IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION 1

SOUTHERN CALIFORNIA GAS COMPANY, Petitioner, v. PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, Respondent.	Case No. B310811 Commission Decision No. D.21-03-001 & Resolution ALJ-391

SOUTHERN CALIFORNIA GAS COMPANY'S REPLY IN SUPPORT OF ITS PETITION FOR WRIT OF REVIEW, MANDATE, AND/OR OTHER APPROPRIATE RELIEF; AND DECLARATION OF MICHAEL H. DORE

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I. INTRODUCTION

In sixty pages of briefing, Respondent California Public Utilities Commission ("Commission") still has yet to answer a fundamental question at the heart of this dispute—one that the Public Advocates Office ("CalPA") was also unable to answer in multiple rounds of briefing before the Commission: why they cannot meet their stated goal of ensuring ratepayer funds are not misused simply by looking at Petitioner Southern California Gas Company's ("SoCalGas") ratepayer accounts, which SoCalGas has repeatedly offered to make available to them.

The Commission and CalPA have not been able to explain, in other words, the total disconnect between their stated objective or governmental interest and the vastly overbroad means they have insisted on—compelled disclosure of *all* ratepayer- *and* shareholder-funded accounts, as well as all related contracts, information, and declarations revealing the identity of all consultants with whom SoCalGas has associated, the activities of and communications with such consultants and other third parties (including those concerning political strategy and messaging), and how much those third parties have been paid (out of shareholder—not ratepayer—funds). The Commission and CalPA's demands impermissibly tread on the constitutional

rights of SoCalGas and those with whom it associates, and the gaping disconnect between the Commission's means and stated ends underscores the pretextual nature of their inquiry. CalPA—backed up by the Commission and working in concert with outside interest groups such as the Sierra Club—is attempting to punish SoCalGas and those with whom it associates for expressing a viewpoint different than CalPA's of how the State should meet its longer-term decarbonization goals, including by outing those with whom SoCalGas associates to advance its public-policy objectives.

Unable to offer any coherent or rational explanation for why CalPA needs to also examine SoCalGas's *shareholder* accounts and related information in order to check whether any *ratepayer* funds or accounts were improperly spent or allocated on political, public-policy, and other initiatives, the Commission instead tries to brush the issue aside. It does so by broadly contending that the Commission's "extensive" constitutionally and statutorily conferred authority gives it and its staff "plenary jurisdiction" over regulated utilities such as SoCalGas and wide leeway to act as they wish and demand what they want when it comes to such utilities. (Ans. at pp. 28, 30.)

The Commission's argument, in other words, is a gussied-up version of its remarkably telling and breathtaking contention in its Resolution (which SoCalGas has petitioned this Court to review) that it and its staff may "investigate the entities that it regulates *regardless of First Amendment claims*." (App. 1861, italics added.) If this Court were to adopt the Commission's position, the First Amendment would impose *no limit* on the Commission's regulatory power. But there is no basis in law for the Commission's assertion of unbounded authority over the entities it regulates, especially when fundamental constitutional rights are at stake and threatened by the prospect of six-figure daily fines in the "not in a proceeding" procedural no-man's land pursued by the Commission's staff. This Court's intervention is needed to rein in the Commission's stark abuse of state power.

The Commission initially attempts to talk past the serious constitutional violations and infirmities plaguing its Resolution by pointing to seemingly any and every statutory provision under the sun that gives it power to regulate utilities. This Court should not be persuaded by such misdirection. The Commission's undisputed ability to, for example, fix rates, audit ratepayer accounts, establish safety criteria and other rules, and hold

hearings[1] does not somehow *also* confer on the Commission or its staff the power to run roughshod over the guarantees of freedom of expression and association, not to mention due process, enshrined in the United States and California Constitutions. And it is only these outer bounds prescribed by the Constitution that SoCalGas seeks to vindicate through its Petition to this Court—nothing more, and nothing less.

The Commission's attempts at talking past or brushing aside the constitutional infirmities and issues raised in SoCalGas's Petition melt away after even the most cursory examination.

First, the Commission does not controvert or meaningfully contest SoCalGas's ample evidence showing that there is, at the very least, a "reasonable probability" of infringement of its First Amendment rights. SoCalGas substantiated that prima facie showing with several sworn declarations from SoCalGas executives familiar with SoCalGas's public-policy-focused activities, as well as third parties with whom SoCalGas associates for the purpose of furthering those policy goals. The

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[1] Any exercise of the Commission's power "must be cognate and germane to the regulation of public utilities." (*Pacific Bell Wireless, LLC v. P.U.C.* (2006) 140 Cal.App.4th 718, 736, as modified on denial of reh'g (July 10, 2006).)

Commission points to no evidence to the contrary. All of SoCalGas's evidence leads ineluctably to the conclusion that SoCalGas's (and others') constitutional rights will be trampled on unless this Court intervenes to prevent CalPA from exercising the unbounded authority it has arrogated to itself (with the Commission's active support and blessing).

Unable to contradict SoCalGas's evidence substantiating its prima facie showing of First Amendment infringement, the Commission now claims that it did actually apply the correct legal standard and did consider SoCalGas's evidence of threatened harm in its challenged Resolution. But that argument is directly contradicted by the Resolution's plain terms, which show that the Commission ruled against SoCalGas based on a legally flawed standard requiring a showing of "concrete" and "clearly established" constitutional harm, rather than the "reasonable probability" of "arguable First Amendment infringement" required by the law. SoCalGas has made the requisite prima facie showing of First Amendment infringement.

Tellingly, the Commission's Answer—like the Resolution before it—cannot justify CalPA's purported need for the information it has demanded. Even if CalPA's discovery rights are "coextensive" with the Commission's (as it has claimed),

CalPA would still not have freewheeling discovery authority to tread upon federal and state constitutional limitations in carrying out its investigations and other responsibilities.

Mindful of CalPA's and the Commission's legitimate (and broad) discovery authority and the Commission's power to levy sanctions, SoCalGas has *already* provided a significant amount of information to CalPA and repeatedly offered to provide it with complete access to all of SoCalGas's ratepayer and shareholder accounts (except for a narrow subset of information that would reveal political strategy and messaging). This access would give CalPA (and the Commission) everything they would need in order to ensure that SoCalGas's political, public-policy, and other expenses are paid for with only shareholder (rather than ratepayer) funds. Unable to explain why it or its staff (including CalPA) need to also intrude on SoCalGas's shareholder-funded accounts, activities, and information that would reveal its political strategy and messaging, the Commission instead resorts to hyperbole and slippery-slope scare tactics.

Those tactics fall flat. As SoCalGas has explained, defending SoCalGas's (and others') federal and state constitutional rights and protecting those rights from being infringed in Commission "proceedings" does not detract from the

full legitimate scope and breadth of the considerable regulatory authority conferred on the Commission (and CalPA) by the California Constitution and Public Utilities Code. Like all governmental entities with important oversight and regulatory responsibilities, the Commission must, of course, stay within the outer bounds prescribed by the Federal Constitution. (See, e.g., *Gibson v. Fla. Legis. Investigation Committee* (1963) 372 U.S. 539, 545 ["[T]he legislative power to investigate, broad as it may be, is not without limit. The fact that the general scope of the inquiry is authorized and permissible does not compel the conclusion that the investigatory body is free to inquire into or demand all forms of information."].)

Finally, just as the Commission cannot convincingly justify CalPA's infringement on SoCalGas's (and others') First Amendment rights, so too can it not convincingly justify the procedural no-man's land that has characterized the "not in a proceeding" "proceedings" that have taken place below. Instead, the Commission attempts to dodge the glaring due-process issues raised by SoCalGas with a hyper-technical and flawed invocation of the waiver doctrine. But, as the Commission has acknowledged, SoCalGas *did* raise its "due process" concerns in

its application to the Commission for rehearing, as it had repeatedly done in prior briefing to the Commission.

Perhaps sensing the weakness of its waiver argument, the Commission also contends that SoCalGas was given ample due process via the opportunity to brief its constitutional challenges to the Commission. But during the fifteen months that SoCalGas and CalPA actively litigated these disputes before the Commission finally ruled and since then, SoCalGas has been forced to operate in a regulatory landscape unmarked by the rules and procedures that should normally apply. It has done so, confronted with a scorched-earth litigation adversary (CalPA) inextricably intertwined with the adjudicating body (the Commission), all while facing repeated threats of massive six-figure daily fines and sanctions for the crime of daring to defend its (and others') constitutional rights.

The Commission should not be allowed to sweep all these constitutional violations and infirmities under the rug through a simple invocation of its extensive regulatory authority, forcing SoCalGas today and other utilities tomorrow to challenge, under threat of significant penalties, the Commission's extra-constitutional overreach. Contrary to what the Commission's Answer implies, there must be some limiting principle on the

Commission's regulatory power—and the Federal and California Constitutions provide it.

This Court should therefore grant SoCalGas's Petition, vacate the Resolution, and enjoin the Commission and CalPA from further attempts at infringing on SoCalGas's constitutional rights (and those of others with whom SoCalGas associates) to freedom of expression, association, and due process.

II. ARGUMENT

A. The Commission's Statutory Authority Cannot Trump or Circumscribe SoCalGas's Constitutional Rights.

While the Commission argues it has "extensive authority over public utilit[ies] . . . pursuant to the California Constitution and Public Utilities Code" (Ans. at p. 28),[2] it cannot seriously contend that such authority overrides or limits the guarantees of freedom of association, freedom of expression, and due process secured by the United States and California Constitutions. Those guarantees of course circumscribe the Commission's authority. Much of the first section of the Commission's Answer is thus largely beside the point, as the Commission's admittedly broad authority does not allow it to infringe, through its data

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[2] Any statutory references are to the Public Utilities Code, unless otherwise noted.

(Cont'd on next page)

requests and subpoena, on SoCalGas's First Amendment, Article I, and due-process rights.[3]

Although the Commission characterizes SoCalGas's Petition as launching an "unprecedented attack on the Commission's constitutional and statutory authority to regulate utilities" (Ans. at pp. 7–8), even a cursory review of SoCalGas's Petition makes clear that it does no such thing. And if the Commission were right that SoCalGas's actions—i.e., seeking to protect constitutionally protected material from disclosure, notwithstanding threats of six-figure daily fines—are truly "unprecedented," that would simply underscore the need for this

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[3] The Commission cites section 1757 for the proposition that this Court is "not permitted to hold a trial de novo or to exercise its independent judgment on the evidence." (Ans. at p. 25.) But SoCalGas has not asked for this Court to substitute its judgment for the Commission's on purely factual questions. Even if this Court may not re-weigh the evidence or make novel findings of fact (*Goldin v. P.U.C.* (1979) 23 Cal.3d 638, 653), the law indisputably requires that when a petitioner challenges an order "on the ground that it violates any right of petitioner under the United States or California Constitution, the . . . court of appeal shall exercise *independent judgment on the law and the facts*, and the findings or conclusions of the commission material to the determination of the constitutional question shall not be final" (§ 1760, italics added). Thus, whether CalPA's data requests and subpoena infringe on SoCalGas's constitutional rights is for this Court to decide, without according any deference to the Commission's determinations below.

Court's review and underscore the dangerous lack of basic fairness or adherence to fundamental constitutional guarantees in the "proceedings" below.

To be clear, SoCalGas acknowledges that the Commission and CalPA have significant regulatory authority over public utilities such as SoCalGas. But that truism has no bearing on the issues before this Court, because it is hornbook law that the First Amendment imposes certain limits on the actions all government actors—including the Commission—may take.

As the Commission itself has recognized, SoCalGas "enjoys the same First Amendment rights as any other person or entity." (App. 1480–1481, citations omitted; see also *ibid.* [conceding that SoCalGas's "status as a regulated public utility does not impair or lessen these rights"].) And as SoCalGas has explained in its Petition, the fact that an entity is a regulated utility does not "decrease the informative value of its opinions on critical public matters" (*Consolidated Edison Co. of N.Y., Inc. v. Public Service Com. of N.Y.* (1980) 447 U.S. 530, 534 fn. 1), or "lessen[] its right to be free from state regulation that burdens its speech" (*Pacific Gas & Electric Co. v. P.U.C. of Cal.* (1986) 475 U.S. 1, 17 fn. 14).

Unsurprisingly then, none of the dozen or so statutory sections and subsections that the Commission quotes at length and cites in section V.A. of its Answer gives the Commission the authority to restrict or violate SoCalGas's, or any other utility's

or person's, rights under the First and Fourteenth Amendments to the United States Constitution or the correlative provisions of the California Constitution. If those statutes *did* provide the Commission with that power, then there would not seem to be *any* limiting principle the Commission could articulate on its regulatory authority.

Similarly, while the court in *Southern California Edison Co. v. Peevey* (2003) 31 Cal.4th 781 recognized that the California Constitution gives the Commission the "power to fix rates for public utilities" (*id.* at p. 792), it at no point suggested that rate-setting authority *also* gives the Commission or its staff any power to circumscribe or restrict the guarantees of freedom of association, expression, and due process accorded to regulated utilities and those with whom they associate. And even though the Commission cites *Consumers Lobby Against Monopolies (CLAM) v. Public Utilities Commission* (1979) 25 Cal.3d 891 for the proposition that the Legislature has conferred broad authority on the Commission to fix rates, establish rules, hold hearings, award reparations, and establish its own procedures (*id.* at p. 905), the Supreme Court in that case certainly never suggested that the Commission had been given any power to override or in any way limit fundamental constitutional rights. Indeed, *CLAM* concerned the far more pedestrian issue of

whether the Commission could award attorneys' fees in reparation and rate-making proceedings. (*Id.* at pp. 897, 908.)

In other words, even if the Commission is "'not an ordinary administrative agency, but a constitutional body with broad legislative and judicial powers'" (Ans. at p. 30, quoting *Wise v. Pacific Gas & Electric Co.* (1999) 77 Cal.App.4th 287, 300), the Commission has cited no authority to suggest that those powers could somehow give it or its staff any authority to limit the constitutional rights of regulated utilities such as SoCalGas (and those with whom it associates) to resist the compelled production of the kind of constitutionally protected material at issue here. And no such authority could possibly exist, of course.
(U.S. Const. art. VI, § 2.)

Recognizing as much, the Commission tries to sweep aside the constitutional concerns raised by SoCalGas with the dramatic sky-is-falling protestation that if the Commission "cannot require SoCalGas to comply with Commission data requests related to oversight of its regulatory accounts, it has no power at all." (Ans. at p. 34.) The Commission then follows up with a hypothetical "situation in which utilities, emboldened by a court decision limiting the Commission's authority to pursue investigations . . .[,] simply refuse to comply with information requests without a protracted fight over various asserted privileges." (*Ibid.*) The

Commission's nightmare scenario, however, has no basis in reality.

First, as explained in its Petition, SoCalGas has not taken, and still does *not* take, issue with CalPA inspecting its ratepayer (i.e., above-the-line)[4] accounts to determine whether any of those funds have been improperly allocated to support SoCalGas's political and public-policy efforts. (E.g., Petn. at pp. 48–49.) Significantly, a thorough examination of these ratepayer accounts would alone suffice and provide CalPA all the information it needs in order to determine whether any costs of political and public-policy activities have been designated for recovery from ratepayers—the only remotely plausible rationale advanced by CalPA and the Commission for their challenged discovery demands. (*Id.* at p. 49.)

Thus, it is simply not true that CalPA and the Commission would need to "take [SoCalGas] at its word that it is not funding advocacy activities with ratepayer funds." (Ans. at p. 11.) At no point in its 60-page Answer does the Commission ever explain why examining the above-the-line accounts, all of which

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[4] As SoCalGas has explained (Petn. at p. 15 fn. 3), SoCalGas's "above-the-line" accounts contain expenditures which SoCalGas may seek to recover from ratepayers. The expenses reflected in SoCalGas's "below-the-line" (shareholder) accounts likely cannot be recovered from ratepayers, at least without special approval from the Commission.

SoCalGas has repeatedly offered to make available, would not give the Commission and its staff (e.g., CalPA) all the information they would need to ensure that the costs of political, public-policy, and other initiatives are not in ratepayer accounts. Neither the Commission nor CalPA has ever offered a coherent or rational explanation why that would not suffice, because they are unable to.[5]

More generally, SoCalGas's active cooperation with and participation in the Commission's other regulatory initiatives and activities further belies the faulty notion that vindicating the constitutional rights at stake here would somehow eviscerate the Commission's admittedly extensive regulatory and oversight powers. SoCalGas submits to the Commission's extensive regulatory and oversight powers on a daily basis, operating within the confines of the Commission's extensive regulatory

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[5] As explained further below, there is no merit to the Commission's suggestion that section 583 and General Order 66-D provide adequate protections for the information over which SoCalGas has asserted constitutional protections. (Ans. at p. 33.) The Petition does not challenge only the *public* disclosure of "sensitive" and "confidential" information—the type of disclosure General Order 66-D and section 583 are designed to protect against. Rather, the Petition *also* challenges the forced production of the materials at issue *to CalPA itself*, as that would also infringe on the constitutional rights of SoCalGas and those with whom it associates. (See *post*, at pp. 37–39.)

structure. For instance, SoCalGas must respond in Commission proceedings when directed by the Commission, must file periodic General Rate Cases (in which the Commission determines which levels and categories of costs can be recovered by SoCalGas in the rates it charges to customers), must comply with all Commission safety and reliability requirements, and must regularly submit reports to the Commission and comply with audits regarding its operation of the gas system. SoCalGas *in fact* does all of those things. SoCalGas's defense of its constitutional rights in this case has not, and will not, impact its ongoing working relationship with the Commission with respect to almost everything SoCalGas does.

To try to bolster its parade-of-horribles argument for sweeping SoCalGas's constitutional concerns under the rug, the Commission ominously warns that "other California gas and electric utilities," emboldened by SoCalGas's actions here, "have recently begun issuing similar refusals" to comply with Commission data requests, "creat[ing] an untenable situation" for the Commission. (Ans. at p. 9.) But the connection between SoCalGas's attempts to defend its constitutional rights and other utilities' alleged objections to entirely separate Commission data requests is *wholly speculative* and outside the record.[6] And in

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[6] SoCalGas was not a party to those data requests and played no role in the other utilities' responses.

positing such a utility-coordination conspiracy, even the Commission acknowledges—as it must—that SoCalGas's refusal to comply has been made "[on] First Amendment grounds," *not* on the basis of some generalized resistance to the Commission's admittedly broad statutory authority. (Ans. at pp. 34–35.) Therefore, vindicating SoCalGas's constitutional rights, in the face of the specific instances of regulatory overreach documented in SoCalGas's Petition, would not erode or adversely affect the Commission's and CalPA's ability to continue to carry out their legitimate regulatory activities and statutory mandates.

To the extent other utilities may have similar constitutional objections in responding to the Commission's data requests, that could very well provide further evidence of the as-yet unchecked overreach and inadequate regard for constitutional rights by the Commission and CalPA. But the key point here is that the Commission and CalPA have violated SoCalGas's (and its consultants') constitutional rights *in this case*, which calls for this Court's intervention now, although the Court's recognition of that violation would also plainly be relevant to safeguarding other utilities' rights in the future.

Moreover, SoCalGas has already produced or offered to produce all the information needed for CalPA to verify that the cost of its advocacy activities are not in ratepayer accounts. Indeed, the notion that SoCalGas is challenging the

Commission's broad authority, or trying to bring about the "complete abdication of its regulatory oversight responsibilities" (Ans. at p. 11), is belied by just one indisputable statistic: of the 2,300 vendors at issue in its SAP database, SoCalGas made available to CalPA information for all but approximately 20 vendors—fewer than 1%, in other words. (App. 990.)

SoCalGas seeks only to vindicate the constitutional guarantees of freedom of expression, association, and due process secured to it (and those with whom it associates) by the United States and California Constitutions. State agencies—even those as powerful as the CPUC—do not have unlimited, "freewheeling authority" to circumvent such fundamental and longstanding constitutional protections. (*IMDB.com Inc. v. Becerra* (9th Cir. 2020) 962 F.3d 1111, 1121, quoting *United States v. Stevens* (2010) 559 U.S. 460, 472.) None of the authorities cited by the Commission suggest that it somehow possesses that unique (and unconstitutional) power, and no such authority could, of course, exist.

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

Courts have long recognized that "unduly strict requirements of proof" are to be avoided in evaluating whether a party has presented a prima facie case of First Amendment infringement. (*Buckley v. Valeo* (1976) 424 U.S. 1, 74; *John Doe No. 1 v. Reed* (2010) 561 U.S. 186, 204 (conc. opn. of Alito, J.]

["From its inception, . . . [establishing a prima facie case of First Amendment infringement] has not imposed onerous burdens of proof on speakers who fear that disclosure might lead to harassment or intimidation"].) As long as a party has demonstrated at least "a *reasonable probability*" of threats or harassment (*Buckley*, *supra*, 424 U.S. at p. 74, italics added), it has established the requisite "showing of *arguable* first amendment infringement" (*Perry v. Schwarzenegger* (9th Cir. 2010) 591 F.3d 1147, 1160, italics added and citation omitted; see *Americans for Prosperity Foundation v. Bonta* (2021) 141 S. Ct. 2373, 2388 ("*AFP*") ["Exacting scrutiny is triggered by 'state action which *may* have the effect of curtailing the freedom to associate,' and by the '*possible* deterrent effect' of disclosure," original italics and citation omitted].)

SoCalGas demonstrably cleared that fairly low hurdle here. It produced, for example, a declaration from its Vice President of Strategy and Engagement explaining that forced disclosure would likely limit SoCalGas's future associations (App. 372–373); three declarations from third parties attesting that they would "drastically alter" their affiliations with SoCalGas if their political communications were disclosed (App. 376–384); evidence that, in at least one case, a consultant "would not have done business with SoCalGas if it had known its information and contact details would have been disclosed" (App. 613); and

evidence that the forced disclosure of contracts to CalPA in November 2019 had *already* had a "chilling effect" on SoCalGas's associations with its "consultant[s]" and "partner[s]" (App. 609). This unrebutted evidence is far more than needed to carry SoCalGas's burden of making out a prima facie case—a "reasonable probability"—that forced disclosure will chill protected speech or association.

The Commission does not—and cannot—dispute that *Buckley* and *Perry* articulate the relevant legal standard as set forth above. (See Ans. at p. 36.) Nor does it defend its prior (erroneous) articulation of the governing legal standard and the language it used just a few months ago in its challenged Resolution: that SoCalGas was supposedly required to "*clearly demonstrate[]*" a "threat to [its] constitutional rights," which it could only do through evidence of "*concrete*" harm. (App. 1482, italics added.) Instead, the Commission belatedly attempts to retroactively insert the correct legal language into the Resolution that this Court is reviewing. (Ans. at p. 36–37.) But try as it might, the Commission cannot now rewrite what its final Resolution says.

First, the Commission argues that any difference between "reasonable probability" and the correct standard is a "distinction without a difference" (Ans. at p. 36)—that is, the Resolution may have *said* the words "clearly demonstrate[]" (App. 1482), but it

was really referring to the "reasonable probability" standard all along. "Clearly demonstrate," however, is hardly synonymous with "reasonable probability." The former implies a high degree of likelihood. (See, e.g., *Hartley v. Super. Ct.* (2011) 196 Cal.App.4th 1249, 1259 [noting that "clear demonstration" is a higher standard than "proving by a preponderance of the evidence," citations omitted].) The latter does not. (See, e.g., *United States v. Tapia* (9th Cir. 2011) 665 F.3d 1059, 1061 ["A 'reasonable probability' is, of course, less than a certainty, or even a likelihood"]; *Licudine v. Cedars-Sinai Medical Center* (2016) 3 Cal.App.5th 881, 895 [similar].)

Similarly, rather than defend its earlier premise (in the challenged Resolution before this Court) that evidence of "*concrete*," non-"hypothetical" harm is required to establish a "chilling" effect, the Commission now claims that the Resolution *did* consider SoCalGas's evidence of present and future harm. (Ans. at p. 42–43.) In making this revisionist claim, the Commission now cites a passage from its Order Modifying the Resolution that defended—but made no changes to—the Resolution's misstatement of the governing legal standard. (*Id.* at p. 42 [pointing to App. 1856].) The cited passage in the modification order describes the declaration of Andy Carrasco as

"alleg[ing] present and future harm." (App. 1856)[7] Three paragraphs later, however, the Commission dismissed SoCalGas's evidence as insufficiently "concrete" (App. 1857), reverting to its earlier erroneous statement of the legal standard.

A fleeting descriptive reference in another order cannot alter the standard actually applied by (and remaining unchanged in) the challenged Resolution before this Court: that evidence of "hypothetical," "threatened harm" is supposedly not enough, and that evidence of "concrete" harm is required. (App. 1482–1483.) That is particularly true where that modification order doubles down on the Resolution's earlier errant "concrete" evidence standard. Decades of First Amendment jurisprudence have placed no such limits on the type of evidence that can demonstrate a "chilling" effect. (See, e.g., *Buckley*, *supra*, 424 U.S. at pp. 73–74; *Smith v. Novato Unified School Dist.* (2007) 150 Cal.App.4th 1439, 1459 (2007) ["[A] violation of free speech rights may be established where a governmental response to speech 'would chill or silence a person of ordinary firmness from *future* First Amendment activities,'" italics added and citation

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[7] Elsewhere in the Order Modifying the Resolution, the Commission admits that the Resolution "d[id] not refer" to the Carrasco Declaration. (App. 1859, quoting D.20-05-027 at p. 6.)

omitted).) The Commission was wrong to impose such limits here.

Tellingly, the Commission does not dispute that in *Perry* the petitioners made no showing of *past* harm, and in *Britt v. Superior Court* (1978) 20 Cal.3d 844, the petitioners produced *no evidence at all*. But those cases were different, says the Commission, given the identity of the speaker and the "subject matter" at issue—*Britt* involved a "discovery order in public litigation" regarding "homeowners," and *Perry* involved campaign messages about Proposition 8. (Ans. at pp. 44–45.) The Commission would apparently have this Court hold that the First Amendment should apply in full force to *some* political messages made by *some* parties, but not to *these* political messages in this case made by *this* regulated utility.

Such a holding would, of course, fly in the face of the well-settled rule that, as even the Commission admits, "SoCalGas enjoys the same First Amendment rights as any other person or entity." (App. 1480–1481.)[8] It also runs contrary to the well-established principle that the First Amendment discourages

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[8] CalPA, meanwhile, continues to insist that "SoCalGas' First Amendment rights of association are necessarily more constrained" than other entities', and that "suggest[ing] that SoCalGas has the same First Amendment rights of association as any other corporation" is "not correct." (App. 1334–1335.) That, of course, is a complete misstatement of the law.

"differential burdens upon speech because of its content." (*Turner Broadcasting System, Inc. v. Federal Communications Com.* (1994) 512 U.S. 622, 642.)

With no credible way to distinguish *Britt* and *Perry*, the Commission retreats to the tenuous claim that, unlike in those cases, the harm of disclosure here is limited because the constitutionally protected materials will supposedly be disclosed only to the Commission and CalPA. According to the Commission, section 583 and General Order 66-D provide for "statutorily mandated confidentiality," and there is no "evidence" that "disclosure to staff will result in public disclosure." (Ans. at p. 37.)

As an initial matter, it is worth noting that the "Commission staff"—that is, CalPA (Ans. at pp. 27–28 fn. 31)—has repeatedly argued that the political communications at issue *should* be publicly disclosed. (E.g., App. 1335–1336, 1715.) In fact, in CalPA's Comments on the Draft Resolution, it urged the Commission to provide for the "release [of] a significant portion of the information . . . as soon as practicable," since "'Section 583 does *not* forbid the disclosure of any information furnished to the CPUC by utilities.'" (App. at pp. 1335–1336 & fn. 61, italics added and citations omitted.)

In that narrow respect, CalPA is correct: section 583 provides virtually no protection against the disclosure of

constitutionally protected information. "Rather, the statute provides that such information will be open to the public if the commission so orders, and the commission's authority to issue such orders is unrestricted." (*In re Cal. P.U.C.* (9th Cir. 1989) 892 F.2d 778, 783.)[9]

The Commission has repeatedly endorsed this boundless description of its broad authority under section 583 to determine whether and what information should be publicly disclosed. (See, e.g., *In re Southern Cal. Edison Co.* (1991) 42 Cal. P.U.C. 2d 298 ["The Commission has broad discretion under Section 583 to disclose information."]; *In re Telmatch Telecommunications, Inc.* (1999) Cal. P.U.C. Dec. No. 99-10-027, 1999 WL 1229808 ["Public Utilities Code section 583 gives the Commission broad discretion to order confidential information provided by a utility [be] made public."]; *Decision on Data Confidentiality Issues Track 3* (2020) Cal. P.U.C. Dec. No. 20-03-014, 2020 WL 1486172] [same]; see also *In re Cal. P.U.C.*, *supra*, 892 F.2d at p. 783 [noting that under section 583 the "commission's authority to issue . . . orders [making information available to the public] is unrestricted].) Section 583 therefore does not "provide[] ample protection for [constitutionally protected] information" (Ans. at p. 33)—it

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[9] Even absent an order by the Commission, any individual commissioner may make information public during a "hearing or proceeding." (§ 583.)

simply grants the Commission the authority to deem whether information is "confidential" or not to begin with.

Section 583 provides that "[a]ny present or former officer or employee" who divulges confidential information "is guilty of a misdemeanor" (§ 583), which the Commission claims is "a substantial incentive towards compliance" (Ans. at p. 37 fn. 45). As the Commission has explained in other proceedings, however, that provision just ensures "'that staff will not disclose information received from regulated utilities unless that disclosure is in the context of a Commission proceeding or is otherwise ordered by the Commission,' but [it] does not limit [the Commission's] broad discretion to disclose information." (*In re Order Instituting Rulemaking to Implement Sen. Bill* (2006) Cal. P.U.C. Dec. No. 05-06-040, 2006 WL 1971372, citation omitted.) In other words, Commission staff may not leak information to the public that the Commission has deemed "confidential." But that is beside the point, because that restriction does nothing to limit the Commission's discretion to decree, in the first place, that such information be released to the public.

That section 583 grants the Commission vast authority over public disclosure is reinforced by General Order 66-D, the mechanism by which a party *requests* that the Commission exercise its broad discretion to classify something as confidential.

A party wishing to protect information from public disclosure "bears the burden of proving the reasons why the Commission shall withhold any information . . . from the public." (*Phase 2A Decision Adopting Gen. Order 66-D* (2017) Cal. P.U.C. Dec. No. 17-09-023, 2017 WL 4548172 at p. *12.) After the party has made its submission, the "Legal Division will determine whether the information submitter has established a lawful basis of confidentiality." (Gen. Order 66-D § 5.5, subd. (a).) That determination, however, is largely discretionary: although the Legal Division must adhere to the Constitution and the Public Records Act (CPRA), General Order 66-D—like section 583—contains no substantive limits of its own. (See *Phase 2A Decision Adopting Gen. Order 66-D*, *supra*, 2017 WL 4548172 at p. *7 ["Section 583 sets forth a process for dealing with claims of confidentiality, and does not contain any substantive rules on what is and is not appropriate for protections"].)

A regulatory and statutory scheme that grants the Commission virtually unlimited authority over public disclosure can hardly be said to provide "statutory protection" from such disclosure. (Ans. at p. 39). The Ninth Circuit said as much in *Dole v. Service Employees Union, AFL-CIO, Local 280* (9th Cir. 1991) 950 F.2d 1456, where it rejected the argument that the Department of Labor's "need to know" policy would adequately

prevent the public disclosure of minutes from labor union meetings. (*Id.* at p. 1461.)

The "need to know" policy in *Dole* had little bearing on the union's prima facie case because it "provide[d] only so much protection to first amendment interests as the Secretary—in her discretion—chooses to grant at any particular moment." (*Ibid.*) Here, section 583 and General Order 66-D are even *more* discretionary than the "need to know" policy in *Dole*: the Secretary of Labor could only distribute union minutes to government officials with "a need to know the information involved" (*id.* at p. 1459), while "[section] 583 gives [the Commission] *complete* discretion to order disclosure of official information" (*In re Cal. P.U.C.*, *supra*, 892 F.2d at p. 783, italics added).

And, as mentioned, the Commission's staff has already stated that the information at issue *should* be publicly disclosed. CalPA has stated that this "investigation" was initiated to prevent SoCalGas from "withhold[ing] from the public the identity of any person or entity the utility pays to advocate . . . on its behalf." (App. 1335–1336 ["Only by . . . making such information publicly available will SoCalGas' customers, and its legislators, be able to hold the utility accountable"].) In its Response to SoCalGas's Application for Rehearing, CalPA admitted that it believes the "real issue" in this case is "how

much of [SoCalGas's] information . . . can be disclosed as public." (App. 1715.) For the Commission to now say that "disclosure[] [will be] limited to government regulators" (Ans. at p. 40) thus strains credulity.[10]

Further undermining the Commission's claim that SoCalGas's constitutionally protected information will not be publicly disclosed is the fact that other confidential materials have *already* been disclosed—in the very proceedings before this Court. As detailed in the Declaration of Michael H. Dore (see *post*, at pp. 65–67), on July 13, 2021, counsel for SoCalGas discovered that CalPA had publicly posted Volume 9 of the Exhibits to SoCalGas's Petition for Writ of Review to its website. That Volume—which contains confidential non-public material—was conditionally lodged under seal pursuant to California Rule of Court 8.46, and was not to be disclosed publicly pending this Court's determination of SoCalGas's Application for Leave to File

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[10] Indeed, a simple search of the web shows that CalPA *has* funneled documents obtained from SoCalGas in these "non-proceedings" to the press. (See, e.g., Sammy Roth, *Is America's biggest gas utility abusing customer money? A California watchdog demands answers*, L.A. Times (July 23, 2020) <https://www.latimes.com/environment/story/2020-07-23/is-americas-biggest-gas-utility-fighting-climate-action-california-demands-answers> ["SoCalGas has also acknowledged charging its customers for some of that lobbying, *according to documents shared with The Times by the Public Advocates Office*," italics added].)

Under Seal, which the Commission did not oppose. CalPA's disclosure of this information is strikingly similar to the situation the Supreme Court found problematic in *AFP*, where the petitioners identified "confidential Schedule Bs that had been inadvertently posted to the Attorney General's website," despite a regulation prohibiting such disclosure. (*AFP*, *supra*, 141 S. Ct. at p. 2381.) And in *AFP*, the documents were discovered by an expert witness who "chang[ed] a digit in the URL" to access the information, whereas here no digits needed to be changed at all, given that CalPA publicly posted Volume 9 to the "Press Room" section of its website. (*Ibid.*) Given the State's failure to safeguard confidential information in the past, the Supreme Court concluded that "the State's assurances of confidentiality are not worth much." (*Id.* at p. 2388 fn. 2.) The same holds true here.

But even if the Commission *could* still somehow ensure that the sensitive political communications at issue here are never disclosed to the public, there can *still* be no doubt that SoCalGas has demonstrated a "chilling" effect. In *Shelton v. Tucker* (1960) 364 U.S. 479, for instance, the Supreme Court held that an Arkansas statute compelling teachers to disclose "every organization to which [they had] belonged or regularly contributed" was unconstitutional—"*[e]ven if there were no disclosure to the general public*." (*Id.* at pp. 480, 486, 490, italics

added; see also *AFP*, *supra*, 141 S. Ct. at p. 2388 ["Our cases have said that disclosure requirements can chill association '[e]ven if there [is] no disclosure to the general public,'" citation omitted].) Confidential disclosure, the Court explained, placed "pressure upon a teacher to avoid any ties which might displease" the State. (*Shelton*, *supra*, at pp. 486–487.) And as the court recognized in *Dole*, that concern is particularly evident when the information to be disclosed pertains to the very industry that the "state agenc[y]" *seeking* the information is "responsible for regulating." (*Dole, supra*, 950 F.2d at p. 1461.) The harm is not extinguished if the Government is allowed to view the constitutionally protected information.

That concern rings true here, where consultants have represented that they "would not have done business with SoCalGas" had they known that their contracts would be disclosed "to the California Public Advocates Office" (App. 613), and where the political communications at issue relate directly to an industry over which the Public Utilities Commission wields vast power. In short, "[w]hile assurances of confidentiality may reduce the burden of disclosure to the State, they do not eliminate it." (*AFP*, *supra*, 141 S. Ct. at p. 2388.)

This is to say nothing of the fact that the governmental entity demanding SoCalGas's political strategies—CalPA—is an aggressive litigant that frequently opposes SoCalGas. Examples

of CalPA's combative tactics in these "non-proceedings" alone are almost too many to mention. CalPA has, for example, issued subpoenas on short deadlines while appeals are pending (App. 624), responded to SoCalGas's requests for a stay by demanding sanctions (App. 582, 698), and labeled SoCalGas's arguments under the First Amendment as "disrespect[] [of] the Commission" punishable by the highest possible six-figure-a-day fines (App. 909, 928). Before the Commission stepped in to "clarify [CalPA's] status" (CPUC, Letter to Court at p. 2, March 30, 2021), CalPA even sought leave (which this Court denied) to appear separately from the Commission as a real party in interest (CalPA, Request to Appear as a Real Party in Interest, March 23, 2021) and attempted to preempt a ruling on the merits by this Court by opposing SoCalGas's sealing application (CalPA, Opposition to SoCalGas's Application for Leave to File Volume 10 Under Seal, March 23, 2021), which the Commission itself did not oppose. Clearly, granting such a dogged, aggressive adversary access to information about SoCalGas's political strategies "*may* have the effect of curtailing [SoCalGas's] freedom to associate." (*AFP*, *supra*, 141 S. Ct. at p. 2388, original italics and citation omitted.)[11]

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[11] The Commission argues that "[t]here is no basis" for "[p]rohibiting distribution" to CalPA of documents that have

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In sum, there should be no doubt that SoCalGas has amply made out its prima facie showing of First Amendment infringement by demonstrating at least "a reasonable probability" that forced disclosure of the subject information will chill protected speech and association.

C. The Commission Has Not Come Close to Demonstrating That CalPA's Data Requests Are Substantially Related to a Compelling State Interest and Narrowly Tailored to Obtain the Desired Information.

Because SoCalGas has made "the necessary *prima facie* showing, the evidentiary burden . . . shift[s]" to the Commission (*Perry*, *supra*, 591 F.3d at p. 1161, citation omitted) to show that the information it demands is substantially related to a compelling governmental interest and is "narrowly tailored to the

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already been produced to the Commission (Ans. at p. 56)—an apparent reference to the confidential declarations submitted by SoCalGas to the Commission, but not CalPA. But SoCalGas submitted those declarations to the Commission *so that the Commission and its ALJ could adjudicate this dispute*, and even then, four consultants refused to provide declarations out of fear of reprisal from the Commission. (App. 608–614.) If SoCalGas is required to make a prima facie case of First Amendment infringement, it must be allowed to produce evidence to *someone*. The Commission's argument is akin to saying that any materials produced to a court must ipso facto also be produced to the prosecutor. That cannot be the law.

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interest it promotes" (*AFP*, *supra*, 141 S. Ct. at p. 2384).[12] The Commission has not come close to carrying its burden. That is readily apparent from the "dramatic mismatch" between the means enforced by the Commission (*id.* at p. 2386)—complete disclosure of all *shareholder* accounts, vendor contracts relating to political advocacy, and related confidential declarations—and the only remotely plausible governmental interest the Commission has articulated to date—ensuring that *ratepayer* funds are not improperly used.

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[12] The Commission has suggested that the Supreme Court's recent opinion in *AFP* may call for supplemental briefing depending on whether the Court selected "exacting scrutiny" or "strict scrutiny" as the applicable standard governing compelled disclosure cases. But the Court in *AFP* (as opposed to the plurality) did not need to decide that question—it assumed that at least exacting scrutiny applied and then held that the state could not meet even that standard. (*AFP, supra*, 141 S. Ct. at pp. 2387–2389.) Because the same holds true here, there is no need for supplemental briefing: even under exacting scrutiny, the Commission cannot prevail. Here, as in *AFP*, there must be a sufficient showing by the state, which the Commission has demonstrably failed to make, of an adequate "means-end fit" between the asserted governmental interest and the disclosure demanded, and the state must also "demonstrate its need for universal production in light of any less intrusive alternatives." (*Id.* at p. 2386.) Whether termed "exacting scrutiny" or "strict scrutiny," the Commission cannot pass this demanding test.

Tellingly, the Commission still has not explained why it cannot carry out its asserted objective by looking at SoCalGas's ratepayer accounts—that is, it has not "demonstrate[d] its need for [the demanded information] in light of any less intrusive alternatives." (*Ibid.*)

Instead, the Commission casts about for a colorable justification, falling back on its broad discovery authority—which, again, is undisputed and largely beside the point. (See *ante*, at pp. 16, 18–19.) Then it claims that it must verify SoCalGas's "word," which it could easily do with the solution SoCalGas has proposed. This lays bare the real reason for CalPA's demands: It is far more interested in chilling the political and public-policy activities of SoCalGas and its consultants than in following the ratepayers' money—the pretextual rationale CalPA has offered, which the Commission now tries to defend as constitutional.

This is evident from the latest iteration of the Commission's attempts at reverse-engineering a rationale for the unconstitutional discovery it seeks to compel SoCalGas to respond to. The Commission proclaims that "the government interest at stake in this case is clear" (Ans. at p. 48), but then proceeds to quote ad nauseum from the Public Utilities Code, asserting that CalPA has "essentially coextensive" "discovery rights" with the Commission that enable it to "inspect the books

and records of investor-owned utilities." (*Id.* at pp. 48–49.) As an initial matter, if all the Commission had to do to put forth a compelling government interest was to point to its general regulatory powers, that would, of course, eviscerate the First Amendment rights of all regulated utilities. The Commission does not have unfettered authority to demand whatever it wants. At any rate, as SoCalGas has explained (Petn. at pp. 46–48), whatever the scope of CalPA's discovery powers as a *statutory* matter, that has no bearing on the permissible limits of its authority as a *constitutional* matter.[13] Where statutes infringe on fundamental constitutional rights, the state must still demonstrate "that the intrusion . . . is necessary to further a 'compelling'—i.e., an extremely important and vital—

[13] The Commission now appears to recognize as much, retreating from its breathtaking assertion in its Resolution that an agency may "investigate the entities that it regulates *regardless of* First Amendment claims." (App. 1861, italics added.) Likewise, the Commission now stops short of repeating its earlier remarkable assertion in its Resolution that "the Commission does not need to show more than its statutory framework to establish a compelling government interest." (*Ibid.*) While the Commission no longer appears to openly insist on such a demonstrably flawed statement of the law, that flawed understanding of the law still undergirds the Commission's defense of the challenged Resolution that SoCalGas has petitioned this Court to review.

state interest." (*American Academy of Pediatrics v. Lungren* (1997) 16 Cal.4th 307, 341.)

Separate and apart from the statutes the Commission has quoted at length, the Commission also invokes an asserted objective that it and its staff (CalPA) have previously invoked: "protect[ing] ratepayer interests" by "ensuring that advocacy costs have been booked to the appropriate utility accounts." (Ans. at pp. 49–50.) But even if "following the money" were a compelling state interest and the one CalPA and the Commission have truly been seeking to advance here (but see *post*, at pp. 42–43), the Commission has still fallen far short of showing anything that would resemble a narrowly tailored means of achieving that asserted objective. (*AFP*, *supra*, 141 S. Ct. at pp. 2385–2386.)

CalPA has asserted that it is entitled to "information necessary to determine whether a regulated utility is properly booking costs associated with activities that should not be funded by ratepayers." (App. 1715.) But that is precisely the information SoCalGas has repeatedly offered to produce through live access to its SAP database (and CalPA has tellingly declined): *access to ratepayer accounts*. (E.g., App. 581, 588–589.) In fact, SoCalGas's offer to provide access to information in its accounting database regarding 96% of its vendors includes access to nearly every *shareholder* account as well (see App. 990 fn. 5)—accounts that are assigned to (and paid for by)

shareholders. (App. 1250.) If CalPA and the Commission were truly interested in "following the money" (App. 717), they already have more than everything they need, and do not need to "cast[] a dragnet for sensitive . . . information" (*AFP*, *supra*, 141 S. Ct. at p. 2387) by forcing the disclosure of all below-the-line shareholder accounts, spending, and related information. It should be obvious that the Commission can confirm that no funds have been misclassified to ratepayer accounts just by reviewing above-the-line ratepayer accounts.

The Commission's attempt at showing why it and CalPA also need access to below-the-line information makes clear the pretextual nature of the rationale they have offered up. The Commission says that it "cannot be forced to simply take SoCalGas' word on these matters" (Ans. at pp. 52–53), citing the omission of SoCalGas as an "interested entity" from an early filing by Californians for Balanced Energy Solutions (C4BES) in another proceeding. (App. 180–181.) But SoCalGas's involvement with C4BES has never been a "secret[]" (Ans. at p. 10)—as CalPA acknowledged during a meet and confer, "that information [was] readily available on the internet" (App. 785).[14]

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[14] The Commission disputes that C4BES is a "red herring." (Ans. at p. 53.) But none of the information at issue relates to C4BES. Indeed, to enable CalPA and the Commission to "follow the money," SoCalGas has produced all contracts and

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The Commission also claims that SoCalGas has "chang[ed] its story and alter[ed] the account designations" (Ans. at p. 53), pointing to a disclosure by SoCalGas of an accounting adjustment that moved certain expenditures from an above-the-line account to a below-the-line account (App. 831–832). But that was simply an inadvertent misclassification caused by "an incorrect settlement rule" that caused the Balanced Energy Internal Order (IO) to be "settled to the incorrect [Federal Energy Regulatory Commission (FERC)] account." (*Ibid.*) What the Commission characterizes as deceit was nothing more than an accounting error. Regardless, this further supports SoCalGas's point: such an error was discovered simply by looking at above-the-line accounts, without also rummaging through below-the-line accounts.

In any event, if CalPA or the Commission want to "verify the utility's assertions" instead of "tak[ing] SoCalGas' word on these matters" (Ans. at pp. 52–53), they are welcome to do so. SoCalGas is not simply "asserting" that its political advocacy activities are not funded by any above-the-line accounts or

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responded to all of CalPA's data requests with respect to C4BES, regardless of accounting treatment. Yet not only do CalPA and the Commission continue to rely on this as their rationale, but CalPA also makes the demonstrably false claim that "SoCalGas had allocated over $27 million" to C4BES in an above-the-line account (App. 1712).

ratepayer funds. By offering to provide CalPA with live, read-only access to all above-the-line accounts—category 1 of the data sought by CalPA—SoCalGas has offered to let CalPA see for itself. (App. 992–993.) If, as the Commission seems to suggest, SoCalGas has been misclassifying political or public-policy activity as ratepayer-funded, the Commission and its staff would be able to see evidence of that in all the above-the-line portions of the SAP database SoCalGas has offered to provide—not to mention in the upcoming General Rate Case ("GRC") proceeding commencing in May 2022, when SoCalGas will, once again, request the Commission's authorization for the ultimate recovery of costs from ratepayers.[15] In short, SoCalGas has made its ratepayer accounts available for review. The accounting information speaks for itself.

The Commission's attempted rationalizations are even more threadbare as to why CalPA supposedly needs access to all vendor contracts (category 2). Citing no support, the Commission asserts that vendor contracts provide "background information

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[15] Accounting labels in SoCalGas's dynamic financial database are frequently adjusted in between GRC cycles, each of which typically lasts three (and now four) years. The accounting labels only become fixed at the start of GRC proceedings, when SoCalGas formally seeks approval for its rates from the Commission. During those proceedings, CalPA appears as the primary opposing party that audits and rigorously scrutinizes SoCalGas's requests and claimed costs.

such as vendor IDs" and "account numbers" that will help CalPA "understand and analyze the raw data contained in the SAP database." (Ans. at pp. 54–55.) Even if the vendor contracts contained such information (they do not), the SAP database (category 1) already "identifies SoCalGas's vendors by name" in each associated account, in addition to providing user access to associated invoices, payments, and other records. (App. 619.) CalPA "may well prefer to have" the contracts and other information it has demanded, but "[m]ere administrative convenience does not remotely 'reflect the seriousness of the actual burden' that th[is] demand . . . imposes." (*AFP*, *supra*, 141 S. Ct. at p. 2387, citation omitted.)

On October 2, 2019, CalPA disclosed the real reason it seeks the vendor contracts: it wants to "review the contracts' scope of work to determine whether SoCalGas' *shareholders* are taking positions that are inconsistent with State policy." (App. 672.) But that, of course, means that CalPA is seeking to intrude into SoCalGas's constitutionally protected activities unrelated to its interest in "obtain[ing] the lowest possible rate for service consistent with reliable and safe service levels" for ratepayers. (§ 309.5, subd. (a).)

Finally, as to category 3, the Commission makes no attempt at explaining how forcing the disclosure to CalPA of unredacted copies of sensitive, sealed declarations would shed

any light on CalPA's professed "follow-the-money" objective of verifying how ratepayer money has been spent.

Without a coherent rationale as to why CalPA cannot carry out its "investigation" through access to ratepayer-funded accounts, the Commission resorts, once again, to hyperbole. Apparently, precluding access to constitutionally protected information "'is fundamentally inconsistent with [SoCalGas's] status as a regulated public utility,'" would "countermand the reason why powerful utility monopolies such as SoCalGas are regulated in the first place," and would enable SoCalGas to "'opt out of regulation at any time.'" (Ans. at pp. 52–53, quoting App. 1487.)

As SoCalGas has repeatedly explained, however, this case has nothing to do with the Commission's and CalPA's admittedly broad discovery and general regulatory authority. This is not, in other words, a case in which "a utility under investigation by its regulator tell[s] its regulator which accounts can be examined to find relevant information" or how the regulator should go about setting rates or pipeline-safety standards. (*Id.* at p. 52.) It is a case in which an office statutorily mandated to advocate for lower utility rates cannot articulate how forcing the disclosure of constitutionally protected below-the-line accounting information can plausibly be characterized as a narrowly tailored way of carrying out its above-the-line investigation.

Ultimately, as SoCalGas has explained (Petn. at pp. 51–53), the breadth of CalPA's discovery demands strongly suggests that SoCalGas is being impermissibly targeted by CalPA for its disfavored political and public-policy views. (See, e.g., *First Nat. Bank of Boston v. Bellotti* (1978) 435 U.S. 765, 793 [overbreadth "suggests instead that the legislature may have been concerned with silencing [a] corporation[] on a particular subject"].) In response, the Commission parrots back the assertion in its Order Modifying the Resolution that a "utility's viewpoint is irrelevant as to its obligation to comply with Commission directives." (Ans. at p. 41, quoting App. 1863.) But that misses the point: the question is not whether *SoCalGas's* political or public-policy views excuse its obligation to comply with the law, but rather whether the *Commission* (or in this case, CalPA) issued its directives *because of* those views.

The First Amendment protects all of us against governmental actors exerting their power against disfavored individuals or companies as retaliation for engaging in constitutionally protected expression or association—an important safeguard that has been extended to nearly all aspects of government action. (See, e.g., *Hartman v. Moore* (2006) 547 U.S. 250, 256 [prosecutorial authority]; *Perry v. Sindermann* (1972) 408 U.S. 593, 597–598 [public employment]; *Bd. of County Comrs., Wabaunsee County, Kan. v. Umbehr* (1996) 518 U.S. 668,

673–674 [provision of government benefits].) It is well-settled that the power of the state may not be used to "drive certain ideas or viewpoints from the marketplace." (*Simon & Schuster, Inc. v. Members of the N.Y. State Crime Victims Bd.* (1991) 502 U.S. 105, 116.)

Moreover, the record belies the Commission's conclusory assertion that SoCalGas's allegations of viewpoint discrimination are "without substantiation." (Ans. at p. 41.) First, CalPA has hardly been subtle about its intentions. It initially attempted to justify its August 13, 2019 Data Request by explaining that it wanted to know "how the activities related to the contracts" impact "issues such as achieving a least-cost path to meeting the state's decarbonization goals." (App. 301.) Then, during a meet and confer, it told SoCalGas that it was investigating the development of "business plans that undermine California's climate change goals"—"an issue of public importance that the public has a right to know about." (App. 786.)

CalPA's justifications as to why it needs SoCalGas's constitutionally protected information have become more refined over time, but still, in its comments on the Draft Resolution, it admitted that it seeks "to hold the utility accountable" by preventing SoCalGas from "withhold[ing] from the public the identity of any person or entity the utility pays to advocate . . . on its behalf." (App. 1335.) CalPA also stated that it believes the

"real issue" in this case is "how much of [SoCalGas's] information . . . can be disclosed as public" (App. 1715).[16]

Tellingly, this is the explanation that actually fits with CalPA's expansive discovery demands that the Commission has now enforced—SoCalGas's consultants' identities (categories 1-3), the amounts SoCalGas paid them (categories 1-2), and the strategies employed to influence public policy (categories 1-2) are all contained in the documents CalPA has demanded.

Second, CalPA has entered into an unprecedented Joint Prosecution Agreement with the Sierra Club to investigate SoCalGas's alleged "'anti-electrification' activities." (App. 1515.) The Commission never disputes the existence of this CalPA-Sierra Club pact, nor does it attempt to offer any coherent explanation for it. Yet as several legislators explained in a letter to the Commission's President voicing concern over the Joint Prosecution Agreement, the agreement represents a "pact to essentially do everything in their collective power to fight Southern California Gas Company . . . [in] the battle over

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[16] As SoCalGas explained in its Petition, these are only some of the shifting explanations CalPA has given for its discovery demands. (Petn. at pp. 17–18.) And as the Ninth Circuit has noted, "fundamentally different justifications . . . give rise to a genuine issue of fact with respect to pretext since they suggest the possibility that [none] of the official reasons [are] the true reason." (*Aragon v. Republic Silver State Disposal Inc.* (9th Cir. 2002) 292 F.3d 654, 661, citation omitted.)

whether natural gas is allowed to be used by California residential and business customers." (App. 1605.) In other words, the alliance illustrates the true reason for CalPA's investigation: it seeks to silence SoCalGas on a political issue within the sphere of the Commission's authority.

Notably, when asked last year to identify any data requests "outside of a proceeding for which input on the questions was provided and/or the questions were reviewed by Sierra Club," CalPA refused to respond. (Request for Judicial Notice, Ex. A at p. 20 ["Whether Sierra Club provided input and/or reviewed data requests propounded on SoCalGas by the Public Advocates Office is not relevant."])

To cap this all off, this investigation—and CalPA's pact with the Sierra Club—exceeds CalPA's statutory authority. CalPA is entitled to "compel the production or disclosure" of *only* information "necessary to perform its duties" of "obtain[ing] the lowest possible rate for service consistent with reliable and safe service levels." (§ 309.5, subds. (a), (e).)[17] As the legislators

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[17] Indeed, if CalPA had unbounded authority to audit all "books and records" of regulated utilities (Ans. at p. 48), then section 309.5(e), which on its face limits CalPA's discovery powers, would be rendered surplusage. (But see *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387 [in interpreting statutes, "[a] construction making some words surplusage is to be avoided"].)

explained, CalPA's "stated mission is very clear . . . but it is in conflict with what appears to be a new focus by CalPA which is to aid the Sierra Club in their effort to seek the ban of natural gas usage in California even though it is proven to be favored by customers as a fuel source because of the affordable cost." (App. 1606.) CalPA's venture outside its statutory authority lays bare its true intentions and the pretextual nature of the ones that it and the Commission have offered.

In sum, it should be readily apparent that the Commission has fallen far short of showing any rational connection between the (pretextual) governmental interest or objective it has offered up and the (vastly overbroad) means it has enforced against SoCalGas, let alone showing that its discovery demands are narrowly tailored to advance its asserted interest. (*AFP*, *supra*, 141 S. Ct. at p. 2387.)

D. Enforcing CalPA's Data Requests and Subpoena Would Violate SoCalGas's Due-Process Rights, as SoCalGas Repeatedly Explained to the Commission.

The Commission also erred and violated SoCalGas's constitutional rights in failing to recognize that enforcing CalPA's discovery requests and subpoena—absent any real or clear procedural rules in the "not in a proceeding" (App. 758) proceedings below, with the ongoing threat of steep, six-figure daily fines still hanging over SoCalGas's head—contravenes basic guarantees of due process secured to SoCalGas and others by the

Federal and California Constitutions. (Petn. at pp. 53–56, citations omitted.) As the Court of Appeal has recognized, the Commission's use of ad hoc procedures must be "consistent with the requirements of due process." (*San Pablo Bay Pipeline Co. v. P.U.C.* (2015) 243 Cal.App.4th 295, 313.) The Commission's actions below, however, fail to clear that basic hurdle.

Meanwhile, the Commission's three contentions that SoCalGas's due-process "allegation should be summarily dismissed" do not withstand even cursory scrutiny. (Ans. at pp. 57–58.)

First, there is no merit to the Commission's contention that SoCalGas supposedly waived or abandoned its due-process claims in its application for rehearing to the Commission. In that application, SoCalGas explained that:

> Cal Advocates *exerted extreme pressure on SoCalGas to waive its fundamental rights*, including by *threatening millions of dollars in fines* because SoCalGas merely sought Commission review of an order requiring the production of constitutionally protected materials. But SoCalGas had *no procedural protections on which to rely* in confronting Cal Advocates' threats. The Resolution suggests that protections were there all along, but no Commission rule says that. Indeed, Chief ALJ Anne Simon[] confirmed in her email instruction for this non-proceeding that *disputes*

> *in this non-proceeding w[ere] not subject to the Commission's rules*. Particularly where Cal Advocates is claiming an *essentially boundless authority* to intrude on SoCalGas' shareholder-funded activities (even while working in concert with a private litigant opposing SoCalGas), the absence of procedural protections is especially harmful and prone to abuse. SoCalGas still faces the *prospect of huge fines* at Cal Advocates' urging. And it may be in the same position in response to a future intrusive request. Then, as now, SoCalGas will *have no established procedural safeguards to protect itself*. An entity, even a regulated one, that has the same constitutional rights as everyone else cannot be forced to face the government's coercive threats without any defined recourse. It is an ***improper denial of due process*** that undermines the legitimacy of any "non-proceeding" order that follows, including this one.

(App. 1532–1533 fn. 69, emphases added.) And elsewhere in the application, SoCalGas explained that CalPA had "unjustifiably demand[ed] the discovery at issue and threaten[ed] SoCalGas with contempt, fines, and sanctions for exercising its *due process rights*." (App. 1519, italics added; see also App. 1516 [explaining that CalPA has opposed a "formal OII [order instituting investigation] into SoCalGas's accounting of ratepayer funds"

because it "prefers to continue its investigation *outside of any formal Commission rules or procedures*," italics added]; App. 1516, 1521, 1531–1532, 1545 [repeatedly noting the "millions of dollars in fines and sanctions" CalPA has sought to impose below].) In sum, there can be no doubt that SoCalGas specifically identified, explained, and thus adequately preserved its due-process claim.

That follows a fortiori from *Southern California Edison Co. v. Public Utilities Commission* (2000) 85 Cal.App.4th 1086. There the Commission, pointing to section 1732, argued that the utility had failed to assert in its application for rehearing that the Commission misinterpreted section 455. (*Id.* at p. 1101 fn. 7.) While the utility had included one sentence on section 455 in a footnote in its application, the Commission contended that single "ambiguous and limited reference" was insufficient to preserve the issue. (*Ibid.*) This Court, however, rejected the Commission's waiver argument, noting in part that the utility "did reference section 455 in its papers, albeit in a footnote," and that the "limited footnote reference," combined with language implicitly concerning section 455, had sufficiently preserved the issue for appeal. (*Ibid.*)

If there was no waiver in *Southern California Edison*, then there could not have been any here. SoCalGas plainly "set forth specifically the ground[s]" for its due-process claims, which it also

briefed in at least four pages of its later-filed petition to this Court. (§ 1732; Petn. at pp. 53–56.)

The Commission's reliance on *Postal Telegraph-Cable Co. v. Railroad Commission of the State of California* (1925) 197 Cal. 426, does not suggest otherwise. There, the constitutional questions the petitioner attempted to raise in the Supreme Court had never been argued or alluded to in any way before the Commission, and were only first "specifically set out in the brief of petitioner" *to the Supreme Court*, "referred to in less specific language in the petition [to that Court] for the writ," and "*not specified* as a ground of unlawfulness in the application for a rehearing before the Commission." (*Id.* at p. 434, italics added.) Here, in contrast, SoCalGas *did* specifically set out the grounds for its due-process claim in its application for rehearing to the Commission, and those claims were also specifically presented in SoCalGas's Petition to this Court. Finally, even though there may have been grounds for finding waiver in *Postal Telegraph-Cable*, the Supreme Court actually *did* "give consideration to [petitioner's] constitutional questions" on their merits, as should this Court here with respect to SoCalGas's due-process claims. (*Ibid.*)

In addition, the Commission conveniently ignores the fact that in the year prior to SoCalGas's application for rehearing, the due-process issue had already been briefed extensively by both

sides to the Commission, which in turn ruled on SoCalGas's due-process claim in its Resolution now before this Court (App. 341–342, 1449–1451.) Even CalPA understood SoCalGas's due-process claims to be before the Commission: otherwise, it presumably would not have addressed those claims as extensively as it did in its own application for rehearing, filed a month after SoCalGas's (App. 1779, 1784–1785).

The Commission may not dictate the precise form and manner in which SoCalGas argues its case. SoCalGas's due-process arguments in its application for rehearing more than adequately satisfy the requirements of section 1732. This Court should therefore reject the Commission's threadbare and hyper-technical allegation of waiver.

Second, the Commission misses the point once again in arguing that "there is nothing improper . . . about an investigation preceding the opening of a formal proceeding" given that the Commission's broad powers "are not in any way limited to formal Commission proceedings." (Ans. at pp. 57–58.) Even if the Commission's broad regulatory powers encompass CalPA investigations, the Commission has not pointed to any authority suggesting what are the outer bounds on those powers prescribed by the United States and California Constitutions—the issue that *is* before this Court. (See *ante*, at pp. 16–19.)

Third, the Commission's contention that "SoCalGas has been afforded a multitude of opportunities to present its arguments to the Commission" is a strawman. (Ans. at p. 58.) SoCalGas has never suggested that it has been deprived of the opportunity to submit written briefs (many of them, in fact) to the Commission and its staff. But SoCalGas has been forced to operate in a procedural no-man's land of the Commission's and CalPA's creation that lacks the rules that would normally apply, despite the Commission's own Code of Conduct, which states that the Commission's rules "are intended to ensure due process and fairness for all interested parties." (CPUC, Strategic Directives, Governance Process Policies, and Commission-Staff Linkage Policies (Feb. 20, 2019) p. 21.)

What's more, SoCalGas's litigation adversary (CalPA) is inextricably intertwined with the adjudicator (the Commission). (See, e.g., *People v. Ramirez* (1979) 25 Cal.3d 260, 268 ["freedom from arbitrary adjudicative procedures is a substantive element of one's liberty"].) Indeed, in its Answer, the Commission has embraced the theory that CalPA is *not* an entity separate from the Commission itself. (E.g., Ans. at pp. 27–28 fn. 31 [arguing that CalPA's access to information should be "coextensive" with that of other Commission staff].)

And it is in this context that CalPA has made highly intrusive and unwarranted demands for constitutionally

protected material, backing up those demands with threats of multiple sets of staggering six-figure daily fines and retroactive penalties that the Commission has continued to dangle over SoCalGas's head. (App. 909, 928, 1114–1120.) Far from eliminating that chilling threat, the Commission has invited CalPA to "resubmit[]" its motions for sanctions "at a later date." (App. 1501.)

As SoCalGas previously explained and the Commission does not dispute, these procedural uncertainties and the specter of crippling fines violate well-established requirements of due process (U.S. Const. amend. V, XIV; Cal. Const. art. I, § 7) and the Excessive Fines Clause (U.S. Const. amends. V, VIII, XIV; Cal. Const., art. I, §§ 7, 17; see also *United States v. Mackby* (9th Cir. 2001) 261 F.3d 821, 829). The "value of a sword of Damocles," after all, "is that it hangs—not that it drops." (*In re Marriage of Siller* (1986) 187 Cal.App.3d 36, 49 fn. 10, quoting *Arnett v. Kennedy* (1974) 416 U.S. 134, 231, Marshall, J., dissenting.) Absent meaningful procedural protections, CalPA has effectively chilled SoCalGas's right to speak, associate, and petition the government, and even more tangibly it has forced SoCalGas to produce sensitive contracts under protest, lest it face staggering, six-figure-a-day fines.

It is therefore of little consequence that the Commission has allowed SoCalGas to submit many written briefs to it, which

the Commission only recently ruled on after a 15-month hiatus punctuated by CalPA's continuing and escalating demands and threats. Again, when the Commission's ad hoc procedures conflict with the requirements of due process, the latter must prevail. (*San Pablo Bay Pipeline*, *supra*, 243 Cal.App.4th at p. 313.)

This Court should not permit CalPA (and the Commission) to exploit a lack of procedural protections and the ongoing threat of massive fines in order to chill SoCalGas's (and others') free speech and associational rights.

III. CONCLUSION

Nothing the Commission has come forth with in its Answer comes close to justifying the infringement on SoCalGas's First Amendment, due-process, and other rights in this case. Consequently, this Court should grant the prayed-for writ of review, mandate, and/or other appropriate relief. And, following oral argument, the Court should vacate D.21.03-001 and Resolution ALJ-391 and enjoin the Commission and its staff from making any further attempts at forcing the disclosure of SoCalGas's (and its consultants') constitutionally protected materials.

Dated: July 16, 2021 Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

By: _____
Julian W. Poon

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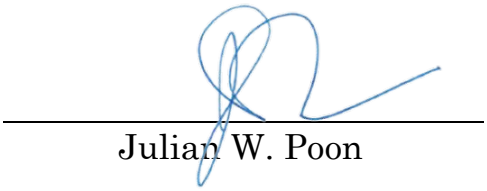
CERTIFICATE OF WORD COUNT

I certify this Reply of Petitioner Southern California Gas Company in Support of its Petition for Writ of Review, Mandate, and/or Other Appropriate Relief contains 11,821 words. In completing this word count, I relied on the "word count" function of the Microsoft Word program.

July 16, 2021



Julian W. Poon

DECLARATION OF MICHAEL H. DORE IN SUPPORT OF SOUTHERN CALIFORNIA GAS COMPANY'S REPLY IN SUPPORT OF ITS PETITION FOR WRIT OF REVIEW, MANDATE, AND/OR OTHER APPROPRIATE RELIEF

I, Michael H. Dore, declare as follows:

1. I am an attorney licensed to practice law in the State of California, and am a partner of Gibson, Dunn & Crutcher LLP, counsel of record for Petitioner Southern California Gas Company ("SoCalGas") in this proceeding. I submit this declaration in support of SoCalGas's Reply in Support of its Petition for Writ of Review, Mandate, and/or Other Appropriate Relief. I have personal knowledge of the matters set forth herein, unless the context indicates otherwise, and if called upon to testify, I could and would do so competently.

2. On July 13, 2021, counsel for SoCalGas discovered that the Public Advocates Office ("CalPA") of the California Public Utilities Commission ("the Commission") had posted the filings from the instant proceedings before this Court to its publicly accessible website. Included in those materials were filings lodged under conditional seal pursuant to California Rule

of Court 8.46, which contain confidential and non-public material that were not to be disclosed publicly pending the Court's determination of SoCalGas's Application for Leave to File Under Seal Volumes 9–10 of the Exhibits to SoCalGas's Petition for Writ of Review, Mandate, and/or Other Appropriate Relief. The Commission did not oppose SoCalGas's sealing application.

3. Specifically, CalPA posted Volume 9 of the Exhibits to SoCalGas's Petition to the "Press Room" section of its public website, located at the following address: https://www.publicadvocates.cpuc.ca.gov/general.aspx?id=4444. A screenshot of CalPA's website at the time it contained a link to the conditionally sealed material is attached to this declaration as Exhibit A, with the relevant portion highlighted.

4. Upon learning of this public disclosure of conditionally sealed material, counsel for SoCalGas on July 14, 2021 promptly notified counsel for the Commission and demanded that the material be removed from CalPA's website. The material was removed from CalPA's website later that day.

Counsel for SoCalGas also requested that the Commission confirm that no other sealed or conditionally sealed material related to these proceedings has been publicly disclosed by CalPA.

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

Executed this 16th day of July, 2021, in New York, New York.

Michael H. Dore

EXHIBIT A

LEGAL PLEADINGS

5-14-19 Sierra Club Motion to Deny Party Status to C4BES - RESOLVED

- **1 - Sierra Club Motion to Deny Party Status to C4BES**
- **2 - C4BES Response - 5-29-10**
- **3 - SoCalGas Response - 5-29-10**
- **4 - Cal Advocates Response - 5-29-10**
- **5 - Sierra Club Reply re C4BES - 6-10-19**
- **6 - Cal Advocates Motion to Amend Scoping Memo - 6-17-19**
- **7 - SoCalGas Motion to Strike - 6-19-19**
- **8 - Sierra Club Response to Motion to Strike - 7-5-19**
- **9 - Cal Advocates Response to Motion to Strike - 7-5-19**
- **10 - ALJ Ruling on Various Motions re C4BES and SoCalGas - 6-25-20**

8-14-19 Cal Advocates Motion to Compel Further Responses to DR#4 From SoCalGas - RESOLVED

- **1 - Ltr to Picker re Motion to Compel Futher Responses to DR SC-SCG**
- **2 - SoCalGas Response - 8-26-2019**
- **2a - SoCalGas Attachments A-F_Redacted**
- **3 - CalAdvocates Reply - 9-9-2019**
- **4 - ALJ Ruling Resolving Discovery Dispute - 9-10-2019**

10-7-19 Cal Advocates Motion to Compel Further Responses to DR#5 Q8 From SoCalGas - RESOLVED

- **1 CalAdvocates Motion to Compel Responses to DR5 Q8 - 10-7-19**
- **1a- Ex 1-9 - Motion to Compel 10-7-10**
- **2 - SCG Response to Cal Advocates Motion to Compel - 10-17-19**
- **3 CalAdvocates Reply - 10-31-19**
- **4 - ALJ Ruling 11-1-19**
- **5 - SoCalGas Emergency Motion to Stay ALJ Ruling - 11-4-19**

12-2-19 SoCalGas Motion Reconsideration re 1st Amendment Issues - PENDING CPUC ACTION

- **1 - Motion for Reconsideration-Appeal with Declarations_combined (FINAL)-1**
- **1a - SoCalGas Transmittal EMail for Motion for Reconsideration - 12-2-19**
- **2 - Motion to File Under Seal and Order (Executed) a**
- **2a - Tomkins Dec MFUS a**
- **3 - Public Advocates Office Response to SoCalGas Appeal, 12-17-2019**
- **Res ALJ-391 DeAngelis Resolution**

3-25-20 SoCal Emergency Motion To Stay All Discovery Due to COVID 19 - RESOLVED

- **1 - Motion to Stay Discovery Pending COVID-19**
- **1a - Motion to File Under Seal FINAL**
- **2 - ALJ Ruling Denying SoCalGas Emergency Motion to Stay - 4-6-20**

5-22-20 SoCalGas SoCalGas Motion to Partially Quash Subpoena For Access To Audit Accounts - PENDING CPUC ACTION

- **1 - SoCalGas Substitute-Motion to Quash-pdfA 5-22-2020**
- **1a - Decls.Carrasco.Enrique.Contratto ISO motion to quash_pdfA**
- **1b - Pages 1-32 of 140 of Declaration of Elliott Henry A**
- **1c - Pages 33-64 of 140 of Declaration of Elliott Henry-A**
- **1d Pages 65-110 of 140 of Declration of Elliott Henry-A**
- **1e Pages 111-127 of 140 of Declaration of Elliott Henry A**
- **1f Pages 128-140 of 140 of Declaration of Elliott Henry-A**
- **2 - CalAdvocates Response to SoCalGas 5-22-20 Motion to Quash (Not a Proceeding)**
- **2a - CalAdvocates 6-1-20 Response to Motion to Quash - Exhibits 1-10**
- **2b CalAdvocates 6-1-20 Response to Motion to Quash - Exhibits 11-15**
- **2c CalAdvocates 6-1-20 Response to Motion to Quash - Exhibits 16-21**

5-22-20 SoCalGas Motion to Supplement Reconsideration Motion - PENDING CPUC ACTION

- **1 - Substitute-SoCalGas Motion to Supplement-pdfA 5-22-2020**
- **1a - Declaration of Elliott Henry ISO Motion to Supplement Record-pdfA**
- **1b - Attachments B-D**

6-23-20 Cal Advocates Motion for Contempt & Fines for Subpoena Violation - PENDING CPUC ACTION

- **1 - CalAdvocates Motion for Contempt and Sanctions with Exhibits - 6-23-20**
- **2 - SCG's Response to Contempt Motion**
- **3 - CalAdvocates Reply to SoCalGas Response to Motion for Contempt Sanctions - 7-10-20 & Exhibits**

- 1 _Declaration of Kelly Contratto ISO Response to Contempt Motion
- 1 Attachment A Enrique Decl ISO MTQ
- 1 Attachment D-1-Pages 1-32 of 140 of Declaration of Elliott Henry A
- 1 Attachment D-2-Pages 33-64 of 140 of Declaration of Elliott Henry-A
- 1 Attachment D-3-Pages 65-110 of 140 of Declration of Elliott Henry-A
- 1 Attachment D-4-Pages 111-127 of 140 of Declaration of Elliott Henry A
- Attachment B-1 - CalAdvocates Response to SoCalGas 5-22-20 Motion to Quash (Not a Proceeding)
- Attachment B-2 - CalAdvocates 6-1-20 Response to Motion to Quash - Exhibits 1-10
- Attachment C - Mot. to Compel
- Attachment E - Simon's Instructions
- Declaration of Dennis Enrique ISO Response to Contempt Motion
- Declaration of Kelly Contratto ISO Response to Contempt Motion
- Declaration of Jason H. Wilson ISO Resp to Mtn for Contempt with Exhs

7-9-20 Cal Advocates Motion to Compel Confid Declarations & Fines - PENDING CPUC ACTION

- 1 - CalAdvocates Motion to Compel Confidential Decs & For Fines - 7-9-20
- 2 - SoCalGas Opp to CalPA Motion to Compel re Sealed Decs 7-17-20
- 3 - CalAdvocates Reply to SoCalGas Response to Mot 2 Compel 7-24-20 with Exs

10-29-20 Administrative Law Judge Draft Resolution ALJ-391 – Resolution ALJ-391 Adopted Effective 12-21-2020

- 1 - Draft Resolution ALJ-391 issued 10-29-20
- 2 - Cal Advocates Comments on ALJ-391 - 11-19-20
- 2a - Cal Advocates Comments on ALJ-391 with Exhibits - 11-19-20
- 3 - Earthjustice and Sierra Club Comments on ALJ-391 - 11-19-20
- 4 - SoCalGas's Comments on Draft Resolution ALJ-391 - 11-19-20
- 5 - SoCalGas Decl & Exhs of J. Wilson re Draft Resolution ALJ-391 - 11-19-2020
- 6 - SoCalGas Attachment 1 - [Proposed] Protective Order re Comments Draft Resolution ALJ-391

12-18-2020 SoCalGas Application for Rehearing of Resolution ALJ-391 – PENDING CPUC ACTION

- 1 - Resolution ALJ-391 - Issued 12-21-2020
- 2 - SoCalGas Reh'g App & Request for Oral Argument - 12-18-2020
- 3 - SoCalGas Motion to Stay - 12-21-20
- 4 - Cal Advocates Objection to Stay Motion 12-22-2020
- 5 - Cal Advocates Motion for Confidential Declarations - 12-30-20
- 6 - SCG's Opp to Cal PA's Motion for Confidential Declarations - 1-4-2021
- 6a - Decl of J. Wilson ISO SCG's Oppo. to Mtn for Confidential Decls 1-4-2021
- 7 - Cal Advocates Response to SoCalGas Reh'g App 1-11-2021
- 8 - Sierra Club Response to SoCalGas Reh'g App 1-11-2021
- 9 - Cal Advocates Reh'g App 1-20-21
- 10 - SoCalGas Response to CalPA's Application For Rehearing 2-4-21
- 11 - D.21-03-001 Re Rehearing on ALJ-391

3-8-2021 – SoCalGas Petition for Writ of Review, et seq. to the California Court of Appeal

- 1 - SoCalGas Writ of Review et seq
- 1a - SoCalGas_Application to File PA Vols. Under Seal
- 2 - Vol. 1 [0001-0286] - Exhibits
- 3 - Vol. 2 [0287-0492] - Exhibits
- 4 - Vol. 3 [0493-0734] - Exhibits
- 5 - Vol. 4 [735-1022] - Exhibits
- 6 - Vol. 5 [1023-1286] - Exhibits
- 7 - Vol. 6 [1287-1503] - Exhibits
- 8 - Vol. 7 [1504-1702] - Exhibits
- 9 - Vol. 8 [1703-1874] - Exhibits
- 10 - Vol. 9 [1875-2003] - Exhibits
- 11 - Vol. 10 Cover Letter re Confidential Exhibits
- 12 - SDGE Amicus Letter Re B310811 3 9 2021
- 13 - CPUC Opposition to SoCalGas Request for Emergency Stay 3-11-21
- 14 - SoCalGas Reply to CPUC Opp to Motion to Stay - 3-12-21
- 15 - Appellate Court's Temporary Stay Order - 3-16-21
- 16 - SoCalGas request for oral argument
- 17 - SoCalGas' 2nd Request to CPUC for Extension of Time to Comply with Res. ALJ-391 and D.21-03-001 - 3-18-21
- 18 - Cal Advocates Letter Opposing Request for Stay 3-18-21
- 19 - CPUC Grant of Ext'n To Comply 3-19-21
- 20 - SoCalGas Withdrawal of Request for Emergency Stay 3-19-21
- 21 - Joint Application for Extension of Time 3-19-21
- 22 - Order - Extension Of Briefing Schedule 3-22-21
- 23 - Order - Stay vacated & Oral Arg Off Calendar 3-22-21
- 24 - Cal Advocates Request to Appear as Real Party in Interest
- 25 - Cal Advocates Opp'n to SCG Request to file under seal
- 26 - SoCalGas Reply To CalPA Opp'n To Seal App'n 3-26-21
- 27 - CPUC Letter to Crt re CalAdvocates - 3-30-21
- 28 - Sierra Club Ltr re Common Interest Agreement - 4-1-21
- 29 - Order Denying RPI Request
- 30 - CPUC Answer to Petition for Writ of Review 6-1-2021
- 31- Exhibits to CPUC Answer to etition of Writ of Review 6-1-2021

PROOF OF SERVICE

I, Kelsey Fong, declare as follows:

I am employed in the County of Los Angeles, State of California, I am over the age of eighteen years and am not a party to this action; my business address is 333 South Grand Avenue, Los Angeles, CA 90071-3197, in said County and State. On July 16, 2021, I served the following document(s):

SOUTHERN CALIFORNIA GAS COMPANY'S REPLY IN SUPPORT OF ITS PETITION FOR WRIT OF REVIEW, MANDATE, AND/OR OTHER APPROPRIATE RELIEF; AND DECLARATION OF MICHAEL H. DORE

on the parties stated below, by the following means of service:

California Public Utilities Commission	**California Advocates**
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☑ **BY ELECTRONIC SERVICE THROUGH TRUEFILING**: I caused the documents to be electronically served through TrueFiling.

☑ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 16, 2021.

Kelsey Fong