” (Motion to Compel at p. 8.)

None of these rationales suffice though, because 100% shareholder-funded activity bears no rational relationship to any compelling interest within the scope of CalPA’s statutory authority. Almost anything SoCalGas and its employees do could, under CalPA’s breathtakingly broad rationale, affect ratepayers, right down to which political candidate they vote for and whether they support certain policy initiatives. The standard of “exacting scrutiny” for constitutionally protected political association and speech cannot be so easily thwarted by the mere mention of the words “ratepayer harm.” Otherwise, CalPA would have limitless discovery authority, as CalPA could easily claim (without producing any evidence) that something could potentially deviate from what CalPA unilaterally deems is “a least-cost path” or is not aligned with “State policy.” If the Commission allows that to suffice and does not reverse the ALJ Ruling, it would set a dangerous precedent that could empower CalPA 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. There is no legal basis for that kind of vast government overreach, which cannot under any circumstances be considered “narrowly tailored.”¹⁶

¹⁶ The arbitrariness of CalPA’s demands is demonstrated by the fact that advocating for natural gas solutions—including renewable natural gas (“RNG”), hydrogen, and fuel cells—is entirely consistent with State policy. For instance, Assembly Bill (“AB”) 1257, the Natural Gas Act, requires that the California Energy Commission (“CEC”) develop a report that identifies strategies to *maximize* the benefits obtained from natural gas, including biomethane. Similarly, the CPUC adopted a monetary incentive program to promote the interconnection of biomethane into utilities’ gas pipeline systems. (See *Order Instituting Rulemaking to Adopt Biomethane Standards and Requirements, Pipeline Open Access Rules, and Related Enforcement Provisions* (Cal.P.U.C. June 11, 2015) 2015 WL 3879854 [Decision 15-06-029].) Further, the CPUC recently issued a ruling on November 21, 2019 that sets the scope and procedural schedule for a Phase 4 in the Biomethane OIR to address: (1) standards for injection of renewable hydrogen into gas pipelines, and (2) implementation of Senate Bill (“SB”) 1440 to consider adopting biomethane procurement targets or goals. In addition, pursuant to SB 1383, the CPUC adopted Decision 17-12-004, which provided funding for six dairy biomethane pilot projects to interconnect into utilities’ gas pipeline systems. (See *Order Instituting Rulemaking to Implement Dairy Biomethane Pilot Projects to Demonstrate Interconnection to the Common Carrier Pipeline System in Compliance with S.B. 1383* (Cal.P.U.C. Dec. 14, 2017) 342 P.U.R.4th 17, 2017 WL 6621850.) Moreover, in Decision 18-12-015, the CPUC approved SoCalGas’ pilot to use

In any event, CalPA must produce *evidence* showing a sufficient relationship to a compelling government interest. (See *Perry, supra*, 591 F.3d at p. 1161 [noting the government’s “evidentiary burden”].) A tortured and belated justification in a brief hardly suffices to warrant CalPA’s ongoing intrusive demands on SoCalGas (and SDG&E). Because CalPA has not offered (and cannot offer) sufficient evidence to justify its demands, this Motion should be granted based just on CalPA’s failure to come forth with the requisite evidentiary showing.

b. CalPA’s Interpretation and Application of PUC §§ 309.5 and 314 Are Unconstitutionally Overbroad.

CalPA’s claim that it is entitled to demand “any” material—even material regarding 100% shareholder-funded activity—renders PUC §§ 309.5 and 314 unconstitutionally overbroad. Under the First Amendment doctrine of overbreadth, a “showing that a law punishes a ‘substantial’ amount of protected free speech, ‘judged in relation to the statute’s plainly legitimate sweep,’ suffices to invalidate *all* enforcement of that law, ‘until and unless a limiting construction or partial invalidation so narrows it to remove the seeming threat or deterrence to constitutionally protected expression.’” (*Virginia v. Hicks* (2003) 539 U.S. 113, 118-119, citations omitted.) Here, it is plainly impermissible for CalPA to arrogate to itself the authority to demand any information it wants. (See *Stanford v. Texas* (1965) 379 U.S. 476, 485 [noting the “constitutional impossibility of leaving the protection of [First Amendment] freedoms to the whim of officers charged with executing [a search] warrant”].) Thus, CalPA’s claim of unlimited authority substantially exceeds the statute’s legitimate sweep.

ratepayer funding to extend natural gas infrastructure to California City, a disadvantaged community in the San Joaquin Valley (as defined in that proceeding). (*Order Instituting Rulemaking to Identify Disadvantaged Communities in the San Joaquin Valley and Analyze Economically Feasible Options to Increase Access to Affordable Energy in those Disadvantaged Communities* (Cal.P.U.C. Dec. 13, 2018) 2018 WL 6830165.) Likewise, the CPUC has explicitly issued a fact-versus-fiction sheet to clarify that there is no mandate that all buildings stop using natural gas. The same sheet also clarifies that the CPUC is actively working to make renewable natural gas available in greater quantity. (CPUC, *Building Decarbonization: Fact vs. Fiction*, <https://www.cpuc.ca.gov/WorkArea/DownloadAsset.aspx?id=6442462472>.)

For example, in *Snatchko v. Westfield LLC* (2010) 187 Cal.App.4th 469, 473, the Court of Appeal ruled that a shopping mall's rules that prohibited peaceful and consensual speech on topics unrelated to the mall were unconstitutionally overbroad. "Considering the facial breadth of the Rules," the court in *Snatchko* concluded that "the Rules do prohibit a substantial amount of protected speech," including "political, social, environmental, [and] religious views." (*Id.* at p. 494.) *Snatchko* thus held that the mall's prohibition on speech unrelated to the mall "substantially burdens far more protected speech than is necessary to meet Westfield's safety and convenience concerns." (*Id.* at p. 495.)

The same rationale applies here, where CalPA contends that § 309.5(e) contains no limit on the information it may seek and that it "specifically allows for discovery of any information [CalPA] deems necessary." (Reply at p. 4; see also *People v. Barajas* (2011) 198 Cal.App.4th 748, 759 fn. 7 ["A probation condition that in effect delegates unfettered discretion to a probation officer to determine its scope at the very least risks being unconstitutionally overbroad," citation omitted].) Accordingly, any reading of PUC §§ 309.5 and 314 that permits CalPA's intrusive demands regarding 100% shareholder-funded activity is unconstitutionally overbroad.

c. CalPA's Interpretation and Application of §§ 309.5 and 314 Are Unconstitutionally Vague.

PUC §§ 309.5 and 314 are also unconstitutionally vague as interpreted and applied here because they do not provide fair notice of what material CalPA may demand in discovery and because they also invite arbitrary and discriminatory enforcement. "A law is unconstitutionally vague if it fails to meet two basic requirements: (1) The regulations must be sufficiently definite to provide fair notice of the conduct proscribed; and (2) the regulations must provide sufficiently definite standards of application to prevent arbitrary and discriminatory enforcement." (*Snatchko, supra*, 187 Cal.App.4th at p. 495.)

A vague law "is offensive for several reasons." (*State Bd. of Equalization v. Wirick* (2001) 93 Cal.App.4th 411, 419.) One reason is that a "person of ordinary intelligence should

have a reasonable opportunity to know what is prohibited.” (*Id.* at pp. 419-420.) In fact, the need for precision is heightened where, as here, First Amendment rights are at stake. As the Supreme Court has noted, “[i]f . . . the law interferes with the right of free speech or of association, a more stringent vagueness test should apply.” (*Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.* (1982) 455 U.S. 489, 499.)

Put another way, “standards of permissible statutory vagueness are strict in the area of free expression,” and “[b]ecause First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity.” (*NAACP v. Button* (1963) 371 U.S. 415, 432-433; see also *Burton v. Municipal Ct.* (1968) 68 Cal.2d 684, 691 [a regulation’s standard “must be ‘susceptible of objective measurement,’” quoting *Keyishian v. Bd. of Regents* (1967) 385 U.S. 589, 603-604].) Here, PUC §§ 309.5 and 314 lack such specificity in how they are being applied. As SoCalGas has argued to the ALJ, the statutes on their face are clear. (Emergency Mot. at pp. 5-6; Response to Motion to Compel at pp. 4-5.). But by extending their scope beyond what is necessary for CalPA “to perform its duties” (Pub. Util. Code, § 309.5, subd. (e)), CalPA has broadened the statutory language so far that it no longer imposes any meaningful or discernible constraint on CalPA’s authority.

A vague law also “impermissibly delegates the legislative job of defining what is prohibited to policemen, judges, and juries, creating a danger of arbitrary and discriminatory application.” (*Wirick, supra*, 93 Cal.App.4th at pp. 419-420, citation omitted.) That is precisely the problem here, where CalPA has expansively defined the scope of its power and delegated itself plenary authority to demand whatever constitutionally protected materials it wants. CalPA’s demands for SoCalGas’ 100% shareholder-funded materials are wholly arbitrary and targeted at SoCalGas based on the *viewpoints* expressed in SoCalGas’ activities.

Indeed, nothing distinguishes SoCalGas’ political association and expression from anyone else’s, particularly when it is shareholder funded. There is no basis for CalPA’s claim that it should be able to delve into SoCalGas’ political affiliations and communications when it may not do so for any unregulated individual or entity with a political interest in California

energy policy. (See *Humanitarian Law Project v. U.S. Dept. of Treasury* (C.D.Cal. 2006) 463 F.Supp.2d 1049, 1070 [“It is axiomatic that the Constitution forbids punishing a person for mere association.”].) CalPA appears to be targeting SoCalGas precisely **because** of the content of its free speech. That is fundamentally wrong and a core violation of SoCalGas’ First Amendment rights. (See *Rosenberger v. Rector & Visitors of Univ. of Virginia* (1995) 515 U.S. 819, 828-829 [“Discrimination against speech because of its message is presumed to be unconstitutional,” and “[w]hen the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant.”].)¹⁷

Another harm resulting from a vague law is that it “may have a chilling effect, causing people to steer a wider course than necessary in order to avoid the strictures of the law.” (*Wirick, supra*, 93 Cal.App.4th at pp. 419-420, citation omitted.) This, too, is evident here, where CalPA’s justifications and continuing discovery demands show that it improperly and arbitrarily considers political associations and advocacy associated with natural gas solutions to be suspect. Based on past precedent, SoCalGas and anyone who might associate with it have reason to believe that CalPA could demand and potentially disclose any sensitive 100% shareholder-funded material it wants, even targeting materials that might advance a rulemaking or political cause with which CalPA disagrees.

For all of these reasons, the interpretation and application of PUC §§ 309.5 and 314 on which CalPA’s entire argument hinges are unconstitutionally vague. (See *Snatchko, supra*, 187 Cal.App.4th at p. 496 [concluding that “[w]ithout any standards, the Rules are ripe for arbitrary and discriminatory enforcement,” and thus “the Rules are unconstitutionally vague”].)

¹⁷ It also denies SoCalGas equal protection under the law. (See *Wayte v. United States* (1985) 470 U.S. 598, 608 [selective enforcement of an otherwise valid law neutral as to speech violates the equal protection clause if it (1) has a discriminatory effect and (2) is motivated by a discriminatory purpose]; *FSK Drug Corporation v. Perales* (2d Cir. 1992) 960 F.2d 6, 10 [an equal protection violation based on a “claim of selective application of a facially lawful state regulation requires a showing that . . . the selective treatment was motivated by an intention to discriminate on the basis of impermissible considerations, such as . . . to punish or inhibit the exercise of constitutional rights”].)

B. The Lack of Procedural Safeguards Gives CalPA Free Rein to Demand Any Material It Wants, in Violation of SoCalGas' Due Process Rights.

There must be procedural guardrails in place to protect parties against the excesses of the unlimited discovery authority CalPA has asserted. The California Constitution mandates, for example, that the Commission may establish its own procedures “[s]ubject to statute and due process.” (Cal. Const. art. XII, § 2.) The Commission Code of Conduct likewise states that the Commission’s rules “are intended to ensure due process and fairness for all interested parties and the public, and encourage all others to do the same.” (CPUC, *Strategic Directives, Governance Process Policies, and Commission-Staff Linkage Policies* (Feb. 20, 2019) at p. 21; see generally *Waters v. Churchill* (1994) 511 U.S. 661, 669 [substantive First Amendment standards must be “applied through reliable procedures”].) But as the Chief ALJ noted in an email to CalPA and SoCalGas, “[s]ince this discovery dispute occurs outside any formal proceeding, the Commission’s Rules of Practice and Procedure and filing requirements for formal proceedings do not directly apply.” (Tran. Decl., Exh. A.)

CalPA is making its intrusive demands in a procedural “no-man’s land.” It has leveraged the threat of fines of up to \$100,000 a day (Pub. Util. Code, § 2107) to force SoCalGas to comply with a two-business-day production deadline. And the ALJ has granted CalPA’s demands (despite SoCalGas’ request for two weeks to enable it to seek appellate review), without providing any reasoning for her ruling and without acting on SoCalGas’ Emergency Motion to Stay, all in a procedural gray zone in which SoCalGas has no established procedure to follow in order to appeal or otherwise challenge the ALJ’s rulings.

These procedural gaps and uncertainties conflict with “the principle that freedom from arbitrary adjudicative procedures is a substantive element of one’s liberty.” (*People v. Ramirez* (1979) 25 Cal.3d 260, 268.) They also violate well-established requirements under the Due Process Clauses of the U.S. and California Constitutions. (U.S. Const. amend. V, XIV; Cal. Const. art. I, § 7.) Because CalPA is targeting protected speech, there is a need for even greater procedural protections. (See *NAACP v. Button*, *supra*, 371 U.S. at p. 438 [“Precision of

regulation must be the touchstone in an area so closely touching our most precious freedoms.”].) Here, however, CalPA is exploiting a near total lack of those protections to chill SoCalGas’ and others’ constitutionally protected speech in violation of their due process rights.

C. CalPA Continues to Make Intrusive Demands, Leveraging the ALJ Ruling and Lack of Rules to Demand More Constitutionally Protected Material.

Absent the Commission’s intervention, CalPA has and will continue to demand constitutionally protected material from SoCalGas and others, leveraging the ALJ Ruling to improperly drill deeper and deeper into SoCalGas’ (and others’) constitutionally protected associational, expressive, and petitioning activity.

First, CalPA repeatedly cited the ALJ’s September Ruling to try to force SoCalGas to produce the 100% shareholder-funded contracts charged to the Balanced Energy IO. After CalPA’s second motion to compel, CalPA then cited the subsequent ALJ Ruling to force both SoCalGas and SDG&E to produce their 100% shareholder-funded contracts associated with communications, advocacy, and public outreach. According to CalPA, those additional 100% shareholder-funded contracts “are responsive to our data request,” and “whether or not they are shareholder funded does not provide a proper basis to withhold this information from the Public Advocates Office.” (Cohen Decl., Exh. C.) It claims this is the “same issue” that the ALJ decided regarding CalAdvocates-SC-SCG-2019-05 on November 1, and that SoCalGas should simply turn over more of its constitutionally protected material “[i]n light of this ruling.” (*Ibid.*)

CalPA is thus using the two ALJ rulings both to validate its misguided claims of unchecked power and to cut off SoCalGas’ already limited ability to object to CalPA’s intrusive demands. Rather than try to make the necessary showing to justify encroaching on SoCalGas’ constitutional rights, CalPA instead wants to streamline its intrusion so that SoCalGas cannot object at all. This only enhances the chilling effect on SoCalGas and others by broadening the potential harm to their constitutional rights while narrowing their ability to preserve those rights.

Even if SoCalGas is able to object, it faces exorbitant fines and to this point was provided only two business days to comply with the ALJ’s rulings. Further, when SoCalGas attempted to

seek emergency relief from the ALJ Ruling, the emergency motion was not ruled upon. Under these extraordinary circumstances, CalPA can issue new demands for protected materials on an even shorter time fuse, further abridging (if not eliminating) SoCalGas' ability to challenge them. Accordingly, there is an especially pressing need for the Commission to rule on this Motion/Appeal as soon as possible. (See, e.g., *NBC Subsidiary (KNBC-TV), Inc. v. Super. Ct.* (1999) 20 Cal.4th 1178, 1190 fn. 6.)

Moreover, CalPA's discovery into non-ratepayer-funded activity and the ALJ Ruling's unexplained affirmation of that right of discovery appear to contradict the Commission's own directives to explore SoCalGas' use of any *ratepayer funding* of political lobbying activities in *formal* proceedings that are already open. The full Commission has already weighed in on the appropriate scope of investigation and procedural avenue as part of SoCalGas' 2019 General Rate Case ("GRC") Decision (D.19-09-051) for activities beyond what was already litigated in that GRC proceeding.¹⁸ If the ALJ Ruling stands, CalPA will be encouraged to continue its unconstitutional discovery in the shadows, unbounded by any limits or rules. CalPA and its aligned parties will also have free rein to avoid the evidentiary standards of a formal proceeding (e.g., relevance, consistency with scope, submission before the record is closed, etc.)¹⁹ in propounding and using discovery.

And CalPA will continue to share such discovery with SoCalGas' opponents in formal proceedings who would not otherwise have had access to such discovery. Sierra Club and

¹⁸ Cf. 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 ["To the extent that SoCalGas utilizes **ratepayer** funds on expenditures that go beyond providing information about natural gas and constitute inappropriate political activity, **the Commission will address such activities in the appropriate proceeding,**" bold and italics added]. In this same section of D.19-09-051, the Commission examined the evidentiary record and did not reduce ratepayer funds for the activities challenged by Sierra Club and UCS as inappropriate political activity. (See *ibid.*)

¹⁹ See, e.g., A.17-07-007/008 (SoCalGas/SDG&E's 2019 GRC), Sierra Club Response to TURN's Application for Rehearing ("AFR") of D.19-09-051, dated Nov. 15, 2019 (attaching SoCalGas' responses to CalPA's §§ 309.5 and 314 data requests, which were not part of the GRC's record, to raise new arguments against SoCalGas under the cloak of a response to another party's AFR on an SDG&E issue; note that Sierra Club did not bring its own AFR within the 30-day requirement).

CalPA itself have shown a propensity to use the information obtained by CalPA under PUC §§ 309.5 and 314 in ways that would not otherwise be admissible in a formal proceeding.²⁰ As the concurrently filed declarations confirm, CalPA’s funneling of information to SoCalGas’ litigation adversaries and the media compounds the chilling effect on SoCalGas’ and others’ exercise of their constitutional rights, as others are less likely to associate with SoCalGas or participate in SoCalGas’ speech and petitioning. Additionally, it means that SoCalGas will be less willing to engage in such constitutionally protected activities itself. That further offends the Constitution and calls for this Commission’s prompt intervention.

IV. CONCLUSION

CalPA’s unchecked incursions on the constitutionally protected rights of SoCalGas and others run afoul of the U.S. and California Constitutions’ guarantees of freedom of association, freedom of speech, and the right to petition the government for redress of grievances. They also rest upon an unconstitutionally overbroad and vague interpretation and application of PUC §§ 309.5 and 314. At the same time, the constitutionally required procedural safeguards in this non-proceeding are severely lacking. The resulting gap between what CalPA can do (and is doing) here and what the United States and California Constitutions allow is wholly unfair and causes serious harm to SoCalGas’ (and others’) First Amendment, due process, and other rights.

Accordingly, SoCalGas respectfully requests that the Commission issue an order:

- (1) Striking Question 8 of CalPA’s data requests CalAdvocates-SC-SCG-2019-05 in this “non-proceeding,” to the extent it seeks SoCalGas’ 100% shareholder-funded contracts;
- (2) Requiring CalPA to return or destroy all originals and copies of all materials that SoCalGas produced under protest in response to Question 8 of CalAdvocates-SC-SCG-2019-05;
- (3) Striking Question 1 of PubAdv-SDG&E-001-SCS to SDG&E and PubAdv-SCG-001-SCS to SoCalGas, to the extent it seeks 100% shareholder-funded contracts from SoCalGas and SDG&E;

²⁰ See Sierra Club Resp. at p. 1; CalPA Resp. at p. 1; see generally, *ante*, at pp. 8-9 & fn 9.

(4) Requiring CalPA to return or destroy all originals and copies of all materials that SoCalGas and SDG&E have produced or will produce under protest in response to Question 1 of PubAdv-SDG&E-001-SCS to SDG&E and PubAdv-SCG-001-SCS to SoCalGas;

(5) Requiring CalPA to prove to a neutral decisionmaker that any pending or future demands for materials impinging on constitutional freedoms further a compelling interest and are narrowly tailored to achieve that interest; and

(6) If necessary, setting 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 and seeks other appropriate judicial relief.

Respectfully submitted on behalf of SoCalGas,

By:



Johnny Q. Tran

JOHNNY Q. TRAN

Attorneys for:

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December 2, 2019

[PROPOSED] ORDER

On December 2, 2019, Southern California Gas Company (SoCalGas) filed a Motion For Reconsideration/Appeal (“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 (“ALJ Ruling”). Having considered SoCalGas’ Motion for Reconsideration/Appeal and the declarations it submitted in support thereof, and good cause having been shown, SoCalGas’ Motion for Reconsideration/Appeal is hereby GRANTED.

ORDER

The ALJ Ruling is withdrawn. In addition:

(1) Question 8 of CalPA’s data requests CalAdvocates-SC-SCG-2019-05 in this “non-proceeding” is stricken to the extent it seeks SoCalGas’ 100% shareholder-funded contracts;

(2) CalPA is ordered to return or destroy all originals and copies of all materials that SoCalGas produced under protest in response to Question 8 of CalAdvocates-SC-SCG-2019-05;

(3) Question 1 of PubAdv-SDG&E-001-SCS to SDG&E and PubAdv-SCG-001-SCS to SoCalGas are stricken to the extent it seeks 100% shareholder-funded contracts from SoCalGas and SDG&E;

(4) CalPA is ordered to return or destroy all originals and copies of all materials that SoCalGas and SDG&E have produced under protest in response to Question 1 of PubAdv-SDG&E-001-SCS to SDG&E and PubAdv-SCG-001-SCS to SoCalGas; and

(5) CalPA is ordered to prove to a neutral decisionmaker that any pending or future demands for materials impinging on constitutional freedoms further a compelling interest and are narrowly tailored to achieve that interest.

SO ORDERED

Dated: December ____, 2019

President of the Commission, Marybel Batjer

DECLARATION OF
JOHNNY Q. TRAN

DECLARATION OF JOHNNY Q. TRAN

I, Johnny Q. Tran, 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 Senior Counsel - Regulatory.

3. Attached hereto as Exhibit A is a true and correct copy of an email from Chief Administrative Law Judge ("ALJ") Anne Simon dated October 29, 2019 with the subject line, "[EXTERNAL] Public Advocates Office/SoCalGas discovery dispute (Oct. 7, 2019) [not in a proceeding]" that I received in the course of my work for SoCalGas.

4. On November 4, 2019, I sent an e-mail to ALJ Regina DeAngelis requesting approval to file SoCalGas' Emergency Motion to Stay (Emergency Motion) 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. That same day, ALJ DeAngelis granted SoCalGas' request to file the Emergency Motion to Stay. A true and correct copy of ALJ DeAngelis' e-mail approving SoCalGas' request to file the Emergency Motion is attached hereto as Exhibit B. SoCalGas has not received a ruling on the Emergency Motion.

5. On November 22, 2019, I sent an e-mail to ALJ DeAngelis to request approval to file SoCalGas' 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 (Motion for Reconsideration/Appeal). On November 25, 2019, I received an e-mail from the Commission's Staff Counsel, Pouneh Ghaffarian, advising that she is looking into

the request and requested confirmation that the documents have been produced. On November 26, 2019, I responded to Ms. Ghaffarian by e-mail and again requested prompt approval for SoCalGas to file its Motion for Reconsideration/Appeal. A true and correct copy of the November 22, 25, and 26 e-mails are attached hereto as Exhibit C. I received an out of office response from Ms. Ghaffarian stating that she will be out of the office until December 2 and will not be checking email or voicemail.

6. I have reviewed the 100% shareholder-funded contracts that SoCalGas produced to the California Public Advocates Office in response to Question 8 of Data Request CalAdvocates-SC-SCG-2019-05. Those contracts include information regarding, among other things, the identities of the contracting parties, the scope of activity contemplated by the agreements, the duration of their agreements, and/or SoCalGas expenditures related to political activity.

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

Executed on November 30, 2019.



Johnny Q. Tran

EXHIBIT A

Trujillo, Leslie A

From: Simon, Anne [REDACTED]
Sent: Tuesday, October 29, 2019 6:25 PM
To: Yip-Kikugawa, Amy C.; Buch, Daniel; Campbell, Michael; Castello, Stephen; Tran, Johnny Q; Sierzant, Corinne M; Vorpe, Rebecca M.; Lee, Shawane L
Cc: DeAngelis, Regina
Subject: [EXTERNAL] Public Advocates Office/SoCalGas discovery dispute (Oct. 7, 2019) [not in a proceeding]

Counsel,

I have received a referral of the matter of the discovery dispute related to Data Request CALADVOCATES-SC-SCG-2019-05 from Commission President Batjer. Please take note of the following:

Designation of Administrative Law Judge

I designate Administrative Law Judge (ALJ) Regina DeAngelis to handle this matter going forward.

Service and filing of documents

Since this discovery dispute occurs outside any formal proceeding, the Commission's Rules of Practice and Procedure and filing requirements for formal proceedings do not directly apply. The following instructions apply to service and filing of all documents in this dispute.

1. All documents must be served by e-mail on the addressees of this e-mail, or such other list as ALJ DeAngelis designates.
2. Any request to expand or contract the list of people to be served must be made to ALJ DeAngelis.
3. All documents must bear as their title “___[name of document___] in the Discovery Dispute between Public Advocates Office and Southern California Gas Company, October 2019 (not in a proceeding).”
4. All documents must be submitted for filing to the Commission's Docket Office as paper documents. One paper copy of each document, including any e-mails, must be submitted to the Docket Office for filing. Electronic filing of documents is not available for this matter.
5. All documents and correspondence to date have been provided to the Docket Office for filing.
6. No other documents may be submitted for filing without the prior approval of ALJ DeAngelis.

Please direct all service of documents and any further correspondence to ALJ DeAngelis.

Anne E. Simon

Chief Administrative Law Judge
California Public Utilities Commission

[REDACTED]

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.

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EXHIBIT B

Trujillo, Leslie A

From: DeAngelis, Regina [REDACTED]
Sent: Monday, November 4, 2019 2:49 PM
To: Tran, Johnny Q
Cc: Vorpe, Rebecca M.; Buch, Daniel; Castello, Stephen; Lee, Shawane L; Sierzant, Corinne M
Subject: [EXTERNAL] Re: SoCalGas' Request to File an Emergency Motion to Stay ALJ's November 1 Ruling in the Discovery Dispute Between Public Advocates Office and Southern California Gas Company, October 2019 (not in a proceeding)

Your request is granted.

On Nov 4, 2019, at 2:46 PM, Tran, Johnny Q <JQTran@socalgas.com> wrote:

Judge DeAngelis,

Pursuant to the Chief Administrative Judge's October 29, 2019 e-mail instructions, Southern California Gas Company (SoCalGas) requests approval to file the attached Emergency Motion to Stay (Emergency Motion to Stay) 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). SoCalGas requests the stay of the ALJ Ruling so that it may preserve its due process rights and follow Commission precedent on how to preserve its appellate rights via an appeal to the full Commission.

Due to the ALJ Ruling requiring SoCalGas to produce responsive documents by tomorrow, November 5, 2019 and to preserve its due process and appellate rights, SoCalGas respectfully requests expedited approval of its request to file the Emergency Motion to Stay (concurrently being sent to the Docket Office for filing) and expedited ruling on its Emergency Motion to Stay to remain in compliance with the ALJ Ruling.

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

<image001.png>

<SoCalGas Emergency Motion to Stay ALJ Ruling in the Discovery Dispute Between Public Advocates Office and SoCalGas Company, October 2019 (not in a proceeding).pdf>

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EXHIBIT C

Trujillo, Leslie A

From: Tran, Johnny Q
Sent: Tuesday, November 26, 2019 10:45 AM
To: Ghaffarian, Pouneh
Cc: Vorpe, Rebecca M.; Buch, Daniel; Castello, Stephen; Lee, Shawane L; Sierzant, Corinne M; DeAngelis, Regina
Subject: RE: SoCalGas' Request to File an Appeal of ALJ's November 1 Ruling in the Discovery Dispute Between Public Advocates Office and Southern California Gas Company, October 2019 (not in a proceeding)

Ms. Ghaffarian,

Thank you for looking into SoCalGas' request. Since SoCalGas did not receive a ruling on its Emergency Motion to Stay the ALJ Ruling, as cautioned in that motion, this caused irreparable harm to SoCalGas as it was forced to immediately produce the contracts at issue within the two business day deadline or be out of compliance with the ALJ's Ruling. Not having received a stay of the ALJ Ruling, SoCalGas produced its 100% shareholder funded contracts to Public Advocates Office (Cal Advocates) under protest while it appeals the ALJ Ruling to the full Commission. As SoCalGas has previously indicated in its filings, SoCalGas will be appealing the ALJ Ruling due to its broad implications on SoCalGas' First Amendment and Due Process rights. This is a live issue and the harm from the ALJ Ruling is ongoing. Cal Advocates has cited to this ALJ Ruling in a different set of data requests served outside of any proceeding for the proposition that the ALJ Ruling confirms Cal Advocates' broad authority to continue to conduct discovery into SoCalGas' and another utility's 100% shareholder funded activities. This is an important issue that continues to "present possible ramifications in other proceedings and/or the issue concerns constitutional rights. . . ." and needs to be brought before the full Commission for resolution. *See, e.g.,* D.16-10-043 at 16 (citing 55 Cal. P.U.C.2d 672, 680 (1994)[D.94-08-028]).

Therefore, ALJ DeAngelis' prompt approval would be greatly appreciated so that SoCalGas may timely file its motion for reconsideration/appeal to the full Commission and preserve its appellate rights. Per Chief ALJ Simon's original instructions to direct all further correspondence to ALJ DeAngelis, I've included ALJ DeAngelis on this email.

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



From: Ghaffarian, Pouneh [REDACTED]
Sent: Monday, November 25, 2019 4:48 PM
To: Tran, Johnny Q <JQTran@socalgas.com>
Cc: Vorpe, Rebecca M. [REDACTED]; Buch, Daniel [REDACTED]; Castello, Stephen [REDACTED]; Lee, Shawane L [REDACTED]; Sierzant, Corinne M [REDACTED]

Subject: [EXTERNAL] RE: SoCalGas' Request to File an Appeal of ALJ's November 1 Ruling in the Discovery Dispute Between Public Advocates Office and Southern California Gas Company, October 2019 (not in a proceeding)

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

Mr. Tran,

We're looking into your request. Per my understanding, the documents have been produced – correct?

Best,

Pouneh Ghaffarian
Staff Counsel
CA Public Utilities Commission
Office: [REDACTED]

From: "Tran, Johnny Q" <JQTran@socalgas.com>

Date: November 22, 2019 at 1:07:05 PM PST

To: "DeAngelis, Regina" [REDACTED]

Cc: "Vorpe, Rebecca M." [REDACTED], "Buch, Daniel" [REDACTED], "Castello, Stephen" [REDACTED], "Lee, Shawane L" [REDACTED], "Sierzant, Corinne M" [REDACTED]

Subject: SoCalGas' Request to File an Appeal of ALJ's November 1 Ruling in the Discovery Dispute Between Public Advocates Office and Southern California Gas Company, October 2019 (not in a proceeding)

Judge DeAngelis,

Pursuant to the Chief Administrative Law Judge Simon's October 29, 2019 e-mail instructions, Southern California Gas Company (SoCalGas) requests approval to file its appeal 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 (ALJ Ruling). As SoCalGas has previously indicated in its Response to Public Advocates' Motion to Compel and its Emergency Motion to Stay the ALJ Ruling, SoCalGas intends to appeal the ALJ Ruling to the full Commission to protect its shareholders' First Amendment and due process rights.

In accordance with Commission precedent and Chief ALJ Simon's instructions, SoCalGas also requests to expand the service list to include the Commissioners, as "the proper procedure is to bring the issue before the full Commission for resolution" to alert them of the appeal for their consideration where the ALJ's ruling "may present possible ramifications in other proceedings and/or the issue concerns constitutional rights. . . ." See, e.g., D.16-10-043 at 16 (citing 55 Cal. P.U.C.2d 672, 680 (1994)[D.94-08-028]).

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