

No. \_\_\_\_\_

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

**SECOND APPELLATE DISTRICT, DIVISION \_\_\_\_**

---

---

**SOUTHERN CALIFORNIA GAS COMPANY,**

*Petitioner,*

v.

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

*Respondent.*

---

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

**VOLUME 2 OF 10 (PAGES 287 TO 492 OF 2015)**

**IMMEDIATE RELIEF REQUESTED BY MARCH 16, 2021**

---

---

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

---

**GIBSON, DUNN & CRUTCHER LLP**

\*JULIAN W. POON, SBN 219843, JPOON@GIBSONDUNN.COM  
MICHAEL H. DORE, SBN 227442, MDORE@GIBSONDUNN.COM  
ANDREW T. BROWN, SBN 311734, ATBROWN@GIBSONDUNN.COM  
DANIEL M. RUBIN, SBN 319962, DRUBIN@GIBSONDUNN.COM  
MATTHEW N. BALL, SBN 327028, MNBALL@GIBSONDUNN.COM

333 SOUTH GRAND AVENUE  
LOS ANGELES, CALIFORNIA 90071-3197  
TELEPHONE: 213.229.7000  
FACSIMILE: 213.229.7520

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

## Chronological Index Volume 2

<u>Ex.</u>	<u>Document Description</u>	<u>File Date</u>	<u>Volume</u>	<u>Page</u>
4	Reply of the Public Advocates Office to Response of SoCalGas in the Discovery Dispute Between Public Advocates Office and SoCalGas, 10/2019 (Not in a Proceeding)  Attach. A to Reply – 10/25/19 Castello Declaration  Attach. B to Reply – 10/25/19 Buch Declaration	10/31/19	2	291   304  307
5	ALJ's Ruling in the Discovery Dispute Between Public Advocates Office and SoCalGas, 10/7/2019 (Not in a Proceeding)	11/01/19	2	309
6	SoCalGas's (U 904 G) Motion for Reconsideration/Appeal to the Full Commission Regarding ALJ's Ruling in the Discovery Dispute Between Public Advocates Office & SoCalGas, 10/7/2019 (Not in a Proceeding) Public Version (Declarations Nos. 3–6 Confidential)  11/30/19 Declaration of Johnny O. Tran  Ex. A – 10/29/19 Email re Discovery Dispute <b>[Redacted Public Version]</b>  Ex. B – 11/4/19 Email re Motion to Stay <b>[Redacted Public Version]</b>  Ex. C – 11/26/19 Email re Appeal <b>[Redacted Public Version]</b>  11/27/19 Declaration of Sharon Cohen  Ex. A – 8/26/19 Data Request <b>[Redacted Public Version]</b>  Ex. B – 8/26/19 Data Request <b>[Redacted Public Version]</b>		2  2  2  2  2  2	313  347  350  352  354  358  361  364

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

## Chronological Index Volume 2

<b>Ex.</b>	<b><u>Document Description</u></b>	<b><u>File Date</u></b>	<b><u>Volume</u></b>	<b><u>Page</u></b>
6	<p>Ex. C – 11/12/19 Email re PubAdv-SCE-001-SCS [<b>Redacted Public Version</b>]</p> <p>12/02/19 Declaration of Sharon Tomkins [<b>Redacted Public Version</b>]</p> <p>11/27/19 Declaration 4 [<b>Redacted Public Version</b>]</p> <p>11/29/19 Declaration 5 [<b>Redacted Public Version</b>]</p> <p>11/29/19 Declaration 6 [<b>Redacted Public Version</b>]</p>		2	367
			2	371
			2	376
			2	379
			2	382
7	Motion of SoCalGas’s (U 904 G) for Leave to File Under Seal Confidential Versions of Declaration Nos. 3, 4, 5 & 6 in Support of Its Motion for Reconsideration/Appeal	12/02/19	2	385
8	Tomkins Declaration in Support of Motion of SoCalGas for Leave to File Under Seal Confidential Versions of Declarations Nos. 3, 4, 5 & 6	12/02/19	2	390
9	<p>Public Advocates Office’s Response to SoCalGas’s (U 904 G) Motion For Reconsideration/Appeal to the Full Commission Regarding ALJ’s Ruling in the Discovery Dispute Between the Public Advocates Office and SoCalGas, 10/7/2019 (Not in a Proceeding) PUBLIC VERSION</p> <p>Attach. A – 10/7/19 Motion to Compel Responses From SoCalGas to Question 8 of Data Request (Not in a Proceeding)</p>	12/17/19	2	392
			2	413

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

## Chronological Index Volume 2

<u>Ex.</u>	<u>Document Description</u>	<u>File Date</u>	<u>Volume</u>	<u>Page</u>
9	Attach. B – 11/4/19 SoCalGas’s (U 904 G) Emergency Motion to Stay Pending Full Commission Review of ALJ’s Ruling in the Discovery Dispute Between Public Advocates Office & SoCalGas, 10/7/19 (Not in a Proceeding)		2	428
	Attach. C – 11/1/19 ALJ’s Ruling in the Discovery Dispute Between Public Advocates Office & SoCalGas, 10/7/19 (Not in a Proceeding)		2	441
	Attach. D – 8/13/19 Data Request No. CalAdvocates-SC-SCG-2019-05		2	445
	Attach. E – 8/27/19 SoCalGas’s Response to Data Request		2	451
	Attach. F – 10/17/19 SoCalGas Letter to PUC re Response to Data Request		2	472
	Attach. G – 6/14/19 – Questions on C4BES (Data Request) <b>[Redacted Public Version]</b>		2	482
	Attach. H – 8/13/19 – Questions on C4BES (Data Request)		2	487
	Attach. I – 12/17/19 Stephen Castello Declaration		2	492

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

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

**REPLY OF THE PUBLIC ADVOCATES OFFICE  
TO RESPONSE OF SOCALGAS IN THE DISCOVERY DISPUTE  
BETWEEN PUBLIC ADVOCATES OFFICE AND SOUTHERN CALIFORNIA  
GAS COMPANY, OCTOBER 2019 (NOT IN A PROCEEDING)**

**I. INTRODUCTION**

Pursuant to Rule 11.1(f) the Rules of Practice and Procedure of the California Public Utilities Commission (Commission) and the October 30, 2019 email Ruling of Administrative Law Judge Angela DeAngelis granting permission to submit a reply, the Public Advocates Office at the California Public Utilities Commission hereby submits this *Reply of the Public Advocates Office to Response of SoCalGas in the Discovery Dispute Between Public Advocates Office and Southern California Gas Company, October 2019 (Not in a Proceeding)* (Reply).

The facts underlying this matter were discussed in previous submissions and are generally not in dispute. Briefly, the Public Advocates Office is currently investigating Southern California Gas Company's (SoCalGas) funding of political lobbying activities, including, among other things, whether and to what extent ratepayer money was used to found and support Californians for Balanced Energy Solutions (C4BES). In furtherance of this investigation, the Public Advocates Office served a series of data requests on SoCalGas outside of any formal proceeding. These data requests include Data Request (DR) No. CalAdvocates-SC-SCG-2019-05, served on August 13, 2019. SoCalGas refuses to provide documents in response to Questions 8 of this DR, contending that the Public Advocates Office has no right to inquire into activities that SoCalGas claims are shareholder funded.

On October 7, 2019, the Public Advocates Office submitted to Commission President Batjer its *Motion to Compel Responses from Southern California Gas Company to Question 8 of Data Request CalAdvocates-SC-SCG-2019-05 (Not in a Proceeding)* (Motion to Compel). The Public Advocates Office sought this information in order to

perform its statutory duties and in conformance with Public Utilities (Pub. Util.) Code §§ 309.5(e) and 314. The Public Advocates Office also noted in its Motion to Compel that Administrative Law Judge Regina DeAngelis recently decided the same legal issue, in a related dispute between the same parties, in favor of the Public Advocates Office.<sup>1</sup>

On October 17, 2019, SoCalGas submitted its *Response of SoCalGas Pursuant to October 7, 2019 Motion to Compel Further Responses from Southern California Gas Company to Data Request – CalAdvocates – SC – SCG-2019-05 (Not in a Proceeding)* (Response). In its response SoCalGas argues:

- 1) The Commission has not “delegated authority” to the Public Advocates Office under Pub. Util. Code § 314;
- 2) Pub. Util. Code § 309.5(e) limits the Public Advocates Office’s discovery authority to information “necessary to perform its duties” and the Public Advocates Office has “failed to clearly articulate” how the requested information is necessary;
- 3) Permitting the Public Advocates Office to inspect shareholder information and documents in this instance would violate SoCalGas’ right to free speech under the First Amendment; and
- 4) The Public Advocates Office failed to meet and confer in good faith, depriving SoCalGas of due process.

The Public Advocates Office submits this Reply to address SoCalGas’ erroneous claims that the Public Advocates Office is not entitled to the information it needs to conduct this investigation under Pub. Util. Code §§ 309.5(e) and 314, and to correct inaccuracies in SoCalGas’ recitation of the facts surrounding the attempts to resolve this dispute.

---

<sup>1</sup> In opposing an earlier motion to compel submitted on August 14, 2019, SoCalGas largely relied the argument that neither Pub. Util. Code § 309.5(e) nor § 314 provides the Public Advocates Office with the authority to seek information related to shareholder-funded activities. SoCalGas is relying on the same reasoning here—that because the requested contracts are purportedly shareholder funded, they are beyond the Public Advocates Office’s statutory purview. In a September 10, 2019 Ruling, Judge DeAngelis stated that after reviewing the motion, response, and reply, the motion to compel was granted.

## II. DISCUSSION

### A. The Public Advocates Office has Authority to Obtain the Information Requested Under Pub. Util. Code §§ 309.5(e) and 314

#### 1. SoCalGas' Interpretation of Pub. Util. Code § 309.5(e) is Flawed

Question 8 of DR CalAdvocates-SC-SCG-2019-05 seeks all contracts and contract amendments covered by the Work Order Authorization which created the Balanced Energy IO.<sup>2</sup> SoCalGas objected to this request on two grounds. First, according to SoCalGas, the request sought information that is “outside the statutory authority delegated to the Public Advocates Office by Pub. Util. Code § 309.5.” Second, and somewhat circularly, SoCalGas asserts that “knowing this information will not assist the Public Advocates Office in performing its statutory duties” because, SoCalGas has stated, the Balanced Energy IO is not ratepayer funded.<sup>3</sup>

In its Response, SoCalGas argues that the Public Advocates Office’s ability to conduct discovery under Pub. Util. Code § 309.5(e) is limited to matters that SoCalGas deems necessary for the Public Advocates Office to perform its duties.<sup>4</sup> SoCalGas’ assertion that the Public Advocates Office may not inquire into shareholder funds is based on an interpretation of Pub. Util. Code § 309.5(e) that ignores the plain language of the statute.

---

<sup>2</sup> See Exhibit 4 to the Motion to Compel, DR CalAdvocates-SC-SCG-2019-05, dated August 13, 2019, at 4.

<sup>3</sup> See Exhibit 5 to the Motion to Compel, Southern California Gas Company’s Responses to Data Request CalAdvocates-SC-SCG-2019-05, dated August 27, 2019, at 8. In its Response, SoCalGas repeatedly states that the contracts in question are 100 percent shareholder funded. While the Public Advocates Office has authority to compel the production of information relating to shareholder funded activity under §§ 309.5(e) and 314, it has not been able to confirm that the withheld contracts are indeed 100 percent shareholder funded. In fact, on October 16, 2019, SoCalGas provided “responsive documents pertaining to contracts that are utilized by both the Balanced Energy IO and ratepayer funded accounts” although it continued to withhold “contracts that are exclusively shareholder funded.” See Attachment D to the Response (email dated Oct. 16, 2019). This suggests that SoCalGas’ statement in its original response to Question 8 that “the Balanced Energy IO is shareholder funded, not ratepayer funded” was less than candid.

<sup>4</sup> Response at 5-6.

In relevant part, Pub. Util. Code § 309.5(e) provides that:

The [Public Advocates Office] may compel the production or disclosure of any information it deems necessary to perform its duties from any entity regulated by the commission ... .

Thus, the plain language of Pub. Util. Code § 309.5(e) makes clear that the Public Advocates Office has sole discretion to determine what information is necessary for it to perform its duties.

Just as SoCalGas’s argument wrongly emphasizes the language “necessary to perform its duties,” and ignores the immediately preceding language—that the Public Advocates Office is entitled to *any information that it deems necessary to perform its duties*—its response wrongly focuses on how SoCalGas believes that the requested information is not necessary for the Public Advocates Office to perform its duties. There is no suggestion whatsoever in the statute that anyone other than the Public Advocates Office (and certainly not the regulated entity) may decide what is responsive or necessary for the Public Advocates Office to perform its duties. Rather, the plain language of Pub. Util. Code § 309.5(e) specifically allows for discovery of any information the Public Advocates Office deems necessary.

Further, Pub. Util. Code § 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. Pub. Util. Code § 309.5(e) specifically states that the Public Advocates Office is authorized to compel production of any information it deems necessary to perform its duties from any entity regulated by the Commission. In pursuing its goals to advocate on behalf of the interests of public utility customers, the Public Advocates Office may seek “any” information it deems necessary, whether that be information related to ratepayer funded activities or shareholder funded activities.<sup>5</sup>

---

<sup>5</sup> SoCalGas cited D.07-03-014 for the assertion that Commission decisions have “recognized limitations on Cal Advocates’ discovery rights.” Response at 5, n.11. However, D.07-03-014 stated only that the Public Advocates Office’s request in that proceeding to “receive automatically every piece of data supplied to the Commission” was unreasonable. D.07-03-014 at 220-221. While the decision stated that the Public Advocates Office’s need for access to data should be balanced with the rights of companies to avoid unreasonable requests for data, the decision did not limit the Public Advocates Office’s broad



SoCalGas also argues that the Public Advocates Office “has failed to clearly articulate how obtaining SoCalGas’ 100 percent shareholder funded contracts are necessary” to perform its statutory duties and that the Public Advocates Office “improperly attempts to expand its scope of authority contravening the express language of Pub. Util. Code §309.5(e).”<sup>6</sup> Although there is no requirement that the Public Advocates Office divulge its internal deliberations and strategy to the utilities, in an effort to resolve this dispute before resorting to Commission intervention the Public Advocates Office has provided SoCalGas with a number of reasons for why the Public Advocates Office seeks this information.<sup>7</sup> These reasons are not “shifting” as SoCalGas attempts to characterize them, but varied and not exclusive. These reasons also provide sufficient context to demonstrate that the Public Advocates Office deems the sought-after information necessary to perform its statutory duties.

**2. Pub. Util. Code § 314 Provides the Public Advocates Office with Broad Discovery Rights as Staff of the Commission**

As explained in the Motion to Compel, the Public Advocates Office’s discovery rights are broad, as provided by statute and confirmed by Commission decisions. As noted in Decision (D.) 01-08-062:

[The Public Advocates Office’s] scope of authority to request and obtain information from entities regulated by the Commission is as broad as that of any other units of our staff, including the offices of the Commissioners. It [is] constrained solely by a statutory provision that provides a

---

discovery rights in the manner SoCalGas suggests in this proceeding.

<sup>6</sup> Response at 5, 6.

<sup>7</sup> For example, at the September 16, 2019 meet and confer, the Public Advocates Office stated that one of the reasons it sought these contracts was to verify whether they were shareholder or ratepayer funded. The Public Advocates Office also mentioned that it and ratepayers have an interest in the cost and non-cost aspects of these contracts, such as the scope of the work related to “balanced energy” as described by the WOA. At the October 2, 2019 meet and confer, the Public Advocates Office explained that, among other things, the investigation was also seeking information on how the activities related to the contracts in Question 8 may have affected ratepayers’ interests in issues such as achieving a least-cost path to meeting the state’s decarbonization goals.

mechanism unique to [the Public Advocates Office] for addressing discovery disputes.<sup>8</sup>

SoCalGas argues that the Commission must formally delegate authority under § 314 to the Public Advocates Office in order for it to exercise discovery rights under this section.<sup>2</sup> However, contrary to SoCalGas' argument, the Public Advocates Office is already deemed to have such authority as staff of the Commission.<sup>10</sup> For example, in an order instituting investigation, the Commission “confirms that under Pub. Util. Code §§ 313, 314, 314.5, 315, 581, 582, 584, 701, 702, 771, 1794, and 1795, the Commission staff may obtain information from utilities and **is already deemed** to have the general investigatory authority of the Commission.”<sup>11</sup> (emphasis added). Additionally, as stated in D.01-08-062, the Public Advocates Office's discovery authority “is as broad as that of any other units of [the Commission's] staff, including the offices of the Commissioners.”

---

<sup>8</sup> D.01-08.062 at 6. See also D.04-02-010, *Decision Addressing New Regulatory Framework Audit, Monitoring Reports, and Review Schedule* (Feb. 11, 2004) at 6, 9 (noting that “ORA is an arm of this Commission, and its staff has the authority to examine and audit utility records” and that in the context of an audit, consistent with Pub. Util. Code §§ 309.5 and 314, among other sections, and D.01-08-062, a utility is “obligated to respond to ORA's data requests and those of its consultants” and “cannot refuse to respond to ORA's or its consultants' requests for information simply because [the utility] considers these outside the scope of the audit.”), and at 19 (conclusion of law number 34, “pursuant to § 314, [the utility] may not refuse to allow the Commission's staff . . . to inspect [its] records”); D.04-09-061 *Interim Opinion Regarding Phase 2B Audit Issues, Order Instituting Investigation on the Commission's Own Motion to Assess and Revise the New Regulatory Framework for Pacific Bell and Verizon California Incorporated*, (Sept. 23, 2004), at 113 (noting “a utility has little to gain from objecting to information requests” and that “[t]he authority of the Commission, its divisions, its staff and its contract auditors is **plenary** under § 314.”) (emphasis added); D.04-12-024, *Order Denying Application for Limited Rehearing of Decision 04-07-036, Denying Motion for Stay of Ordering Paragraph 14 of Decision 04-07-036, and Modifying Decisions 03-10-088 and 04-07-036* (Dec. 3, 2004) at 7 (“[Section 314] does not limit the right to inspection to the existence of a Commission proceeding, or even require particular justification. There **is no limitation placed on the type of papers or documents that may be inspected**; for example, documents that would otherwise not be admissible in court as evidence.”) (emphasis added).

<sup>2</sup> Response at 4-5.

<sup>10</sup> See D.01-08.062 at 10, finding of fact number five: “ORA staff members are Commission staff members as that term is used in § 314.”

<sup>11</sup> I.15-08-019, *Order Instituting Investigation on the Commission's Own Motion to Determine Whether Pac. Gas & Elec. Co. & PG&E Corps. Organizational Culture & Governance Prioritize Safety*, (Sept. 2, 2015) at 21. See also D.07.05.032, *Interim Opinion Implementing Senate Bill No. 1488, Relating to Confidentiality of Electric Procurement Data Submitted to the Commission* (May 3, 2007) at 72: “We make clear that DRA staff shall have the same access to data as other Commission staff, which has always been our intent.” (dicta); D.90-07-020, *Re AT&T Communications of California, Inc.* 37 CPUC 2d 4 (July 6, 1990) (“DRA needs no specific authorization from the Commission before asking for information from a utility or affiliate described in the statutes.”).

Because the Public Advocates Office’s discovery rights are broad and not constrained in the manner suggested by SoCalGas’ flawed statutory reading, the Public Advocates Office’s Motion to Compel should be granted.

**B. The Public Advocates Office’s Request Does Not Infringe on SoCalGas’ First Amendment Rights**

SoCalGas argues that seeking shareholder funded contracts “bear[s] no relationship to the purpose of Cal Advocates [sic] investigation,” and that the assertion that the contracts are needed “to determine whether SoCalGas’ shareholders are taking positions that are not consistent with State policy is not relevant to the question of whether SoCalGas is funding political lobbying activities with ratepayer or shareholder funds.”<sup>12</sup> Thus, SoCalGas contends that the Public Advocates Office’s discovery request is “excessive in breadth” and would chill shareholders’ First Amendment rights.<sup>13</sup>

SoCalGas’ arguments are without merit. SoCalGas argues that the Public Advocates Office must engage in the “least intrusive measures necessary to perform its assigned functions” and that because obtaining these contracts will not reveal whether they are ratepayer or shareholder funded, the request for the contracts, the request does not meet this standard. However, as repeatedly stated, such an inquiry is only one aspect of the Public Advocates Office’s present investigation.<sup>14</sup> Another relevant issue is that SoCalGas does not have an unfettered right to lobby the government when such lobbying is harmful to ratepayers.<sup>15</sup> If SoCalGas shareholders are undermining the interests of

---

<sup>12</sup> Response at 7-8.

<sup>13</sup> *Id.* at 8, citing *White v. Lee*, 227 F.3d 1214, 1228 (9th Cir. 2000).

<sup>14</sup> The case relied upon by SoCalGas is also distinguishable. There, the Ninth Circuit Court of Appeals found that an investigation by the Department of Housing and Urban Development (“HUD”) was overly broad in relation to the narrow purpose on which it later relied as justification. In part, the court found that the matter under investigation was a matter of public record and therefore HUD had no cause to undertake the various “extraordinarily intrusive” measures it did during its investigation. *White*, 227 F.3d at 1237-38. Such measures included advising the plaintiffs to cease publication of certain statements and demanding a list of names, addresses, and telephone numbers of peripheral parties and witnesses, among other measures. The Public Advocates Office has hardly taken “extraordinarily intrusive” measures akin to those described by the court. Further, if SoCalGas is concerned about the confidentiality of names and addresses of individuals identified in the contracts, there is a well-established method for claiming that such are confidential.

<sup>15</sup> See, e.g., D.12-12-036, *Decision Adopting a Code of Conduct and Enforcement Mechanisms Related to Utility Interactions with Community Choice Aggregators, Pursuant to Senate Bill 790* (adopting

ratepayers, the Public Advocates Office 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.

### **C. Civil Court Treatment of Similarly Flawed Discovery Arguments**

As explained in the Public Advocates Office’s Motion to Compel, the same legal issue between the same parties was already decided by Judge DeAngelis. SoCalGas now argues that because Question 8 was not explicitly before Judge DeAngelis as part of the first motion to compel filed on August 14, 2019,<sup>16</sup> the legal argument it made then was not addressed in the ruling granting the first motion to compel and that it is “entirely speculative” to conclude that Judge DeAngelis did not find merit in SoCalGas’ previous arguments.<sup>17</sup>

The doctrine of collateral estoppel precludes the litigation of an issue argued and decided in a prior proceeding. The doctrine applies if: 1) the issue sought to be precluded is identical to that decided in a former proceeding; 2) the issue was actually litigated in the former proceeding; 3) the issue was necessarily decided in the former proceeding; 4) the decision in the former proceeding was final and decided on the merits; and 5) the party against whom preclusion is sought is the same as, or in privity with, the party to the former proceeding.<sup>18</sup> Collateral estoppel applies here to preclude the litigation of the same issue. In refusing to answer Question 8, SoCalGas relied on the same reasoning that it did in opposing the first motion to compel—that because the contracts are

---

definitions and placing limits on utility marketing and lobbying activities that could discourage interest in community choice aggregators).

<sup>16</sup> Although the Public Advocates Office noted in its reply in the previous dispute that Question 8 was not a subject of that dispute, the Public Advocates Office purposefully drew the ALJ’s attention to SoCalGas’ continued failure to cooperate based on the same flawed legal arguments. *See* Exhibit 3 to Motion to Compel at 9-10.

<sup>17</sup> Response at 9-10.

<sup>18</sup> *Lucido v. Superior Court*, 51 Cal. 3d 335, 341 (1990). The doctrine of collateral estoppel is also referred to as issue preclusion and at times has been encompassed within the term “res judicata.” However, as the Supreme Court of California has noted, “The doctrine of collateral estoppel is one aspect of the concept of res judicata. In modern usage, however, the two terms have distinct meanings.” *Id.*, at n.3.

purportedly shareholder funded, they are beyond the Public Advocates Office’s statutory purview. Judge DeAngelis rejected this reasoning in granting the August 14, 2019 motion to compel. That ruling was final and on the merits and involved the identical parties. Therefore this issue should not have had to be litigated a second time, regardless of whether the particular data request question is different.

Civil courts have treated similarly frivolous arguments presented during discovery disputes, and purposefully obstructionist tactics in general, with an order for sanctions. For example, courts can impose a variety of sanctions for various misuses of the discovery process, such as “failing to respond or to submit to an authorized method of discovery; making, without substantial justification, an unmeritorious objection to discovery; making an evasive response to discovery; and disobeying a court order to provide discovery.”<sup>19</sup> Sanctions that may be imposed in civil courts include monetary sanctions, issue sanctions, evidentiary sanctions, terminating sanctions, or contempt sanctions.<sup>20</sup>

Should SoCalGas continue to make stale and frivolous arguments that obstruct the Public Advocates Office’s investigation, the Commission should adopt traditional civil court remedies to address and dissuade such continued abuses of process.

**D. SoCalGas’ Request to Be Given Two Weeks to File an Appeal of a Ruling in the Public Advocates Office’s Favor Should Be Denied**

Given SoCalGas’s protracted refusal to comply with its obligations under Pub. Util. Code §§ 309.5(e) and 314, the Public Advocates Office moved that SoCalGas be compelled to produce responsive documents within 24 hours of the granting of the Motion to Compel.<sup>21</sup> SoCalGas argues that this request is “arbitrary” and that “[d]ue to

---

<sup>19</sup> *Dep’t of Forestry & Fire Prot. v. Howell*, 18 Cal. App. 5th 154, 191 (2017), *reh’g denied* (Jan. 3, 2018), *review denied* (Mar. 14, 2018); *see also Tenderloin Hous. Clinic, Inc. v. Sparks*, 8 Cal. App. 4th 299, 304 (1992) (trial court may impose sanctions for “tactics that are frivolous or solely intended to cause unnecessary delay”).

<sup>20</sup> *Howell*, 18 Cal. App. 5th at 191.

<sup>21</sup> Motion to Compel at 13.

the invasiveness” of the data request, should the Motion to Compel be granted, the ruling should “provide SoCalGas at least two weeks to file an appeal with a concurrent motion to stay enforcement of the ruling.”<sup>22</sup> SoCalGas’ request should be denied.

As an initial matter, SoCalGas’ request is conclusory and offered in its Response for the first time. Moreover, SoCalGas has already engaged in repeated efforts to stonewall the Public Advocates Office’s investigation. Among other things, DR CalAdvocates-SC-SCG-2019-05 was served on August 13, 2019, with a response due on August 27, 2019. It has been nearly two months since SoCalGas should have candidly and fully responded to the data request, in keeping with its obligations under the Pub. Util. Code as a regulated entity. SoCalGas should not be allowed to further delay the Public Advocates Office’s investigation and should be ordered to produce the requested documents forthwith.

**E. The Public Advocates Office Met and Conferred in Good Faith and SoCalGas’ Recitation of the Relevant Facts is Inaccurate**

The Public Advocates Office and SoCalGas met and conferred multiple times in an attempt to resolve this dispute informally.<sup>23</sup> In its Response, SoCalGas inaccurately relates the facts regarding the meet and confer conferences in this matter and wrongly asserts that the Public Advocates Office did not meet and confer in good faith, thus harming its due process rights.<sup>24</sup> The Public Advocates Office has continuously acted in good faith in attempting to resolve this matter informally and SoCalGas has not been deprived of due process.

SoCalGas asserts that at the September 16, 2019 meet and confer, it understood that the reason the Public Advocates Office sought the contracts requested in Question 8 was to verify whether the contracts are ratepayer or shareholder funded.<sup>25</sup> SoCalGas

---

<sup>22</sup> Response at 10.

<sup>23</sup> See Motion to Compel at 6-8, 12-13.

<sup>24</sup> Response at 8-9.

<sup>25</sup> *Id.* at 3.

contends that “despite” answering questions related to its accounting practices at a subsequent meet and confer on September 27, 2019, the Public Advocates Office “continued to demand the production of the contracts.”<sup>26</sup> While the meeting on September 27, 2019, was helpful, and indeed facilitated a resolution regarding a separate question in the data request, that the dispute over Question 8 was not resolved does not indicate that the Public Advocates Office misled SoCalGas, deprived them of due process, or engaged in bad faith.

Additionally, as stated in the Motion to Compel, in response to repeated questions about the purpose behind Question 8 during the October 2, 2019 meet and confer, the Public Advocates Office explained that the investigation was in part seeking information on how the activities related to the contracts in Question 8 may have affected ratepayers’ interests in issues such as achieving a least-cost path to meeting the state’s decarbonization goals.<sup>27</sup> Despite providing this explanation during the October 2, 2019 meeting, in its Response SoCalGas repeatedly claims that this reasoning was offered for the first time in the Motion to Compel and its due process rights have thus been harmed.<sup>28</sup>

As an initial matter, SoCalGas cites no case or statutory authority for its claim that the Public Advocates Office (or any other party) must explain its litigation strategy in order to obtain responsive answers to data requests. Nonetheless, the Public Advocates Office provided this further explanation for the investigation during the October 2, 2019 meet and confer.

SoCalGas has not been deprived of due process—both because due process does not require a party seeking discovery to set forth the details of its litigation and/or investigation strategy, and because the Public Advocates Office provided its reasoning and SoCalGas had an opportunity to discuss it during the meet and confer, prior to the

---

<sup>26</sup> *Ibid.*

<sup>27</sup> See Attachment B, Declaration of Daniel Buch, dated October 25, 2019.

<sup>28</sup> Response at 6, 9.

filing of the Motion to Compel. SoCalGas' baseless argument that it has been denied due process is an attempt to undermine the Motion to Compel and should be disregarded.

SoCalGas also asserts that at the October 2, 2019 meet and confer the Public Advocates Office stated it "wanted to review the contracts' scope of work to determine whether SoCalGas' shareholders are taking positions that are inconsistent with State policy." In point of fact, this statement alone (which was shared at the September 16, 2019 meet and confer) should have put SoCalGas on notice that verifying whether the contracts were ratepayer or shareholder funded was not the Public Advocates Office's sole concern in asking Question 8.

Additionally, SoCalGas notes in its Response that on October 4, 2019, its regulatory case manager left a voicemail message for the Public Advocates Office asking to discuss possible ways to "bridge the gap pertaining to the request for contracts."<sup>29</sup> SoCalGas goes on to assert that the Public Advocates Office wrongly filed the Motion to Compel without any further meet and confer.<sup>30</sup> SoCalGas ignores the fact that the parties ended the meeting on October 2, 2019, by agreeing that they were at an impasse.<sup>31</sup> At no time after agreeing that the parties were at an impasse did SoCalGas' counsel contact the Public Advocates Office's counsel requesting a further meet and confer.

### III. CONCLUSION

For the reasons explained above and in the October 7, 2019 Motion to Compel, and consistent with the broad discovery authority granted under Pub. Util. Code §§ 309.5(e) and 314, the Public Advocates Office's Motion to Compel should be granted and SoCalGas should be compelled to provide fully responsive documents in response to Question 8 of DR CalAdvocates-SC-SCG-2019-05.

---

<sup>29</sup> Response at 3. The voicemail message, recorded on Friday October 4, 2019, was left for Stephen Castello, the Public Advocates Office's analyst assigned to this investigation, not counsel. *See* Attachment A, Declaration of Stephen Castello, dated October 25, 2019.

<sup>30</sup> Response at 3.

<sup>31</sup> *See* Motion to Compel at 8.



Respectfully submitted,

/s/ REBECCA VORPE

---

REBECCA VORPE

Attorney for the  
Public Advocates Office

California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, California 94102  
Telephone: (415) 703-4443  
Email: [rebecca.vorpe@cpuc.ca.gov](mailto:rebecca.vorpe@cpuc.ca.gov)

October 31, 2019

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

# ATTACHMENT A

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

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

**DECLARATION OF STEPHEN CASTELLO**

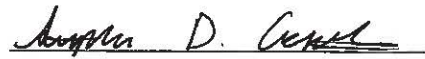
I, Stephen Castello, hereby declare:

1. I am a Public Utilities Regulatory Analyst I in the Electricity Pricing and Customer Programs Branch of the Public Advocates Office at the California Public Utilities Commission. If called as a witness, I could and would competently testify as to the matters stated herein from my own personal knowledge, except as to any matters that I state upon information and belief, and, as to those matters, I am informed and believe them to be true.
2. I have been assigned to the investigation in which the Public Advocates Office issued DR CalAdvocates-SC-SCG-2019-05.
3. When I arrived at work on Monday October 7, 2019, I retrieved a voicemail message from Shirley Arazi, who I have been informed works in regulatory affairs for Southern California Gas Company. Ms. Arazi had left the message for me on Friday, October 4, 2019, indicating, among other things, that she wanted to discuss Question 8 of DR CalAdvocates-SC-SCG-2019-05. I did not retrieve the message on October 4, 2019, because I was out of the office.
4. In her voicemail, Ms. Arazi suggested that while there were contracts in response to Question 8 that were fully shareholder funded, there were certain contracts that were not fully shareholder funded, and that there may be a way to “bridge the gap” by providing those contracts. She did not mention another meet and confer.
5. I had communicated with Ms. Arazi by email on Friday, October 4, 2019. In an email sent at 4:14 p.m., she mentioned that she had left a voicemail for me earlier that day to inform me that SoCalGas would not be able to provide a timeline for the production dates for a different data request (DR CalAdvocates-SC-SCG-

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

2019-06), but she did not mention Question 8 of DR CalAdvocates-SC-SCG-2019-05.

Dated this 25<sup>th</sup> of October, 2019, at San Francisco, California.



Stephen Castello  
Public Utilities Regulatory Analyst I  
Public Advocates Office  
California Public Utilities Commission

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

# **ATTACHMENT B**

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

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

**DECLARATION OF DANIEL BUCH**

I, Daniel Buch, hereby declare:

1. I am the Program and Project Supervisor of the Customer Programs team in the Electricity Pricing and Customer Program Branch of the Public Advocates Office at the California Public Utilities Commission. If called as a witness, I could and would competently testify as to the matters stated herein from my own personal knowledge.
2. I have supervisory responsibility for the investigation in which the Public Advocates Office issued DR CalAdvocates-SC-SCG-2019-05.
3. I was present at and participated in the October 2, 2019, meet and confer telephone conference between Southern California Gas Company (SoCalGas) and the Public Advocates Office.
4. During the October 2, 2019 meet and confer, SoCalGas pressed for further justification regarding the Public Advocates Office's investigation. In response, I stated that that the investigation was in part seeking information on how the activities related to the contracts in Question 8 of DR CalAdvocates-SC-SCG-2019-05 may have affected ratepayers' interests in issues such as achieving a least-cost path to meeting the state's decarbonization goals.

Dated this 25<sup>th</sup> of October, 2019, at San Francisco, California.



Daniel Buch  
Program and Project Supervisor  
Electricity Pricing and Customer Programs Branch  
Public Advocates Office  
California Public Utilities Commission

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

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

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

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

**1. Background**

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

## 2. Discussion

The October 7, 2019 Motion to Compel states that SoCalGas responded to Data Request - CalAdvocates-SC-SCG-2019-05 but, regarding Question 8, refused to provide responsive documents in response to Question 8.<sup>1</sup>

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

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

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

---

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



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

Dated November 1, at San Francisco, California.

/s/ REGINA M. DEANGELIS

Regina M. DeAngelis  
Administrative Law Judge

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

## INFORMATION REGARDING SERVICE

I have electronically served all persons on the attached.

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

Regina DeAngelis, [Regina.deangelis@cpuc.ca.gov](mailto:Regina.deangelis@cpuc.ca.gov)

Rebecca Vorpe, [Rebecca.Vorpe@cpuc.ca.gov](mailto:Rebecca.Vorpe@cpuc.ca.gov)

[JQTran@socalgas.com](mailto:JQTran@socalgas.com)

[CSierzant@socalgas.com](mailto:CSierzant@socalgas.com)

[SLee5@socalgas.com](mailto:SLee5@socalgas.com)

[Buch@cpuc.ca.gov](mailto:Buch@cpuc.ca.gov)

[Stephen.Castello@cpuc.ca.gov](mailto:Stephen.Castello@cpuc.ca.gov)

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

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

/s/ REGINA M. DEANGELIS

---

Regina DeAngelis

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

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

**SOUTHERN CALIFORNIA GAS COMPANY'S (U 904 G) MOTION 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)**

JOHNNY Q. TRAN

Attorneys for:

**SOUTHERN CALIFORNIA GAS COMPANY**

555 West Fifth Street, Suite 1400

Los Angeles, California 90013

Telephone: (213) 244-2981

Facsimile: (213) 629-9620

Email: [JQTran@socalgas.com](mailto:JQTran@socalgas.com)

Julian W. Poon

Michael H. Dore

Gibson, Dunn & Crutcher LLP

Los Angeles, California 90071-3197

Telephone: (213) 229-7000

Facsimile: (213) 229-7520

Email: [jpoon@gibsondunn.com](mailto:jpoon@gibsondunn.com); [mdore@gibsondunn.com](mailto:mdore@gibsondunn.com)

December 2, 2019

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

**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

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

**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

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

**TABLE OF AUTHORITIES**

<b>Cases</b>	<u>Page(s)</u>
<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&amp;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&amp;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 &amp; Elec. Co. v. Pub. Utils. Comm'n</i> (2000) 85 Cal.App.4th 86 .....	10
<i>Pac. Gas &amp; 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

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

**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 &amp; 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
<b>Constitutional Provisions</b>	
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

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



**TABLE OF AUTHORITIES** *(continued)*

	<u>Page(s)</u>
<b>Statutes</b>	
Pub. Util. Code, § 309.5, subd. (e).....	20
Pub. Util. Code, § 2107.....	8, 22
<b>Other Authorities</b>	
CPUC, <i>Building Decarbonization: Fact vs. Fiction</i> , <a href="https://www.cpuc.ca.gov/WorkArea/DownloadAsset.aspx?id=6442462472">https://www.cpuc.ca.gov/WorkArea/DownloadAsset.aspx?id=6442462472</a> .....	17
CPUC, <i>Strategic Directives, Governance Process Policies, and Commission-Staff Linkage Policies</i> (Feb. 20, 2019) .....	22

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

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

**SOUTHERN CALIFORNIA GAS COMPANY’S (U 904 G) MOTION 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)**

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,”<sup>1</sup> and Chief ALJ Anne Simon’s October 29, 2019 email instructions,<sup>2</sup> Southern California Gas Company (“SoCalGas”) respectfully submits this Motion for Reconsideration/Appeal<sup>3</sup> to the Full Commission Regarding Administrative Law Judge’s Ruling in the Discovery Dispute Between

---

<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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 Office<sup>4</sup> 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

---

<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

---

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

<sup>6</sup> 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*.<sup>7</sup> 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).<sup>8</sup> 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

---

<sup>7</sup> 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”).

<sup>8</sup> 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).<sup>9</sup>

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.)<sup>10</sup>

---

<sup>9</sup> 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.)

<sup>10</sup> 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.<sup>11</sup>

### 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,<sup>12</sup> 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”].)<sup>13</sup>

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

---

<sup>11</sup> 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>.

<sup>12</sup> 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.)

<sup>13</sup> 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.”].)<sup>14</sup>

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

---

<sup>14</sup> 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.<sup>15</sup>

**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

---

<sup>15</sup> 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.”<sup>16</sup>

---

<sup>16</sup> 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.”].)<sup>17</sup>

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”].)

---

<sup>17</sup> 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.<sup>18</sup> 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.)<sup>19</sup> 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

---

<sup>18</sup> 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.*)

<sup>19</sup> 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.<sup>20</sup> 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;

---

<sup>20</sup> 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:  
**SOUTHERN CALIFORNIA GAS COMPANY**  
555 West Fifth Street, Suite 1400  
Los Angeles, California 90013  
Telephone: (213) 244-2981  
Facsimile: (213) 629-9620  
Email: [JQTran@socalgas.com](mailto:JQTran@socalgas.com)

Julian W. Poon  
Michael H. Dore  
**Gibson, Dunn & Crutcher LLP**  
Los Angeles, California 90071-3197  
Telephone: (213) 229-7000  
Facsimile: (213) 229-7520  
Email: [jpoon@gibsondunn.com](mailto:jpoon@gibsondunn.com); [mdore@gibsondunn.com](mailto:mdore@gibsondunn.com)

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

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

DECLARATION OF  
JOHNNY Q. TRAN

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

**DECLARATION OF JOHNNY Q. TRAN**

1, 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

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

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

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



**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.

---

This email originated outside of Sempra Energy. Be cautious of attachments, web links, or requests for information.

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

# EXHIBIT B

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

## 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](mailto: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>

---

This email originated outside of Sempra Energy. Be cautious of attachments, web links, or requests for information.

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

# EXHIBIT C

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

## 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  
Tel: (213) 244-2981  
Email: [JQTran@socalgas.com](mailto:JQTran@socalgas.com)



A Sempra Energy utility

**From:** Ghaffarian, Pouneh [REDACTED]  
**Sent:** Monday, November 25, 2019 4:48 PM  
**To:** Tran, Johnny Q <[JQTran@socalgas.com](mailto: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](mailto: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]).

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](mailto:JQTran@socalgas.com)



---

This email originated outside of Sempra Energy. Be cautious of attachments, web links, or requests for information.

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

DECLARATION OF  
SHARON COHEN

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



**DECLARATION OF SHARON L. COHEN**

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

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

2. I am employed by San Diego Gas & Electric Company (SDG&E) as Senior Counsel – Regulatory.

3. I am submitting this Declaration in Support of Southern California Gas Company’s (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.

4. I am informed that on or about August 26, 2019, the Public Advocates Office served Data Requests No. PubAdv-SDG&E-001-SCS to SDG&E and Data Requests No. PubAdv-SCG-001-SCS to SoCalGas, which pose identical questions. I am the attorney representing SDG&E and SoCalGas on these data requests. Question 1 of the data requests states: “Please provide a list of all contracts active in the last 18 months associated with communications, advocacy, and/or public outreach. For each contract, include: scope of work, contract number, expense to date, account (cost center) where cost was recorded, and designation of whether that account was originally recorded to a ratepayer or shareholder funded account. For each contract, indicate whether the contract was competitively bid. If not competitively bid, please provide the sole-source justification documentation, and a copy of the executed contract. Please see attached Excel template.” A true and correct copy of the Data Requests Nos. PubAdv-SDG&E-001-SCS and PubAdv-SCG-001-SCS are attached here to as Exhibits A and B without Excel template.

5. On November 4, 2019, after meet and confer sessions with representatives of the Public Advocates Office, which modified the scope of

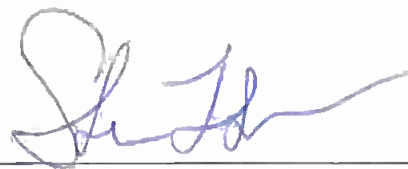
Document received by the CA 2nd District Court of Appeal.

Question 1 and the time for responses, SDG&E and SoCalGas timely served their responses to Question 1 agreeing to produce (and produced) certain contracts and objecting to the production of contracts that are 100% shareholder funded.

6. On November 12, 2019, I received an e-mail from Kerriann Sheppard, Counsel for the Public Advocates Office. In the e-mail, Ms. Sheppard stated that SoCalGas and SDG&E are required to produce all responsive contracts, whether or not they are shareholder funded. To support the Public Advocates Office's assertion, Ms. Sheppard cited to Administrative Law Judge Regina DeAngelis' November 1, 2019 Ruling stating that the ALJ has "ruled on this same issue and ordered SoCalGas to provide the contracts it alleged were 100% shareholder funded. In light of this ruling, we request that you provide the omitted contracts so that another motion to compel would not be necessary." A true and correct copy of Ms. Sheppard's November 12, 2019 e-mail is attached hereto as Exhibit C.

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

Executed on November 27, 2019.



---

Sharon L. Cohen

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

# EXHIBIT A

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



*Public Advocates Office  
California Public Utilities Commission*

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

## DATA REQUEST

**Date:** 26 August 2019

**Responses Due:** 10 September 2019

**To:** Chuck Manzuk  
[REDACTED]  
[REDACTED]

**From:** Clayton Tang and Truman Burns, Project Coordinators  
Office of Ratepayer Advocates  
505 Van Ness Avenue, Room 4205  
San Francisco, CA 94102

**Originated by:** Stephen Castello

**Phone:** [REDACTED]

**Email:** [REDACTED]

**Data Request No:** PubAdv-SDG&E-001-SCS

**Subject:** Communications, Advocacy & Public Outreach

### Please provide the following:

1. Please provide a list of all contracts active in the last 18 months associated with communications, advocacy, and/or public outreach. For each contract, include: scope of work, contract number, expense to date, account (cost center) where cost was recorded, and designation of whether that account was originally recorded to a ratepayer or shareholder funded account. For each contract, indicate whether the contract was competitively bid. If not competitively bid, please provide the sole-source justification documentation, and a copy of the executed contract. Please see attached Excel template.
2. Please provide a headcount of personnel associated with governmental relations (not including personnel who primarily work with CPUC staff). Provide the percentage of time that is recorded to ratepayer funded accounts (and list those accounts). Provide the percentage of time that is recorded to shareholder accounts. Provide a list of any journal entries (including unique identification information) associated with the recorded time of these personnel from 1/1/2019 to present. Please see attached Excel template.

## END OF REQUEST

---

### **INSTRUCTIONS**

You are instructed to answer the following Data Requests in the above-captioned proceeding, with written, verified responses per Public Utilities Code §§ 309.5 and 314, and Rules 1.1 and 10.1 of the California Public Utilities Commission's Rules of Practice and Procedure. Restate the text of each request prior to providing the response. If you have any questions regarding this data request, please contact the Originator at the email address or phone number above.

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

Identify the person providing the answer to each data request and his/her contact information. All data responses need to have each page numbered, referenced, and indexed so worksheets can be followed. If any numbers are calculated, include a copy of all supporting electronic files, with data and formulas intact and functioning, so that the formula and their sources can be reviewed. Responses should be provided both in the original electronic format, if available, and in hard copy. (If available in Word or Excel format, send the Word document or Excel file and do not send the information only as a PDF file.) All electronic documents submitted in response to this data request should be in readable, downloadable, printable, and searchable formats, unless use of such formats is infeasible.

Documents produced in response to the data requests should be numbered, and indexed if voluminous. Responses to data requests that refer to or incorporate documents should identify the particular documents referenced by page numbers.

If a request, definition, or an instruction, is unclear, notify ORA as soon as possible. In any event, answer the request to the fullest extent possible, specifying the reason for your inability to answer the remaining portion of the Data Request.

Provide two copies of the above information as it becomes available but no later than the due date identified above. Provide electronic responses if possible, and set of hard copy responses with your submittal to the data request Originator and the ORA Project Coordinator(s).

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

# EXHIBIT B

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



*Public Advocates Office  
California Public Utilities Commission*

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

## DATA REQUEST

**Date:** 26 August 2019

**Responses Due:** 10 September 2019

**To:** Chuck Manzuk  
[REDACTED]  
[REDACTED]

**From:** Clayton Tang and Truman Burns, Project Coordinators  
Office of Ratepayer Advocates  
505 Van Ness Avenue, Room 4205  
San Francisco, CA 94102

**Originated by:** Stephen Castello

**Phone:** [REDACTED]

**Email:** [REDACTED]

**Data Request No:** PubAdv-SCG-001-SCS

**Subject:** Communications, Advocacy & Public Outreach

### Please provide the following:

1. Please provide a list of all contracts active in the last 18 months associated with communications, advocacy, and/or public outreach. For each contract, include: scope of work, contract number, expense to date, account (cost center) where cost was recorded, and designation of whether that account was originally recorded to a ratepayer or shareholder funded account. For each contract, indicate whether the contract was competitively bid. If not competitively bid, please provide the sole-source justification documentation, and a copy of the executed contract. Please see attached Excel template.
2. Please provide a headcount of personnel associated with governmental relations (not including personnel who primarily work with CPUC staff). Provide the percentage of time that is recorded to ratepayer funded accounts (and list those accounts). Provide the percentage of time that is recorded to shareholder accounts. Provide a list of any journal entries (including unique identification information) associated with the recorded time of these personnel from 1/1/2019 to present. Please see attached Excel template.

## END OF REQUEST

---

### **INSTRUCTIONS**

You are instructed to answer the following Data Requests in the above-captioned proceeding, with written, verified responses per Public Utilities Code §§ 309.5 and 314, and Rules 1.1 and 10.1 of the California Public Utilities Commission's Rules of Practice and Procedure. Restate the text of each request prior to providing the response. If you have any questions regarding this data request, please contact the Originator at the email address or phone number above.

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

Identify the person providing the answer to each data request and his/her contact information. All data responses need to have each page numbered, referenced, and indexed so worksheets can be followed. If any numbers are calculated, include a copy of all supporting electronic files, with data and formulas intact and functioning, so that the formula and their sources can be reviewed. Responses should be provided both in the original electronic format, if available, and in hard copy. (If available in Word or Excel format, send the Word document or Excel file and do not send the information only as a PDF file.) All electronic documents submitted in response to this data request should be in readable, downloadable, printable, and searchable formats, unless use of such formats is infeasible.

Documents produced in response to the data requests should be numbered, and indexed if voluminous. Responses to data requests that refer to or incorporate documents should identify the particular documents referenced by page numbers.

If a request, definition, or an instruction, is unclear, notify ORA as soon as possible. In any event, answer the request to the fullest extent possible, specifying the reason for your inability to answer the remaining portion of the Data Request.

Provide two copies of the above information as it becomes available but no later than the due date identified above. Provide electronic responses if possible, and set of hard copy responses with your submittal to the data request Originator and the ORA Project Coordinator(s).

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



# EXHIBIT C

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

## Trujillo, Leslie A

---

**From:** Sheppard, Kerriann [REDACTED]  
**Sent:** Tuesday, November 12, 2019 9:28 AM  
**To:** Cohen, Sharon L  
**Cc:** Castello, Stephen  
**Subject:** [EXTERNAL] Re: PubAdv-SCE-001-SCS

**Follow Up Flag:** Flag for follow up  
**Flag Status:** Flagged

Hi Sharon,

I received your voicemail yesterday. However we were closed for Veterans Day.

The omitted information are the contracts which Sempra utilities allege are 100% shareholder funded. These contracts are responsive to our data request and are not privileged information. So whether or not they are shareholder funded does not provide a proper basis to withhold this information from the Public Advocates Office.

In a recent ruling on a motion to compel regarding DR CalAdvocates-SC-SCG-2019-05, On November 1, 2019, Administrative Law Judge Regina DeAngelis ruled on this same issue and ordered SoCalGas to provide the contracts it alleged were 100% shareholder funded. In light of this ruling, we request that you provide the omitted contracts so that another motion to compel would not be necessary. Especially since an ALJ has recently ruled against one of your companies on the same issue.

Please let me know what time today would work for a meet and confer conference call.

Or let us know if Sempra Utilities will provide the omitted information in light of ALJ DeAngelis' ruling.

Regards,

Kerriann Sheppard  
Counsel for the Public Advocates Office

On Nov 6, 2019, at 12:39 PM, Sheppard, Kerriann [REDACTED] wrote:

Ms. Cohen,

The Public Advocates Office would like to schedule a meet and confer teleconference call regarding SDG&E's and SoCalGas' response to Question 1 of the Public Advocates Office's recent data request PubAdv-SCG-001-SCS.

Please let me know the earliest date and time that you are able to meet and confer regarding this matter. Please include any other SDG&E and SoCalGas employees/counsel that would need to be present to resolve this matter.

Regards,

Kerriann Sheppard  
Counsel for the Public Advocates Office

**From:** Cohen, Sharon L [REDACTED]  
**Sent:** Monday, November 04, 2019 12:36 PM  
**To:** Castello, Stephen [REDACTED]  
**Cc:** Sheppard, Kerriann [REDACTED]  
**Subject:** RE: PubAdv-SCE-001-SCS

Hi Stephen,

Our response was served on Friday for both Companies, and you appear to be copied on the email transmittal of the responses. I can forward them to you separately in case there was a glitch with your email address. We did receive a receipt confirmation from Mr. Burns. Please let me know if you receive the forwarded two packages. Thank you.

Best regards,  
Sharon

*Sharon L. Cohen*  
*Regulatory Counsel*  
San Diego Gas & Electric Company  
8330 Century Park Ct.,  
San Diego, CA 92123

**From:** Castello, Stephen [REDACTED]  
**Sent:** Monday, November 4, 2019 12:22 PM  
**To:** Cohen, Sharon L [REDACTED]  
**Cc:** Sheppard, Kerriann [REDACTED]  
**Subject:** [EXTERNAL] PubAdv-SCE-001-SCS

Hi Sharon,

Hope you've been well. I have not received SoCalGas' response to PubAdv-SCE-001-SCS. I was expecting the complete production on Friday (11/1/19) as we discussed. Could you give me an update on the status? Just so you are aware, we received a response from SDG&E on Friday.

Thanks,  
Stephen

Stephen Castello, Regulatory Analyst  
Public Advocates Office  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

---

This email originated outside of Sempra Energy. Be cautious of attachments, web links, or requests for information.

---

This email originated outside of Sempra Energy. Be cautious of attachments, web links, or requests for information.

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

# DECLARATION 3

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

## DECLARATION OF SHARON TOMKINS

I, Sharon Tomkins, declare and state as follows:

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

2. I am employed by Southern California Gas Company (SoCalGas) as Vice President, Strategy, Engagement and Chief Environmental Officer. I have worked for SoCalGas since 2010. In my current role, my responsibilities include environmental services and developing and delivering the information that meets customers' energy needs and supports state environmental and social policy objectives.

3. I am submitting this Declaration in Support of Southern California Gas Company's (SoCalGas) 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 (ALJ Ruling). If the non-public contracts and communications SoCalGas has had regarding its political activity to advance natural gas are required to be disclosed in response to the demands of the Public Advocates Office, it will alter how SoCalGas and its partners, consultants, and others work together and communicate in the future regarding matters of shared political interest.

4. In response to the ALJ Ruling requiring SoCalGas to produce the contracts within two business days, SoCalGas filed an Emergency Motion to Stay the ALJ's Ruling. Because SoCalGas did not receive a ruling on our Emergency Motion to Stay, we were required to produce the contracts or be subject to potential penalties up to \$100,000 a day and other consequences. SoCalGas produced the contracts under protest.

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

5. Forcing 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. We had to make the choice of violating an ALJ Ruling or violating our First Amendment right to political expression and association.

6. In connection with SoCalGas' political activity to advance natural gas solutions, I communicate with SoCalGas' consultants, partners, and other entities and individuals about contractual terms, scope of work and matters of public debate. I have helped formulate strategy and communicated with others on behalf of SoCalGas.


7. My work for SoCalGas has included sensitive discussions in furtherance of developing strategy and advocacy associated with natural gas solutions and selecting our message and the best means to promote that message. It also has included recommending that others become involved with SoCalGas in this political process.

8. I and SoCalGas will need to take into consideration the potential disclosure of such communication in the future as a result of such forced disclosure. As a result, it will have a chilling effect on those communications and associations and could limit our future associations.

9. In the future, I and 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.

10. Based on conversations I have had, others may be less likely to associate with SoCalGas. [REDACTED]

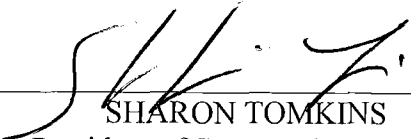
[REDACTED]  
[REDACTED]  
[REDACTED]



11. We know that information received from SoCalGas in response to data requests has been disclosed to the Los Angeles Times. Sharing SoCalGas' contracts with the media has further compounded the chilling effect on SoCalGas' right to political expression and association.

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

Executed on December 2, 2019.

  
SHARON TOMKINS  
Vice President of Strategy, Engagement and  
Chief Environmental Officer

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



# DECLARATION 4

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

DECLARATION OF [REDACTED]

I, [REDACTED] 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 the Managing Partner of [REDACTED] I have worked in this capacity for [REDACTED] as a Managing Partner for 17 years. As a Managing Partner, I provide professional government relations services and advice in support of companies' policy, legislative, and regulatory objectives.

3. [REDACTED] entered into a contract with Southern California Gas ("SoCalGas") on January 1, 2018 to provide professional government relations services and advice in support of SoCalGas' natural gas related political interests.

4. Under the contract, [REDACTED] provided services including, but not limited to,

[REDACTED]

5. I am submitting this Declaration in Support of in Support of 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 because I can unequivocally state that if the non-public communications I have had regarding [REDACTED] contract with SoCalGas are ordered to be disclosed in response to the demand of the California Public Advocates Office, it will drastically alter how I associate with SoCalGas in the future. Indeed, my understanding is that these non-public communications regarding the contract and other sensitive information will be disclosed to the California Public Advocates Office under protest on December 4, 2019. These disclosures have

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

made me reconsider whether I want to work and associate with SoCalGas in the future.

6. In connection with SoCalGas' legislative, policy, regulatory and political participation in the State of California to advance natural gas solutions, I often communicated with SoCalGas, its employees, and its shareholders about matters of public debate.

7. In the future, I will be less willing to engage in such association with SoCalGas knowing that my views and communications may be disclosed simply because of my association with SoCalGas in connection with its political efforts.

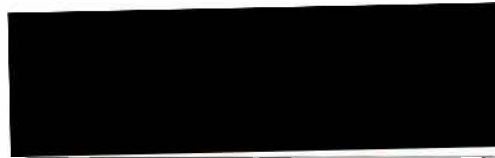
[REDACTED]

[REDACTED] This, of course, make me consider whether to associate with SoCalGas in future initiatives, rulemaking, or any other political process.

8. My work with SoCalGas included sensitive discussions in furtherance of developing strategy for pursuing political goals and selecting a message and the best means to promote that message. It also included recommending that others become involved with SoCalGas in the political process. Because of the forced disclosure to the California Public Advocates Office, I am concerned I will suffer negative consequences—including disclosure to my competitors of sensitive strategic information, the cost of responding to inquiries, and the breach of privacy that comes with disclosure of my thoughts, processes, decisions, and strategies. As a result of the disclosures to the California Public Advocates Office (and likelihood of its additional demands for disclosure), I am reluctant to continue associating with SoCalGas and am seriously considering limiting my association with SoCalGas in the future.

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

Executed on November 27, 2019.

A large black rectangular redaction box covering the signature of the individual.

 Managing Partner

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

# DECLARATION 5

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

**DECLARATION OF** [REDACTED]

I, [REDACTED] 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 [REDACTED] as President. I have worked as President of [REDACTED] since October 2013. As President of [REDACTED] my professional duties include public affairs and assisting clients with public messaging.

3. I entered into a contract with Southern California Gas (SoCalGas) on or about August 10, 2019. As a part of this contract, [REDACTED]  
[REDACTED]  
[REDACTED]

4. I am submitting this Declaration in Support of 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 because I can unequivocally state that if the non-public contract I have with SoCalGas regarding the public affairs work I am doing with the company is ordered to be disclosed in response to the demand of the California Public Advocates Office, it will drastically alter how I communicate in the future. Indeed, my understanding is that the [REDACTED] contract has already been disclosed to the California Public Advocates Office. This disclosure has made me less willing to work and associate with SoCalGas in the future.

5. In connection with SoCalGas' [REDACTED]

[REDACTED] I often communicated with SoCalGas and its employees.

6. I helped formulate strategy regarding [REDACTED]  
[REDACTED]

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

7. In the future, I will be less willing to engage in such contracts and communications knowing that my non-public association with SoCalGas has been disclosed simply because of my association with SoCalGas in connection with [REDACTED] [REDACTED] solutions. I also am seriously considering whether to associate with SoCalGas in future regarding public affairs work.

8. I entered into a contract with SoCalGas in furtherance of [REDACTED] [REDACTED] Because of the forced disclosure of this contract to the California Public Advocates Office, I am concerned I will suffer negative consequences—including financial and strategic information being released to my competitors, the cost of responding to inquiries, and the breach of privacy that comes with disclosure of my contract. Of course, this disclosure also will hinder [REDACTED] [REDACTED] goals I shared with SoCalGas. As a result of the disclosures to the California Public Advocates Office (and likelihood of its additional demands for disclosure), I am reluctant to continue associating with SoCalGas and am seriously considering limiting my association with SoCalGas in the future.

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

Executed on November 29, 2019.

[REDACTED]

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

# DECLARATION 6

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



DECLARATION OF [REDACTED]

I, [REDACTED] 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 cofounded [REDACTED] more than six years ago and serve as one of its Principals.

3. I entered into a contract with Southern California Gas (SoCalGas) on or about in October 2019. As a part of this contract, [REDACTED]  
[REDACTED]  
[REDACTED]

4. I am submitting this Declaration in Support of 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 because I can unequivocally state that if the non-public contract I have with SoCalGas regarding the public affairs work I am doing with the company is ordered to be disclosed in response to the demand of the California Public Advocates Office, it will drastically alter how I communicate in the future. Indeed, my understanding is that the [REDACTED] contract has already been disclosed to the California Public Advocates Office.

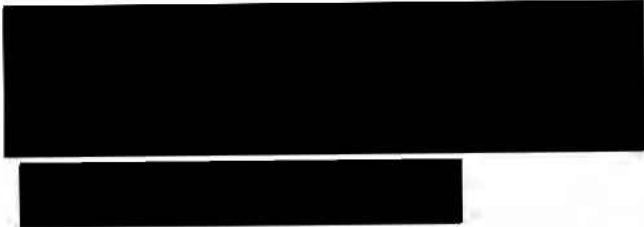
5. In the future, I will be less willing to engage in communications knowing that my non-public association with SoCalGas and private discussions and views may be (and have been) disclosed simply because of my association with SoCalGas in connection with its efforts to petition the government on political matters related to, among other things, rulemaking. I also am seriously considering whether to associate with SoCalGas in future regarding ballot initiatives,

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

rulemaking, or any other political process due to the breach of privacy that comes with disclosure of my thoughts, processes, decisions, and strategies.

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

Executed on November 29, 2019.

A large black rectangular redaction box covers the signature area, with a smaller black rectangular redaction box positioned directly below it.

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

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

**MOTION TO FILE UNDER SEAL**

**MOTION OF SOUTHERN CALIFORNIA GAS COMPANY'S (U 904 G)  
FOR LEAVE TO FILE UNDER SEAL CONFIDENTIAL VERSIONS OF  
DECLARATION NUMBERS 3, 4, 5 AND 6 IN SUPPORT OF ITS MOTION FOR  
RECONSIDERATION/APPEAL TO THE FULL COMMISSION REGARDING  
ADMINISTRATIVE LAW JUDGE'S RULING IN THE DISCOVERY DISPUTE  
BETWEEN PUBLIC ADVOCATES OFFICE AND SOUTHERN CALIFORNIA GAS  
COMPANY, OCTOBER 7, 2019; [PROPOSED] ORDER  
(NOT IN A PROCEEDING)**

JOHNNY Q. TRAN

Attorney for:

**SOUTHERN CALIFORNIA GAS COMPANY**

555 West Fifth Street, Suite 1400

Los Angeles, California 90013

Telephone: (213) 244-2981

Facsimile: (213) 629-9620

Email: [JQTran@socalgas.com](mailto:JQTran@socalgas.com)

Julian W. Poon

Michael H. Dore

Gibson, Dunn & Crutcher LLP

Los Angeles, California 90071-3197

Telephone: (213) 229-7000

Facsimile: (213) 229-7520

Email: [jpoon@gibsondunn.com](mailto:jpoon@gibsondunn.com); [mdore@gibsondunn.com](mailto:mdore@gibsondunn.com)

December 2, 2019

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

**MOTION TO FILE UNDER SEAL**

**MOTION OF SOUTHERN CALIFORNIA GAS COMPANY’S (U 904 G)  
FOR LEAVE TO FILE UNDER SEAL CONFIDENTIAL VERSIONS OF  
DECLARATION NUMBERS 3, 4, 5 AND 6 IN SUPPORT OF ITS MOTION FOR  
RECONSIDERATION/APPEAL TO THE FULL COMMISSION REGARDING  
ADMINISTRATIVE LAW JUDGE’S RULING IN THE DISCOVERY DISPUTE  
BETWEEN PUBLIC ADVOCATES OFFICE AND SOUTHERN CALIFORNIA GAS  
COMPANY, OCTOBER 7, 2019; [PROPOSED] ORDER  
(NOT IN A PROCEEDING)**

Consistent with Rule 11.4 of the California Public Utilities Commission’s (“Commission”) Rules of Practice and Procedure,<sup>1</sup> Southern California Gas Company (“SoCalGas”) respectfully moves the Commission for an order for leave to file under seal portions of the Declaration Numbers 3, 4, 5 and 6,<sup>2</sup> filed in support of SoCalGas’ Motion for Reconsideration/Appeal.

On December 2, 2019, and concurrently with this Motion to File Under Seal, SoCalGas has filed its Motion for Reconsideration/Appeal which includes six declarations. As detailed in the attached Declaration of Sharon Tomkins in support of this Motion to File Under Seal (“Tomkins Decl.”), Declaration Numbers 3, 4, 5 and 6 contain information that is confidential pursuant to California Government Code Sections 6254(c), 6254(k) and 6255.

---

<sup>1</sup> Because SoCalGas’ 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 Proceeding) (“Motion for Reconsideration/Appeal”) arose outside of a proceeding, the Chief ALJ has confirmed that the Commission’s Rules of Practice and Procedure and filing requirements for formal proceedings do not directly apply. Notwithstanding the lack of clear procedures governing this dispute, this filing is intended to preserve SoCalGas’ right to confidentiality.

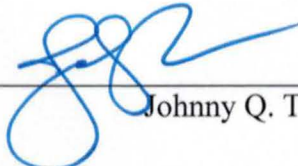
<sup>2</sup> Declaration Number 3 is the Declaration of Sharon Tomkins in support of the Motion for Reconsideration/Appeal. The identity of the declarants for Declarations Number 4, 5 and 6, as well as portions of the declarants’ statements are confidential as detailed below.

Specifically, Declaration Numbers 3, 4, 5 and 6 contain information that discloses the identities of the third parties that SoCalGas has engaged with respect to SoCalGas' associational activities and speech. *See* Tomkins Decl. ¶¶ 4-5. Disclosing the name of the third party risks the disclosure of identifying information regarding the third party. Disclosure of such information risks the third party's privacy, especially here where there is a history of names and contact information being shared with the public and/or media. *See* Calif. Gov't Code § 6254(c) ("disclosure of which would constitute an unwarranted invasion of personal privacy"); *Britt v. Superior Court*, 20 Cal. 3d 844, 855-856 (1978) (even highly relevant information may be shielded from discovery if its disclosure would impair a person's inalienable right of privacy provided by the California Constitution). For that reason, SoCalGas requests that the portions of the declarations identifying the third parties remain confidential and under seal.

In addition, Declaration Numbers 3, 4, 5 and 6 contain information that is confidential pursuant to California Government Code Sections 6254(k) and 6255. The declarations contain information related to SoCalGas' associational activities and speech—material such as contracts with third parties and expenditures made in furtherance of political association and expression that was 100% shareholder-funded. As such, that information is confidential. *See* Calif. Gov't Code § 6254(k) ("[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law"); U.S. Const. amend. I; Cal. Const. art. I, §§ 2–3; *NAACP v. Alabama* (1958) 357 U.S. 449, 460; *Britt*, 20 Cal. 3d at 820; *see also In re GlaxoSmithKline plc* (Minn. 2007) 732 N.W.2d 257, 268 (associational freedom protects an organization's external interactions and internal communications); *Perry v. Schwarzenegger* (9th Cir. 2010) 591 F.3d 1147, 1162-1163; *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"). For that reason, SoCalGas requests that the portions of the declarations containing information regarding SoCalGas' associational activities and speech remain confidential and under seal.

For these reasons, SoCalGas respectfully requests that the Commission grant this motion designating the redacted portions of Declaration Numbers 3, 4, 5 and 6 filed directly with the Docket Office in connection with the Motion for Reconsideration/Appeal as confidential and protect the material under seal.

Respectfully submitted on behalf of Southern California Gas Company,

By:  \_\_\_\_\_  
Johnny Q. Tran

JOHNNY Q. TRAN  
Attorney for:  
**SOUTHERN CALIFORNIA GAS COMPANY**  
555 West Fifth Street, Suite 1400  
Los Angeles, California 90013  
Telephone: (213) 244-2981  
Facsimile: (213) 629-9620  
Email: [JQTran@socalgas.com](mailto:JQTran@socalgas.com)

Julian W. Poon  
Michael H. Dore (227442)  
**Gibson, Dunn & Crutcher LLP**  
Los Angeles, California 90071-3197  
Telephone: (213) 229-7000  
Facsimile: (213) 229-7520  
Email: [jpoon@gibsondunn.com](mailto:jpoon@gibsondunn.com); [mdore@gibsondunn.com](mailto:mdore@gibsondunn.com)

December 2, 2019

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

**[PROPOSED] ORDER**

Having reviewed the Motion for Leave to File Confidential Versions of Declaration Numbers 3, 4, 5 and 6 to SoCalGas' 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 Proceeding) on December 2, 2019, and for good cause appearing,

IT IS HEREBY ORDERED, that the confidential versions of Declaration Numbers 3, 4, 5 and 6 to SoCalGas' 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 Proceeding) will be filed under seal.

Dated: \_\_\_\_\_, at San Francisco, California.

\_\_\_\_\_  
President of the Commission, Marybel Batjer

**DECLARATION OF SHARON TOMKINS IN SUPPORT OF MOTION OF SOUTHERN CALIFORNIA GAS COMPANY FOR LEAVE TO FILE UNDER SEAL CONFIDENTIAL VERSIONS OF DECLARATION NUMBERS 3, 4, 5 AND 6**

I, Sharon Tomkins, do declare as follows:

1. I am a resident of California over 18 years of age, and I am personally familiar with the facts and representations in this Declaration and, if called upon to testify, I could and would testify to the following based upon my personal knowledge and/or information and belief.

2. I am employed by Southern California Gas Company (“SoCalGas”) as Vice President of Strategy, Engagement and Chief Environmental Officer. I have worked for SoCalGas since 2010.

3. I am submitting this declaration in support of the Motion to File Under Seal Declarations Confidential Versions of Declaration Numbers 3, 4, 5, and 6 in support of 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 2019 (Not in a Proceeding) issued on November 1, 2019 (“Motion for Reconsideration/Appeal”).

4. Declarations 3, 4, 5 and 6 contain information that discloses the identities of the third parties that SoCalGas has engaged. Disclosing the name of the third party risks the disclosure of identifying information regarding the third party. Disclosure of the confidential information risks the third party’s privacy, especially here where there is a history of names and contact information being shared with the public and/or media.

5. Declarations 3, 4, 5 and 6 contain confidential information that discloses SoCalGas’ 100% shareholder-funded associational activities and speech, such as its scope of work, business plans and strategies with third parties made in furtherance of its political association and expression.

6. In accordance with the statutory provisions described herein, the confidential information should be protected from public disclosure.


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



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 2nd day of December 2019, at Los Angeles, California.

Respectfully submitted on behalf of  
SOUTHERN CALIFORNIA GAS COMPANY

By:   
SHARON TOMKINS  
Vice President of Strategy, Engagement and  
Chief Environmental Officer

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

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

**PUBLIC ADVOCATES OFFICE'S RESPONSE TO 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)**

**REBECCA VORPE**

Attorney for the  
Public Advocates Office

California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102  
Phone: (415) 703-4443  
Email: [rebecca.vorpe@cpuc.ca.gov](mailto:rebecca.vorpe@cpuc.ca.gov)

December 17, 2019

## I. INTRODUCTION

Pursuant to the California Public Utilities Commission's (Commission's) Rules of Practice and Procedure (the Rules), the Public Advocates Office at the California Public Utilities Commission (Public Advocates Office) submits this Response to the *Motion for Reconsideration/Appeal to the Full Commission Regarding Administrative Law Judge's Ruling in the Discovery Dispute Between Public Advocates Office and Southern California Gas Company, October 7, 2019 (Not in a Proceeding)* (Motion for Reconsideration/Appeal).<sup>1</sup>

On October 7, 2019, the Public Advocates Office<sup>2</sup> submitted a *Motion to Compel Responses from Southern California Gas Company to Question 8 of Data Request CalAdvocates-SC-SCG-2019-05 (Not in a Proceeding)* (October 7, 2019 Motion to Compel).<sup>3</sup> Administrative Law Judge (ALJ) Regina DeAngelis granted the Public Advocates Office's motion on November 1, 2019, ordering Southern California Gas Company (SoCalGas) to produce the requested documents within two business days (November 1, 2019 Ruling).<sup>4</sup> SoCalGas requested permission to file an appeal of the November 1, 2019 Ruling, which was not ruled upon.<sup>5</sup> SoCalGas submitted its Motion for Reconsideration/Appeal on December 2, 2019 requesting that ALJ DeAngelis' November 1, 2019 Ruling be overturned by the full Commission.

SoCalGas' primary argument is that by allowing the Public Advocates Office to investigate SoCalGas' lobbying activity, the November 1, 2019 Ruling has had a

---

<sup>1</sup> The Commission's Rules do not directly apply because this matter is outside of a formal proceeding. However, the Public Advocates Office has adhered to the Rules in the litigation of this ongoing discovery dispute.

<sup>2</sup> Sometimes referred to by SoCalGas as "CalPA."

<sup>3</sup> See Attachment A. SoCalGas subsequently submitted an emergency motion to stay Administrative Law Judge (ALJ) DeAngelis' ruling, indicating that it intended to appeal the ruling to the full Commission (Attachment B). ALJ DeAngelis did not rule upon the motion to stay and SoCalGas submitted the requested documents on November 5, 2019, in compliance with the November 1, 2019 Ruling.

<sup>4</sup> See Attachment C.

<sup>5</sup> The Public Advocates Office requested permission to respond to SoCalGas' appeal, should permission to file an appeal be granted. This request was also not ruled upon.

“chilling effect on SoCalGas’ and others”<sup>6</sup> exercise of their constitutional rights to associate with each other, petition the government, and engage in free speech . . . .”<sup>7</sup>

SoCalGas argues that the requested contracts are entitled to First Amendment protection, that it has made a prima facie showing of First Amendment infringement, and that the Public Advocates Office has not shown a requisite compelling interest in the documents nor has it narrowly tailored its requests. SoCalGas also argues that the Public Advocates Office’s interpretation of Pub. Util. Code §§ 309.5 and 314 is unconstitutionally overbroad and vague. Further, SoCalGas argues, because this dispute arises outside of a proceeding, there are insufficient procedural safeguards afforded to protect its due process rights.

SoCalGas seeks an order from the Commission:

- (1) Striking Question 8 of CalPA’s data requests [sic] 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;
- (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

---

<sup>6</sup> SoCalGas also seeks a Commission order on a separate data request served on San Diego Gas & Electric Company (SDG&E), to which SDG&E objected because the requested documents allegedly related to 100% shareholder-funded contracts. *See* Motion for Reconsideration/Appeal at 4, n.5-6. SoCalGas requests that the Commission not only reverse ALJ DeAngelis’ ruling on the matter at hand, but also strike the Public Advocates Office’s requests of SDG&E and return any materials it may have produced. *Id.* SoCalGas’ attempt to seek such relief in a Motion for Reconsideration/Appeal of a completely separate discovery dispute is inappropriate. Nevertheless, even if the Commission were to consider this request here, SoCalGas’ request regarding the data request to SDG&E should be denied on same grounds that its request to reverse ALJ DeAngelis’ ruling should be denied—SoCalGas’ First Amendment and procedural arguments are without merit.

<sup>7</sup> Motion for Reconsideration/Appeal at 3.

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.<sup>8</sup>

As discussed below, each argument is without merit and SoCalGas' requests for relief should be denied in their entirety. The Public Advocates Office, both as a statutorily created entity and as Commission staff, has the right to inspect any of SoCalGas' records in the course of its duties, whether such records relate to shareholder- or ratepayer-funded activities. SoCalGas is obligated under the Pub. Util. Code to make its records available for inspection and cannot sequester certain records by claiming they are purely related to shareholder funds. The Public Advocates Office is not infringing on SoCalGas' First Amendment rights by carrying out its statutorily mandated duty of regulating a public utility to protect the interest of ratepayers as it is not prohibiting SoCalGas from using shareholder funds to pursue its lobbying activities.

Further, even if SoCalGas' First Amendment rights were implicated by the Public Advocates Office's data requests, the Public Advocates Office and the Commission, in general, have a compelling interest in being able to review regulated utilities' records. The Public Advocates Office has not interpreted the Pub. Util. Code in an impermissibly broad or vague manner as it has relied on to the clear, plain language of the statute and Commission decisions in its interpretation. Finally, the procedural safeguards afforded SoCalGas are sufficient to protect its due process rights, as evidenced by the protections provided in statute and the process of adjudication for this ongoing dispute. Accordingly, SoCalGas' motion and requests for relief should be denied.

---

<sup>8</sup> *Id.* at 25-26.

## II. FACTUAL BACKGROUND<sup>2</sup>

The Public Advocates Office is currently investigating SoCalGas' funding of political lobbying activities, including, among other things, whether and to what extent ratepayer money was used to found and support Californians for Balanced Energy Solutions (C4BES).<sup>10</sup> On May 13, 2019, C4BES filed a Motion for Party Status in Rulemaking (R.)19-01-011 in which C4BES represented that it is "a coalition of natural and renewable natural gas users."<sup>11</sup> C4BES did not disclose that it has any affiliation with SoCalGas in its Motion for Party Status. On May 14, 2019, Sierra Club filed a *Motion to Deny Party Status to Californians For Balanced Energy Solutions or, in the Alternative, to Grant Motion to Compel Discovery*, in which it alleged that SoCalGas founded and funded C4BES.<sup>12</sup> On May 29, 2019, the Public Advocates Office, C4BES, and SoCalGas separately filed responses to Sierra Club's motion to deny party status to C4BES. In its response to Sierra Club's motion to deny party status, the Public Advocates Office stated that it would be investigating the allegations raised by Sierra Club.<sup>13</sup>

On May 23, 2019, the Public Advocates Office issued Data Request Number Public Advocates Office-SCG051719 to SoCalGas regarding its involvement with C4BES. This data request was issued outside of R.19-01-011. SoCalGas' response to the Public Advocates Office's data request provides evidence that SoCalGas had been using

---

<sup>2</sup> A similar but more detailed factual background is provided in the Public Advocates Office's *Motion to Compel Responses from Southern California Gas Company to Question 8 of Data Request CalAdvocates-SC-SCG-2019-05 (Not in a Proceeding)*, provided here in Attachment A. This brief recounting of the factual background is provided for convenience and context.

<sup>10</sup> In Rulemaking (R.) 19-01-011, Sierra Club alleged that SoCalGas found and funded C4BES. This led to an investigation by the Public Advocates Office into the veracity of Sierra Club's allegation and whether ratepayer funding was used to found and fund C4BES. See Sierra Club's *Motion to Deny Party Status to Californians For Balanced Energy Solutions or, in the Alternative, to Grant Motion to Compel Discovery* (May 14, 2019). See also Public Advocates Office's *Response to Sierra Club's Motion to Deny Party Status to Californians For Balanced Energy Solutions or, in the Alternative, to Grant Motion to Compel Discovery* filed (May 29, 2019).

<sup>11</sup> See *C4BES Motion for Party Status in R.19-01-011* filed (May 13, 2019).

<sup>12</sup> See R.19-01-011, Sierra Club's *Motion to Deny Party Status to Californians for Balanced Energy Solutions or, in the Alternative, to Grant Motion to Compel Discovery* (filed May 14, 2019).

<sup>13</sup> See R.19-01-011, *Response of the Public Advocates Office to Sierra Club's Motion to Deny Party Status to Californians for Balanced Energy Solutions or, in the Alternative, to Grant Motion to Compel Discovery* (filed May 29, 2019), at 2.

ratepayer money to start and fund C4BES.<sup>14</sup> The Public Advocates Office issued additional data requests to further investigate this matter. Each of these data requests has also been issued outside of R.19-01-011 and are not within the scope of any current proceeding.

On July 19, 2019, the Public Advocates Office issued DR CalAdvocates-SC-SCG-2019-04 to SoCalGas. SoCalGas refused to provide a full unredacted response, which led to the Public Advocates Office to submit a *Motion to Compel Further Responses from Southern California Gas Company to Data Request - CalAdvocates-SC-SCG-2019-04* to then-Commission President Picker's office. The Public Advocates Office's Motion sought unredacted documents pursuant to the Public Advocates Office's ability to seek information from entities regulated by the Commission under Pub. Util. Code §§ 309.5(e) and 314. SoCalGas argued that the information sought by the Public Advocates Office was "not responsive to [the] questions and furthermore is not necessary for Cal Advocates to perform its statutory duties as laid out in Public Utilities Code § 309.5(a)[<sup>15</sup>]" because it was allegedly related to shareholder funds, not ratepayer funds. On September 10, 2019, ALJ DeAngelis granted the Public Advocates Office's motion to compel.

On August 13, 2019, prior to the filing of the first motion to compel in this matter, the Public Advocates Office served SoCalGas with DR CalAdvocates-SC-SCG-2019-05.<sup>16</sup> This Data Request included a question requesting all contracts (and contract

---

<sup>14</sup> See R.19-01-011, *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* (filed July 5, 2019), at 2.

<sup>15</sup> Pub. Util. Code § 309.5(a) states:

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

<sup>16</sup> See Attachment D, Data Request (DR) CalAdvocates-SC-SCG-2019-05, dated August 13, 2019, at 4.

amendments) related to a “Balanced Energy Internal Order (IO).”<sup>17</sup> SoCalGas objected to the request on the grounds it sought information “outside the statutory authority delegated to the Public Advocates Office by Pub. Util. Code § 309.5” because the Balanced Energy IO was allegedly shareholder funded, not ratepayer funded.<sup>18</sup> Thus, SoCalGas contended, “knowing this information will not assist the Public Advocates Office in performing its statutory duties.”<sup>19</sup> SoCalGas did not object on First Amendment grounds, nor was this reasoning offered during any of the subsequent meet and confer conferences. SoCalGas first asserted such a defense in its response to the October 7, 2019 Motion to Compel.<sup>20</sup>

The Public Advocates Office attempted to resolve the issue informally, noting to SoCalGas that ALJ DeAngelis’s September 10, 2019 ruling implicitly rejected SoCalGas’ grounds for refusing to answer Question 8. The Public Advocates Office sought to avoid the extreme waste of Commission resources in seeking judicial intervention on a legal issue that had already been decided. SoCalGas disagreed, and although the Public Advocates Office met with SoCalGas three times in an attempt to resolve the dispute, the Public Advocates Office had no other option but to file the October 7, 2019 Motion to Compel.<sup>21</sup>

As previously communicated to SoCalGas, the Public Advocates Office sought the contracts that are the subject of Question 8 for a number of reasons.<sup>22</sup> In part, the Public Advocates Office sought these contracts because there was evidence from SoCalGas’

---

<sup>17</sup> The Balanced Energy IO is an account set up to track the costs of SoCalGas’ Energy Policy and Strategy team associated with “balanced energy.”

<sup>18</sup> See Attachment E, Southern California Gas Company’s Responses to Data Request CalAdvocates-SC-SCG-2019-05, dated August 27, 2019, at 8.

<sup>19</sup> *Ibid.*

<sup>20</sup> See Attachment F, *Response of SoCalGas Pursuant to October 7, 2019 Motion to Compel Further Responses from Southern California Gas Company to Data Request - CalAdvocates -SC-SCG-2019-05 (Not in a Proceeding)*, at 6-8.

<sup>21</sup> The parties met on September 16, 2019, September 27, 2019, and October 2, 2019. See Attachment A at 7-8 for a more detailed description of the meet and confer sessions.

<sup>22</sup> Although, as noted in the October 7, 2019 Motion to Compel, the Public Advocates Office in general is not required to divulge the purpose of its discovery because it is entitled to these documents per statute and Commission decision.



responses to the Public Advocates Office’s other data requests that other such contracts associated with the Balanced Energy IO were at one point ratepayer funded.<sup>23</sup> Further, regardless of whether these contracts were shareholder-funded, the Public Advocates Office and ratepayers have an interest in the cost and non-cost aspects of SoCalGas’ activities, such as whether the contracted-for activities are consistent with statutory and Commission requirements. The Public Advocates Office also explained to SoCalGas that, among other things, the investigation was seeking information on how the activities related to the contracts in Question 8 may have affected ratepayers’ interests in issues such as achieving a least-cost path to meeting the state’s decarbonization goals.

The Public Advocates Office required the information in response to Question 8 in order to perform its duties and considered SoCalGas’ non-response to be in violation of SoCalGas’ duty to comply with its obligations under Pub. Util. Code §§ 309.5(e)<sup>24</sup> and 314.<sup>25</sup> SoCalGas opposed the October 7, 2019 Motion to Compel, but ALJ DeAngelis

---

<sup>23</sup> See Attachment G, Southern California Gas Company’s Responses to Data Request CALPA-SCG-051719, dated June 14, 2019 (redacted), at 5 (while SoCalGas designated certain information on page 4 as confidential, it later agreed that the information was not confidential; however, the information has been redacted in an abundance of caution); see also Attachment H, Southern California Gas Company’s Updated Responses to Data Request CALPA-SCG-051719, dated August 13, 2019, at 5 (demonstrating SoCalGas changed the funding of the contracts from 50% ratepayer funding to 100% shareholder funding).

<sup>24</sup> Pub. Util. Code § 309.5(e) states: “The office may compel the production or disclosure of any information it deems necessary to perform its duties from any entity regulated by the commission, provided that any objections to any request for information shall be decided in writing by the assigned commissioner or by the president of the commission, if there is no assigned commissioner.”

<sup>25</sup> Pub. Util. Code §314 states:

(a) The commission, each commissioner, and each officer and person employed by the commission may, at any time, inspect the accounts, books, papers, and documents of any public utility. The commission, each commissioner, and any officer of the commission or any employee authorized to administer oaths may examine under oath any officer, agent, or employee of a public utility in relation to its business and affairs. Any person, other than a commissioner or an officer of the commission, demanding to make any inspection shall produce, under the hand and seal of the commission, authorization to make the inspection. A written record of the testimony or statement so given under oath shall be made and filed with the commission.

(b) Subdivision (a) also applies to inspections of the accounts, books, papers, and documents of any business that is a subsidiary or affiliate of, or a corporation that holds a controlling interest in, an electrical, gas, or telephone corporation, or a water corporation that has 2,000 or more service connections, with respect to any transaction between the water, electrical, gas, or telephone corporation and the subsidiary, affiliate, or holding corporation on any matter that might adversely affect the interests of the ratepayers of the water, electrical, gas, or telephone corporation.

again granted the Public Advocates Office’s motion and ordered SoCalGas to produce the requested contracts. SoCalGas then filed its Motion for Reconsideration/Appeal.

### III. DISCUSSION

#### A. Pub. Util. Code §§ 309.5(e) and 314 Entitle the Public Advocates Office to the Information It Seeks

The Public Advocates Office, and Commission staff in general, enjoy broad discovery power to inquire into any aspect of regulated utilities’ records in the pursuit of its statutory duties. Under the Pub. Util. Code, the Public Advocates Office has a duty to represent and advocate on behalf of the interests of ratepayers.<sup>26</sup> In pursuit of this duty, the Public Advocates Office has been granted the authority to “compel the production or disclosure of any information it deems necessary to perform its duties from any entity regulated by the commission.”<sup>27</sup> Additionally, as staff of the Commission, the Public Advocates Office is entitled to, at any time, “inspect the accounts, books, papers, and documents of any public utility” as well as “any business that is a subsidiary or affiliate of, or a corporation that holds a controlling interest in” any public utility . . . .<sup>28</sup> Commission staff, therefore, has a right to inspect the books and records of all regulated entities, regardless of the category of the funds.

The right, and the statutory duty, to inspect the accounts of a regulated utility is not qualified and includes all accounts—whether such accounts, books, or documents relate to shareholder- or ratepayer-funded activities. This is part of the basic regulatory compact that underlies public utility operation. The Pub. Util. Code provides that the Public Advocates Office and the staff of the Commission have lawful oversight over the entire utility, including any “shareholder portion” of the utility. As part of this oversight,

---

<sup>26</sup> Pub. Util. Code § 309.5(a).

<sup>27</sup> Pub. Util. Code § 309.5(e).

<sup>28</sup> Pub. Util. Code § 314(a). *See also*, Decision (D.) 01-08-062 at 6: “[The Public Advocates Office’s] rights to seek information from entities regulated by this Commission . . . principally arise from two statutes—Pub. Util. Code. §§ 314 and 309.5.” The Public Advocates Office’s “scope of authority to request and obtain information from entities regulated by the Commission is as broad as that of any other units of our staff, including the offices of the Commissioners” and is “constrained solely by a statutory provision that provides a mechanism unique to [the Public Advocates Office] for addressing discovery disputes.” *Ibid.*

the Commission has broad discovery powers. Were the Public Advocates Office and Commission staff to be restricted from looking at shareholder-funded activities or activities the utilities claim to be shareholder-funded, the ability of the Commission to inspect documents and records would be severely curtailed. Such a restriction is not consistent with the Commission's duty to effectively regulate utilities and determine whether any ratepayers were harmed to the benefit of the shareholders. The Public Advocates Office likewise is empowered to advocate on behalf of the interests of public utility customers. Were regulated utilities able to shield activities from disclosure because they are presently (allegedly) shareholder-funded, the Public Advocates Office could not carry out its statutory duties with any kind of certainty or thoroughness.

Furthermore, the authority of the Commission to inspect all records and books of a utility is well established. For example, the Commission has repeatedly affirmed that Commission staff, and by inclusion, the Public Advocates Office, has the right to inspect the books and records of a utility holding company.<sup>29</sup> Commission staff perform audits of utilities' books and records, and staff is not restricted to merely looking at above the line transactions. Additionally, the entirety of a utility's funds come from ratepayers apart from any original investor or lender funding. Ratepayers pay the utilities for their services and the utilities can then operate their businesses as well as pay dividends and interest to shareholders. Further, by affirming that the Commission may inspect the books and records of holding companies, the Commission has indicated that the distribution of the funds to shareholders remains within the Commission's interest.

SoCalGas argues that there is no basis for the Public Advocates Office 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."<sup>30</sup> To the contrary, Pub. Util. Code §§ 314 and 309.5(e) grant that authority: as a *regulated utility*, Commission staff and the Public Advocates Office may inspect SoCalGas' records

---

<sup>29</sup> See, e.g., D.06-12-029, *Order Instituting Rulemaking Concerning Relationship Between California Energy Utilities and their Holding Companies and Non-Regulated Affiliates*.

<sup>30</sup> Motion for Reconsideration/Appeal at 20-21.

and its records are clearly distinguished from an “unregulated individual or entity.” That such activity may be shareholder funded at some point does not shield it from inspection.

**B. The Public Advocates Office’s Lawful Oversight of SoCalGas As A Regulated Entity Has Not Infringed on Its First Amendment Rights.**

SoCalGas maintains that the Public Advocates Office has infringed its First Amendment rights to free association by requesting contracts relating to its lobbying activities.<sup>31</sup> SoCalGas argues that it has shown a prima facie case of arguable First Amendment infringement and that the Public Advocates Office has not demonstrated that it has a compelling interest in the contracts.<sup>32</sup> Any allegation that the Public Advocates Office is restricting SoCalGas’ ability to enter into lobbying contracts is unripe. SoCalGas has also not established a prima facie case of probable First Amendment infringement. However, even if it had, the Public Advocates Office has a compelling interest in the contracts and has narrowly tailored its requests.

**1. The Public Advocates Office Has Not Restricted SoCalGas’ Ability to Enter Into Contracts**

First, any alleged concerns regarding a restriction placed on SoCalGas’ contracting efforts is premature and unripe. The Public Advocates Office is merely requesting access to documents that it is entitled to review under the Pub. Util. Code in connection with an investigation in the interest of ratepayers. The Public Advocates Office has a number of reasons for requesting the information as part of its investigation of SoCalGas’ funding of its lobbying efforts.<sup>33</sup> The Public Advocates Office is not

---

<sup>31</sup> *Id.* at 10-17.

<sup>32</sup> *Id.* at 15-18.

<sup>33</sup> The Public Advocates Office again objects to SoCalGas’ characterization that these reasons are “shifting.” *See* Motion for Reconsideration/Appeal at 3. As explained in the October 7, 2019 Motion to Compel, the Public Advocates Office has various reasons for seeking this information. What is more appropriately characterized as “shifting” are SoCalGas’ objections. First, SoCalGas stated that responsive documents were not in fact “responsive” to the Public Advocates Office’s request. SoCalGas then tried to argue the documents are irrelevant to the Public Advocates Office’s statutory duties. SoCalGas also argued that the Public Advocates Office could not assert discovery authority under Pub. Util. Code § 314. Once these arguments did not take hold, SoCalGas belatedly argued that the request infringed on its First Amendment rights.

asserting that it is improper to use shareholder funds to lobby for certain issues. SoCalGas asserts it is being targeted because of the content of these contracts,<sup>34</sup> but the underlying message of the contracts is not the potentially problematic issue—it is the funding of such contracts and SoCalGas’ shifting of the funding between ratepayer and shareholder accounts, as well as whether the content of these contracts reveals any potential wrongdoing.

However, it is not appropriate for SoCalGas to potentially engage in Rule 1 violations,<sup>35</sup> which it may have done when it first asserted that ratepayers were not funding these activities or when it failed to disclose it established C4BES. The Public Advocates Office’s investigation may reveal improprieties regarding SoCalGas’ propagating of these contracts, and without further investigation into the *allegedly* 100% shareholder funded contracts, Commission staff would not be able to effectively regulate SoCalGas. Further, if SoCalGas were allowed to shield portions of its accounts and records by simply claiming they were shareholder funded, SoCalGas would evade effective regulation in the future. As explained above, the Public Advocates Office and Commission staff has the right to look at all of SoCalGas’ books and records to ensure ratepayers are not being harmed.

## **2. SoCalGas’ First Amendment Rights Have Not Been Infringed**

SoCalGas asserts that the Public Advocates Office’s requests for these contracts “has had a chilling effect on SoCalGas and [its] ability to engage in activities which are lawful” and that it will be less willing to engage in such 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

---

<sup>34</sup> Motion for Reconsideration at 20.

<sup>35</sup> Rule 1.1 states:

Any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law.

disclosed.”<sup>36</sup> SoCalGas also cites declarations from its contracting partners asserting they are less willing to engage in such contracts if they are disclosed.<sup>37</sup> These self-serving declarations do not establish a prima facie case of probable First Amendment infringement. Again, the Public Advocates Office has not stated that such contracts and communications, if actually shareholder-funded, are necessarily improper or prohibited. SoCalGas can protect any confidential information by designating it as such. Further, while SoCalGas is entitled to First Amendment protections, SoCalGas’ status as a regulated, public entity mandates that its records and books be subject to inspection.

SoCalGas also objects to the Public Advocates Office’s sharing of certain information with the Sierra Club and the media.<sup>38</sup> The Public Advocates Office has in no way abused its discovery rights in sharing non-confidential information. If SoCalGas is concerned about confidential information, there is a well-established procedure for protecting such information from disclosure to those outside the Commission. No information protected by Pub. Util. Code § 583 or General Order 66-D was disclosed.<sup>39</sup> The Public Advocates Office has not pursued its advocacy goals in any manner that has violated Commission rules or statute. SoCalGas implied that the Public Advocates Office has violated Rule 10.1’s bar on a party obtaining privileged and irrelevant information by providing information to Sierra Club that it has used in a formal proceeding.<sup>40</sup> Contrary to SoCalGas’ accusations, the Public Advocates Office has not provided any privileged or irrelevant information to Sierra Club or the media.

SoCalGas argues that the Public Advocates Office cannot establish a compelling interest in seeking this information nor that the data request are narrowly tailored.<sup>41</sup> However, since SoCalGas has failed to demonstrate a prima facie case of probable First

---

<sup>36</sup> Motion for Reconsideration at 14, citing Declaration of SoCalGas Vice President Sharon Tomkins.

<sup>37</sup> *Id.*, Declarations 4, 5, and 6.

<sup>38</sup> *Id.* at 9-10, 24-25.

<sup>39</sup> *See* Attachment I, Declaration of Stephen Castello.

<sup>40</sup> *Id.* at 10.

<sup>41</sup> *Id.* at 15-16.

Amendment infringement, the Public Advocates Office is not required to demonstrate a compelling interest or that its data request is narrowly tailored to achieve such an interest. Moreover, even if SoCalGas were to have made a prima facie case of probable First Amendment infringement, which it has not, the Public Advocates Office and the Commission have a compelling interest in being able to examine these records from SoCalGas to ensure that the contracts are in fact shareholder funded, and that the entities created by SoCalGas such as C4BES were not created to advocate against ratepayer interests, and that all relevant statutes and Commission rules have been followed. The Public Advocates Office has identified a potential abuse of ratepayer funds and various potential improper activities by a regulated entity. Upon discovery of SoCalGas' actions, the Public Advocates Office began an investigation into these potential abuses, in keeping with its statutory-mandated duties.<sup>42</sup> The Supreme Court has held that the disclosure of names and contributors of recipients of campaign funds was valid because the disclosure made it easier to detect violations of the Federal Election Campaign Act.<sup>43</sup> Similarly here, inspection of documents related to this allegedly shareholder-funded activity enables Commission staff to ensure regulated utilities are not violating various portions of the Pub. Util. Code as well as Commission Rules, such as Rule 1. It also ensures the public accountability of the Commission and its staff—the ability to thoroughly inspect a regulated entities' records and books ensures the Commission is fulfilling its constitutionally-mandated responsibilities.

SoCalGas also contends that shareholder-funded activity “bears no rational relationship to any compelling interest within the scope of CalPA’s statutory authority” and that the Public Advocates Office’s position that it has the right to look into such records could be used, for example, to inquire into which political candidates SoCalGas

---

<sup>42</sup> See also *Pacific Tel. & Tel. Co. v. Public Utilities Com.*, 62 Cal. 2d 634, 647 (1965): “[T]he primary purpose of the Public Utilities Act is to insure the public adequate service at reasonable rates without discrimination.”

<sup>43</sup> *Buckley v. Valeo*, 424 U.S. 1, 66-67 (1976).

employees voted for.<sup>44</sup> SoCalGas argues that allowing ALJ DeAngelis’ rulings to stand would “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.”<sup>45</sup>

SoCalGas’ argument is both hyperbolic and specious. Inquiring into contracts entered into by a regulated utility is entirely different from inquiring into individual employee’s personal voting record. Further, the Public Advocates Office is not “dictating” what utilities may say or associate with. As explained above, the Public Advocates Office is not investigating the message of the contracts, but SoCalGas’ activities related to the funding of those contracts and any potential improprieties resulting from the propagating of those contracts. Additionally, as demonstrated by statute and Commission decision, the Public Advocates Office’s broad discovery powers are not limited to inquiring into the use of ratepayer funds.<sup>46</sup> The Public Advocates Office has a compelling interest, based on its statutory duty, to protect ratepayer interests. Its broad discovery powers enable it to compel any information it deems necessary to perform those duties.

The Public Advocates Office’s request for contracts was also narrowly tailored. The Public Advocates Office did not seek, for example, all contracts SoCalGas entered into regarding all lobbying activities, but tailored its request to ask for specific contracts in which it had already uncovered issues regarding shareholder and ratepayer funds related to the Balanced Energy IO.

In sum, SoCalGas has failed to make a prima facie case of probable infringement of its First Amendment Rights. Moreover, even if it had not failed in its prima facie case, the Public Advocates Office has a compelling interest in the contracts and the request for the contracts was narrowly tailored.

---

<sup>44</sup> Motion for Reconsideration/Appeal at 17.

<sup>45</sup> *Ibid.*

<sup>46</sup> *See* Pub. Util. Code §§ 309.5(e), 314; D.01-08-062 at 6.



**C. The Public Advocates Office’s Interpretation of Pub. Util. Code §§ 309.5 and 314 Are Not Unconstitutionally Overbroad or Vague**

SoCalGas contends that the Public Advocates Office’s contention it is entitled to “‘any’ material,” including information related to shareholder-funded activities, is unconstitutionally overbroad.<sup>47</sup> SoCalGas argues that the Public Advocates Office has claimed “unlimited authority” that “substantially exceeds the statute’s legitimate sweep” and “punishes a ‘substantial’ amount of protected free speech.”<sup>48</sup>

The Public Advocates Office has consistently relied on the plain language of Pub. Util. Code § 309.5(e) that it is entitled to any information it deems necessary to perform its duties, and Pub. Util. Code § 314 that staff of the Commission may inspect all records. These contentions are grounded in the plain language of statute and the Public Advocates Office is not broadening the interpretation of the statute beyond this plain language. Here, the Public Advocates Office is investigating the SoCalGas’ role and funding in lobbying activities; whether such activities are shareholder or ratepayer funded, and the historical financial data regarding whether such activities were ever ratepayer funded. The utility’s financial records related to such activities are necessary to fully investigate the utility’s actions. This type of investigation, to ensure that ratepayers are not harmed, is clearly within the scope of Pub. Util. Code § 309.5(e).

The Public Advocates Office has argued, successfully, that SoCalGas cannot decide what is necessary for the Public Advocates Office to perform its duties. Additionally, and as explained in multiple rounds of briefing, the statute, as written and as interpreted by the Commission, does not limit the Public Advocates Office to only inquiring into ratepayer-funded activities.<sup>49</sup> Further, SoCalGas has failed to demonstrate how the Commission’s inspection of allegedly shareholder-funded contracts “punishes a

---

<sup>47</sup> Motion for Reconsideration/Appeal at 18-19.

<sup>48</sup> *Id.* at 18, citing *Virginia v. Hicks* (2003) 539 U.S. 113, 118-19.

<sup>49</sup> D.01-08-062 at 6, noting that the Public Advocates Office’s rights to seek information from regulated entities is “as broad as that of any other units of [Commission] staff, including the offices of the Commissioners” and is “constrained solely by a statutory provision that provides a mechanism unique to [the Public Advocates Office] for addressing discovery disputes.”

‘substantial’ amount of protected free speech,” as the examination of such records is firmly within the purview of Commission staff and is related to the specific contracts at issue.

SoCalGas also argues that the Public Advocates Office’s interpretation of Pub. Util. Code §§ 309.5 and 314 are “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.”<sup>50</sup> This argument wholly lacks merit. Section 309.5(e) clearly allows the Public Advocates Office to request any information it deems necessary to perform its duties from any entity regulated by the commission.”<sup>51</sup> Staff of the Commission may, at any time, “inspect the accounts, books, papers, and documents of any public utility.”<sup>52</sup> These statutes contain no qualifications regarding shareholder funded activity and provide notice to all regulated utilities that their books and records, *in their entirety*, are subject to inspection by the regulator. SoCalGas’ suggestion otherwise is disingenuous, at best. The Public Advocates Office’s requests are not arbitrary, but in keeping with its statutory mandate.

**D. The Procedural Safeguards Afforded SoCalGas in this Matter Are Sufficient to Protect Its Due Process Rights**

SoCalGas argues that due to the “lack of procedural safeguards” present since this matter arises outside of a current proceeding, the Public Advocates Office has been given “free rein to demand any material it wants, in violation of SoCalGas’ Due Process rights.”<sup>53</sup> However, the Pub. Util. Code and the fact that extensive process has been

---

<sup>50</sup> Motion for Reconsideration/Appeal at 19.

<sup>51</sup> Pub. Util. Code § 309.5(e).

<sup>52</sup> Pub. Util. Code § 314(a). *See also*, Decision (D.) 01-08-062 at 6: “[The Public Advocates Office’s] rights to seek information from entities regulated by this Commission . . . principally arise from two statutes—Pub. Util. Code. §§ 314 and 309.5.” The Public Advocates Office’s “scope of authority to request and obtain information from entities regulated by the Commission is as broad as that of any other units of our staff, including the offices of the Commissioners” and is “constrained solely by a statutory provision that provides a mechanism unique to [the Public Advocates Office] for addressing discovery disputes.” *Ibid.*

<sup>53</sup> Motion for Reconsideration/Appeal at 22-23.

provided to SoCalGas to argue its position demonstrate that adequate due process has at all times been provided.

First, the Public Advocates Office has requested documents that it is entitled to obtain under Pub. Util. Code §§ 314 and 309.5(e), not simply “any material it wants” beyond what it is entitled to under the Pub. Util. Code, as suggested by SoCalGas. Second, § 309.5(e) specifically provides a procedure for resolution of discovery disputes that occur outside of a proceeding. Section 309.5(e) provides that “any objections to any request for information shall be decided in writing by the assigned commissioner or by the president of the commission, if there is no assigned commissioner.” At each instance that SoCalGas objected to the data requests in the current investigation, the Public Advocates Office has engaged in a good faith effort to meet and confer to resolve the issue. If the issue could not be resolved, and in keeping with the clear procedural protections due SoCalGas under § 309.5(e), the Public Advocates Office properly submitted a motion to the Commission President’s Office. The Commission President then referred the matter to the Chief ALJ, who provided further process and procedures for the adjudication of the dispute, before referring the matter to an ALJ to decide.

Further, despite the fact that the formal Rules do not apply, the adjudication of this matter has employed the procedural Rules consistently, providing the procedural structure and safeguards that SoCalGas claims are lacking. Indeed, SoCalGas has now sought to pursue this matter before the full Commission, citing Commission precedent regarding interlocutory appeals, demonstrating that it has been afforded proper and full due process. The Public Advocates Office also has not moved to restrict SoCalGas’ ability to object to these requests. As demonstrated through the ongoing litigation of these issues, SoCalGas has been given ample opportunity to object. Importantly, if SoCalGas believes that any information it has been compelled to provide is confidential, there are well-established procedures by which to protect that information.

**E. The Public Advocates Office’s Continuing Discovery Is Not Improper**

SoCalGas also contends that the Public Advocates Office is infringing its First Amendment rights by submitting further data requests and citing ALJ DeAngelis’ ruling as part of the justification.<sup>54</sup> The Public Advocates Office is not “continu[ing] to demand constitutionally protected material” from SoCalGas, but merely requesting materials that SoCalGas is required to present under the Pub. Util. Code.<sup>55</sup> The Public Advocates Office is also not asserting that SoCalGas is barred from “raising any objection”<sup>56</sup> to its discovery requests, but instead maintains that SoCalGas’ repeated argument that shareholder-funded activity is protected from disclosure is legally infirm and has been repeatedly rejected. As explained in the October 8, 2019 Motion to Compel, ALJ DeAngelis implicitly rejected SoCalGas’ argument that it did not have to turn over documents related to allegedly 100% shareholder funded activity. It is entirely appropriate to continue to cite that ruling as SoCalGas continues to regurgitate the same (rejected) objections. Additionally, the Public Advocates Office has not merely relied on ALJ DeAngelis’ ruling, but has repeatedly cited the statutory authority that entitles it to the requested information—§§ 309.5(e) and 314. That SoCalGas continues to refuse to comply with its obligations under the Pub. Util. Code and continues its obstructionist tactics does not render the Public Advocates Office’s requests for statutorily required disclosures improper. The Public Advocates Office is entitled to the information requested, and SoCalGas’ refusal to provide it despite clear statutory authority, prior Commission decisions, and ALJ DeAngelis’ rulings, do not transform the Public Advocates Office’s insistence on disclosure into a due process violation.

---

<sup>54</sup> *Id.* at 23-24.

<sup>55</sup> The Public Advocates Office also objects to SoCalGas’ characterization that it is claiming “unchecked power” in its discovery requests. *See Motion to Reconsider/Appeal* at 23. The Public Advocates Office’s authority to request information in order to perform its duties is firmly grounded in the Pub. Util. Code, as the Public Advocates Office has consistently explained to SoCalGas.

<sup>56</sup> *Motion for Reconsideration/Appeal* at 3, 23-24.

Additionally, SoCalGas argues that the discovery into “non-ratepayer-funded activity” and ALJ DeAngelis’ rulings “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.”<sup>57</sup> SoCalGas cites to D.19-09-051, the Decision in SoCalGas’ 2019 General Rate Case, for support of this contention. However, the Commission did not prohibit any investigation into SoCalGas’ funding of lobbying activities or imply that any such investigation is improper, merely that the Commission will address any utilization of ratepayer funds on inappropriate political activities in the appropriate proceeding.<sup>58</sup> The Public Advocates Office maintains the statutory right to compel production from SoCalGas regarding any information it deems necessary to perform its duties, and the Commission’s statement in dicta in D.19-09-051 does not contradict that right.

#### **F. CONCLUSION**

For the foregoing reasons, SoCalGas’ Motion for Reconsideration/Appeal and requests for relief should be denied in their entirety. The Public Advocates Office, both as its own statutorily created entity and as Commission staff, has the right to inspect any of SoCalGas’ records in the course of its duties, whether such records relate to shareholder- or ratepayer-funded activities. The Public Advocates Office is not infringing on SoCalGas’ First Amendment rights by carrying out its statutorily mandated duty of protecting the interest of ratepayers because not only has SoCalGas failed to make a prima facie case of probable First Amendment infringement, but the Public Advocates office has a compelling interest in the contracts and the request was narrowly tailored. The Public Advocates Office has also not interpreted the Pub. Util. Code in an impermissibly broad or vague manner as it has relied on to the clear, plain language of

---

<sup>57</sup> *Id.* at 24.

<sup>58</sup> *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.

the statute and Commission decisions in its interpretation. Additionally, the procedural safeguards afforded SoCalGas are sufficient to protect its due process rights, as evidenced by the protections provided in statute and the process of adjudication for this ongoing dispute.

Respectfully submitted,

/s/ REBECCA VORPE

---

Rebecca Vorpe

Attorney for the  
Public Advocates Office

California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, California 94102  
Telephone: (415) 703-4443  
Email: [rebecca.vorpe@cpuc.ca.gov](mailto:rebecca.vorpe@cpuc.ca.gov)

December 17, 2019

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

# ATTACHMENT A

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

**MOTION TO COMPEL RESPONSES FROM  
SOUTHERN CALIFORNIA GAS COMPANY TO QUESTION 8 OF  
DATA REQUEST CALADVOCATES-SC-SCG-2019-05  
(NOT IN A PROCEEDING)**

## I. INTRODUCTION

Pursuant to Public Utilities (Pub. Util.) Code §§ 309.5(e)<sup>1</sup> and 314,<sup>2</sup> and Rule 11.3<sup>3</sup> of the California Public Utilities Commission's (Commission's) Rules of Practice and Procedure, the Public Advocates Office at the California Public Utilities Commission moves to compel production in response to Question 8 of Data Request

---

<sup>1</sup> Pub. Util. Code § 309.5(e) states: "The office may compel the production or disclosure of any information it deems necessary to perform its duties from any entity regulated by the commission, provided that any objections to any request for information shall be decided in writing by the assigned commissioner or by the president of the commission, if there is no assigned commissioner."

<sup>2</sup> Pub. Util. Code §314 states:

(a) The commission, each commissioner, and each officer and person employed by the commission may, at any time, inspect the accounts, books, papers, and documents of any public utility. The commission, each commissioner, and any officer of the commission or any employee authorized to administer oaths may examine under oath any officer, agent, or employee of a public utility in relation to its business and affairs. Any person, other than a commissioner or an officer of the commission, demanding to make any inspection shall produce, under the hand and seal of the commission, authorization to make the inspection. A written record of the testimony or statement so given under oath shall be made and filed with the commission.

(b) Subdivision (a) also applies to inspections of the accounts, books, papers, and documents of any business that is a subsidiary or affiliate of, or a corporation that holds a controlling interest in, an electrical, gas, or telephone corporation, or a water corporation that has 2,000 or more service connections, with respect to any transaction between the water, electrical, gas, or telephone corporation and the subsidiary, affiliate, or holding corporation on any matter that might adversely affect the interests of the ratepayers of the water, electrical, gas, or telephone corporation.

<sup>3</sup> Rule 11.3(a) states: "A motion to compel or limit discovery is not eligible for resolution unless the parties to the dispute have previously met and conferred in a good faith effort to informally resolve the dispute. The Motion shall state facts showing a good faith attempt at an informal resolution of the discovery dispute presented by the motion, and shall attach a proposed ruling that clearly indicates the relief requested."

(DR) No. CalAdvocates-SC-SCG-2019-05 served on Southern California Gas Company (SoCalGas).

As described in prior related briefing,<sup>4</sup> the Public Advocates Office is currently investigating SoCalGas' funding of political lobbying activities, including, among other things, whether and to what extent ratepayer money was used to found and support Californians for Balanced Energy Solutions (C4BES).<sup>5</sup> In furtherance of this investigation, the Public Advocates Office served SoCalGas with DR No. CalAdvocates-SC-SCG-2019-05 on August 13, 2019.<sup>6</sup> SoCalGas refused to provide responsive documents in response to Question 8 of this DR.<sup>7</sup>

The Public Advocates Office requires this information in order to perform its duties and considers SoCalGas' non-response to Questions 8 to be in violation of SoCalGas' duty to comply with its obligations under Pub. Util. Code §§ 309.5(e) and 314. The Public Advocates Office met with SoCalGas multiple times in conformance with Rule 11.3(a) to attempt to resolve this dispute informally; however, the parties reached an impasse and this motion became necessary. SoCalGas must be compelled to comply with the law and provide fully responsive documents in response to Question 8

---

<sup>4</sup> See Exhibit 1, *Motion to Compel Further Responses from Southern California Gas Company to Data Request - CalAdvocates-SC-SCG-2019-04* (August 14, 2019); Exhibit 2, *Response of SoCalGas to August 14, 2019 Motion To Compel Further Responses From Southern California Gas Company to Data Request - CalAdvocates-SC-SCG-2019-04* (August 26, 2019); Exhibit 3, *Reply of the Public Advocates Office to Response Of SoCalGas to August 14, 2019 Motion to Compel Further Responses From Southern California Gas Company to Data Request - CalAdvocates-SC-SCG-2019-04 in the Discovery Dispute Between Public Advocates Office and Southern California Gas Company, August 2019 (Not in a Proceeding)* (September 9, 2019). The attachments to the filings have been omitted because these filings are voluminous and the attachments are not directly relevant to the current dispute, but the attachments can be provided upon request.

<sup>5</sup> In Rulemaking (R.) 19-01-011, Sierra Club alleged that SoCalGas found and funded C4BES. This led to an investigation by the Public Advocates Office into the veracity of Sierra Club's allegation and whether ratepayer funding was used to found and fund C4BES. See Sierra Club's *Motion to Deny Party Status to Californians For Balanced Energy Solutions or, in the Alternative, to Grant Motion to Compel Discovery* (May 14, 2019). See also Public Advocates Office's *Response to Sierra Club's Motion to Deny Party Status to Californians For Balanced Energy Solutions or, in the Alternative, to Grant Motion to Compel Discovery* filed (May 29, 2019).

<sup>6</sup> See Exhibit 4, *Data Request (DR) CalAdvocates-SC-SCG-2019-05*, dated August 13, 2019, at 4.

<sup>7</sup> See Exhibit 5, *Southern California Gas Company's Responses to Data Request CalAdvocates-SC-SCG-2019-05*, dated August 27, 2019, at 8.



within 24 hours of the ruling on this motion. The Public Advocates Office submits this motion to compel to the Commission’s President<sup>8</sup> and respectfully requests an expeditious ruling addressing the legal issues on the merits as this investigation has been unnecessarily and repeatedly delayed by SoCalGas’ obstructive tactics.

## II. BACKGROUND

### A. Impetus for the Public Advocates Office’s Current Inquiries

As discussed in the Public Advocates Office’s prior motion to compel in this matter relating to DR CalAdvocates-SC-SCG-2019-04, on May 13, 2019, C4BES filed a Motion for Party Status in Rulemaking (R.)19-01-011 in which C4BES represented that it is “a coalition of natural and renewable natural gas users.”<sup>2</sup> C4BES did not disclose that it has any affiliation with SoCalGas in its Motion for Party Status. On May 14, 2019, Sierra Club filed a *Motion to Deny Party Status to Californians For Balanced Energy Solutions or, in the Alternative, to Grant Motion to Compel Discovery*, in which it alleged that SoCalGas founded and funded C4BES.<sup>10</sup> On May 29, 2019, the Public Advocates Office, C4BES, and SoCalGas separately filed responses to Sierra Club’s motion to deny party status to C4BES. In its response to Sierra Club’s motion to deny party status, the Public Advocates Office stated that it would be investigating the allegations raised by Sierra Club.<sup>11</sup>

On May 23, 2019, the Public Advocates Office issued Data Request Number Public Advocates Office-SCG051719 to SoCalGas regarding its involvement with

---

<sup>8</sup> Pursuant to Pub. Util. Code § 309.5(e), objections to the production or disclosure or any information the Public Advocates Office deems necessary to perform its duties must be decided in writing by the assigned commissioner or by the President of the Commission. Because DR CalAdvocates-SC-SCG-2019-05 was not issued pursuant to any open Commission proceeding, there is no assigned Commissioner. As a result, the motion to compel must be decided by the Commission’s President.

<sup>2</sup> See *C4BES Motion for Party Status in R.19-01-011 filed* (May 13, 2019).

<sup>10</sup> See R.19-01-011, *Sierra Club’s Motion to Deny Party Status to Californians for Balanced Energy Solutions or, in the Alternative, to Grant Motion to Compel Discovery* (filed May 14, 2019).

<sup>11</sup> See R.19-01-011, *Response of the Public Advocates Office to Sierra Club’s Motion to Deny Party Status to Californians for Balanced Energy Solutions or, in the Alternative, to Grant Motion to Compel Discovery* (filed May 29, 2019), at 2.

C4BES. This data request was issued outside of R.19-01-011, and the investigation into SoCalGas' involvement with C4BES is not within the scope of any current proceeding. SoCalGas' response to the Public Advocates Office's data request provides evidence that SoCalGas has been using ratepayer money to start and fund C4BES.<sup>12</sup> The Public Advocates Office issued additional Data Requests to further investigate this matter. Each of these data requests has also been issued outside of R.19-01-011 and is not within the scope of any current proceeding.

**B. Previous Discovery Dispute**

On July 19, 2019, the Public Advocates Office issued DR CalAdvocates-SC-SCG-2019-04 to SoCalGas. SoCalGas provided a response on August 2, 2019, which contained redacted documents in response to Items 1 and 5 of the Data Request. On August 14, 2019, after meeting and conferring in an attempt to resolve the matter informally with SoCalGas, the Public Advocates Office submitted a *Motion to Compel Further Responses from Southern California Gas Company to Data Request - CalAdvocates-SC-SCG-2019-04* to then-Commission President Picker's office.<sup>13</sup> The Public Advocates Office's motion sought unredacted documents in response to Items 1 and 5 in DR CalAdvocates-SC-SCG-2019-04, pursuant to the Public Advocates Office's ability to seek information from entities regulated by the Commission under Pub. Util. Code §§ 309.5(e) and 314.<sup>14</sup>

On August 26, 2019, SoCalGas submitted *Response of SoCalGas to August 14, 2019 Motion to Compel Further Responses from Southern California Gas Company to*

---

<sup>12</sup> See R.19-01-011, *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* (filed July 5, 2019), at 2.

<sup>13</sup> See Exhibit 1. Commission President Marybel Batjer subsequently referred the matter to Chief Administrative Law Judge Anne Simon for ruling, who in turn referred the matter to Administrative Law Judge Regina DeAngelis.

<sup>14</sup> Subsequently, but prior to Judge DeAngelis' ruling, SoCalGas provided an amended response to Item 5 and, therefore, the Public Advocates Office no longer sought this information via the motion to compel submitted on August 14, 2019.

*Data Request – CalAdvocates – SC-SCG-2019-04.*<sup>15</sup> On September 9, 2019, the Public Advocates Office filed a *Reply of the Public Advocates Office to Response of SoCalGas to August 14, 2019 Motion to Compel Further Responses from Southern California Gas Company to Data Request – CalAdvocates-SC-SCG-2019-04.*<sup>16</sup>

In its response to Item 1 of DR CalAdvocates-SC-SCG-2019-04, SoCalGas had redacted information on a Work Order Authorization (WOA) relating to shareholder funds. The Public Advocates Office sought an unredacted response to Item 1 of DR CalAdvocates-SC-SCG-2019-04.<sup>17</sup> SoCalGas argued that the information sought in the Public Advocates Office’s motion in response to Item 1 was “not responsive to [the] questions and furthermore is not necessary for Cal Advocates to perform its statutory duties as laid out in Public Utilities Code § 309.5(a)[<sup>18</sup>]” because it is related to shareholder funds, not ratepayer funds.

On September 10, 2019, Administrative Law Judge DeAngelis granted the Public Advocates Office’s motion to compel (September 10, 2019 Ruling).<sup>19</sup>

### **C. Current Discovery Dispute**

On August 13, 2019, prior to the filing of the first motion to compel in this matter, the Public Advocates Office served SoCalGas with DR CalAdvocates-SC-SCG-

---

<sup>15</sup> See Exhibit 2.

<sup>16</sup> See Exhibit 3. Chief Administrative Law Judge Simon granted the Public Advocates Office permission to file this reply in an email ruling on September 5, 2019. See Rule 11.1(f).

<sup>17</sup> The Public Advocates Office also referenced SoCalGas’ recalcitrance related to Question 8 in its September 9 reply, although Question 8 was not specifically the subject of the August 14 motion. See Exhibit 3 at 9-10.

<sup>18</sup> Pub. Util. Code § 309.5(a) states:

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

<sup>19</sup> See Exhibit 6, *Administrative Law Judge’s Ruling in the Discovery Dispute Between Public Advocates Office and Southern California Gas Company, August 2019 (Not in a Proceeding)*, dated September 10, 2019.

2019-05.<sup>20</sup> This Data Request included the following question, with SoCalGas' August 27, 2019 response indicated below<sup>21</sup>:

QUESTION 8:

Provide all contracts (and contract amendments) covered by the WOA which created the BALANCED ENERGY IO.<sup>22</sup>

RESPONSE 8:

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

On September 11, 2019, after Judge DeAngelis granted the August 14, 2019 Motion to Compel, the Public Advocates Office contacted SoCalGas in an attempt to obtain an updated response to Question 8, given that SoCalGas' grounds for refusing to answer Question 8 were implicitly rejected in the September 10, 2019 Ruling. The Public Advocates Office sought to avoid the extreme waste of Commission resources in seeking judicial intervention on a legal issue that had already been decided. SoCalGas responded that it was "unable to find support for [the Public Advocates Office's] rationale in ALJ DeAngelis's September 10 ruling."<sup>23</sup> In an attempt to resolve this dispute without resorting to judicial intervention, and in conformance with Rule 11.3(a), the parties engaged in a meet and confer regarding Question 8 on September 16, 2019.

---

<sup>20</sup> See Exhibit 4, Data Request (DR) CalAdvocates-SC-SCG-2019-05, dated August 13, 2019, at 4.

<sup>21</sup> See Exhibit 5, Southern California Gas Company's Responses to Data Request CalAdvocates-SC-SCG-2019-05, dated August 27, 2019, at 8.

<sup>22</sup> The Work Order Authorization (WOA) created the Balanced Energy Internal Order (IO). The Balanced Energy IO is an account set up to track the costs of SoCalGas' Energy Policy and Strategy team associated with "balanced energy."

<sup>23</sup> See Exhibit 7, which provides the Public Advocates Office's emails dated September 11 and 12, 2019, and SoCalGas' email responses, dated September 12 and 13, 2019.

During the September 16, 2019 meet and confer, the Public Advocates Office and SoCalGas were unable to resolve the dispute. SoCalGas contended that the contracts requested in Question 8 were not the subject of the August 14, 2019 motion to compel and that the contracts are distinguishable from the WOA at issue in the previous motion to compel because the WOA was partially responsive to the question asked, whereas the contracts that are the subject of Question 8 are allegedly 100% shareholder funded.

Also during the September 16, 2019 meet and confer, the Public Advocates Office stated that one of the reasons it sought these contracts was to verify whether they were shareholder or ratepayer funded. The Public Advocates Office did not intend to imply that this was the only reason for its request, and also mentioned that the Public Advocates Office and ratepayers have an interest in the cost and non-cost aspects of these contracts, such as the scope of the work related to “balanced energy” as described by the WOA. At the conclusion of the meeting, the Public Advocates Office agreed to meet with some of SoCalGas’ accounting staff to see if it could better understand SoCalGas’ accounting processes, in the hopes that such understanding would help the Public Advocates Office gain a better understanding of how the Balanced Energy IO was created.

The meeting with SoCalGas’ accountants, with counsel present, occurred on September 27, 2019. SoCalGas provided an overview of its general accounting processes and procedures and answered specific questions regarding certain accounting procedures and notations. During the meeting, SoCalGas expressed its belief that the meeting was intended to resolve the dispute regarding Question 8. The Public Advocates Office explained that its good faith belief was that the meeting would be helpful in understanding the context behind SoCalGas’ accounting practices, and helpful for understanding the context for both Question 8 and Question 13.<sup>24</sup> However, Question 8 was still in dispute, and the Public Advocates Office reiterated that it is entitled to the

---

<sup>24</sup> At the September 27, 2019 meeting, the parties also discussed information related to Question 13 of DR CalAdvocates-SC-SCG-2019-05, which had been in dispute. As a result of this discussion, SoCalGas agreed to submit a revised response to Question 13, which it did on October 2, 2019. The Public Advocates Office felt that the revised response sufficiently answered the question and therefore Question 13 is no longer in dispute.

documents requested pursuant to both statute and Commission decisions. While this meeting provided further context and understanding of SoCalGas' internal accounting procedures, it did not obviate the need for documents in response to Question 8.<sup>25</sup>

On October 2, 2019, the parties met once again to discuss Question 8. The Public Advocates Office again reiterated that it needed the contracts in response to Question 8 in order to continue its investigation. SoCalGas repeated its assertion that because the contracts were fully shareholder funded, reviewing the contracts would not assist the Public Advocates Office in its statutory duty. The Public Advocates Office repeated its position that this matter had been argued in the prior motion to compel and decided by Judge DeAngelis. The Public Advocates Office also responded that, as a general matter, it is not required to divulge the purpose of its discovery because it is entitled to these documents per statute and Commission decision as argued in its original motion to compel. However, to further clarify its position to SoCalGas, the Public Advocates Office explained that, among other things, the investigation was seeking information on how the activities related to the contracts in Question 8 may have affected ratepayers' interests in issues such as achieving a least-cost path to meeting the state's decarbonization goals. At the conclusion of the meeting, the parties agreed they were at an impasse on this issue.

### **III. DISCUSSION**

#### **A. This Issue Has Been Previously Decided By Judge DeAngelis**

Initially, this motion to compel should not be necessary because SoCalGas' justification for refusing to provide the contracts in response to Question 8 has been rejected by Judge DeAngelis. In opposing the August 14, 2019 motion to compel, SoCalGas largely relied on its arguments that neither Pub. Util. Code § 309.5(e) nor § 314 provided the Public Advocates Office with the authority to seek information related

---

<sup>25</sup> See Exhibit 8, Public Advocates Office email dated September 27, 2019.

to shareholder-funded activities.<sup>26</sup> SoCalGas is relying on the same reasoning here—that because the contracts are purportedly shareholder funded, they are beyond the Public Advocates Office’s statutory purview. However, the Public Advocates Office argued, successfully, that its authority to obtain information from regulated entities related to the scope of its work is broad and two-fold. This authority is derived from both Pub. Util. Code §§ 309.5(e) and 314, and neither contains the type of limitation suggested by SoCalGas. Adopting SoCalGas’ interpretation of these statutes would severely curtail the ability of the Public Advocates Office, and the Commission in general, to access information in a way that is not supported by law.

In the September 10, 2019 Ruling, Judge DeAngelis stated that after reviewing the motion, response, and reply, the motion to compel was granted.<sup>27</sup> If she had found that *any* of SoCalGas’ arguments had merit, she would not have granted the motion.

Further, despite SoCalGas’ attempt to distinguish Question 8 from the question regarding the WOA at issue in the August 14, 2019 motion to compel, the legal issue is not substantively different. While this is a different data request, the underlying reasoning for SoCalGas’ refusal to disclose the documents is identical—that this information relates solely to shareholder funds and is therefore undiscoverable by the Public Advocates Office. That SoCalGas considered portions of the WOA responsive, in contrast to the contracts at issue here, which SoCalGas considers wholly unresponsive, does not mean the two issues are substantively different. On the contrary, the two issues are the same: SoCalGas withheld information in the WOA because it related to shareholder funds<sup>28</sup>; here, SoCalGas is withholding the contracts because they are allegedly shareholder funded. Because Judge DeAngelis granted the August 14, 2019

---

<sup>26</sup> See Exhibit 2, at 5-6, 9-10.

<sup>27</sup> See Exhibit 6 at 2.

<sup>28</sup> The WOA, when created, directed that costs be recorded in ratepayer funded accounts. Only after the Public Advocates Office discovered via data requests that these costs were being booked to ratepayer accounts did SoCalGas direct their accounting department to move these costs to a shareholder funded account. *SoCalGas Modified Response to DR Number Public Advocates Office-SCG051719* (served Aug. 13, 2019).

motion to compel and implicitly rejected SoCalGas' reasoning for withholding information related to shareholder funds, this issue has already been decided and in accordance with that ruling, this motion should also be granted.

**B. The Public Advocates Office is Entitled to the Information it Seeks under Pub. Util. Code §§ 309.5(e) and 314.**

To reiterate the Public Advocates Office's previously argued position, the Public Advocates Office is entitled to the information requested, and SoCalGas as a regulated entity is obligated to provide the information pursuant to both statute and Commission decision. This statutory right to inspect the documents of any public utility includes records related to shareholder funding.

As explained in Decision (D.) 01-08-062, "[The Public Advocates Office's] rights to seek information from entities regulated by this Commission . . . principally arise from two statutes—Pub. Util. Code. §§ 314 and 309.5."<sup>29</sup> Under § 309.5(e), the Public Advocates Office "may compel the production or disclosure of any information it deems necessary to perform its duties from any entity regulated by the commission..." Under § 314, as staff of the Commission, the Public Advocates Office may inspect the "accounts, books, papers and documents of any public utility" as well as "any business that is a subsidiary or affiliate of, or a corporation that holds a controlling interest in" any public utility . . . ."

Pub. Util. Code § 309.5(e) contains no limitation on the type of information that may be sought by the Public Advocates Office in the pursuit of its statutory duties and it clearly allows for discovery of information the Public Advocates Office deems necessary. The information requested is related to the Public Advocates Office's investigation of SoCalGas' role in political lobbying activities, including the funding and founding of C4BES. The Public Advocates Office has determined that the disclosure of the contracts requested by Question 8 is necessary to perform its duties in relation to this investigation. Pub. Util. Code § 309.5(e) clearly allows for discovery of information the Public

---

<sup>29</sup> D.01-08-062, at 6.



Advocates Office deems necessary. Section 309.5(e) does not limit the Public Advocates Office to only reviewing information related to ratepayer accounts. Therefore, the Public Advocates Office is entitled to this information under § 309.5(e).

Additionally, § 309.5(a) does not limit the Public Advocates Office to only inquiring into the use of ratepayer funds. Section 309.5(a) states that the Public Advocates Office's role is to "represent and advocate on behalf of the interests of public utility customers and subscribers within the jurisdiction of the commission" and "to obtain the lowest possible rate for service consistent with reliable and safe service levels." While § 309.5(a) delineates the Public Advocates Office's goals, § 309.5(e) authorizes the Public Advocates Office to pursue these goals through the production of any information it deems necessary. The Public Advocates Office's role is to protect ratepayer interests, and it may pursue that goal without being subject to such an illogical and statutorily unsupported restraint as only being allowed to look at above-the-line transactions.

Further, as staff of the Commission, the Public Advocates Office has broad authority under Pub. Util. Code § 314 to inspect the accounts and documents of any public utility.<sup>30</sup> Section 314 allows the Public Advocates Office the same scope of authority as any other member of the Commission staff:

---

<sup>30</sup> Pub. Util. Code § 314 states:

(a) The commission, each commissioner, and each officer and person employed by the commission may, at any time, inspect the accounts, books, papers, and documents of any public utility. The commission, each commissioner, and any officer of the commission or any employee authorized to administer oaths may examine under oath any officer, agent, or employee of a public utility in relation to its business and affairs. Any person, other than a commissioner or an officer of the commission, demanding to make any inspection shall produce, under the hand and seal of the commission, authorization to make the inspection. A written record of the testimony or statement so given under oath shall be made and filed with the commission.

(b) Subdivision (a) also applies to inspections of the accounts, books, papers, and documents of any business that is a subsidiary or affiliate of, or a corporation that holds a controlling interest in, an electrical, gas, or telephone corporation, or a water corporation that has 2,000 or more service connections, with respect to any transaction between the water, electrical, gas, or telephone corporation and the subsidiary, affiliate, or holding corporation on any matter that might adversely affect the interests of the ratepayers of the water, electrical, gas, or telephone corporation.

[The Public Advocates Office’s] scope of authority to request and obtain information from entities regulated by the Commission is as broad as that of any other units of our staff, including the offices of the Commissioners. It [is] constrained solely by a statutory provision that provides a mechanism unique to [the Public Advocates Office] for addressing discovery disputes.<sup>31</sup>

Accordingly, the ability of Public Advocates Office and the Commission, in general, to access information is not restricted to only inquiring directly into ratepayer-funded activities. Such a restriction is not consistent with the Commission’s duty to effectively regulate utilities and determine whether any ratepayers were harmed to the benefit of the shareholders. Therefore, the Public Advocates Office’s motion to compel the production of the requested contracts in response to Question 8 should be granted in accordance with statutory and Commission authority.

**C. The Public Advocates Office Has Made a Good Faith Attempt to Resolve this Dispute Prior to Filing this Motion to Compel**

SoCalGas has implied during meet and confer sessions that the Public Advocates Office has not been acting in good faith. However, the Public Advocates Office has continuously acted in good faith in attempting to resolve this matter informally. The Public Advocates Office initiated email discussions and engaged in three telephonic meetings regarding Question 8. The purpose of the September 27, 2019 meeting with SoCalGas’ accountants was for the Public Advocates Office to gain a better understanding of SoCalGas’ internal accounting processes since SoCalGas stated that the Public Advocates Office misunderstood some of its accounting practices.<sup>32</sup> The Public Advocates Office hoped that the September 27, 2019 meeting would lead to a greater understanding of SoCalGas’ accounting processes and answer at least some of the Public Advocates Office’s questions underlying Question 8. However, even after the September

---

<sup>31</sup> D.01-08-062, at 6.

<sup>32</sup> See Exhibit 9, emails between the Public Advocates Office dated September 12, 13, and 18, 2019.

27, 2019 meeting, the Public Advocates Office felt that it still required the contracts as requested by Question 8.<sup>33</sup>

The Public Advocates Office need not disclose to SoCalGas the need for its requests during the course of an investigation. However, in the course of the many meet and confer meetings on this issue, the Public Advocates Office explained that it sought the contracts in order to understand more fully how the activities related to the contracts in Question 8 may have affected ratepayers' interests. The Public Advocates Office also explained that it believed this matter had already been decided by Judge DeAngelis. The Public Advocates Office explained its position and why SoCalGas had an obligation to respond to Question 8. While SoCalGas may have desired a more detailed or in-depth explanation of the Public Advocates Office's internal processes and strategy, it is not entitled to such information during a meet and confer, and the Public Advocates Office fully engaged with the meet and confer process in good faith.

#### **D. Conclusion**

The Public Advocates Office's motion to compel production in response to Question 8 should be granted, and SoCalGas should be compelled to produce responsive documents within 24 hours of the granting of this motion. This motion should be granted consistent with the Public Advocates Office's broad authority to seek information from any regulated entity for any purpose related to the scope of its work. Neither Pub. Util. Code §§ 309.5(e) nor 314 is limited in the manner suggested by SoCalGas, and therefore its argument that the Public Advocates Office does not have authority to seek information into shareholder funds should be rejected as inconsistent with the broad discovery authority granted by statute to the Public Advocates Office and Commission staff. Additionally, because SoCalGas contends that the September 10, 2019 Ruling does not resolve the current dispute, the Public Advocates Office respectfully requests a ruling

---

<sup>33</sup> As stated previously, the September 27, 2019 meeting was successful in resolving the dispute regarding Question 13.

addressing the legal issues on the merits in order to avoid further unnecessary litigation on this issue.

Respectfully submitted,

/s/ REBECCA VORPE

---

Rebecca Vorpe

Attorney for the  
Public Advocates Office

California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, California 94102  
Telephone: (415) 703-4443  
Email: [rebecca.vorpe@cpuc.ca.gov](mailto:rebecca.vorpe@cpuc.ca.gov)

October 7, 2019

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

**[PROPOSED] ORDER**

On October 7, 2019, the Public Advocates Office submitted a *Motion to Compel Responses from Southern California Gas Company to Question 8 of Data Request CalAdvocates-SC-SCG-2019-05 (Not in a Proceeding)* requesting that the Commission order SoCalGas to provide documents in response to Question 8 of DR CalAdvocates-SC-SCG-2019-05. Having considered the Public Advocates Office’s motion to compel and given the urgency of this request and the clear statutory authorization for the information sought pursuant to Public Utilities Code Sections 309.5(e) and 314, the Commission hereby grants the Public Advocates Office’s motion.

**ORDER**

SoCalGas is hereby ordered to provide documents in response to Question 8 of DR CalAdvocates-SC-SCG-2019-05. SoCalGas is ordered to comply with this order within 24 hours from the date of this ruling.

**SO ORDERED.**

Dated: \_\_\_\_\_, 2019

\_\_\_\_\_  
**Administrative Law Judge**

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

# ATTACHMENT B

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

**SOUTHERN CALIFORNIA GAS COMPANY'S (U 904 G) EMERGENCY MOTION TO  
STAY PENDING FULL COMMISSION REVIEW 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)**

JOHNNY Q. TRAN

Attorney for:  
SOUTHERN CALIFORNIA GAS COMPANY  
555 West Fifth Street, Suite 1400  
Los Angeles, California 90013  
Telephone: (213) 244-2981  
Facsimile: (213) 629-9620  
Email: [JQTran@socalgas.com](mailto:JQTran@socalgas.com)

November 4, 2019

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

**TABLE OF CONTENTS**

	PAGE
I. INTRODUCTION.....	1
II. BACKGROUND AND PROCEDURAL HISTORY .....	3
III. DISCUSSION .....	3
A. LEGAL STANDARD OF REVIEW FOR MOTION TO STAY .....	3
1. SoCalGas Will Suffer Serious or Irreparable Harm if the ALJ Does Not Stay Production.....	4
2. SoCalGas Will Likely Prevail on the Merits. ....	5
3. The Harm to SoCalGas if the Stay is not Granted Outweighs the Harm to Cal Advocates if the Stay is Granted.....	7
4. Requiring SoCalGas to Produce the Contracts Without Providing SoCalGas Adequate Time to Have its Appeal Heard by the Full Commission Violates SoCalGas’ Due Process and Contravenes Commission Precedent in Preserving a Utility’s Right of Appeal.....	8
IV. CONCLUSION.....	9

## TABLE OF AUTHORITIES

### Cases

<i>California Rest. Ass’n v. Henning</i> , 173 Cal. App. 3d 1069, 1075 (1985) .....	7
<i>Consolidated Edison Co. of N.Y. v. Pub. Serv. Comm’n of N.Y.</i> , 447 U.S. 530, 534 n.1 .....	4
<i>Fed. Trade Comm’n v. Qualcomm Inc.</i> , 935 F.3d 752, 756 (9th Cir. 2019).....	5
<i>Pacific Gas &amp; Elec. Co. v. Pub. Utilities Comm’n of California</i> , 475 U.S. 1, 17, n. 14 (1986) ....	4
<i>Pacific Gas &amp; Elec. Co. v. Pub. Utilities Comm’n</i> , 85 Cal. App. 4th 86, 93 (2000).....	4
<i>People v. Cornett</i> 53 Cal.4th 1261, 1265 (2012) .....	6
<i>Poole v. Orange Cty. Fire Auth.</i> , 61 Cal. 4th 1378, 1384–85 (2015).....	6
<i>See v. City of Seattle</i> , 387 U.S. 541, 544-45 (1967). .....	7
<i>White v. Lee</i> , 227 F.3d 1214, 1228 (9 <sup>th</sup> Cir. 2000).....	4

### Statutes

PUC § 314.....	3
PUC § 309.5.....	3
PUC § 309.5(e) .....	5

### Commission Decisions

D.08-04-044 .....	4, 9
D.11-05-050 .....	3
D.12-12-036 .....	6, 7
D.16-10-043 .....	2, 4, 8
D.19-09-051 .....	6



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

**SOUTHERN CALIFORNIA GAS COMPANY’S (U 904 G) EMERGENCY MOTION TO  
STAY PENDING FULL COMMISSION REVIEW 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)**

Pursuant to Chief Administrative Law Judge Simon’s instructions<sup>1</sup> and consistent with Rule 11.1 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission” or “CPUC”) Southern California Gas Company (“SoCalGas”) respectfully submits this 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 (“Emergency Motion to Stay”).

The Administrative Law Judge’s Ruling in the Discovery Dispute Between Public Advocates Office and Southern California Gas Company, October 7, 2019 (Not in a Proceeding) (“ALJ Ruling”) requires that SoCalGas produce certain 100 percent shareholder funded contracts within two business days, which is no later than Tuesday, November 5, 2019. As such, SoCalGas respectfully requests that the Administrative Law Judge (“ALJ”) provide an expedited ruling on this Emergency Motion to Stay by no later than November 5, 2019 to avoid serious or irreparable harm to SoCalGas.

**I. INTRODUCTION**

The discovery dispute at issue is whether California Public Advocates Offices (“Cal Advocates”) has the unfettered discovery authority to demand production of SoCalGas’ 100 percent shareholder funded contracts. In granting Cal Advocates Motion to Compel Responses from SoCalGas to Question 8 of Data Request—Cal Advocates-SC-SCG-2019-05 (“Motion”) and requiring SoCalGas to produce its 100 percent shareholder funded contracts, the ALJ Ruling

---

<sup>1</sup> Chief Administrative Law Judge Anne Simon’s October 29, 2019 e-mail designating Administrative Law Judge DeAngelis to handle this discovery dispute states that since this discovery dispute is outside of any formal proceeding, the Commission’s Rules of Practice and Procedures and filing requirements do not directly apply.

could implicate SoCalGas' shareholders' First Amendment rights. The two-day production deadline effectively deprives SoCalGas of a fundamental due process opportunity to appeal on the basis of a constitutionally protected right. Due to the invasiveness of Cal Advocates' data request and the potential First Amendment right issues, SoCalGas requests that the ALJ stay the ALJ Ruling to permit SoCalGas an opportunity to file an appeal to the full Commission. Failing to stay the ALJ Ruling would deny SoCalGas' constitutional right before it is able to appeal and be heard by the full Commission. SoCalGas would be forced to choose between producing the documents or following Commission precedent on how to preserve its appellate rights via an appeal to the full Commission.<sup>2</sup>

In addition, the ALJ Ruling could have broader implications regarding Cal Advocates' overall discovery authority and whether there are any limitations at all on what Cal Advocates can demand and inspect from regulated utilities. Cal Advocates asserts that SoCalGas does not have unfettered right to lobby the government, regardless of whether that lobbying is ratepayer or shareholder funded, when such lobbying, in Cal Advocates' opinion, is harmful to ratepayers.<sup>3</sup> In essence, Cal Advocates wants to be able to tell SoCalGas' shareholders what they can and cannot say. As part of Cal Advocates investigation, Cal Advocates asserts that it has the unfettered authority to conduct discovery into SoCalGas' shareholder activities and that **no one**, other than Cal Advocates themselves, can decide what information and documents Cal Advocates can and cannot access.<sup>4</sup>

This important issue should not be precluded from consideration by the full Commission, or the Court of Appeal, by virtue of an ALJ directing SoCalGas to produce the contracts within two business days. SoCalGas would be contravening prior Commission precedent on how to preserve its appellate rights if it were to comply with the ALJ Ruling's production deadline. Further, Cal Advocates will likely continue to assert this position and cite to the ALJ Ruling as well as the ALJ's September 10, 2019 Ruling,<sup>5</sup> as it already has,<sup>6</sup> as justification for its

---

<sup>2</sup> See e.g. D.16-10-043.

<sup>3</sup> *Reply of the Public Advocates Office to Response of SoCalGas in the Discovery Dispute Between Public Advocates Office and Southern California Gas Company, October 2019 (Not in a Proceeding)* (filed October 31, 2019) ("Reply"), at 7-8.

<sup>4</sup> Reply, at 4, 7-8.

<sup>5</sup> *Administrative Law Judge's Ruling in the Discovery Dispute Between Public Advocates office and Southern California Gas Company, August 2019 (Not in a Proceeding)* (issued on September 10, 2019).

<sup>6</sup> For example, Cal Advocates has argued that SoCalGas is collaterally estopped from objecting to Cal Advocates discovery into SoCalGas' 100 percent shareholder funded activities. Reply, at 8-9.

unfettered discovery authority. Without a clear reasoned decision as to whether Cal Advocates has unfettered discovery authority into SoCalGas' 100 percent shareholder funded activities and whether there are any limitations to Cal Advocates' authority, this issue will likely arise again as part of Cal Advocates' ongoing Public Utilities Code ("PUC") §§ 309.5 and 314 data requests that effectively deprive SoCalGas of due process rights that would otherwise be afforded during a CPUC proceeding.

## **II. BACKGROUND AND PROCEDURAL HISTORY**

On October 7, 2019, Cal Advocates filed its Motion asserting that PUC §§ 309.5 and 314 provide Cal Advocates with broad discovery authority that extends to SoCalGas' shareholder funded activities. On October 17, 2019, SoCalGas filed its response stating that while SoCalGas does not dispute that Cal Advocates has broad discovery authority, it is not without limits. SoCalGas asserts that Cal Advocates' discovery authority is limited to information that is necessary to perform its statutory duties and that Cal Advocates cannot rely on PUC § 314 because it has not been delegated authority pursuant to said code section. SoCalGas also requested that should the ALJ grant Cal Advocates' Motion, SoCalGas be given at least two weeks to file an appeal with a concurrent motion to stay enforcement of the ruling due to the invasiveness of Cal Advocates data request and the potential chilling effect on SoCalGas' shareholders' First Amendment rights. On October 31, 2019, Cal Advocates filed its Reply. On November 1, 2019, ALJ DeAngelis granted Cal Advocates' Motion and ordered SoCalGas to produce the 100 percent shareholder funded contracts within two (2) business days.

## **III. DISCUSSION**

### **A. LEGAL STANDARD OF REVIEW FOR MOTION TO STAY**

The Commission considers a number of factors in determining whether there is good cause to grant a stay pending rehearing of its own decisions. Those factors include: (1) whether the moving party will suffer serious or irreparable harm if the stay is not granted; (2) whether the moving party is likely to prevail on the merits; (3) a balance of the harm to the moving party if the stay is not granted and the decision reversed, against the harm to the other parties if the stay is granted and the decision affirmed; and (4) other factors relevant to a particular case.<sup>7</sup>

---

<sup>7</sup> D.11-05-050, at 2-3.

The Commission has determined that it believes a “due process allegation is a unique ‘other factor’ ... which merits preliminary and independent consideration.”<sup>8</sup> As a matter of equity, the Commission has granted a Motion for Stay given the circumstances of a case and procedural issues involved without ruling on the merits of the stay.<sup>9</sup> As set forth below, SoCalGas has established the essential prerequisites to obtain a Motion to Stay and is entitled to the relief requested.

**1. SoCalGas Will Suffer Serious or Irreparable Harm if the ALJ Does Not Stay Production.**

Even as a regulated utility, SoCalGas is entitled to the full protection of the First Amendment of the United States Constitution, including the right to free speech and the right to petition.<sup>10</sup> To permit Cal Advocates to conduct discovery on SoCalGas’ shareholders, not ratepayers, lobbying activities could have an unconstitutional chilling affect or silence a person of ordinary firmness from engaging in future First Amendment activities.<sup>11</sup> Due to the broader implications of the ALJ Ruling, SoCalGas intends to appeal the ALJ Ruling to the full Commission.<sup>12</sup>

If the ALJ Ruling is not stayed pending the result of SoCalGas’ appeal, SoCalGas will suffer serious and irreparable harm because once SoCalGas produces the contracts to Cal Advocates, it cannot be undone.<sup>13</sup> Cal Advocates will be forever privy to the information contained in those contracts. This is true even if the Commission ultimately agrees with

---

<sup>8</sup> D.08-04-044, at 3.

<sup>9</sup> *Id.* at 1.

<sup>10</sup> *Pacific Gas & Elec. Co. v. Pub. Utilities Comm’n of California*, 475 U.S. 1, 17, n. 14 (1986) (plurality opinion); *Consolidated Edison Co. of N.Y. v. Pub. Serv. Comm’n of N.Y.*, 447 U.S. 530, 534 n.1; *Pacific Gas & Elec. Co. v. Pub. Utilities Comm’n*, 85 Cal. App. 4th 86, 93 (2000).

<sup>11</sup> *White v. Lee*, 227 F.3d 1214, 1228 (9<sup>th</sup> Cir. 2000).

<sup>12</sup> *See* D.16-10-043, at 28-29 (where the Commission “made clear that where an ALJ’s evidentiary ruling may present possible ramifications in other proceedings and/or the issue concerns constitutional rights... the proper procedure is to bring the issue before the full Commission for resolution, including during the pendency of the proceeding.”)

<sup>13</sup> *Fed. Trade Comm’n v. Qualcomm Inc.*, 935 F.3d 752, 756 (9<sup>th</sup> Cir. 2019) (finding that there is a probability of irreparable harm where the injunction requires a party to enter new contractual relationships and renegotiate existing ones on a large scale and imposes fundamental business changes that cannot be easily undone should party prevail on appeal).

SoCalGas that Cal Advocates has exceeded its authority in demanding SoCalGas' 100 percent shareholder funded contracts and are not entitled to the contracts.

## 2. SoCalGas Will Likely Prevail on the Merits.

Cal Advocates asserts that it has unfettered discovery authority pursuant to PUC §309.5(e) and that **no one**, other than Cal Advocates themselves, can decide what information and documents Cal Advocates can and cannot access.<sup>14</sup> However, that position directly conflicts with the language of the code. PUC §309.5(e) states:

The office may compel the production or disclosure of any information it deems *necessary to perform its duties* from any entity regulated by the commission, provided that any objections to any request for information shall be decided in writing by the assigned commissioner or by the president of the commission, if there is no assigned commissioner. (Emphasis added.)

Cal Advocates argues that because the code section includes the language, “it deems necessary,” that Cal Advocates has sole discretion to determine what information is necessary for it to perform its duties.<sup>15</sup> Once Cal Advocates determines, at its sole discretion, that certain information is necessary to perform its duties, then there is no limitation to the type of information it can seek.<sup>16</sup> This position is in direct conflict with PUC § 309.5(e) and improperly reads out entire portions of PUC §309.5(e). First, it reads out the language that the information must be “necessary to perform its duties.” While Cal Advocates is able to deem what it considers to be “necessary to perform its duties,” the information still must be “necessary to perform its duties.” Second, simply because Cal Advocates may compel production or disclosure of information that it deems necessary to perform its duties, it is not the sole decision maker. Clearly, PUC § 309.5(e) permits parties such as SoCalGas to disagree with Cal Advocates position by allowing parties to object to the disclosure. The Commission would decide whether to grant or deny the discovery, not Cal Advocates. Cal Advocates interpretation of PUC § 309.5(e) would in essence re-write the section to read:

“The office may compel the production or disclosure of any information it deems necessary to perform its duties from any entity regulated by the commission; provided that any objections to any request for information shall be decided in

---

<sup>14</sup> Reply, at 4, 7-8.

<sup>15</sup> *Id.*, at 4.

<sup>16</sup> *Id.*

writing by the assigned commissioner or by the president of the commission, if there is no assigned commissioner.”

It is black letter law in California that when interpreting a statute, “[w]e begin with the plain language of the statute, affording the words of the provision their ordinary and usual meaning and viewing them in their statutory context, because the language employed in the Legislature's enactment generally is the most reliable indicator of legislative intent.’ The plain meaning controls if there is no ambiguity in the statutory language.”<sup>17</sup> It is clear from the plain language of the statute that there are limitations on Cal Advocates’ rights. That is not ambiguous. Cal Advocates cannot simply read out the limitations of the statute.

In addition, Cal Advocates provide no argument to refute that its overbroad discovery could have a chilling effect on SoCalGas’ First Amendment rights. Cal Advocates only states that it has authority to conduct its investigation into SoCalGas’ shareholder activity, which SoCalGas disagrees, and cites to Decision (D.12-12-036) for the proposition that SoCalGas does not have unfettered right to lobby the government when such lobbying is harmful to ratepayers.<sup>18</sup> However, D.12-12-036 is completely distinguishable as that Decision prohibits ratepayer funded lobbying activities, not shareholder funded lobbying activities. In fact, D.12-12-036 clearly permits lobbying that is supported by shareholder funds.<sup>19</sup>

Moreover, 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 the further exploration of SoCalGas’ funding of political lobbying activities beyond what was already litigated in that GRC proceeding: “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*.”<sup>20</sup> Cal Advocates’ discovery into non-ratepayer funded

---

<sup>17</sup> *Poole v. Orange Cty. Fire Auth.*, 61 Cal. 4th 1378, 1384–85 (2015) citing to *People v. Cornett* 53 Cal.4th 1261, 1265 (2012).

<sup>18</sup> Reply, at 7-8.

<sup>19</sup> D.12-12-036, at 39 (Conclusion of Law 3) (“It is reasonable and consistent with SB 790 to require that marketing or lobbying against CCAs is supported by shareholder funds, not ratepayer funds.”)

<sup>20</sup> D.19-09-051, at 379 (emphasis added). It is worth noting that 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: “Some of the letters include information on the benefits of natural and renewable gas options or suggest consideration of these options but we find that these are generally informational as opposed to what Sierra Club and UCS suggest.” *Id.*

activity and the ALJ Ruling's unexplained affirmation of that right of discovery contradict the Commission's directive. Cal Advocates' continuation to submit data requests outside of a proceeding, despite multiple proceedings where they could bring requests related to its own investigation (e.g., Building Decarbonization OIR, Energy Efficiency Order to Show Cause) would deprive SoCalGas of any appellate review of the ALJ Ruling and similar future rulings outside of a proceeding. The Commission's GRC language should be respected and discovery should conform to due process protections intended to preserve SoCalGas' appellate rights.

**3. The Harm to SoCalGas if the Stay is not Granted Outweighs the Harm to Cal Advocates if the Stay is Granted.**

If the ALJ does not grant a stay of the ALJ Ruling, SoCalGas will be required to produce its 100 percent shareholder funded contracts. Once SoCalGas produces these contracts to Cal Advocates, it cannot be undone.<sup>21</sup> Even if the full Commission rules in favor of SoCalGas, Cal Advocates would have already seen the contracts.

On the other hand, if the stay is granted and the Commission resolves the appeal in favor of Cal Advocates, Cal Advocates will simply be delayed in examining the contracts. Cal Advocates has not presented any pressing need for the contracts in its Motion or Reply to the Motion. While Cal Advocates states that it is investigating SoCalGas, it has not stated why it cannot wait until after SoCalGas' appeal is resolved to examine the contracts. Cal Advocates reasoning that it is entitled to the contracts immediately because it served the data request on August 13, 2019<sup>22</sup> is outweighed by the harm to SoCalGas. The ALJ Ruling does not address how it avoids the extreme prejudice to SoCalGas in requiring a two-business-day production.

---

<sup>21</sup> See e.g. *California Rest. Ass'n v. Henning*, 173 Cal. App. 3d 1069, 1075 (1985) ("The Fourth Amendment also requires that there exists a mechanism by which validation, modification, or nullification of a subpoena can be judicially resolved, without penalty, before compliance with the subpoena can be exacted.") citing to *See v. City of Seattle*, 387 U.S. 541, 544-45 (1967).

<sup>22</sup> Reply, at 9-10.

**4. Requiring SoCalGas to Produce the Contracts Without Providing SoCalGas Adequate Time to Have its Appeal Heard by the Full Commission Violates SoCalGas' Due Process and Contravenes Commission Precedent in Preserving a Utility's Right of Appeal.**

If the ALJ does not grant a stay of the ALJ Ruling, SoCalGas will be deprived of the ability to have its appeal heard by the full Commission before it has to produce the contracts violating SoCalGas' due process.

The Commission has “made clear that where an ALJ’s evidentiary ruling may present possible ramifications in other proceedings and/or the issue concerns constitutional rights...the proper procedure is to bring the issue before the full Commission for resolution...”<sup>23</sup> This “can be accomplished through the mechanism of an interlocutory appeal or pursuant to a party’s motion, though there is no requirement that that any particular process is utilized; and...a presiding ALJ or Assigned Commissioner may...bring such an issue to the full Commission’s attention for resolution.”<sup>24</sup> In D.16-01-043, following an ALJ’s denial of Pacific Gas and Electric Company’s (“PG&E”) motion to file confidential information under seal, PG&E complied with the ALJ’s ruling by filing public unredacted versions of the agreements and filed another motion contesting the ALJ’s rulings and preserving its rights to seek rehearing of the ALJ ruling upon issuance of a final decision in the proceeding.<sup>25</sup> On rehearing, the Commission faulted PG&E for not filing an interlocutory appeal and filing the unredacted agreements.<sup>26</sup> The Commission stated PG&E is requesting that the Commission issue a decision that would essentially undo the outcome of the ALJ’s ruling,<sup>27</sup> which it cannot do. At best, the Commission could order the un-redacted version of the agreement be removed from its formal files, but any error would be entirely harmless at that point.<sup>28</sup> SoCalGas is in a similar position in that if it produces the documents on November 5, the Commission would be unable to undo the effects of the ALJ Ruling. Cal Advocates would already have seen SoCalGas’ 100 percent shareholder

---

<sup>23</sup> D.16-10-043, at 16.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*, at 3, 10.

<sup>26</sup> *Id.*, at 16-17.

<sup>27</sup> *Id.*, at 17.

<sup>28</sup> *Id.*





**[PROPOSED] ORDER**

On November 4, 2019, Southern California Gas Company (SoCalGas) filed an 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”) requesting that the Administrative Law Judge stay the ALJ Ruling to permit SoCalGas an opportunity to file an appeal to the full Commission and preserve its rights. Having considered SoCalGas’ Emergency Motion to Stay and given the urgency of this request, SoCalGas’ Emergency Motion to Stay is Granted.

**ORDER**

The ALJ Ruling is hereby stayed pending full Commission review.

**SO ORDERED.**

Dated: November \_\_\_\_, 2019

---

Regina M. DeAngelis  
Administrative Law Judge

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

# ATTACHMENT C

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

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

### 1. Background

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

## 2. Discussion

The October 7, 2019 Motion to Compel states that SoCalGas responded to Data Request - CalAdvocates-SC-SCG-2019-05 but, regarding Question 8, refused to provide responsive documents in response to Question 8.<sup>1</sup>

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

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

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

---

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

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

Dated November 1, at San Francisco, California.

/s/ REGINA M. DEANGELIS

Regina M. DeAngelis  
Administrative Law Judge

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

## INFORMATION REGARDING SERVICE

I have electronically served all persons on the attached.

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

Regina DeAngelis, [Regina.deangelis@cpuc.ca.gov](mailto:Regina.deangelis@cpuc.ca.gov)

Rebecca Vorpe, [Rebecca.Vorpe@cpuc.ca.gov](mailto:Rebecca.Vorpe@cpuc.ca.gov)

[JQTran@socalgas.com](mailto:JQTran@socalgas.com)

[CSierzant@socalgas.com](mailto:CSierzant@socalgas.com)

[SLee5@socalgas.com](mailto:SLee5@socalgas.com)

[Buch@cpuc.ca.gov](mailto:Buch@cpuc.ca.gov)

[Stephen.Castello@cpuc.ca.gov](mailto:Stephen.Castello@cpuc.ca.gov)

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

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

/s/ REGINA M. DEANGELIS

Regina DeAngelis

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

# ATTACHMENT D



**Public Advocates Office**  
*California Public Utilities Commission*

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

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

## **PUBLIC ADVOCATES OFFICE DATA REQUEST** **No. CalAdvocates-SC-SCG-2019-05**

Date: August 13, 2019

Response Requested: **Tuesday, August 27, 2019**

To: **Corinne Sierzant** Phone: (213) 244-5354  
Regulatory Affairs for SoCalGas Email: CSierzant@semprautilities.com

**Avisha A. Patel** Phone: (213) 244-2954  
Attorney for SoCalGas Email: APatel@semprautilities.com

From: **Stephen Castello** Phone: (415) 703-1063  
Analyst for the Email: Stephen.Castello@cpuc.ca.gov  
Public Advocates Office

**Kerriann Sheppard** Phone: (916) 327-6771  
Attorney for the Email: Kerriann.Sheppard@cpuc.ca.gov  
Public Advocates Office

### **INSTRUCTIONS**

You are instructed to answer the following Data Requests in the above-captioned proceeding, with written, verified responses per Public Utilities Code §§ 309.5 and 314, and Rules 1.1 and 10.1 of the California Public Utilities Commission's Rules of Practice and Procedure. Restate the text of each request prior to providing the response. For any questions, email the Public Advocates Office (Cal PA) contact(s) above with a copy to the Public Advocates Office attorney.

Each Data Request is continuing in nature. Provide your response as it becomes available, but no later than the due date noted above. If you are unable to provide a response by this date, notify the Public Advocates Office as soon as possible, with a written explanation as to why the response date cannot be met and a best estimate of when the information can be

provided. If you acquire additional information after providing an answer to any request, you must supplement your response following the receipt of such additional information.

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

If a request, definition, or an instruction, is unclear, notify the Public Advocates Office as soon as possible. In any event, answer the request to the fullest extent possible, specifying the reason for your inability to answer the remaining portion of the Data Request.

Any objection to a Data Request should clearly indicate to which part or portion of the Data Request the objection is directed. If any document, in whole or in part, covered by this request is withheld for whatever reason, please furnish a list identifying all withheld documents in the following manner: (a) a brief description of the document; (b) the date of the document; (c) the name of each author or preparer; (d) the name of each person who received the document; and (e) the reason for withholding it.

**If you are unable to answer a question completely, accurately, and with the specificity requested, notify the Public Advocates Office as soon as possible.** In your written response to the question, explain why you are unable to answer in full and describe the limitations of your response.

#### **DEFINITIONS**

- A. As used herein, the terms “you,” “your(s),” “Company,” “SCG,” and “SoCalGas” mean Southern California Gas Company and any and all of its respective present and former employees, agents, consultants, attorneys, officials, and any and all other persons acting on its behalf.
- B. The terms “and” and “or” shall be construed either disjunctively or conjunctively whenever appropriate in order to bring within the scope of these Data Requests any information or documents which might otherwise be considered to be beyond their scope.
- C. Date ranges shall be construed to include the beginning and end dates named. For example, the phrases “from January 1 to January 31,” “January 1-31,” “January 1 to 31,” and “January 1



through January 31” should be understood to include both the 1<sup>st</sup> of January and the 31<sup>st</sup> of January. Likewise, phrases such as “since January 1” and “from January 1 to the present” should be understood to include January 1<sup>st</sup>, and phrases such as “until January 31,” “through January 31,” and “up to January 31” should also be understood to include the 31<sup>st</sup>.

- D. The singular form of a word shall be interpreted as plural, and the plural form of a word shall be interpreted as singular whenever appropriate in order to bring within the scope of these Data Requests any information or documents which might otherwise be considered to be beyond their scope.
- E. The term “communications” includes all verbal and written communications of every kind, including but not limited to telephone calls, conferences, notes, correspondence, and all memoranda concerning the requested communications. Where communications are not in writing, provide copies of all memoranda and documents made relating to the requested communication and describe in full the substance of the communication to the extent that the substance is not reflected in the memoranda and documents provided.
- F. The term “document” shall include, without limitation, all writings and records of every type in your possession, control, or custody, whether printed or reproduced by any process, including documents sent and received by electronic mail, or written or produced by hand.
- G. “Relate to,” “concern,” and similar terms and phrases shall mean consist of, refer to, reflect, comprise, discuss, underlie, comment upon, form the basis for, analyze, mention, or be connected with, in any way, the subject of these Data Requests.
- H. When requested to “state the basis” for any analysis (including studies and workpapers), proposal, assertion, assumption, description, quantification, or conclusion, please describe every fact, statistic, inference, supposition, estimate, consideration, conclusion, study, and analysis known to you which you believe to support the analysis, proposal, assertion, assumption, description, quantification, or conclusion, or which you contend to be evidence of the truth or accuracy thereof.

### **DATA REQUEST**

1. Provide the “Political Activities Policy” referenced in the *CAU Approval and Commitment Policy* provided in SoCalGas’ response to Question 2 of SC-SCG-2019-04.
2. Provide the “Procurement Policy” referenced in the *CAU Approval and Commitment Policy* provided in SoCalGas’ response to Question 2 of SC-SCG-2019-04.
3. Provide the Excel workbook titled “IO\_Form\_503.xls,” referenced on the Work Order Authorization (WOA) provided in SoCalGas’ response to Question 1 of SC-SCG-2019-04.
4. Provide all WOAs or Authorizations of Expenditure (AFE) which controlled Standard Services Agreement No. 5660052135 (between SoCalGas and Marathon

Communications) prior to the WOA provided in SoCalGas' response to Question 1 of SC-SCG-2019-04.

5. Does SoCalGas consider the WOA which created the BALANCED ENERGY IO to be Ordinary course of business (OCB) or "base business" as defined in the CAU Approval and Commitment Policy?
  - a. If so, explain why this designation is appropriate.
  - b. Include any documentation used to support this designation.
6. Does SoCalGas consider the WOA which created the BALANCED ENERGY IO to be "Not in ordinary course of business, incremental projects or non-base business" as defined in the CAU Approval and Commitment Policy?
  - a. If so, explain why this designation is appropriate.
  - b. Include any documentation used to support this designation.
7. Does SoCalGas consider the founding and continued financial support of C4BES and activities related to C4BES to be base business?
  - a. Explain why this designation is appropriate.
  - b. Identify the elements of the CAU Approval and Commitment Policy apply to designation.
8. Provide all contracts (and contract amendments) covered by the WOA which created the BALANCED ENERGY IO.
9. Were all policies and procedures as described in the *CAU Approval and Commitment Policy* followed in regard to the creation, maintenance and execution of the WOA which created the BALANCED ENERGY IO?
  - a. Provide any and all internal audits or other documentation regarding internal review of the accounting and documentation regarding the WOA provided in response to Question 1 of SC-SCG-2019-04.
10. Were all invoices SoCalGas received from Marathon Communications in 2018 and 2019 reviewed in a manner consistent with all policies and procedures as described in the *CAU Approval and Commitment Policy*.
11. Were any reviews as described on page 6 of the *CAU Approval and Commitment Policy* performed for the WOA which created the BALANCED ENERGY IO?
  - a. If reviews were performed, provide all review documentation as described in the *CAU Approval and Commitment Policy*.
  - b. Explain why, or why not, a Technical/Economic Review was performed. Explain why, or why not, the Internal Review Checklist was completed.
12. Was Board approval obtained for the WOA which created the BALANCED ENERGY IO?
  - a. If yes, on what date was approval obtained?
  - b. Provide all documents provided to the board as part of the board approval.
13. Is nonrefundable O&M ratepayer funded?

14. Provide screenshots of the Purchase Order (PO) that controls Agreement No. 5660052135 (between SoCalGas and Marathon Communications) in the accounting system SAP. The screenshots should include the full content of the window with all content fully legible. If separate tabs exist within the PO, separate screenshots displaying the contents of each tab should be included. Submit all screenshots for the PO in one .pdf document.
15. If a PO distinct from the PO referenced in Question 13 has previously controlled Agreement No. 5660052135 (between SoCalGas and Marathon Communications), provide screenshots in the same manner as requested in Question 13. If applicable, provide one .pdf document for each PO.
16. Provide documentation that clearly indicates SoCalGas' intent has always been that work and expenses related to founding and supporting the organization that came to be known as Californians for Balanced Energy Solutions should be fully shareholder funded. The document should be dated and consistent with SoCalGas' response to Question 6 of SC-SCG-2019-02 (i.e.: dated late 2017 – early 2018). If no such documentation exists, please state that no documentation exists to substantiate the claim that it was always SoCalGas' intent that work and expenses related to founding and supporting the organization that came to be known as Californian for Balanced Energy Solutions should be shareholder funded.
17. The following questions refer to the WOA provided in response to Question 1 of SC-SCG-2019-04:
  - a. What does the check mark in the box next to "O&M" signify (upper right hand corner of the document?)
  - b. What does the handwritten number "28322.000" in the upper right hand corner signify?
  - c. What does the number "\$30M" below the signature of Sharan Tomkins signify?
  - d. On what date did Sharon Tomkins sign the WOA?
  - e. Was the WOA prepared 3/31/2019 revised at any point after March 28, 2019?
    - i. If yes, please provide the revised document, along with any documents included in the preparation and review of the revised WOA.
    - ii. If no, please provide all relevant documents providing accounting instruction to have invoices and costs recorded after 6/14/2019 booked to shareholder funded accounts on a going-forward basis.
18. What audit or compliance plan does the Sempra board have in reviewing charges intended to be recovered from shareholders.
19. Provide the initial WOA under which the initial Marathon contract (Contract Agreement 5660052135, which started January 26, 2018) was authorized.
  - a. Provide all documentation associated with the initial WOA.
  - b. If there is no WOA associated with Contract Agreement 5660052135, prior to the WOA prepared on 3/21/2019, please indicate that none exists, and provide an

explanation of how the lack of a WOA prior to 3/21/2019 is consistent with SoCalGas' CAU Approval and Commitment Policy.

20. Provide a list of all journal entries made to remove any charges from Responsible Cost Center 2200-2204 from March 1, 2019 through the date of this data request. For each item, please indicate:
  - a. The date the journal entry was executed.
  - b. The name and title of the SoCalGas employee who authorized the instruction to make the journal entry.
  - c. If that journal entry moved the charge to a shareholder funded account or not.
  - d. Identifying information regarding the charge (including, but not limited to, invoice number and Contract Agreement number, employee charged time)
21. Provide a list of all journal entries made to remove any charges from the "ENERGY POLICY and STRATEGY team" from March 1, 2019 through the date of this data request. For each item, please indicate:
  - a. The date the journal entry was executed.
  - b. The name and title of the SoCalGas employee who authorized the instruction to make the journal entry.
  - c. If that journal entry moved the charge to a shareholder funded account or not.
  - d. Identifying information regarding the charge (including, but not limited to, invoice number and Contract Agreement number, employee charged time).

**END OF REQUEST**

# ATTACHMENT E

SOUTHERN CALIFORNIA GAS COMPANY  
(DATA REQUEST CALADVOCATES-SC-SCG-2019-05)

Date Received: August 13, 2019

Date Submitted: August 27, 2019

---

**Preliminary Statement:** SoCalGas has made a good faith effort to respond fully to all the questions posed in this data request. However, many of the questions are premised on an understandable lack of familiarity with SoCalGas' accounting systems, practices, and procedures. These systems, practices, and procedures are difficult to describe in response to written questions; as such, SoCalGas welcomes the opportunity to meet with Cal Advocates to describe and discuss these and related matters.

**QUESTION 1:**

Provide the "Political Activities Policy" referenced in the *CAU Approval and Commitment Policy* provided in SoCalGas' response to Question 2 of SC-SCG-2019-04.

**RESPONSE 1:**

See attached policy titled Political Activities Policy.

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

**SOUTHERN CALIFORNIA GAS COMPANY**  
**(DATA REQUEST CALADVOCATES-SC-SCG-2019-05)**  
**Date Received: August 13, 2019**  
**Date Submitted: August 27, 2019**

---

**QUESTION 2:**

Provide the "Procurement Policy" referenced in the CAU Approval and Commitment Policy provided in SoCalGas' response to Question 2 of SC-SCG-2019-04.

**RESPONSE 2:**

See the attached policy titled Procurement Policy.

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

**SOUTHERN CALIFORNIA GAS COMPANY  
(DATA REQUEST CALADVOCATES-SC-SCG-2019-05)**

**Date Received: August 13, 2019**

**Date Submitted: August 27, 2019**

---

**QUESTION 3:**

Provide the Excel workbook titled "IO\_Form\_503.xls," referenced on the Work Order Authorization (WOA) provided in SoCalGas' response to Question 1 of SC-SCG-2019-04.

**RESPONSE 3:**

The reference to excel file "IO\_Form\_503.xls" is the excel filename for the Work Order Authorization form template.

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

**SOUTHERN CALIFORNIA GAS COMPANY**  
**(DATA REQUEST CALADVOCATES-SC-SCG-2019-05)**  
**Date Received: August 13, 2019**  
**Date Submitted: August 27, 2019**

---

**QUESTION 4:**

Provide all WOAs or Authorizations of Expenditure (AFE) which controlled Standard Services Agreement No. 5660052135 (between SoCalGas and Marathon Communications) prior to the WOA provided in SoCalGas' response to Question 1 of SC-SCG-2019-04.

**RESPONSE 4:**

No other WOAs or AFEs are related to Standard Services Agreement No. 5660052135.

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



**SOUTHERN CALIFORNIA GAS COMPANY  
(DATA REQUEST CALADVOCATES-SC-SCG-2019-05)**

**Date Received: August 13, 2019**

**Date Submitted: August 27, 2019**

---

**QUESTION 5:**

Does SoCalGas consider the WOA which created the BALANCED ENERGY IO to be Ordinary course of business (OCB) or “base business” as defined in the CAU Approval and Commitment Policy?

- a. If so, explain why this designation is appropriate.
- b. Include any documentation used to support this designation.

**RESPONSE 5:**

Yes.

- a. The Approval and Commitment Policy establishes standards for the authorization to enter into commitments and for the approval of cash disbursements and to execute other documents necessary to carry out the commitments on behalf of SoCalGas. Ordinary course of business or base business in that policy references the usual transactions that are ratepayer funded, but base business need not necessarily be ratepayer funded; it can also be shareholder funded. SoCalGas deems the activities included in the Balanced Energy IO to be ordinary course of business or base business, and the Balanced Energy IO is fully shareholder funded.
- b. SoCalGas objects to this request as vague, ambiguous, overly broad, unduly burdensome and intrusive pursuant to Rule 10.1 of the Commission’s Rules of Practice and Procedure. Subject to and without waiving the foregoing objections, SoCalGas responds as follows: SoCalGas is not aware of any responsive documentation that specifically pertains to the WOA that created the Balanced Energy IO other than the WOA itself.

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

**SOUTHERN CALIFORNIA GAS COMPANY**  
**(DATA REQUEST CALADVOCATES-SC-SCG-2019-05)**  
**Date Received: August 13, 2019**  
**Date Submitted: August 27, 2019**

---

**QUESTION 6:**

Does SoCalGas consider the WOA which created the BALANCED ENERGY IO to be “Not in ordinary course of business, incremental projects or non-base business” as defined in the CAU Approval and Commitment Policy?

- a. If so, explain why this designation is appropriate.
- b. Include any documentation used to support this designation.

**RESPONSE 6:**

SoCalGas does not consider the WOA which created the Balanced Energy IO to be “not in the ordinary course of business, incremental projects or non-base business” as defined in the CAU Approval and Commitment Policy. Please refer to the response to Question 5.

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

**SOUTHERN CALIFORNIA GAS COMPANY  
(DATA REQUEST CALADVOCATES-SC-SCG-2019-05)**

**Date Received: August 13, 2019  
Date Submitted: August 27, 2019**

---

**QUESTION 7:**

Does SoCalGas consider the founding and continued financial support of C4BES and activities related to C4BES to be base business?

- a. Explain why this designation is appropriate.
- b. Identify the elements of the CAU Approval and Commitment Policy apply to designation.

**RESPONSE 7:**

Yes.

- a. As a preliminary matter, please refer to the response to Question 5, which indicates that base business need not be ratepayer funded (and, in this case, the Balanced Energy IO is not ratepayer funded). The designation of this support as base business is appropriate because the funds are used to support an organization which represents the interests of our customers.
- b. Please refer to response to Question 5.

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

**SOUTHERN CALIFORNIA GAS COMPANY**  
**(DATA REQUEST CALADVOCATES-SC-SCG-2019-05)**  
**Date Received: August 13, 2019**  
**Date Submitted: August 27, 2019**

---

**QUESTION 8:**

Provide all contracts (and contract amendments) covered by the WOA which created the BALANCED ENERGY IO.

**RESPONSE 8:**

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

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

**SOUTHERN CALIFORNIA GAS COMPANY  
(DATA REQUEST CALADVOCATES-SC-SCG-2019-05)**

**Date Received: August 13, 2019**

**Date Submitted: August 27, 2019**

---

**QUESTION 9:**

Were all policies and procedures as described in the *CAU Approval and Commitment Policy* followed in regard to the creation, maintenance and execution of the WOA which created the BALANCED ENERGY IO?

- a. Provide any and all internal audits or other documentation regarding internal review of the accounting and documentation regarding the WOA provided in response to Question 1 of SC-SCG-2019-04.

**RESPONSE 9:**

Yes; the copy of the WOA provides evidence of internal approvals to open the internal order in accordance with SoCalGas' policies.

- a. No additional responsive documents exist.

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

**SOUTHERN CALIFORNIA GAS COMPANY  
(DATA REQUEST CALADVOCATES-SC-SCG-2019-05)**

**Date Received: August 13, 2019**

**Date Submitted: August 27, 2019**

---

**QUESTION 10:**

Were all invoices SoCalGas received from Marathon Communications in 2018 and 2019 reviewed in a manner consistent with all policies and procedures as described in the *CAU Approval and Commitment Policy*.

**RESPONSE 10:**

Yes.

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

**SOUTHERN CALIFORNIA GAS COMPANY**  
**(DATA REQUEST CALADVOCATES-SC-SCG-2019-05)**  
**Date Received: August 13, 2019**  
**Date Submitted: August 27, 2019**

---

**QUESTION 11:**

Were any reviews as described on page 6 of the CAU Approval and Commitment Policy performed for the WOA which created the BALANCED ENERGY IO?

- a. If reviews were performed, provide all review documentation as described in the CAU Approval and Commitment Policy.
- b. Explain why, or why not, a Technical/Economic Review was performed. Explain why, or why not, the Internal Review Checklist was completed.

**RESPONSE 11:**

No. The additional review and approval requirements referenced on page 6 are not applicable to this WOA. All necessary approvals of the work order are evidenced on the WOA.

- a. Not applicable.
- b. A Technical/Economic Review and related Internal Review Checklist was not required in accordance with the Approval and Commitment Policy.

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

**SOUTHERN CALIFORNIA GAS COMPANY**  
**(DATA REQUEST CALADVOCATES-SC-SCG-2019-05)**  
**Date Received: August 13, 2019**  
**Date Submitted: August 27, 2019**

---

**QUESTION 12:**

Was Board approval obtained for the WOA which created the BALANCED ENERGY IO?

- a. If yes, on what date was approval obtained?
- b. Provide all documents provided to the board as part of the board approval.

**RESPONSE 12:**

SoCalGas Board approval was not required in accordance with the Approval and Commitment Policy.

- a. Not applicable.
- b. Not applicable.

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



**SOUTHERN CALIFORNIA GAS COMPANY**  
**(DATA REQUEST CALADVOCATES-SC-SCG-2019-05)**  
**Date Received: August 13, 2019**  
**Date Submitted: August 27, 2019**

---

**QUESTION 13:**

Is nonrefundable O&M ratepayer funded?

**RESPONSE 13:**

SoCalGas objects to this question as being vague, ambiguous, and overly broad. Subject to and without waiving the foregoing objections, SoCalGas responds as follows: SoCalGas understands this request to pertain to the Balanced Energy IO. The costs and activities tracked by the Balanced Energy IO are not funded by ratepayers.

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

**SOUTHERN CALIFORNIA GAS COMPANY  
(DATA REQUEST CALADVOCATES-SC-SCG-2019-05)**

**Date Received: August 13, 2019**

**Date Submitted: August 27, 2019**

---

**QUESTION 14:**

Provide screenshots of the Purchase Order (PO) that controls Agreement No. 5660052135 (between SoCalGas and Marathon Communications) in the accounting system SAP. The screenshots should include the full content of the window with all content fully legible. If separate tabs exist within the PO, separate screenshots displaying the contents of each tab should be included. Submit all screenshots for the PO in one .pdf document.

**RESPONSE 14:**

The attachment includes Confidential and Protected Material pursuant to PUC Section 583, GO 66-D, D.17-09-023.

Please see attached document "PO Screenshots."

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

**SOUTHERN CALIFORNIA GAS COMPANY**  
**(DATA REQUEST CALADVOCATES-SC-SCG-2019-05)**  
**Date Received: August 13, 2019**  
**Date Submitted: August 27, 2019**

---

**QUESTION 15:**

If a PO distinct from the PO referenced in Question 13 has previously controlled Agreement No. 5660052135 (between SoCalGas and Marathon Communications), provide screenshots in the same manner as requested in Question 13. If applicable, provide one .pdf document for each PO.

**RESPONSE 15:**

We understand this question to intend to refer to Question 14 and respond on that basis. No other POs have controlled Agreement No. 5660052135.

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

**SOUTHERN CALIFORNIA GAS COMPANY  
(DATA REQUEST CALADVOCATES-SC-SCG-2019-05)**

**Date Received: August 13, 2019**

**Date Submitted: August 27, 2019**

---

**QUESTION 16:**

Provide documentation that clearly indicates SoCalGas' intent has always been that work and expenses related to founding and supporting the organization that came to be known as Californians for Balanced Energy Solutions should be fully shareholder funded. The document should be dated and consistent with SoCalGas' response to Question 6 of SC-SCG-2019-02 (i.e.: dated late 2017 – early 2018). If no such documentation exists, please state that no documentation exists to substantiate the claim that it was always SoCalGas' intent that work and expenses related to founding and supporting the organization that came to be known as Californian for Balanced Energy Solutions should be shareholder funded.

**RESPONSE 16:**

SoCalGas is not aware of any non-privileged responsive documentation.

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

**SOUTHERN CALIFORNIA GAS COMPANY  
(DATA REQUEST CALADVOCATES-SC-SCG-2019-05)**

**Date Received: August 13, 2019**

**Date Submitted: August 27, 2019**

---

**QUESTION 17:**

The following questions refer to the WOA provided in response to Question 1 of SC-SCG-2019-04:

- a. What does the check mark in the box next to "O&M" signify (upper right hand corner of the document?)
- b. What does the handwritten number "28322.000" in the upper right hand corner signify?
- c. What does the number "\$30M" below the signature of Sharon Tomkins signify?
- d. On what date did Sharon Tomkins sign the WOA?
- e. Was the WOA prepared 3/31/2019 revised at any point after March 28, 2019?
  - i. If yes, please provide the revised document, along with any documents included in the preparation and review of the revised WOA.
  - ii. If no, please provide all relevant documents providing accounting instruction to have invoices and costs recorded after 6/14/2019 booked to shareholder funded accounts on a going-forward basis.

**RESPONSE 17:**

The copy of the completed and approved WOA includes notations from the accountant who processed the WOA requisition.

- a. The check mark in the box next to "O&M" signifies that the WOA is for O&M costs.
- b. This number represents the work order number assigned to this project.
- c. This notation indicates the authorization limit that Sharon Tomkins has as a Vice President of SoCalGas. The authority level is documented within the Approval and Commitment policy.
- d. Accounting received the form from Sharon Tomkins' office on March 28, 2019 as indicated by the stamp on the WOA.
- e. SoCalGas understands this question to intend to refer to the date 3/21/2019 rather than 3/31/2019 and responds on that basis. There was no revision to the WOA after March 28, 2019.
  - i. Not applicable.
  - ii. SoCalGas is not aware of the existence of any responsive documents.

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

**SOUTHERN CALIFORNIA GAS COMPANY**  
**(DATA REQUEST CALADVOCATES-SC-SCG-2019-05)**  
**Date Received: August 13, 2019**  
**Date Submitted: August 27, 2019**

---

**QUESTION 18:**

What audit or compliance plan does the Sempra board have in reviewing charges intended to be recovered from shareholders.

**RESPONSE 18:**

Not applicable. The Sempra board is not reviewing these charges.

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

**SOUTHERN CALIFORNIA GAS COMPANY  
(DATA REQUEST CALADVOCATES-SC-SCG-2019-05)**

**Date Received: August 13, 2019**

**Date Submitted: August 27, 2019**

---

**QUESTION 19:**

Provide the initial WOA under which the initial Marathon contract (Contract Agreement 5660052135, which started January 26, 2018) was authorized.

- a. Provide all documentation associated with the initial WOA.
- b. If there is no WOA associated with Contract Agreement 5660052135, prior to the WOA prepared on 3/21/2019, please indicate that none exists, and provide an explanation of how the lack of a WOA prior to 3/21/2019 is consistent with SoCalGas' CAU Approval and Commitment Policy.

**RESPONSE 19:**

A WOA was not created for the initial authorization of Contract Agreement 5660052135 as the Approval and Commitment Policy does not require a WOA to exist in order to enter into an agreement for professional services (i.e., O&M).

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

**SOUTHERN CALIFORNIA GAS COMPANY  
(DATA REQUEST CALADVOCATES-SC-SCG-2019-05)**

**Date Received: August 13, 2019**

**Date Submitted: August 27, 2019**

---

**QUESTION 20:**

Provide a list of all journal entries made to remove any charges from Responsible Cost Center 2200-2204 from March 1, 2019 through the date of this data request. For each item, please indicate:

- a. The date the journal entry was executed.
- b. The name and title of the SoCalGas employee who authorized the instruction to make the journal entry.
- c. If that journal entry moved the charge to a shareholder funded account or not.
- d. Identifying information regarding the charge (including, but not limited to, invoice number and Contract Agreement number, employee charged time)

**RESPONSE 20:**

No journal entries were made to remove charges from responsible cost center 2200-2204 from March 1, 2019 through the date of this data request.

- a. Not applicable.
- b. Not applicable.
- c. Not applicable.
- d. Not applicable.

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



**SOUTHERN CALIFORNIA GAS COMPANY  
(DATA REQUEST CALADVOCATES-SC-SCG-2019-05)**

**Date Received: August 13, 2019**

**Date Submitted: August 27, 2019**

---

**QUESTION 21:**

Provide a list of all journal entries made to remove any charges from the “ENERGY POLICY and STRATEGY team” from March 1, 2019 through the date of this data request. For each item, please indicate:

- a. The date the journal entry was executed.
- b. The name and title of the SoCalGas employee who authorized the instruction to make the journal entry.
- c. If that journal entry moved the charge to a shareholder funded account or not.
- d. Identifying information regarding the charge (including, but not limited to, invoice number and Contract Agreement number, employee charged time).

**RESPONSE 21:**

The Energy Policy and Strategy team charges their labor and non-labor charges to cost center 2200-2204. Please see response to Question 20.

- a. Not applicable.
- b. Not applicable.
- c. Not applicable.
- d. Not applicable.

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

# ATTACHMENT F



Johnny Q. Tran  
Senior Counsel

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

Tel: (213) 244-2981  
Fax: (213) 629-9620

Email: jqtran@socalgas.com

October 17, 2019

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

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

Dear President Batjer:

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

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

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

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

<sup>1</sup> Pub. Util. Code § 309.5(e).

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

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

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

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

## I. BACKGROUND

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

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

---

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

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

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

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

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

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

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

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

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

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

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

## II. DISCUSSION

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

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

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

The Commission has determined that under Pub. Util. Code § 314 "the powers it describes can and *must be delegated to be effective*."<sup>6</sup> The Commission delegates its authority in a variety of contexts and through various means. For example, the Commission has delegated its authority to Commission staff as part of Order Instituting Investigations<sup>7</sup> and through letters and

<sup>5</sup> See Attachment D, *E-mail dated October 16, 2019*.

<sup>6</sup> D.05-06-033, at 41 (emphasis added).

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

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

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

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

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

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

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

---

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

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

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

<sup>9</sup> Motion, at 2.

<sup>10</sup> Pub. Util. Code § 309.5(e) (emphasis added).

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

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

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

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

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

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

---

<sup>12</sup> Motion, at 8.

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

<sup>14</sup> Motion at 8.

**Letter to President Batjer**

**October 17, 2019**

**Page 7**

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

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

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

---

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

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

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

<sup>18</sup> *Id.* at 1237.

<sup>19</sup> *Id.* at 1222.

<sup>20</sup> *Id.* at 1237-1238.

<sup>21</sup> *Id.* at 1238.

<sup>22</sup> *Id.* at 1229.

<sup>23</sup> Motion, at 2.

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



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

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

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

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

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

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

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

---

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

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

<sup>26</sup> Discovery: Custom and Practice Guidelines at 1 (available at: [http://docs.cpuc.ca.gov/word\\_pdf/REPORT/117475.pdf](http://docs.cpuc.ca.gov/word_pdf/REPORT/117475.pdf)).

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

Moreover, Cal Advocates providing its reasoning that it needs SoCalGas' 100 percent shareholder funded contracts to determine how these contracts may have affected ratepayers' interests to achieving a least-cost path to meeting the State's decarbonization goals for the first time in its Motion<sup>27</sup> deprives SoCalGas of an opportunity to meet and confer as to this reasoning and deprives SoCalGas of the ability to understand and respond to this motion in violation of SoCalGas' due process rights. The Commission has recognized that a utility is entitled to procedural and substantive due process.<sup>28</sup> Where, as here, a party is "kept in the dark about the specific charges" made against them, it is a "charade" and "does not serve the public interest."<sup>29</sup> In addition to Cal Advocates' general, vague and ambiguous justifications, Cal Advocates shifting theories for needing the contracts deprives SoCalGas of adequate due process. In these circumstances, Courts have reversed Administrative Law Judge's findings on the grounds that the respondent was not accorded adequate due process.<sup>30</sup> Cal Advocates' failure to meet and confer in good faith violated SoCalGas' due process rights and is sufficient grounds for the Commission to deny the Motion.

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

Cal Advocates claims in its Motion that "this matter had been argued in the prior motion to compel and decided by Judge DeAngelis."<sup>31</sup> However, in Cal Advocates' reply related to its previous motion to compel, Cal Advocates expressly stated that this exact data request "is not the subject of the pending Public Advocates Office's Motion..."<sup>32</sup> Further, Cal Advocate also admits, Judge DeAngelis' Ruling did not state the rationale for granting the motion to compel.<sup>33</sup> Instead, Cal Advocates contends that SoCalGas' arguments were *implicitly rejected* in Judge DeAngelis' September 10, 2019 Ruling<sup>34</sup> and if there was any merit to SoCalGas' arguments, Judge DeAngelis would have granted the motion.<sup>35</sup> This is entirely speculative. There is no support for the statement that the current discovery dispute was implicitly rejected and decided in the prior ruling. On the contrary, the current data request at issue here was specifically not

<sup>27</sup> Motion, at 8.

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

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

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

<sup>31</sup> Motion, at 8.

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

<sup>33</sup> See Motion, Exhibit 6.

<sup>34</sup> Motion, at 6.

<sup>35</sup> Motion, at 9.

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

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

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

III. CONCLUSION

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

Submitted on behalf of SoCalGas,

/s/ Johnny Q. Tran

Johnny Q. Tran  
Attorney for:  
Southern California Gas Company  
555 W. 5th Street, Suite 1400  
Los Angeles, CA 90013  
Telephone: (213) 244-2981  
Facsimile: (213) 629-9620  
Email: [jqtran@socalgas.com](mailto:jqtran@socalgas.com)

Attachments A-D

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

# ATTACHMENT G

## QUESTIONS ON C4BES

SOUTHERN CALIFORNIA GAS COMPANY

(DATA REQUEST CALPA-SCG-051719)

Date Received: May 23, 2019

Date Submitted: June 14, 2019

---

### QUESTION 1:

Did SoCalGas use any ratepayer funding to support the founding and launch of Californians for Balanced Energy Solutions (C4BES)? If yes,

- a. Please give a full accounting of all ratepayer funding sources.
- b. Please give a full accounting of how any ratepayer funds were used.

### RESPONSE 1:

Ratepayer funds have not been used to support the founding or launch of Californians for Balanced Energy Solutions (C4BES).

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

**QUESTIONS ON C4BES**  
**SOUTHERN CALIFORNIA GAS COMPANY**  
**(DATA REQUEST CALPA-SCG-051719)**  
**Date Received: May 23, 2019**  
**Date Submitted: June 14, 2019**

---

**QUESTION 2:**

Does SoCalGas continue to use any ratepayer funding to support C4BES? If yes,  
a. Please give a full accounting of all ratepayer funding sources.  
b. Please give a full accounting of how any ratepayer funds were used.

**RESPONSE 2:**

Ratepayer funds are not used to support C4BES.

**QUESTIONS ON C4BES**  
**SOUTHERN CALIFORNIA GAS COMPANY**  
**(DATA REQUEST CALPA-SCG-051719)**  
**Date Received: May 23, 2019**  
**Date Submitted: June 14, 2019**

---

**QUESTION 3:**

Please provide accounting of all SoCalGas staff who spent work hours on the founding, launch, and continued activities of C4BES.

- a. List all names of SoCalGas staff who spent work hours on C4BES activities.
- b. Provide an estimate of the number of hours spent on C4BES activities by each staff member listed in Question 3b.
- c. Provide the funding source(s) for all staff time, including specification of ratepayer or shareholder funding and the account the time was booked to (balancing account, shareholder account, GRC line item, etc.).

**RESPONSE 3:**

- a. George Minter, Regional Vice President, External Affairs and Environmental Strategy; Ken Chawkins, Public Policy Manager.
- b. For purposes of this response, "C4BES-related activities" refers to the "founding, launch, and continued activities of C4BES," as queried in the question. From August 1, 2018 – December 31, 2018, George Minter spent approximately 2.5% of his time on C4BES-related activities, and Ken Chawkins spent approximately 10% of his time on C4BES-related activities. In 2019, through the date of this response, George Minter spent approximately 3 hours on C4BES-related activities, and Ken Chawkins spent approximately 10% of his time on C4BES-related activities.
- c. The above-described time is shareholder funded (i.e., it is booked to a distinct invoice/order (I/O) that is not ratepayer funded).

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

**QUESTIONS ON C4BES**  
**SOUTHERN CALIFORNIA GAS COMPANY**  
**(DATA REQUEST CALPA-SCG-051719)**  
**Date Received: May 23, 2019**  
**Date Submitted: June 14, 2019**

---

**QUESTION 4:**

Please provide all invoices and contracts to which SoCal Gas is a party for work which relates to the creation or support of C4BES. These include, but are not limited to contracts and invoices related to:

- a. Retention of [REDACTED] in developing C4BES objectives and talking points.
- b. Compensation provided to C4BES board member Matt Rahn.

**RESPONSE 4:**

---

The attachments include Confidential and Protected Material pursuant to PUC Section 583, GO 66-D, D.17-09-023, and the accompanying declaration.

- a. SoCalGas does not have a direct contractual relationship with [REDACTED] pertaining to C4BES. SoCalGas has a contractual relationship with [REDACTED]. [REDACTED] contracts with [REDACTED]. See the folder "Response 4A\_Confidential Information" for responsive invoices through May 31, 2019 and underlying contract, as amended from time to time. [REDACTED] has performed and continues to perform routine services for SoCalGas outside of those performed with respect to C4BES. To account for all the work done on behalf of C4BES, fifty-percent of each invoice is booked to the invoice/order referenced in the response to Question 3.c above, i.e., fifty-percent of each responsive invoice is not ratepayer funded.
- b. Matt Rahn volunteers his time as C4BES' Chair. Neither Rahn nor the organizations with which he is affiliated have received any funding from SoCalGas as compensation for his work with C4BES.

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

**QUESTIONS ON C4BES**  
**SOUTHERN CALIFORNIA GAS COMPANY**  
**(DATA REQUEST CALPA-SCG-051719)**  
**Date Received: May 23, 2019**  
**Date Submitted: June 14, 2019**

---

**QUESTION 5:**

For each invoice and contract provided in response to Question 5, identify:

- a. Whether ratepayer or shareholder funded (and proportions if necessary)
- b. The funding source used (e.g. GRC funds, specific balancing accounts, etc.).

**RESPONSE 5:**

SoCalGas interprets the question to refer to the documents and responses provided in response to Question 4 (rather than Question 5). With the following understanding, SoCalGas responds as follows:

- a. As noted in response to Question 4 above, the invoices provided reflect both routine work done for SoCalGas as well as some work done on behalf of C4BES. As such, in order to fully account for the work done for C4BES, fifty-percent of each invoice is funded by shareholders as described in response to Question 3.c. The remaining fifty-percent of each invoice is funded as described in response to Question 5.b.
- b. The ratepayer-funded portion of each invoice is billed to the internal Cost Center 2200-2441 in SoCalGas' General Rate Case.

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



# ATTACHMENT H

## QUESTIONS ON C4BES

SOUTHERN CALIFORNIA GAS COMPANY

(DATA REQUEST CALPA-SCG-051719)

Date Received: May 23, 2019

Date Submitted: June 14, 2019

Date of Amended Submission: July 12, 2019

Date of Modified Submission: August 13, 2019

---

### QUESTION 1:

Did SoCalGas use any ratepayer funding to support the founding and launch of Californians for Balanced Energy Solutions (C4BES)? If yes,

- a. Please give a full accounting of all ratepayer funding sources.
- b. Please give a full accounting of how any ratepayer funds were used.

### RESPONSE 1:

Ratepayer funds have not been used to support the founding or launch of Californians for Balanced Energy Solutions (C4BES).

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

**QUESTIONS ON C4BES**  
**SOUTHERN CALIFORNIA GAS COMPANY**  
**(DATA REQUEST CALPA-SCG-051719)**  
**Date Received: May 23, 2019**  
**Date Submitted: June 14, 2019**  
**Date of Amended Submission: July 12, 2019**  
**Date of Modified Submission: August 13, 2019**

---

**QUESTION 2:**

Does SoCalGas continue to use any ratepayer funding to support C4BES? If yes,

- a. Please give a full accounting of all ratepayer funding sources.
- b. Please give a full accounting of how any ratepayer funds were used.

**RESPONSE 2:**

Ratepayer funds are not used to support C4BES.

**QUESTIONS ON C4BES**  
**SOUTHERN CALIFORNIA GAS COMPANY**  
**(DATA REQUEST CALPA-SCG-051719)**  
**Date Received: May 23, 2019**  
**Date Submitted: June 14, 2019**  
**Date of Amended Submission: July 12, 2019**  
**Date of Modified Submission: August 13, 2019**

---

**QUESTION 3:**

Please provide accounting of all SoCalGas staff who spent work hours on the founding, launch, and continued activities of C4BES.

- a. List all names of SoCalGas staff who spent work hours on C4BES activities.
- b. Provide an estimate of the number of hours spent on C4BES activities by each staff member listed in Question 3b.
- c. Provide the funding source(s) for all staff time, including specification of ratepayer or shareholder funding and the account the time was booked to (balancing account, shareholder account, GRC line item, etc.).

**RESPONSE 3:**

- a. George Minter, Regional Vice President, External Affairs and Environmental Strategy; Ken Chawkins, Public Policy Manager.
- b. See response to 3.c below.
- c. SoCalGas determined that, in order to prevent further distraction from the important issues in R. 19-01-011, *Order Instituting Rulemaking Regarding Building Decarbonization*, that all of George Minter's and Ken Chawkins's time from May 1, 2018 through the present would be shareholder funded (i.e., this time is booked to a distinct invoice/order (I/O) that is not ratepayer funded).

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

**QUESTIONS ON C4BES**  
**SOUTHERN CALIFORNIA GAS COMPANY**  
**(DATA REQUEST CALPA-SCG-051719)**  
**Date Received: May 23, 2019**  
**Date Submitted: June 14, 2019**  
**Date of Amended Submission: July 12, 2019**  
**Date of Modified Submission: August 13, 2019**

---

**QUESTION 4:**

Please provide all invoices and contracts to which SoCal Gas is a party for work which relates to the creation or support of C4BES. These include, but are not limited to contracts and invoices related to:

- a. Retention of Imprinta Communications in developing C4BES objectives and talking points.
- b. Compensation provided to C4BES board member Matt Rahn.

**RESPONSE 4:**

The attachments include Confidential and Protected Material pursuant to PUC Section 583, GO 66-D, D.17-09-023, and the accompanying declaration.

- a. SoCalGas does not have a direct contractual relationship with Imprinta Communications pertaining to C4BES. SoCalGas has a contractual relationship with Marathon Communications Incorporated, who contracts with Imprinta Communications. See the folder "Response 4A\_Confidential Information" for responsive invoices through May 31, 2019 and underlying contract, as amended from time to time. Marathon Communications Incorporated has performed and continues to perform routine services for SoCalGas outside of those performed with respect to C4BES. Work for C4BES was never intended to be ratepayer funded; thus, the invoices had previously been allocated between ratepayer and shareholder funding. SoCalGas recently determined that, in order to prevent further distraction from the important issues in R. 19-01-011, *Order Instituting Rulemaking Regarding Building Decarbonization*, none of these invoices would be subject to ratepayer funding. For sake of clarity, all work done pursuant to the contracts provided herein is paid for by shareholders.
- b. Matt Rahn volunteers his time as C4BES' Chair. Neither Rahn nor the organizations with which he is affiliated have received any funding from SoCalGas as compensation for his work with C4BES.

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

**QUESTIONS ON C4BES**  
**SOUTHERN CALIFORNIA GAS COMPANY**  
**(DATA REQUEST CALPA-SCG-051719)**  
**Date Received: May 23, 2019**  
**Date Submitted: June 14, 2019**  
**Date of Amended Submission: July 12, 2019**  
**Date of Modified Submission: August 13, 2019**

---

**QUESTION 5:**

For each invoice and contract provided in response to Question 5, identify:

- a. Whether ratepayer or shareholder funded (and proportions if necessary)
- b. The funding source used (e.g. GRC funds, specific balancing accounts, etc.).

**RESPONSE 5:**

SoCalGas interprets the question to refer to the documents and responses provided in response to Question 4 (rather than Question 5). With the following understanding, SoCalGas responds as follows:

- a. SoCalGas recently determined that, in order to prevent further distraction from the important issues in R. 19-01-011, *Order Instituting Rulemaking Regarding Building Decarbonization*, none of these invoices or other work performed under the contracts provided in response to Question 4 would be subject to ratepayer funding. For sake of clarity, all work done pursuant to the contracts provided in response to Question 4 is paid for by shareholders.
  
- b. The funding source is the distinct shareholder-funded I/O described in response to Question 3.c.

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

# ATTACHMENT I

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

### DECLARATION OF STEPHEN CASTELLO

I, Stephen Castello, hereby declare:

1. I am a Public Utilities Regulatory Analyst I in the Electricity Pricing and Customer Programs Branch of the Public Advocates Office at the California Public Utilities Commission. If called as a witness, I could and would competently testify as to the matters stated herein from my own personal knowledge, except as to any matters that I state upon information and belief, and, as to those matters, I am informed and believe them to be true.
2. I have been assigned to the investigation in which the Public Advocates Office issued DR CalAdvocates-SC-SCG-2019-05.
3. I personally redacted the information in the data requests related to this investigation. No information protected by Section 583 or GO 66-D has been shared with anyone outside the Commission staff who are entitled to view this information.

Dated this 17<sup>th</sup> of December, 2019, at San Francisco, California.

  
Stephen Castello  
Public Utilities Regulatory Analyst I  
Public Advocates Office  
California Public Utilities Commission

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

## **PROOF OF SERVICE**

I, Ashley Moser, declare as follows:

I am employed in the County of San Francisco, State of California, I am over the age of eighteen years and am not a party to this action; my business address is 555 Mission Street, Suite 3000, San Francisco, CA 94105-0921, in said County and State. On March 8, 2021, I served the following document(s):

**PETITION FOR WRIT OF REVIEW, MANDATE, AND/OR OTHER APPROPRIATE RELIEF, MOTION FOR EMERGENCY STAY OR OTHER INJUNCTIVE RELIEF, DECLARATION OF JULIAN W. POON, AND PROPOSED ORDER, AND MEMORANDUM OF POINTS AND AUTHORITIES; IMMEDIATE RELIEF REQUESTED BY TUESDAY, MARCH 16, 2021 OF ORDER BY CALIFORNIA PUBLIC UTILITIES COMMISSION TO PRODUCE CONSTITUTIONALLY PROTECTED MATERIAL**

**EXHIBITS TO THE PETITION FOR WRIT OF REVIEW, MANDATE, AND/OR OTHER APPROPRIATE RELIEF (VOLUMES 1-10)\***

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

<p><b>California Public Utilities Commission</b></p> <p>Rachel Peterson Executive Director 505 Van Ness Avenue, San Francisco, CA 94102 415-703-3808 Rachel.Peterson@cpuc.ca.gov</p> <p>Arocles Aguilar General Counsel 505 Van Ness Avenue, San Francisco, CA 94102 415-703-2015 Arocles.Aguilar@cpuc.ca.gov</p>	<p><b>California Advocates</b></p> <p>Elizabeth Echols Director 505 Van Ness Avenue, San Francisco, CA 94102 415-703-2588 elizabeth.echols@cpuc.ca.gov</p> <p>Darwin Farrar General Counsel 505 Van Ness Avenue, San Francisco, CA 94102 415-703-1599 darwin.farrar@cpuc.ca.gov</p> <p>Traci Bone Counsel 505 Van Ness Avenue, San Francisco, CA 94102 415-703-2048 traci.bone@cpuc.ca.gov</p>
---	--

\*Volume 10 was not served on California Advocates for reasons discussed in Petitioner's Application for Leave to File Under Seal, but was served by messenger service to the California Public Utilities Commission and the Court of Appeal.



- BY MESSENGER SERVICE:** I placed a true copy in a sealed envelope or package addressed to the persons at the addresses listed above and provided them to a professional messenger service for delivery before 5:00 p.m. on the above-mentioned date.
- BY ELECTRONIC SERVICE THROUGH TRUEFILING:** I caused the documents to be electronically served through TrueFiling.
- BY ELECTRONIC SERVICE:** On the above-mentioned date at \_\_\_\_\_ [a.m./p.m] , I caused the documents to be sent to the persons at the electronic notification addresses as shown above.
- (STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 8, 2021.

  
\_\_\_\_\_  
Ashley Moser