

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

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

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

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**SOUTHERN CALIFORNIA GAS COMPANY,**

*Petitioner,*

v.

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

*Respondent.*

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

**VOLUME 6 OF 10 (PAGES 1287 TO 1503 OF 2015)**

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

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

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

Resolution ALJ-391  
Administrative Law Judge Division

**DECLARATION OF JASON H. WILSON IN SUPPORT OF COMMENTS OF  
SOUTHERN CALIFORNIA GAS COMPANY TO DRAFT RESOLUTION ALJ-391**

JASON WILSON  
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Attorneys for:  
SOUTHERN CALIFORNIA GAS  
COMPANY

Dated: November 19, 2020

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

Resolution ALJ-391  
Administrative Law Judge Division

**DECLARATION OF JASON H. WILSON IN SUPPORT OF COMMENTS OF  
SOUTHERN CALIFORNIA GAS COMPANY TO DRAFT RESOLUTION  
ALJ-391**

I, Jason H. Wilson, do declare as follows:

1. I am Jason H. Wilson, a partner in Willenken LLP, counsel of record for Southern California Gas Company (“SoCalGas”). 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. In meet and confer discussions with Cal Advocates on this issue, SoCalGas noted that its accounting systems contained twenty-one years of data. *See* Exhibit 1 hereto, Email from Traci Bone to Jason Wilson dated September 22, 2020. Cal Advocates agreed to narrow the date range of the privilege log to January 1, 2015 to the present. *Id.* On September 28, 2020, SoCalGas accepted this date range. *See* Exhibit 2, Email from Jason Wilson to Traci Bone dated September 28, 2020. However, SoCalGas noted that it would have to review documents from many cases that have nothing to do with Cal Advocates’ inquiry about the alleged use of ratepayer funds for lobbying (such as employment cases or personal injury cases) and therefore SoCalGas asked for a further narrowing of the scope of the log. *Id.* Moreover, SoCalGas estimates that at least 10,000 documents will have to be reviewed for attorney client privilege or

attorney work product privilege. *See* Exhibit 3 hereto, a September 25, 2020 email from Jason Wilson to Traci Bone. Cal Advocates refused to make any further concession.

3. Attached as Exhibit 4 hereto, is a true and correct copy of the August 30, 2019 Common Interest, Joint Prosecution, and Confidentiality Agreement between Cal Advocates and Sierra Club.

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 November 19, 2020, at Los Angeles, California.



\_\_\_\_\_  
Jason H. Wilson

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# EXHIBIT 1

**From:** [Bone, Traci](#)  
**To:** [Sierzant, Corinne M](#); [Castello, Stephen](#); [Ward, Alec](#)  
**Cc:** [Jason Wilson](#); [Sherin Varghese](#)  
**Subject:** Meet and Confer re: SoCalGas Response - CalAdvocates-TB-SCG-2020-05  
**Date:** Tuesday, September 22, 2020 4:54:36 PM

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Jason:

Cal Advocates notes that in response to data request CalAdvocates-TB-SCG-2020-05, SoCalGas objected to providing a privilege log for those portions of its SAP system that it claims are privileged, but that it proposed a meet and confer to discuss a “sufficiently narrowed request.” Specifically:

SoCalGas objects to this Request as overbroad and unduly burdensome, in that seeks on its face a log covering data on the SAP system since 1999, which is not reasonable or practicable. SoCalGas further objects to this Request as harassing and oppressive in that Cal Advocates explicitly declared in meet and confer discussions and in the declaration of Stephen Castello that “it had no desire to review any privileged information in the SAP database[.]” (Decl. of Stephen Castello, ¶ 13, May 28, 2020.)

SoCalGas is willing to meet and confer regarding a sufficiently narrowed request.

Cal Advocates would like to meet and confer via this email.

Cal Advocates proposes that SoCalGas provide the privilege log as set forth in the original data request for all documents that SoCalGas claims are privileged in its SAP system from 2015 to the present. Cal Advocates also proposes that the privilege log be provided no later than October 5, 2020.

We note that SoCalGas appeared to object to providing the log for information going as far back as 1999, and so this proposal addresses that concern.

We also note that SoCalGas asserted in its May 22, 2020 Motion to Quash that law firm invoices were privileged if they “communicate information for the purpose of legal consultation or risk exposing information that was communicated for such a purpose.” We also note that the declaration supporting the utility’s claim that the law firm invoices contained potentially confidential information was executed by a SoCalGas “Financial Systems and Client Support Manager.” (This declaration accompanied the May 22, 2020 Motion to Quash.) Clearly, such an individual has no expertise to make a legal determination regarding whether a document is privileged under the law.

Because utility books and records are open to regulator inspection pursuant to numerous statutes, SoCalGas law firm invoices should not contain such information as a matter of course. In my experience managing over 20 law firms, the invoices did not contain legal consultation. In addition, to Cal Advocates’ knowledge, this issue



has never been raised before to prevent CPUC staff from fully auditing a utility's books and records. Consequently, we anticipate that there will be very few legitimate claims of privilege. Further, given that such invoices, and how the costs of those invoices are booked, are directly relevant to the issue of Cal Advocates' AstroTurf Funding Investigation, it is necessary for Cal Advocates to have access to all of the non-privileged information in those invoices. In the unlikely event that privileged information is contained in a law firm invoice, SoCalGas should propose a process for providing redacted versions of those invoices to Cal Advocates.

Finally, any privilege log should specifically identify where the document can be found in the SAP system, as specified in the privilege log template provided with the original data request.

Please respond to this email at your earliest convenience. To the extent any proposal herein is not acceptable to SoCalGas, please propose a counter-proposal.

To the extent you believe that a telephonic meet and confer would be productive, please identify a date and time no later than September 25 for such a meeting.

We look forward to your prompt response to this proposal,

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

---

**From:** Sierzant, Corinne M <CSierzant@socalgas.com>  
**Sent:** Thursday, July 30, 2020 4:01 PM  
**To:** Bone, Traci <traci.bone@cpuc.ca.gov>; Castello, Stephen <Stephen.Castello@cpuc.ca.gov>; Ward, Alec <Alec.Ward@cpuc.ca.gov>  
**Cc:** Jason Wilson <jwilson@willenken.com>; Sherin Varghese <svarghese@willenken.com>  
**Subject:** SoCalGas Response - CalAdvocates-TB-SCG-2020-05

Good Afternoon,  
Attached is SoCalGas' response to CalAdvocates-TB-SCG-2020-05 (DR-16). This includes documents in response to question 1 with a confidentiality declaration. As these are sensitive documents, we appreciate you treating them as such.  
Sincerely,

Corinne Sierzant, Regulatory Affairs  
213-244-5354 (Office); 215-290-3144 (Cell)  
[csierzant@socalgas.com](mailto:csierzant@socalgas.com)

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# EXHIBIT 2

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**From:** [Jason Wilson](#)  
**To:** [Bone, Traci](#); [Ward, Alec](#); [Castello, Stephen](#)  
**Cc:** [Willenken-CalPA](#); [Sierzant, Corinne M](#)  
**Subject:** DR 16, Privilege Log Issue: Meet and Confer  
**Date:** Monday, September 28, 2020 11:23:01 AM

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Traci:

We do not see an impasse and we believe that motion practice is unnecessary and premature at this point. We believe that this dispute can be resolved with further meet and confer. To be clear, SoCalGas is willing to do a privilege log consistent with the scope of your investigation, which you say is related to astroturfing. SoCalGas is not insisting on any further date limitation. Your proposed starting date of January 1, 2015 is fine.

The problem with your current position is that the vast majority of the law firms that SoCalGas retains cannot possibly have worked on matters related to the stated scope of your investigation. For example, SoCalGas retains law firm to handle employment matters. What does an employment lawsuit have to do with “astroturfing?” SoCalGas retains law firms represent them in personal injury matters. What does “astroturfing” have to do with personal injury matters? SoCalGas retains law firms to litigate commercial disputes with vendors. Again, what does a commercial dispute have to do with “astroturfing?” Does Cal Advocates really want to bring a motion to compel to force SoCalGas to do a privilege log on invoices from a personal injury case?

Why can't Cal Advocates exclude unrelated legal matters from the privilege log exercise? We understand that this dispute has grown contentious. However, in our view, distrust should not replace common sense. Can we talk on Friday to find common ground?

For the record, there are four statements we would like to dispute.

First, SoCalGas was not required by so-called “basic rules of Civil Procedure” to produce a log “months ago.” Rather, on July 30, 2020, SoCalGas stated its objections to Cal Advocates’ unduly burdensome request, and offered to meet and confer about reasonable means of narrowing the scope of the requested privilege log. Cal Advocates first responded on September 22, 2020, and SoCalGas believes the parties are still meeting and conferring on the scope of the requested log. After waiting 54 days to engage a meet and confer, Cal Advocates is now declaring an impasse in three days. This position is untenable.

Second, we disagree that SoCalGas’s objections to the privilege log request are “legally infirm.” We provided several relevant citations cited in our email that have gone unaddressed.

Third, your email states that SoCalGas did not “provid[e] a counter proposal.” We counter-proposed that “if Cal Advocates is able to identify particular law firms in which it is interested, we believe this would be a fruitful area for the parties to explore in meet and confer to narrow the scope of the log.” You have not responded to this proposal.

Finally, you claim you have properly met and conferred. We do not believe you have attempted to meet and confer in good faith. You have refused our offer to speak over the phone and to try to settle our

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differences. You have ignored our counterproposal. Instead, you just want SoCalGas to comply with your latest demand without providing any legal justification for your position or addressing the issues we have raised. The idea that further meet and confer would be pointless (as you claim) is contradicted by the fact that the parties have narrowed their differences. And our most recent counter proposal further narrows the gap.

Jason



**Jason H. Wilson**

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# EXHIBIT 3

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**From:** [Jason Wilson](#)  
**To:** [Bone, Traci](#)  
**Cc:** [Sierzant, Corinne M](#); [Willenken-CalPA](#); [Ward, Alec](#); [Castello, Stephen](#)  
**Subject:** DR 16, Privilege Log Issue: Meet and Confer  
**Date:** Friday, September 25, 2020 10:28:19 AM

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Dear Traci,

Thank you for narrowing your request to cover documents only from 2015 to the present. While that is a step in the right direction to alleviate the extreme burden associated with Cal Advocates' original request, it still consists of nearly five years' of transactions and therefore does not entirely resolve our objections. Therefore, we would suggest we meet and confer via telephone. Would you be available next week Friday, October 2 at 11:30 am?

In addition, we would dispute certain characterizations in your email regarding the nature and scope of privilege of legal invoices, and their relevance to this matter.

First, you seem to cast doubt on the validity of having the manager in charge of the database to which Cal Advocates is seeking access testify about the contents of that database, because "such an individual has no expertise to make a legal determination regarding whether a document is privileged under the law." This argument is misplaced. Cal Advocates has demanded unfettered access to SoCalGas's database, which contains material that is likely privileged. SoCalGas has stated its legal objections, and provided evidence that potentially privileged information is contained in the database. Now the parties are meeting and conferring about a privilege log, which will establish "the preliminary facts necessary to support" the privilege. *Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 733.

It is true that that the determination of privilege requires a document-by-document review. As the California Supreme Court has explained, "[T]he information contained within certain [billing] invoices may be within the scope of the [attorney-client] privilege." *Los Angeles County Bd. of Supervisors v. Superior Court* (2016) 2 Cal. 5th 282, 298. For example, "[t]o the extent that billing information is conveyed 'for the purpose of legal representation'—perhaps to inform the client of the nature or amount of work occurring in connection with a pending legal issue—such information lies in the heartland of the attorney-client privilege." *Id.* Even amounts paid for legal services "may come close enough to this heartland to threaten the confidentiality of information directly relevant to the attorney's distinctive professional role." *Id.* Thus, as SoCalGas cited in its Motion to Quash, law firm invoices can be privileged "if they either communicate information for the purpose of legal consultation or risk exposing information that was communicated for such a purpose." *Id.* at 300.

This is precisely why Cal Advocates' request for a log on an entire database, or even five years' of entries in that database, is incredibly burdensome. Determining whether a legal invoice threatens the heartland of the attorney-client privilege will take time and resources. Our preliminary rough estimate is that even limited to five years, there could be more than 10,000 entries to log. That is not reasonable or feasible, and requires additional narrowing via meet and confer.

Second, you also seem to be taking the incorrect position that SoCalGas may not even assert its privilege, because utility books and records "are open to regulator inspection pursuant to numerous statutes." But inspection rights do not obviate a utility's claim of legal privilege. SoCalGas and the Commission

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have litigated this very issue all the way to the California Supreme Court, and the Court has explicitly held that the Commission's power to inspect SoCalGas's books and records is "tempered by the attorney-client privilege" and that "no provision exempts [the Commission] from complying with the statutory attorney-client privilege." *Southern California Gas Co. v. Public Utilities Com.* (1990) 50 Cal. 3d 31, 38-39. The US Supreme Court has also rejected this very argument. *United States v. Louisville & Nashville Railroad Co.* (1915) 236 U.S. 318, 336.

Finally, contrary to your office's prior representation that "it had no desire to review any privileged information in the SAP database," Decl. of Stephen Castello, ¶ 13, May 28, 2020, you now seem to suggest that such information is "directly relevant to the issue of Cal Advocates' Astroturf Funding Investigation." We dispute this characterization, as certainly it is not the case that every law firm utilized by SoCalGas works on issues relevant to Cal Advocates' Astroturfing investigation. However, if Cal Advocates is able to identify particular law firms in which it is interested, we believe this would be a fruitful area for the parties to explore in meet and confer to narrow the scope of the log.

We look forward to discussing these issues with you further and are hopeful we can negotiate a resolution.

All the best,

Jason



**Jason H. Wilson**

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# EXHIBIT 4

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**Confidential Legal Materials, Subject To Joint Prosecution Privilege,  
Attorney-Client Privilege and Attorney Work Product**

**COMMON INTEREST, JOINT PROSECUTION,  
AND CONFIDENTIALITY AGREEMENT**

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This Common Interest, Joint Prosecution, and Confidentiality Agreement (“Agreement”) is made and effective as of the 30<sup>th</sup> day of August 2019, by and among the following entities: the Public Advocates Office and the Sierra Club (“Party” individually and “Parties” collectively).

**WHEREAS**, the Public Advocates Office and Sierra Club are investigating tactics by Southern California Gas Company (“SoCalGas”) to perpetuate reliance on gas in buildings and whether these the costs of these activities are borne by SoCalGas customers.

**WHEREAS**, each Party has been granted party status in the California Public Utilities Commission’s (CPUC) Rulemaking Regarding Decarbonization (R. 19-01-011), wherein both the Public Advocates Office and Sierra Club have investigated SoCalGas’s role in the creation of Californians for Balanced Energy Solutions, an entity that also intervened in R.19-01-011 with no disclosure in its Motion for Party Status of its relationship with SoCalGas.

**WHEREAS**, the Public Advocates Office has investigated and continues to investigate SoCalGas’s activities related to undermining efficiency codes and standards in CPUC Rulemaking Energy Efficiency Rolling Portfolios, Policies, Programs, Evaluation, and Related Issues (R.13-11-005).

**WHEREAS**, Sierra Club has investigated SoCalGas’s use of customer funds for a range of anti-electrification activities in SoCalGas’s Application for Authority, Among Other Things, to Update its General Revenue Requirement and Base Rates Effective on January 1, 2019 (A.17-10-008).

**WHEREAS**, each Party is in agreement that there are many unanswered questions regarding the full scope of SoCalGas’s activities to obstruct progress on the transition from gas to electric end uses in buildings and the extent to which SoCalGas has passed the cost of these activities to its customers.

**NOW, THEREFORE**, in consideration of the mutual representations, covenants, and agreements hereinafter set forth, including the foregoing paragraphs, which are part of this Agreement and not mere recitals, the Parties hereto agree as follows:

1. The Parties acknowledge that they have a common interest in connection with R.19-01-011 before the CPUC, as noted above, as well as further investigations into SoCalGas use of customer funds for anti-electrification activities, as noted above, and that they will cooperate in the joint pursuit of their common interests to the extent permitted by law pursuant to the common interest doctrines recognized by the various state and federal courts.
2. To that end, the Parties recognize that facts and information known by one Party may assist the other in development of discovery that will assist in obtaining relief in

**Confidential Legal Materials, Subject To Joint Prosecution Privilege,  
Attorney-Client Privilege and Attorney Work Product**

currently pending proceedings as well as the development of future actions, such as a Motion for an Order to Show Cause. The Parties acknowledge and agree that their interests will be best served if the Parties can exchange information subject to the continued protection of any applicable privileges. In sharing information, documents, strategies, and resources with each other, the Parties expressly preserve and retain the privilege conferred by the work-product doctrine, the attorney-client privilege, rules of protection from disclosure, and all other privileges during any proceeding that may arise in relation to those matters listed in the recitals. Nothing contained herein, however, will obligate a Party to provide any confidential information to any other Party.

3. The Parties agree that they intend to, and will, maintain the confidentiality of the shared materials unless authorized by the other Party. Each Party agrees that it will protect confidential information from disclosure to non-Parties, other than counsel or consultants to any of the Parties, using the same degree of care used to protect its own confidential or proprietary information of like importance. Moreover, each Party will, on a best efforts basis, mark hard copies and e-mails or other electronic data containing confidential information provided to any other Party with some or all of the following words: “Confidential Legal Materials, Subject To Common Interest Privilege, Attorney-Client Privilege and Attorney Work Product.” Failure to so mark the materials, however, will not be treated as waiving the common interest privilege. The inadvertent disclosure of such information or materials contrary to this provision shall not waive any privilege or confidentiality of such information or materials relative to any person or entity not a Party to this Agreement, *i.e.*, such disclosure shall not be considered a public or privilege-waiving disclosure of the information or materials
4. Confidential information shared in furtherance of this agreement shall not be used by any receiving Party(ies) against the Party(ies) sharing the information. Upon termination of this agreement the Parties will return or destroy any confidential information received in accordance with this Agreement if so requested by the original sharing Party.
5. Each Party shall bear its own costs, and no Party shall have authority to incur costs on behalf of any other.
6. Nothing contained in this Agreement is intended to create an attorney-client relationship for the purposes of conflicts or otherwise, and the fact that any counsel has entered into this Agreement shall not in any way preclude the counsel from representing any interest that may be construed to be adverse to any other Party to this Agreement, during the term hereof or after expiration or any earlier termination of the Agreement. The terms and conditions contained herein, and the fact that any counsel has entered into this Agreement, shall not in any way be used as a basis for seeking to disqualify any counsel from representing any other Party in the above identified discussions.

**Confidential Legal Materials, Subject To Joint Prosecution Privilege,  
Attorney-Client Privilege and Attorney Work Product**

7. Any Party may provide written notice to the other Parties of its intent to withdraw from this Agreement. Subsequent to such withdrawal, this Agreement shall continue to protect all shared materials disclosed by the Parties prior to the withdrawal. All Parties will continue to be bound by this Agreement with regard to any shared materials provided, disclosed, received, learned, or obtained through this Agreement. Moreover, a withdrawing Party shall not disclose to any third-party information pertaining to legal strategies developed in furtherance of this Agreement. Regardless of whether a Party withdraws from the Agreement, should any Party cease to have a common interest with the other Parties to this Agreement, it is the intent of the Parties that the Agreement will remain in effect as to those Parties who continue to have a common interest.
8. No Party acting alone may waive the Common Interest/Joint Prosecution Privilege; the Common/Interest/Joint Prosecution Privilege may be waived only by the unanimous consent of all the Parties as expressed in writing.
9. This Agreement may be amended or modified only by a written instrument executed by all Parties that states specifically that it is intended to amend or modify this Agreement.
10. This Agreement supersedes any other agreement, whether written or oral, that may have been made or entered into collectively by and between all of the Parties relating to the matters contemplated hereby. This Agreement constitutes the entire agreement by and among all of the Parties and there are no agreements or commitments except as expressly set forth herein. However, this provision does not in any way supersede any previous agreements between individual Parties or any subgroups of the Parties.
11. If any person or entity, requests or demands, by subpoena or otherwise, any materials subject to this Agreement, the Party who received (or whose attorneys received) the request or demand will advise the person or entity seeking the materials that such materials are privileged and may not be disclosed without the consent of the Party(ies) who furnished them, unless ordered by a court of competent jurisdiction or the CPUC. Unless and until written notice is received from the affected Party(ies) that all applicable rights and privileges are waived, the recipient of the request or demand will take all reasonable steps to permit the assertion of all applicable rights and privileges with respect to the materials and will cooperate fully with the affected Party(ies) and its (their) attorneys in any judicial or administrative proceeding relating to the disclosure of such materials.
12. If, at any time, the Commission, or any other federal, state, or local governmental authority, or any court or arbitration tribunal having jurisdiction determines that any provision of this Agreement is illegal, void, invalid, or unenforceable, in any respect, then the terms of this Agreement will, if possible, be modified, and this Agreement will be reformulated to the extent necessary to be deemed valid or enforceable in compliance with all Commission or other rules, regulations, order, and policies, and to preserve each Party's privilege, benefits, and equities hereunder.

**Confidential Legal Materials, Subject To Joint Prosecution Privilege,  
Attorney-Client Privilege and Attorney Work Product**

13. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.
14. The validity and enforceability of the terms of this Agreement shall be governed by the laws of the State of California.

IN WITNESS WHEREOF, counsel to the Parties have executed this Agreement as of the date first above written.

s/ MATTHEW VESPA

**MATTHEW VESPA**  
Attorney for Sierra Club  
50 California St., Suite 500  
San Francisco, CA 94111  
mvespa@earthjustice.org  
Office: (415) 217-2123  
Cell: (415) 310-1549

/s/ DIANA L. LEE

**DIANA L. LEE**  
Attorney for Public Advocates Office  
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# ATTACHMENT 1

**[PROPOSED] PROTECTIVE ORDER CONCERNING FINANCIAL DATA RELATED  
TO DRAFT RESOLUTION ALJ-391**

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

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

Resolution ALJ-391  
Administrative Law Judge Division

**[PROPOSED] PROTECTIVE ORDER CONCERNING FINANCIAL DATA RELATED  
TO DRAFT RESOLUTION ALJ-391**

Dated: November 19, 2020

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

**[PROPOSED] PROTECTIVE ORDER CONCERNING FINANCIAL DATA RELATED TO DRAFT RESOLUTION ALJ-391**

TO THE PARTIES AND THEIR COUNSEL OF RECORD:

Having reviewed the comments submitted by the Parties, the [Proposed] Protective Order (“Order”) is effective as of the date of Resolution ALJ-391, the Commission imposes the following Order:

WHEREAS, certain information that Southern California Gas Company (SoCalGas) may produce or disclose in the non-proceeding investigation, after the date of this Order that relates to the subpoena served on May 5, 2020, may constitute confidential, proprietary, or otherwise protected materials, including, but not limited to, nonpublic financial information (such as audited and unaudited financial information, regarding Sempra Energy and its subsidiaries and affiliates), other financial information, proprietary information, information constituting trade secrets, competitively sensitive documents, personal/private information such as employee or customer data, geographic information systems (GIS) data, and/or sensitive security or critical energy infrastructure information (CEII) (*see, e.g.*, 18 C.F.R. § 388.113(c)(1); 6 U.S.C. §131(3); 49 C.F.R. § 1520.5) (all collectively, the Protected Materials); and

WHEREAS, the level and type of real-time immediate access to SoCalGas’s internal financial accounting system requested by Public Advocates Office at the California Public Utilities Commission (CalPA) would make it impossible for SoCalGas to mark information as confidential and submit the supporting confidentiality declaration before being reviewed or copied by CalPA as required under General Order 66-D, Section 3.2.

IT IS NOW ORDERED, FOR GOOD CAUSE, that this Order shall govern the use of information made available by SoCalGas to CalPA from its financial accounting system:

1. With respect to the CalPA subpoena, this Order shall govern access to and the use of all financial data made available or produced by or on behalf of SoCalGas for purposes of the non-proceeding investigation or any related proceeding. The term of the Order shall be perpetual for CalPA to protect any Protected Materials.

2. For purposes of this Order:

(a) The term “Protected Materials” means the financial accounting information residing on the SAP system or elsewhere that SoCalGas makes accessible to CalPA based upon the subpoena that CalPA served on SoCalGas on May 5, 2020, whether or not reduced to other written or electronic form, any information contained in or obtained from such designated materials, hardcopy or electronic notes of Protected Materials, and any other hardcopy or electronic copies of Protected Materials.

(b) Because there is no practical method of marking the Protected Materials as confidential prior to providing it to CalPA, it is Ordered that:

(1) All information on SoCalGas’s SAP system or any other financial information that is accessed, received, or viewed by CalPA shall be preliminarily deemed confidential under Public Utilities Code § 583, General Order 66-D (GO 66-D), and D.17-09-023 and shall be deemed “PROTECTED MATERIALS.” PROTECTED MATERIALS shall also include “memoranda, handwritten notes, or any other form on information (including electronic form), whether copied onto a computer network, computer hard drives or any other medium, electronic or otherwise, which copies or discloses Protected Materials. Any electronic or hard copies of Protected Materials made by CalPA will be marked “PROTECTED MATERIALS” or words of similar import, such as “Confidential and Protected Materials Pursuant to PUC Section 583, GO 66-D, and D.17-09-023,” as long as the term “Protected Materials” or “Confidential” is included in that designation to indicate that there are Protected Materials on each page. If the Protected Materials are produced in electronic form, the “PROTECTED MATERIALS” designation shall be inserted on each page as a header or footer. To the extent CalPA is unable to mark Protected Materials accordingly, CalPA will identify the information as Confidential in some other reasonable manner.

(2) With respect to any copy that CalPA takes pursuant to the subpoena, CalPA shall provide to SoCalGas the PROTECTED MATERIALS it has copied and allow SoCalGas at least twenty (20) business days to review the PROTECTED MATERIALS and mark them in compliance with GO 66-D. In the event CalPA identifies a large number of PROTECTED MATERIALS at one time, the parties shall meet and confer in good faith to expand to a number of days that is reasonable.



3. Any disputes arising under this Agreement must be resolved through the Commission ADR process or through presenting the dispute to the Chief ALJ. Prior to presenting any dispute under this Agreement to the Chief ALJ, the Parties shall use their best efforts to resolve such dispute.

This Order is effective today.

Dated: \_\_\_\_\_

\_\_\_\_\_  
MARYBEL BATJER  
President

LIANE M. RANDOLPH  
MARTHA GUZMAN ACEVES  
CLIFFORD RECHTSCHAFFEN  
GENEVIEVE SHIROMA  
Commissioners

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

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

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the foregoing **Comments of Southern California Gas Company to Draft Resolution ALJ-391, Declaration of Jason H. Wilson In Support of Comments of Southern California Gas Company to Draft Resolution ALJ-391, and [Proposed] Protective Order Concerning Financial Data Related to Draft Resolution ALJ-391 (Not in a Proceeding)** on all parties of record by electronic mail.

Due to the current Coronavirus (COVID-19) health crisis, accordingly, pursuant to CPUC COVID-19 Temporary Filing and Service Protocol for Formal Proceedings, paper copies of documents will not be mailed.

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Dated at Los Angeles, California, this 19th day of November, 2020.

/s/ Lisa S. Gibbons  
Lisa S. Gibbons

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BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

In the Matter of The Public Advocates Office  
Investigation Pertaining To Southern California  
Gas Company's Accounting Practices, Use Of  
Ratepayer Monies To Fund Activities Related  
To Anti-Decarbonization And Gas Throughput  
Policies, And Related Matters

Not In A Proceeding

**PUBLIC ADVOCATES OFFICE COMMENTS ON  
DRAFT RESOLUTIONALJ-391 DENYING  
SOUTHERN CALIFORNIA GAS COMPANY'S DECEMBER 2, 2019  
MOTION FOR RECONSIDERATION/APEAL OF THE NOVEMBER 1, 2019  
ADMINISTRATIVE LAW JUDGE'S RULING AND ADDRESSING  
OTHER RELATED MOTIONS**

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November 19, 2020

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## I. INTRODUCTION

Pursuant to Rule 14.5 of the California Public Utilities Commission’s (Commission) Rules of Practice and Procedure (Rule), the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) provides these comments on Draft Resolution ALJ-391, denying Southern California Gas Company’s (SoCalGas) December 2, 2019 Motion for Reconsideration/Appeal of the November 1, 2019 Administrative Law Judge’s Ruling (Appeal) and addressing other related motions.

SoCalGas’ Appeal argues that the utility has no obligation to provide to Cal Advocates its contracts and other materials related to its creation and funding of the astroturf lobbying organization<sup>1</sup> – Californians for Balanced Energy Solutions or “C4BES” – on three bases: (1) Cal Advocates has no statutory authority to such information; (2) provision of the information violates the utility’s First Amendment rights of association; and (3) discovery outside of a formal Commission proceeding denies it procedural due process.

Draft Resolution ALJ-391 properly rejects all of these SoCalGas claims. However, the Draft Resolution does not go far enough. Among other things, the Draft Resolution establishes troubling precedent by: (1) declining to issue sanctions for SoCalGas’ discovery abuses that have occurred since the submission of its Appeal by deferring those issues to be addressed in an unidentified forum at a later, unidentified date and (2) ignoring the fact that SoCalGas has unlawfully granted itself a stay from certain discovery pending formal Commission action on its Appeal.

As described in Section II.A below, there is no reason for the Commission to defer sanctions against the utility. The issue of sanctions for SoCalGas’ refusal to comply with a validly issued Commission subpoena and to provide Cal Advocates the confidential versions of the declarations supporting its Appeal have been fully briefed in response to Cal Advocates’ June 23, 2020 and July 9, 2020 motions for sanctions.<sup>2</sup> There is nothing further to “investigat[e]” by

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<sup>1</sup> “Astroturfing” is the practice of masking the sponsors of a message or organization to make it appear as though it originates from and is supported by grassroots participants.

<sup>2</sup> All of the briefs on both issues, including exhibits, are available on the Cal Advocates’ website at <https://www.publicadvocates.cpuc.ca.gov/general.aspx?id=4444> under the headings “6-23-20 Cal Advocates Motion for Contempt & Fines for Subpoena Violation” and “7-9-20 Cal Advocates Motion to Compel Confid Declarations & Fines.”

another “appropriate” Commission “enforcement division.”<sup>3</sup> If SoCalGas disagrees with the Commission’s imposition of sanctions in the final resolution, it may appeal that determination through rehearing.

In addition, by deferring sanctions against the utility, the Draft Resolution threatens to render Administrative Law Judge (ALJ) rulings meaningless by providing a troubling road map to Commission-regulated utilities on how to undermine Commission discovery efforts going forward. Specifically, the Draft Resolution establishes that a utility can “appeal” to the Commission any ALJ ruling it contests, and withhold discovery without consequence unless and until the Commission acts – as SoCalGas has done here. Vague threats of potential future sanctions, such as those in the Draft Resolution, are verifiably meaningless to aggressive utilities that view even actual fines as a mere cost of doing business.<sup>4</sup> The Commission should not encourage such tactics because they undermine the Commission’s authority.

Consistent with these observations, and the recommendations provided below, Draft Resolution ALJ-391 should be supplemented to reflect that:

- (1) Sanctions shall be imposed on SoCalGas consistent with the recommendations set forth in the Cal Advocates’ June 23, 2020 and July 9, 2020 motions;
- (2) No stay of its discovery obligations has been granted to SoCalGas regarding the instant investigation;<sup>5</sup>
- (3) SoCalGas was required to comply with both the September 10, 2019 and November 1, 2019 ALJ rulings on discovery issues while awaiting further rulings on its Appeal;
- (4) SoCalGas’ refusal to comply with ALJ discovery rulings by asserting the same arguments as a basis to withhold discovery between November 1, 2019 and today constitutes contempt of this Commission;

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<sup>3</sup> Draft Resolution, p. 27.

<sup>4</sup> See the June 25, 2020 Reporter’s Transcript of Proceedings in the Aliso Canyon civil litigation before the Los Angeles Superior Court, pp. 15, line 21 – 17, line 10, available on Cal Advocates’ website at <https://www.publicadvocates.cpuc.ca.gov/general.aspx?id=4446> under “Additional Items of Interest.” Among other things, Plaintiffs’ Counsel explains: “So what do they have to lose? They just don't give us the evidence, the critical evidence in this case. .... They're not incentivized because they have nothing to lose. If you lose 500,000, a million, 2 million ...in a multi-billion-dollar exposure case, you've won. You've abused the civil discovery system. The residents of this County have not got the justice that this civil justice system is supposed to provide, and that's clear.

<sup>5</sup> Indeed, the ALJ Ruling of April 6, 2020 expressly denied any stay.

- (5) SoCalGas' privilege claims related to its System Applications Products (SAP) system have no basis and should be rejected;
- (6) Information previously withheld from public review based on SoCalGas' First Amendment claims shall be made publicly available;
- (7) SoCalGas' other confidentiality claims regarding discovery provided to Cal Advocates remain to be determined; and
- (8) If the Commission declines to issue sanctions here, an order to show cause why SoCalGas should not be sanctioned for its discovery abuses will issue no later than the first quarter of 2021.

Each of these issues is addressed more fully below.

## II. DISCUSSION

### A. **The Draft Resolution Should Impose Sanctions on SoCalGas, or at A Minimum, Reflect That an Order To Show Cause Will Issue No Later Than The First Quarter Of 2021**

The Draft Resolution properly recognizes that SoCalGas has violated fundamental requirements of the “regulatory framework” and interfered with the Commission’s oversight of the utility:

A significant element of the regulatory framework for utilities in California, such as SoCalGas, is the utility’s obligation to provide the Commission and its staff, such as Cal Advocates, with requested information pertaining to regulatory oversight.

and

If a utility, such as SoCalGas, does not comply with the requests for information, such as DR No. CalAdvocates-SC-SCG-2019-05, from the Commission or its staff, including Cal Advocates, or more formal injunctions from the Commission, such as the May 5, 2020 subpoena, it is not unreasonable for the utility to expect to be subject to sanctions up to and including monetary penalties.<sup>6</sup>

Notwithstanding this strong language, the Draft Resolution then errs by deferring to an unspecified date and forum the question of whether SoCalGas will be sanctioned for the discovery abuses that it has engaged in. Specifically, the Draft Resolution declines to address Cal Advocates’ motions for sanctions based on the utility’s fully-briefed refusal to comply with a

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<sup>6</sup> Draft Resolution, Findings 27 and 28, p. 32.



validly issued Commission subpoena and its fully-briefed refusal to provide Cal Advocates the confidential declarations included in its Appeal but intentionally withheld from Cal Advocates.<sup>7</sup>

To be clear, there are no more facts or law to be adduced regarding these two issues. Both Cal Advocates and SoCalGas have had ample opportunity to present their arguments, authorities, and facts to the Commission.<sup>8</sup> There is no reason the Draft Resolution cannot resolve those motions by issuing sanctions against the utility for its clear violations of law.<sup>9</sup> This is precisely what the Los Angeles Superior Court has done in the Aliso Canyon civil litigation in response to SoCalGas' discovery abuses,<sup>10</sup> and what the Commission should do here.

Instead of taking necessary action to address SoCalGas' disregard for the Commission's authority, so as to encourage SoCalGas' future compliance with state law and Commission requirements, the Draft Resolution creates unnecessary uncertainty regarding Cal Advocates' requests for sanctions by failing to identify how or when such sanctions will be considered. For example, the Draft Resolution states that "[t]his resolution, and more specifically, the underlying process, is not the proper means for the Commission to consider such fines and contempt."<sup>11</sup> However, it does not explain *why* the underlying process is not the proper means for the Commission to consider fines for SoCalGas' contempt, or what process *would* be proper. Instead, it explains that sanctions will be "referred to an appropriate enforcement division within the Commission" for "further investigation":

Any further investigation of SoCalGas' conduct will be referred to an appropriate enforcement division within the Commission. In its referral, Cal Advocates may include instances where it found SoCalGas improperly responded or failed to timely provide information in response to Cal Advocates' discovery requests and should be penalized.

The appropriate enforcement division then will be tasked with investigating the alleged violations and recommending fines and penalties, should the Director of that division deem it appropriate.<sup>12</sup>

This approach is unworkable for several reasons. First, as any Commission practitioner will recognize, the "referral" process described in the Draft Resolution is without precedent at the Commission, and raises a host of questions left unresolved by the Draft Resolution. For

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<sup>7</sup> Draft Resolution, pp. 2 & 26-27.

<sup>8</sup> All of the briefs on both issues, including exhibits, are available on the Cal Advocates' website at <https://www.publicadvocates.cpuc.ca.gov/general.aspx?id=4444> under the headings "6-23-20 Cal Advocates Motion for Contempt & Fines for Subpoena Violation" and "7-9-20 Cal Advocates Motion to Compel Confid Declarations & Fines."

<sup>9</sup> To the extent SoCalGas objects, it may seek rehearing of the final resolution issued by the Commission. No more process is due.

<sup>10</sup> The Los Angeles Superior Court proceedings are described in detail in Section II.C.2 below.

<sup>11</sup> Draft Resolution, p. 26.

<sup>12</sup> Draft Resolution, p. 27.

example: What procedures should Cal Advocates use to “refer” the matter and who should the matter be referred to? Second, what is the “appropriate enforcement division within the Commission” that the Draft Resolution would task with addressing discovery disputes and potential sanctions? And why is it insufficient for the ALJ Division acting through a Commission resolution to address such issues? Discovery disputes are a fundamental legal issue. They frequently require the rights of the parties to be balanced and guided by a substantial body of law. What division, other than the ALJ Division, is designed to decide such legal issues? Indeed, there is certainly well-established Commission precedent for ALJs to sanction utilities that violate the Commission ethics rules, and the Draft Resolution fails to explain why that process is not appropriate here.<sup>13</sup> Further, by proposing that another, unidentified division undertake an investigation, the Draft Resolution overlooks the fact that Cal Advocates has already undertaken an “investigation” pursuant to its statutory authority.<sup>14</sup> The underlying

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<sup>13</sup> See two examples of sanctions for violations of Rule 1.1, including one for contempt, at D.15-08-032 and D.20-08-037.

<sup>14</sup> See, e.g., California Public Utilities Code § 309.5. See also, October 29, 2020 letter from U.S. Senator Dianne Feinstein and U.S. Representative Nanette Barragan to Scott Drury, Chief Executive Officer of SoCalGas, identifying specific findings from the Cal Advocates’ investigation:

... [a]ccording to an ongoing investigation by the California Public Utilities Commission’s Public Advocates Office, SoCalGas has engaged in a lobbying campaign to undermine the state’s clean energy goals. According to documents related to the investigation, SoCalGas has:

1. Formed a group named Californians for Balanced Energy Solutions using ratepayer money to advocate for increased natural gas use without clearly communicating its relationship with SoCalGas.
2. Lobbied against the zero-emission vehicle mandate for drayage trucks and other vehicles in the San Pedro Bay Ports Clean Air Action Plan of 2017.
3. Lobbied against increased efficiency standards for home furnaces.
4. Failed to comply with the Public Advocates Office’s discovery requests regarding additional documents related to the investigation.

See also September 10, 2020 letter from State Senator Henry Stern to Commission President Marybel Batjer (and copied to all Commissioners), requesting the Commission to facilitate Cal Advocates’ ability to pursue its investigation into SoCalGas’ astroturf activities:

My understanding is the PUC’s Public Advocates Office has been investigating this issue for some time now, but has been unsuccessful in getting SoCalGas to respond to requests for documents and information.

As such, I am asking the PUC to use the full weight and force of its office to order SoCalGas to provide all the documents requested by the Public Advocates Office as soon as possible so the Public

(continued on next page)

discovery dispute results from SoCalGas' refusal, despite a valid subpoena and ALJ rulings, to cooperate with that investigation. Further, the Draft Resolution's implicit assumption that another Commission division will get more cooperation from the utility flies in the face of the well-established principle that Cal Advocates has the same discovery rights as any other part of the Commission. The experiences documented by Cal Advocates in this investigation, by Safety and Enforcement Division in the Aliso Canyon investigation (I.19-06-016), and by the Los Angeles County Superior Court in the Aliso Canyon civil litigation, all demonstrate that SoCalGas will withhold discovery from the Commission and other parties conducting an investigation. By purporting to defer the issue of sanctions to yet another investigation, one which SoCalGas has even more reason to undermine, the Draft Resolution facilitates SoCalGas' pattern of delay, denial, and deferral.

The Commission has clear statutory authority to sanction the utilities it regulates,<sup>15</sup> and it has pursued this authority through Commissioner and ALJ-initiated orders to show cause, OIIs, division citation programs, and other mechanisms. Consequently, it is inconceivable that the Commission cannot identify in this Draft Resolution – which has been pending for nearly a year – the specific process for sanctioning SoCalGas for its evident violations of Commission rules and state law.

Absent ordering sanctions here, the Draft Resolution should, at a minimum, identify the specific process for considering sanctions against SoCalGas, and identify the date when such proceedings will begin. In addition, the Draft Resolution should be supplemented to include the following Findings, which are well-established in the law and the record of these proceedings, and need not, and should not, be “investigated” by some other Commission division:

- (1) SoCalGas' refusal to comply with fundamental regulatory requirements is a violation of state law, Commission requirements, and its franchise to operate in California.
- (2) Consistent with the Commission's determinations in D.15-08-032, while SoCalGas may timely assert valid legal arguments, it may not

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Advocates Office can conclude its investigation into whether SoCalGas has acted inappropriately in this matter.

Both letters are available on the Cal Advocates' website at <https://www.publicadvocates.cpuc.ca.gov/general.aspx?id=4446> under “Additional Items of Interest.”

<sup>15</sup> See, e.g., California Public Utilities Code §§ 2107, 2108, 2113 & 2114.

unilaterally or indefinitely withhold information pending resolution of those arguments, nor assert frivolous claims that frustrate Commission oversight.

- (3) SoCalGas' motion to quash the May 5, 2020 Commission Subpoena was served eleven days after performance on the Subpoena was due and it was therefore out of time and should be rejected on that basis alone.
- (4) SoCalGas' motion to quash the May 5, 2020 Commission Subpoena was based on frivolous claims already rejected in the ALJ Rulings of September 10, 2019 and November 2, 2019.
- (5) SoCalGas did not have the right to impose a "custom software solution" to limit Cal Advocates' review of its accounts and records pending resolution of its claims.
- (6) SoCalGas did not have the right to require Cal Advocates to execute a non-disclosure agreement before providing access to its SAP system.<sup>16</sup>
- (7) Contrary to SoCalGas claims,<sup>17</sup> prior practices of Commission staff in reviewing SoCalGas' accounts and records do not excuse SoCalGas's disobedience of the Commission Subpoena.
- (8) Contrary to SoCalGas claims,<sup>18</sup> because the Commission has a statutory right and obligation to review SoCalGas' accounts and records, it would be redundant for the Commission to have to establish a compelling need for access to those accounts and records.
- (9) SoCalGas' refusal to comply with the May 5, 2020 Commission Subpoena had no basis in law or fact.
- (10) SoCalGas' refusal to comply with the May 5, 2020 Commission Subpoena is a violation of a Commission order.
- (11) SoCalGas' refusal to comply with the May 5, 2020 Commission Subpoena is a violation of the November 1, 2019 ALJ Ruling denying its First Amendment claims.
- (12) SoCalGas' refusal to comply with the May 5, 2020 Commission Subpoena is a violation of California Public Utilities Code § 314.

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<sup>16</sup> See Exhibit 1 - J.Wilson & T.Bone Emails to ALJ May 29-June 3 2020 Re Access to Accounts and Records (requiring Cal Advocates' execution of a non-disclosure agreement before providing access to the utility's SAP system).

<sup>17</sup> See SoCalGas Motion to Quash Subpoena, p. 9. See also D.15-08-032, p. 28 (rejecting similar argument).

<sup>18</sup> See SoCalGas Motion to Quash Subpoena, pp. 4, 12, 23-25.

- (13) SoCalGas’ refusal to provide Cal Advocates all versions of the declarations included with its Appeal was unlawful and contrary to the intent of the ALJ Rulings of September 10, 2019, November 2, 2019, and April 6, 2020.
- (14) SoCalGas is subject to sanctions for its violations of the May 5, 2020 Commission Subpoena.
- (15) SoCalGas is subject to sanctions for its refusal to provide Cal Advocates all versions of the declarations included with its Appeal.

**B. The Draft Resolution Should Clarify That There Was No Stay in Place While the Commission Considered the SoCalGas Appeal And, As Such, The Utility is Subject To Sanctions For Its Ongoing Refusal To Comply With Discovery Requests, Including The Commission Subpoena**

As described in Section I above, the Draft Resolution establishes the precedent that a utility can “appeal” to the Commission any ALJ ruling it contests, and withhold discovery without consequence, unless and until the Commission acts. Absent changes to the Draft Resolution to clarify that a utility must comply with state law, ALJ rulings, and Commission orders pending any appeal, the Commission invites similar ongoing non-compliance with its rules and rulings from other Commission-regulated utilities. In addition to clarifications rejecting such a precedent, the Draft Resolution should also be modified to address the fact that SoCalGas has refused to comply with not only the November 1, 2019 ALJ Ruling, but also the ALJ Ruling issued on September 10, 2019. The following discussion elaborates on the need for these clarifications.

**1. The Draft Resolution Should Clearly State That Absent A Stay, SoCalGas Was Obligated to Comply with The ALJ Rulings**

It is a fundamental rule that absent a stay, a utility must comply with the existing Commission rule or order. The rules requiring compliance absent a stay, and requiring a showing of “great or irreparable damage” to obtain a stay of a regulatory decision, are critical components of the regulatory scheme that applies to SoCalGas.<sup>19</sup>

As affirmed by the United States Supreme Court in its seminal regulatory decision, *Munn v. Illinois*, SoCalGas’ franchise to serve the gas customers in its service territory is contingent on

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<sup>19</sup> See, e.g, California Public Utilities Code §§ 1761 et seq.

SoCalGas' submission to Commission regulation.<sup>20</sup> This is because, as a franchise holder, the utility's gas business is devoted to the "public interest" and requires regulation to protect that public interest. As the Supreme Court in *Munn* explained, when someone:

devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use; but, so long as he maintains the use, he must submit to the control.<sup>21</sup>

Notwithstanding its fundamental franchise obligation to comply with the Commission's regulatory requirements, SoCalGas picks and chooses the rulings it will follow. Here SoCalGas has repeatedly ignored two ALJ rulings finding its arguments invalid, and refuses to comply with discovery requests to which it objects. Though it cites no supporting rule, decision, or law, SoCalGas effectively asserts that it need not abide by the ALJ's rulings here because it has asked the full Commission to confirm those rulings. Indeed, for almost a year now, SoCalGas has refused to comply with any data request it objects to, including a Commission subpoena to provide access to its SAP system, on claims that it need not comply with these valid requests until the Commission rules on its Appeal.<sup>22</sup>

The Draft Resolution should clearly state the utility's obligation to either obtain a stay or comply with ALJ rulings pending subsequent review. Further, if sanctions are not imposed here, the final Resolution should reflect that the Commission intends to order SoCalGas to show cause why it should not be sanctioned for its refusal to comply with ALJ rulings by withholding discovery from Cal Advocates from December 1, 2019 to the present.

**2. The Draft Resolution Should Be Modified to Reflect That There Were Two ALJ Rulings Issued Prior To the Appeal and Both Rejected the Arguments SoCalGas Continues to Rely on to Withhold Discovery from Cal Advocates**

The Summary section of the Draft Resolution accurately reflects the specific circumstances leading to the SoCalGas Appeal. However, it fails to acknowledge that the ALJ

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<sup>20</sup> *Munn v. Illinois*, 94 U.S. 113 (1877).

<sup>21</sup> *Munn v. Illinois*, 94 U.S. 113, 125-132 (1877).

<sup>22</sup> See, e.g., SoCalGas May 22, 2020 Motion to Quash.

issued not one, but *two* rulings requiring SoCalGas to comply with earlier discovery requests. Both ALJ rulings – one on September 10, 2019 and the other on November 2, 2019 – rejected nearly identical SoCalGas arguments that the discovery sought by Cal Advocates was not “necessary to perform its duties.”<sup>23</sup> In addition, the November 2, 2020 ALJ ruling rejected SoCalGas’ First Amendment claims initially made in its August 26, 2019 response to the second Cal Advocates’ October 7, 2019 motion to compel. SoCalGas has nonetheless repeatedly continued to raise these same arguments since those rulings were issued in a cynical – but effective – strategy to evade production of discovery.

Because SoCalGas’ refusal to comply with not one, but two ALJ rulings, is an important fact in considering Cal Advocates’ motions for sanctions against SoCalGas, the Summary section of the Draft Resolution should be supplemented to reflect that SoCalGas made the same arguments twice, and its arguments were rejected in both the September 10, 2019 and November 2, 2019 ALJ rulings.

**C. The Draft Resolution Should Reject SoCalGas’ Privilege Claims**

In response to SoCalGas’ refusal to permit Cal Advocates full access to its SAP accounting system based on privilege claims, the Draft Resolution orders SoCalGas to provide Cal Advocates with a privilege log within 15 days.<sup>24</sup> While the Draft Resolution properly recognizes that Cal Advocates is entitled to a privilege log in a somewhat timely manner, this Ordering Paragraph should go significantly further. As the discussion below and Appendix A hereto demonstrates:

- (1) SoCalGas has had every opportunity to provide a privilege log, and has declined to do so;

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<sup>23</sup> SoCalGas also argued that Cal Advocates’ discovery authority “is not unfettered” and that Cal Advocates “should not be permitted to circumvent the Commission’s processes and procedures” by engaging in discovery outside of a proceeding, thereby denying SoCalGas’ due process rights. See SoCalGas August 26, 2019 and October 17, 2019 responses to Cal Advocates’ motions to compel, available on the Cal Advocates’ website at <https://www.publicadvocates.cpuc.ca.gov/general.aspx?id=4444>.

<sup>24</sup> Draft Resolution, Ordering Paragraph 8, p. 34: “Southern California Gas Company shall produce the information and documents requested by Public Advocates Office at the California Public Utilities Commission, including all confidential information not otherwise privileged as attorney-client or attorney work product, in DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 Commission subpoena, with any related privilege log, within 15 days of the effective date of this Resolution.”

- (2) There is no reason to believe that there is any privileged information in SoCalGas' SAP system;
- (3) The Commission should actively discourage utilities from putting privileged information in their accounting systems;
- (4) SoCalGas has such a recent and well-documented history of intentionally abusing privilege claims and violating court orders to withhold discovery that there is no reason to believe that SoCalGas will behave any differently here; and
- (5) The Commission needs to proactively challenge SoCalGas' privilege assertions to ensure that all Commission staff receive the data they need to perform their jobs.

**1. SoCalGas' Claims That Its SAP System Contains Privileged Information Must Be Carefully Scrutinized Because They Are Unsupported and Frustrate Regulatory Objectives**

As the Draft Resolution correctly recognizes, § 314(a) of the California Public Utilities Code ensures that the Commission and all of its employees can “*at any time*, inspect the accounts, books, papers, and documents of any public utility.”<sup>25</sup> However, in a tactic that successfully frustrated the intent of the May 5, 2020 Commission Subpoena to immediately provide Cal Advocates “access to all databases associated in any manner with the company’s accounting system,” SoCalGas asserted that its “accounting database contains, among other things, documents and information protected from disclosure under the attorney-client privilege, the attorney work-product doctrine, and the First Amendment.”<sup>26</sup> Consequently, the utility purported to implement a “custom software solution” to prevent Cal Advocates from accessing *any* attorney billing records for approximately 160 law firms.<sup>27</sup>

SoCalGas' unilateral deployment of its “custom software solution” has no precedent, is unlawful, and if allowed to stand will undermine the Commission’s well-established authority to review all aspects of a utility’s accounts. Such records are critical to the Commission’s review in

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<sup>25</sup> Draft Resolution, p. 11.

<sup>26</sup> SoCalGas May 22, 2020 Motion to Quash, p. 2. These claims were reiterated in emails to the ALJ from SoCalGas counsel. See, e.g., Exhibit 1 - J.Wilson & T.Bone Emails to ALJ May 29-June 3 2020 Re Access to Accounts and Records.

<sup>27</sup> See Exhibit 2 - SoCalGas Response to CalAdvocates-TB-SCG-2020-04 Q 3 re law firms (reflecting that SoCalGas blocked review of all accounting records related to approximately 160 law firms).



rate cases to determine whether the costs incurred were appropriate. They are similarly critical to Cal Advocates' investigation here. Consequently, SoCalGas' overbroad effort to wall off all access to all accounting records related to approximately 160 law firms must be rejected.

Notably – notwithstanding significant follow up by Cal Advocates regarding SoCalGas' claims that its SAP system contains privileged attorney/client or work product communications<sup>28</sup> – the evidence suggests that SoCalGas' SAP system does not contain *any* confidential information, and that its privilege claims are nothing more than another smokescreen to delay Cal Advocates' access to its accounts.<sup>29</sup>

The only support SoCalGas has provided for its privilege claims are bald statements in its pleadings,<sup>30</sup> and two declarations from non-attorney staff describing SoCalGas' SAP system.<sup>31</sup> Significantly, only one of those declarations even addresses the issue of privileged information, explaining with circular reasoning that the SAP system “allows access to information *that SoCalGas maintains should be excluded from Cal Advocates' view as a matter of law*, including certain privileged and other protected information.”<sup>32</sup>

Declarations of the type provided by SoCalGas – from a “Financial Systems and Client Support Manager” and an “IT Software Development Manager” – which only describe the SAP system and do not specifically identify any privileged information or even positively assert that such information is contained in SoCalGas' SAP system – are wholly insufficient to establish a claim of privilege.<sup>33</sup> Specifically, the declarations are facially deficient because they do not even assert that privileged information exists in SoCalGas' SAP system. They only state that SoCalGas has asserted the information is privileged. In addition, the facts that *are* provided in the declaration do not provide even a scintilla of the information needed for other parties, such as the Commission, or Cal Advocates, to evaluate the merits of the privilege claim. Lastly, there is

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<sup>28</sup> These efforts are documented in Attachment A hereto.

<sup>29</sup> See Attachment A hereto.

<sup>30</sup> See, e.g., SoCalGas May 22, 2020 Motion to Quash, p. 2.

<sup>31</sup> See SoCalGas May 22, 2020 Motion to Quash, Declarations of Dennis Enrique and Kelly Contratto, available at Exhibits D and E to Attachment A hereto.

<sup>32</sup> SoCalGas May 22, 2020 Motion to Quash, Declaration of Kelly Contratto, ¶ 4, available as Exhibit E to Attachment A hereto (emphasis added).

<sup>33</sup> See SoCalGas May 22, 2020 Motion to Quash, Declarations of Dennis Enrique and Kelly Contratto, available at Exhibits D and E to Attachment A hereto.

no reason to believe that the declarants have the expertise to determine whether a document is privileged under the law.

Thus, while Cal Advocates acknowledges that it is not entitled to access the utility's privileged information, SoCalGas has not shown that such privileged information even exists in its SAP system, and both the evidence (or lack thereof) and SoCalGas' past litigation practices suggest that SoCalGas' claims have no basis. In sum, SoCalGas' facially deficient declarations, and its refusal – over seven months – to provide any real evidence in support of its privilege claims, is itself evidence that there is no privileged information in the utility's SAP system.

Given the statutory rule – and fundamental regulatory principle – that the Commission and its employees may access a utility's accounts *at any time*, and that third party auditors also routinely access utility accounts, Cal Advocates suggests that the proper assumption both here, and going forward, is that a utility's accounts do *not* contain privileged information, and that if such information is contained in its accounts, any privilege has been waived due to the high level of transparency required for such accounts. Under this scheme, a utility is obliged to ensure that its outside counsel billing records do not contain privileged information, and that if they must, the utility is obliged to maintain a running log of the location and nature of such information. Permitting utilities to merely assert that their law firm accounts contain privileged information which must be completely walled off from regulators before providing access to their accounting systems opens the door to the very type of discovery abuses SoCalGas has been shown to routinely pursue.

Cal Advocates' position is not only consistent with the utility obligation to make its accounts available *at any time*, and the regulatory need for transparency of a utility's accounts, it is also consistent with the fact that attorneys routinely submit their billing records for third party review, and that any law firm working for a utility should understand that its billing records will, similarly be subject to regulatory review. Consider, for example, that the Commission reviews attorney billing records to determine whether or not to award intervenor compensation. Similarly, courts routinely review attorney billing records to determine if statutory attorney fees are appropriate. Indeed, information regarding PG&E's legal costs related to its bankruptcy is –

properly – publicly available for review and debate.<sup>34</sup> In all of these situations, someone has to adjudicate the reasonableness of costs. Such transparency is required in the regulated utility environment, and must be provided by the utility over claims of privilege to delay or frustrate regulatory objectives.

For these reasons, and those set forth below, Cal Advocates proposes that the Commission order SoCalGas to remove its “custom software solution” from its SAP system and provide immediate access to the utility’s accounts consistent with the May 5, 2020 Commission Subpoena.

**2. The Commission Should Take Official Notice of The Los Angeles Superior Court’s Extensive Documentation of SoCalGas’ Discovery Abuses in The Aliso Canyon Civil Litigation**

In considering how to address SoCalGas’ privilege claims here, the Commission should take official notice of the fact that the Los Angeles Superior Court overseeing the Aliso Canyon plaintiffs’ litigation has documented significant discovery abuses by SoCalGas, almost all of them related to unsubstantiated privilege claims.<sup>35</sup> Specifically, a February 20, 2020 Minute Order from that court found that “[b]ased on the prior history of this case, .... [SoCalGas’] initial claims of privilege are unsupportable and/or are withdrawn an average of 94 percent of the time.”<sup>36</sup> The Court observed: “... [SoCalGas], through their counsel, stonewalled over an extended period of this litigation by misusing claims of privilege to attempt to throw Plaintiffs’ counsel off the track with respect to documents to which they were entitled. As a result, Plaintiffs’ counsel were delayed in obtaining documents at a time when they could have been used in deposing Defendants’ current and former employees.”<sup>37</sup>

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<sup>34</sup> See Exhibit 3 - \$140 million and counting – Legal bills scrutinized in PG&E bankruptcy, J.D. Morris, *San Francisco Chronicle*, October 3, 2019.

<sup>35</sup> See *Gandsey v. Southern California Gas Company*, Superior Court of California, Los Angeles County, Civil Division, Central District, JCCP4861, Southern California Leak Cases (“*Gandsey*”). Cal Advocates proposes that, at a minimum, the Commission take notice of the February 20, 2020 and August 3, 2020 Minute Orders in this case, which are available on the Cal Advocates’ website at <https://www.publicadvocates.cpuc.ca.gov/general.aspx?id=4446> under “Additional Items of Interest.”

<sup>36</sup> *Gandsey* February 20, 2020 Minute Order, pp. 2-3.

<sup>37</sup> *Gandsey* February 20, 2020 Minute Order, p. 18.

The Court found that SoCalGas’ “(1) abusive misconduct in discovery; (2) repeated, unmeritorious objections to discovery by assertion of unsubstantiated claims of privilege; (3) repeated failure to provide opposing counsel and the court with legally required information to permit opposing counsel and the court to evaluate Defendants’ claims of privilege; and (4) willful violation of court orders addressing these issues, when taken together, warrant sanctions ....”<sup>38</sup> The Court observed: “In many ways, what is most upsetting about the litigation tactics of Defendants is that they have only asserted good faith objections when threatened with sanctions or when this court required trial counsel to declare under penalty of perjury that there was a good faith basis for the privilege claims asserted.”<sup>39</sup>

The Court rejected SoCalGas’ claims that the conduct was unintentional: “The sheer number of privilege assertions that ultimately were unsupportable is evidence that [SoCalGas’] conduct is the result of a concerted policy, and not the hapless mistakes of a few document review attorneys.”<sup>40</sup>

Unfortunately, the Court’s succinct language and significant sanctions have had little impact on SoCalGas or its attorneys. Since the February 20, 2020 Minute Order, the Court has found numerous privilege logs submitted by SoCalGas to be “unreliable” and has required SoCalGas to re-serve those logs, under threat of a \$50,000 per day sanction “imposed jointly and severally against Defendants and their counsel” for failure to do so.<sup>41</sup> An August 3, 2020 minute order from the Court further documents SoCalGas’ and its attorneys’ long history of discovery abuses:

In what was to become a pattern in this case, SoCalGas simply “fail[ed] to provide evidentiary support sufficient to allow the court to find that SoCalGas ha[d] met its burden of establishing privilege by demonstrating that the documents fall within the categories earlier defined by Judge Wiley.”<sup>42</sup>

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<sup>38</sup> *Gandsey* February 20, 2020 Minute Order, p. 10.

<sup>39</sup> *Gandsey* February 20, 2020 Minute Order, pp. 12-13 (emphases added).

<sup>40</sup> *Gandsey* February 20, 2020 Minute Order, p. 20.

<sup>41</sup> *Gandsey* August 3, 2020 Minute Order, p. 3, available on the Cal Advocates’ website at <https://www.publicadvocates.cpuc.ca.gov/general.aspx?id=4446> under “Additional Items of Interest.”

<sup>42</sup> *Gandsey* August 3, 2020 Minute Order, pp. 4-5.

The August 3, 2020 Minute Order explains that the Court has found that SoCalGas’ “over-designation” of documents as privileged was intended to delay plaintiffs’ discovery rights and has only been constrained by “extraordinary efforts” by those plaintiffs.<sup>43</sup> The Court found that Defendants’ misconduct was both willful and in violation of prior court orders.<sup>44</sup> It cited to a March 20, 2020 Minute Order which found that there were “clear misstatements of fact” in SoCalGas’ February 2020 Privilege Logs and that SoCalGas’ “counsel [did] not acknowledge and apologize for the misrepresentations, [did] not state they [were] concerned about how or why the misrepresentations were made, [did] not attempt to explain how or why the misrepresentations happened and [did] not describe what steps [were] being taken to ensure there [were] no other misrepresentations and to correct any that [were] found.”<sup>45</sup>

The August 2, 2020 Minute Order explained that the “clear misrepresentations in the February 2020 Logs were of grave concern to the court: ‘It follows [from California law] that when a party through counsel provides an untrue description of a document in a privilege log, the party and its counsel make a misrepresentation not only to opposing counsel, but also to the court. A court cannot take that dissembling lightly.’”<sup>46</sup>

The Commission should take official notice of the Los Angeles Superior Court’s findings regarding SoCalGas’ litigation tactics in the *Gandsey* case because those findings are instructive here. The evidence established in Cal Advocates motions and exhibits starting August 14, 2019 demonstrate that SoCalGas has been using similar tactics to undermine the investigation at issue here. As such, the Commission need not engage in the extended learning process described in the *Gandsey* minute orders. Rather, the Commission should take swift and decisive action to ensure compliance from the utility going forward.

As described in Section II.C above, Cal Advocates’ was entitled to a privilege log months ago, when SoCalGas made its privilege claims, and its decision not to provide that log is evidence that its privilege claims have no basis. As such, the Commission should find that the utility’s opportunity to correct that failing has passed and grant Cal Advocates immediate access

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<sup>43</sup> *Gandsey* August 3, 2020 Minute Order, p. 9.

<sup>44</sup> *Gandsey* August 3, 2020 Minute Order, p. 9.

<sup>45</sup> *Gandsey* August 3, 2020 Minute Order, pp. 11-12, quoting March 20, 2020 Minute Order, pp. 3-4.

<sup>46</sup> August 3, 2020 Minute Order, pp. 11-12 Quoting March 20, 2020 Minute Order at 3-4.

to the utility’s SAP system. However, to the extent that SoCalGas does provide a privilege log – whether by Commission order or choice – the *Gandsey* Court rulings show that the utility cannot be trusted to make privilege claims with a good faith basis in the law. Consequently, the Draft Resolution should be modified to: (1) Identify a process that the Commission will use to evaluate any SoCalGas’ privilege claims; and (2) require SoCalGas to provide with any privilege log or other documentation asserting privilege, a declaration under penalty of perjury from a SoCalGas attorney that the attorney has reviewed the materials associated with the privilege claims and that such claims have a good faith basis in the law.<sup>47</sup>

Any other outcome will permit SoCalGas to be the own arbiter of whether its privilege claims are justified – which the Los Angeles Superior Court’s experience demonstrates is unworkable.

### 3. Cal Advocates’ Proposal to Address Privilege Claims

For all of the reasons set forth above, the Draft Resolution should be supplemented to reflect that:

- (1) SoCalGas has provided no meaningful evidence in support of its claims that its SAP system contains privileged information.
- (2) SoCalGas had an obligation to provide a privilege log to the Commission and its offices and divisions whenever it asserts a claim of privilege.<sup>48</sup>
- (3) Any privilege log must contain sufficient information for a party to evaluate the merits of the privilege claim.<sup>49</sup>
- (4) SoCalGas had an obligation under Public Utilities Code § 581 to provide a privilege log to Cal Advocates.
- (5) SoCalGas had an obligation under Public Utilities Code § 581 to provide the declarations requested by Cal Advocates to support the utility’s privilege claims.

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<sup>47</sup> As the Court cogently observed: “when asked to file a declaration as to the good-faith basis of their claims, Defendants chose to abandon over 90 percent of those claims.” *Gandsey* August 3, 2020 Minute Order, pp. 5-6 (emphasis added and citations to an August 14, 2019 Minute Order omitted).

<sup>48</sup> See, e.g., California Code of Civil Procedure § 2031.240(c)(1) (“If an objection is based on a claim of privilege or a claim that the information sought is protected work product, the response shall provide sufficient factual information for other parties to evaluate the merits of that claim, including, if necessary, a privilege log.”).

<sup>49</sup> *Id.*

- (6) A declaration from an employee with no legal training to identify privileged information is not sufficient to establish a claim of privilege.
- (7) The Commission takes official notice of the Los Angeles County Superior Court’s February 20, 2020 and August 3, 2020 Minute Rulings in the Aliso Canyon civil litigation reflecting that SoCalGas has engaged in a pattern and practice of discovery abuses with regard to unjustified claims of privilege.
- (8) SoCalGas’ failure to respond to Cal Advocate’s repeated requests to provide a log of privileged information contained in its accounts is evidence that its privilege claims have not been made in good faith;<sup>50</sup>
- (9) SoCalGas’ failure to comply with Cal Advocates’ requests that it provide a declaration under penalty of perjury from a SoCalGas attorney that the attorney has reviewed the materials associated with the privilege claims and that such claims have a good faith basis in the law is further evidence that SoCalGas’ privilege claims have not been made in good faith;<sup>51</sup>
- (10) The law requires that the Commission and its employees have access to SoCalGas’ accounts “at any time”;
- (11) It is unlawful for SoCalGas to demand that the Commission or any of its employees execute a non-disclosure agreement in order review or access information that the utility claims is confidential.<sup>52</sup>
- (12) This Resolution rejects SoCalGas’ claims that it may withhold information from the Commission or Cal Advocates pursuant to its First Amendment claims.
- (13) Based on the lack of any evidence submitted, this Resolution rejects SoCalGas claims that its SAP system contains any privileged information.
- (14) Within five business days of the effective date of this Resolution, SoCalGas shall provide a declaration under penalty of perjury from both its officer in charge of Information Technology and its General Counsel that all aspects of the “custom software solution” have been removed from its accounts, and that Cal Advocates will have unfettered access to those accounts.

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<sup>50</sup> See Attachment A hereto.

<sup>51</sup> See Attachment A hereto. As described above, the Los Angeles Superior Court in the Aliso Canyon civil litigation has required a similar declaration from SoCalGas attorneys given the company’s significant number of unjustified privilege claims. See *Gandsey* August 3, 2020 Minute Order, pp. 5-6.

<sup>52</sup> SoCalGas has withheld access to its SAP system on this basis. See Exhibit 1 - J.Wilson & T.Bone Emails to ALJ May 29-June 3 2020 Re Access to Accounts and Records.

(15) If the Commission determines that SoCalGas is required to provide a privilege log, given the utility’s refusal to provide such a log for approximately seven months, and to discourage the type of over-designation experienced in the *Gandsey* case, the Commission should require that the following documentation be provided to the service list for this investigation within five business days of the effective date of this Resolution:

- a. A privilege log consistent with the format set forth in Cal Advocates’ Data Request TB-SCG-2020-05 Question 2,<sup>53</sup> including information specific enough for Cal Advocates to identify where the document can be found in the SAP system;
- b. A declaration under penalty of perjury from SoCalGas’ General Counsel that an attorney familiar with the law applicable to First Amendment association and privilege claims has reviewed the items identified as privileged and has confirmed that there is a good faith basis in the law for each of SoCalGas’ privilege claims; and
- c. A declaration consistent with the request set forth in Cal Advocates’ Data Request TB-SCG-2020-05 Question 3.<sup>54</sup>

**D. The Draft Resolution Should Clarify That SoCalGas’ First Amendment Rights Are Constrained By Its Status As A Regulated Utility Operating In the Public Interest And Requires Disclosure Of Any Entities The Utility Hires To Advocate Or Educate On Its Behalf**

The Draft Resolution properly finds that SoCalGas’ First Amendment claims of association have no basis here.<sup>55</sup> However, it errs in two ways. First, it goes too far when it finds that “[t]he First Amendment protections apply to private organizations and corporations, such as SoCalGas.”<sup>56</sup> This Finding 13 suggests that SoCalGas has the same First Amendment rights of association as any other corporation. This is not correct. And while Finding 14 stating that “SoCalGas’ right to associate for political expression is not absolute” appears to temper Finding 13, it is not sufficient. Indeed, all entities’ “right to associate for political expression is

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<sup>53</sup> This data request is available at Attachment A, Exhibit F.

<sup>54</sup> See Attachment A, Exhibit F.

<sup>55</sup> See, e.g., Draft Resolution Findings 16-21.

<sup>56</sup> Draft Resolution Finding 13, p. 30.



not absolute.” Second, the Draft Resolution errs by failing to address the utility’s claims that such “First Amendment” information may not be made publicly available.

As set forth in nearly any primer on regulatory law and policy,<sup>57</sup> public utilities are not the same as any other corporation. As explained in Section II.B.1 above, well-settled United States Supreme Court law recognizes that SoCalGas’ business is devoted to the “public interest” and requires regulation to protect that public interest. As such, SoCalGas’ First Amendment rights of association are necessarily more constrained than the rights of other, unregulated, entities. Finding 13 should be modified to reflect this.

Further, based on its status as a regulated utility whose revenues are derived entirely from captive ratepayers, it is appropriate for the Commission to find here that not only has SoCalGas failed to make a valid First Amendment claim, but that there is no First Amendment basis to withhold from the public the identity of any person or entity the utility pays to advocate, “influence” or “educate” on its behalf. Such a finding is necessary given the significant public interest in SoCalGas’ efforts to undermine the state’s climate policies.<sup>58</sup>

Only by recognizing SoCalGas’ obligation to operate in the public interest and making such information publicly available will SoCalGas’ customers, and its legislators, be able to hold the utility accountable for its misinformation campaigns, which it has thus far attempted to pursue in secret. If the utility seeks to “educate” “influence” or otherwise advocate for specific positions, its status as a public utility devoted to the public interest and entirely funded by captured ratepayers requires that such activities be transparent.

**E. The Draft Resolution Should Clarify That SoCalGas’ Confidentiality Claims Remain to Be Determined**

Cal Advocates observes that there is a standing Public Records Act (PRA) request issued January 30, 2020, for the Commission to make available all of the data responses Cal Advocates

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<sup>57</sup> See, e.g., *Regulating Public Utility Performance: The Law of Market Structure, Pricing and Jurisdiction*, Scott Hempling, American Bar Association, 2013, pp. 41-44; and *Energy Law in a Nut Shell*, Joseph P. Tomain and Richard D. Cudahy, Thomson-West, 2004, pp. 118-120 (citing *Nebbia v. New York*, 291 U.S. 502 (1934) - “public utilities are deemed to be ‘affected with a public interest.’”).

<sup>58</sup> Evidence of the public interest in SoCalGas’ astroturf activities is demonstrated by the number of press reports on these SoCalGas activities, the letters from state and federal legislators on these issues (see footnote 14 above) and the standing Public Records Act request for all discovery obtained from SoCalGas regarding its astroturf activities. See Section II.E below and press reports on Cal Advocates website at <https://www.publicadvocates.cpuc.ca.gov/general.aspx?id=4446>.

has received from SoCalGas as a result of the instant investigation.<sup>59</sup> While a significant number of SoCalGas data responses to Cal Advocates' discovery have been made public in response to this PRA request,<sup>60</sup> some of the most relevant data responses remain in limbo because of SoCalGas' numerous confidentiality claims.

Adoption of the Draft Resolution, with the modifications proposed above, could provide some much needed clarity on these issues. Additional clarity is also needed so that the Commission may release a significant portion of the information that is still pending as soon as practicable. With these goals in mind, Cal Advocates proposes that the Findings in the Draft Resolution be supplemented as follows:

- (1) There is an outstanding Public Records Act (PRA) request dated January 30, 2020, for, among other things, all SoCalGas "responses to data requests issued from June 1, 2019 to the present by [Cal Advocates] related to SoCalGas efforts to oppose fuel switching from natural gas to electric ends uses in the building and transportation sectors."
- (2) The Commission and/or Cal Advocates shall make those materials not marked as confidential publicly available pursuant to the PRA as soon as practicable.
- (3) The Commission reserves the right to disclose at any time the materials that it finds should not be protected as confidential consistent with the PRA and other laws and practices regarding confidential materials.<sup>61</sup>

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<sup>59</sup> That PRA request is available on Cal Advocates' website at <https://www.publicadvocates.cpuc.ca.gov/general.aspx?id=4446> under "Additional Items of Interest."

<sup>60</sup> The public versions of many of these data requests are available on the Cal Advocates' website at <https://www.publicadvocates.cpuc.ca.gov/general.aspx?id=4445>

<sup>61</sup> See, e.g., D.20-03-014, pp. 21-22:

Pub. Util. Code § 583 "neither creates a privilege of nondisclosure for a utility, nor designates any specific types of documents as confidential." (*Re Southern California Edison Company* (1991) 42 CPUC2d 298, 301; *Southern California Edison Company v. Westinghouse Electric Corporation* (1989) 892 F.2d 778, 783 ["On its face, Section 583 does not forbid the disclosure of any information furnished to the CPUC by utilities."]; and Decision 06-06-066, [fn. omitted] as modified by Decision 07-05-032 at 27 [583 does not require the Commission to afford confidential treatment to data that does not satisfy substantive requirements for such treatment created by other statutes and rules.] In fact, Pub. Util. Code § 583 vests the Commission with broad discretion to disclose information that a party deems confidential. (D.99-10-027 [fn. omitted] (1999) CA PUC LEXIS 748 at \*2 [Pub. Util. Code § 583 gives the Commission broad discretion to order confidential information provided by a utility be made public.].) As such, a party may not rely on Pub. Util. Code § 583 for the proposition that information required by the Commission to be submitted is confidential.

### III. CONCLUSION

For the reasons set forth above, Cal Advocates urges the Commission to modify the Draft Resolution as set forth herein, and to sanction SoCalGas for its flagrant violations of state laws and Commission requirements as already fully briefed by the parties in relation to Cal Advocates' June 23, 2020 and July 9, 2020 motions for sanctions.

Respectfully submitted,

/s/ TRACI BONE

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November 19, 2020

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

**Exhibit 2 - SoCalGas Response to CalAdvocates-TB-SCG-  
2020-04 Q 3 re law firms**

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

**SOUTHERN CALIFORNIA GAS COMPANY**

**(DATA REQUEST CALADVOCATES-TB-SCG-2020-04)**

**Date Received: June 30, 2020**

**Responses to Questions [2-3, 7-11, 16-21, 23, 25] Submitted: July 10, 2020**

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**QUESTION 3:**

Please list all account names and numbers that were excluded from Cal Advocates review of SoCalGas' SAP system through the "custom software solution" described on pages 1 and 2 in SoCalGas' May 22, 2020 substitute Motion to Quash.

**RESPONSE 3:**

SoCalGas objects to this Request to the extent that it calls for information that is protected by SoCalGas's rights which are currently the subject of SoCalGas's Motion for Reconsideration/Appeal (filed December 2, 2019) and/or SoCalGas's Motion to Quash (filed May 19, 2020).

Notwithstanding these objections and the General Objections and Objections to "Instructions" stated above, which are expressly incorporated herein, SoCalGas responds as follows:

As of 05/29/2020, the vendor account names and vendor identification numbers listed below are excluded from Cal Advocates' review of SoCalGas's SAP system through the "custom software solution" described on pages 1 and 2 in SoCalGas' May 22, 2020 substitute Motion to Quash. This list includes only law firms whose information contained in the SAP database may be subject to the attorney-client privilege and attorney work-product doctrine. This list does not include consultants for whom the disclosure of their identities to Cal Advocates would infringe SoCalGas's First Amendment rights, as articulated in SoCalGas's Motion for Reconsideration/Appeal and Motion to Quash.

<b>SAP VENDOR ID</b>	<b>Vendor Name</b>
115165	ALVARADO SMITH APC
97626	ANDREWS LAGASSE BRANCH BELL LLP
97902	ANDREWS LAGASSE BRANCH BELL LLP
98172	ANDREWS LAGASSE BRANCH BELL LLP
96267	BARG COFFIN LEWIS & TRAP LLP
124455	BARNES RICHARDSON & COLBURN LLP
115281	BINGHAM MCCUTCHEN CLIENT TRUST ACCT
115479	BINGHAM MCCUTCHEN CLIENT TRUST ACCT
92595	BRYAN CAVE LLP
16198	CHADBOURNE & PARK LLP
124552	CHAPMAN GLUCKSMAN DEAN ROEB &
122949	CONSTANGY BROOKS SMITH & PROPHETE
122948	CONSTANGY BROOKS SMITH & PROPHETE
96816	DLA PIPER US LLP

**SOUTHERN CALIFORNIA GAS COMPANY**

**(DATA REQUEST CALADVOCATES-TB-SCG-2020-04)**

**Date Received: June 30, 2020**

**Responses to Questions [2-3, 7-11, 16-21, 23, 25] Submitted: July 10, 2020**

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89764	FOLEY & LARDNER LLP
83020	FRAGOMEN DEL REY BERNSSEN &
85863	FRAGOMEN DEL REY BERNSSEN &
6111	GIBSON DUNN & CRUTCHER LLP
100567	GREENBERG TRAURIG LLP
60573	HIGGS FLETCHER & MACK LLP
61709	HIGGS FLETCHER & MACK LLP
62397	HIGGS FLETCHER & MACK LLP
70087	HIGGS FLETCHER & MACK LLP
60490	HIGGS FLETCHER & MACK LLP
61626	HIGGS FLETCHER & MACK LLP
59020	HIGGS FLETCHER & MACK LLP
87744	HOLLAND & KNIGHT LLP
87305	HOLLAND & KNIGHT LLP
86821	HOLLAND & KNIGHT LLP
86208	HOLLAND & KNIGHT LLP
9658	HORVITZ & LEVY
9677	HORVITZ & LEVY
9962	HORVITZ & LEVY
8770	HORVITZ & LEVY
8771	HORVITZ & LEVY
9710	HORVITZ & LEVY
9711	HORVITZ & LEVY
113853	JACKSON LEWIS PC
112014	JONES BELL ABBOTT FLEMING & FITZGER
108199	JONES DAY
108302	JONES DAY
2639	JONES DAY REAVIS AND POGU
6114	LATHAM & WATKINS
6121	LATHAM & WATKINS
72546	LATHAM & WATKINS LLP
72824	LATHAM & WATKINS LLP
101382	LAW FIRM OF RUSSELL R JOHNSON III
96272	LAW OFFICE OF PETER MICHAELS
102053	LEVY & NOURAFCHAN LLP
90342	LEVY & NOURAFCHAN LLP
90951	LEWIS BRISBOIS BISGAARD & SMITH LLP
91332	LEWIS BRISBOIS BISGAARD & SMITH LLP
91286	LEWIS BRISBOIS BISGAARD & SMITH LLP
90351	LEWIS BRISBOIS BISGAARD & SMITH LLP

**SOUTHERN CALIFORNIA GAS COMPANY**

**(DATA REQUEST CALADVOCATES-TB-SCG-2020-04)**

**Date Received: June 30, 2020**

**Responses to Questions [2-3, 7-11, 16-21, 23, 25] Submitted: July 10, 2020**

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123911	LIMNEXUS LLP
118671	LINER LLP
3090	LUKAS NACE GUTIERREZ AND SACHS
86132	MARC EBBIN LAW OFFICES
108690	MAYER BROWN LLP
108420	MAYER BROWN LLP
117919	MEHLMAN BARNES LLP
116002	MEHLMAN BARNES LLP
116020	MEHLMAN BARNES LLP
115551	MEHLMAN BARNES LLP
116685	MEHLMAN BARNES LLP
113650	MILLER & CHEVALIER CHARTERED
112699	MILLER LAW GROUP
128117	MILLER LAW GROUP
112290	MILLER LAW GROUP
100125	MODRALL SPERLING ROEHL HARRIS &
100097	MODRALL SPERLING ROEHL HARRIS &
20006	MORGAN LEWIS & BOCKIUS LLP
50101	MORGAN LEWIS & BOCKIUS LLP
28354	MORGAN LEWIS & BOCKIUS LLP
19713	MORGAN LEWIS & BOCKIUS LLP
18109	MORGAN LEWIS & BOCKIUS LLP
57495	MORGAN LEWIS & BOCKIUS LLP
16942	MORGAN LEWIS & BOCKIUS LLP
50027	MORGAN LEWIS & BOCKIUS LLP
50029	MORGAN LEWIS & BOCKIUS LLP
21217	MORGAN LEWIS & BOCKIUS LLP
31809	MORGAN LEWIS & BOCKIUS LLP
10300	MORRISON AND FOERSTER LLP
10301	MORRISON AND FOERSTER LLP
9963	MORRISON AND FOERSTER LLP
123910	NATIVE LAW PLLC
95147	NIXON PEABODY LLP
96220	NIXON PEABODY LLP
94892	NIXON PEABODY LLP
95154	NIXON PEABODY LLP
94730	NIXON PEABODY LLP
14779	NOSSAMAN LLP
13674	NOSSAMAN LLP
71081	OGDEN & FRICKS LLP

**SOUTHERN CALIFORNIA GAS COMPANY**

**(DATA REQUEST CALADVOCATES-TB-SCG-2020-04)**

**Date Received: June 30, 2020**

**Responses to Questions [2-3, 7-11, 16-21, 23, 25] Submitted: July 10, 2020**

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12811	OMELVENY & MYERS
12812	OMELVENY & MYERS LLP
13292	OMELVENY & MYERS LLP
13293	OMELVENY & MYERS LLP
124550	PASICH LLP
113451	PAUL HASTINGS LLP
112903	PAUL HASTINGS LLP
501621	TROPIO & MORLAN
500025	WILLENKEN WILSON LOH & LI
500045	WILSON PETTY KOSMO & TURN
500368	BATE PETERSON DEACON ZINN
501552	ALVARADO SMITH A PROF COR
500255	ANDREWS LAGASSE BRANCH &
501181	JONES BELL ABBOTT FLEMING
500058	LEVY & NOURAFCHAN LLP
501046	LKP GLOBAL LAW LLP
501183	MILLER LAW GROUP
500740	SANCHEZ AMADOR LLP
501095	SIDEMAN & BANCROFT LLP
501740	TYSON & MENDES LLP
501047	ZUBER LAWLER & DEL DUCA L
104724	POLSINELLI SHUGHART PC
104724	POLSINELLI SHUGHART PC
103494	QUINN EMANUEL URQUHART & SULLIVAN L
75624	REED & DAVIDSON
75957	REED & DAVIDSON
73308	REED & DAVIDSON
110954	REGULATORY LAW CHAMBERS
110580	REGULATORY LAW CHAMBERS
110580	REGULATORY LAW CHAMBERS
109400	REGULATORY LAW CHAMBERS
132330	REICHMAN JORGENSEN LLP
105635	SANCHEZ & AMADOR LLP
105147	SANCHEZ & AMADOR LLP
132155	SCHILLING LAW GROUP PC
81362	SELMAN & BREITMAN LLP
79714	SELMAN & BREITMAN LLP
77071	SELMAN & BREITMAN LLP
78696	SELMAN & BREITMAN LLP
15633	SHEPPARD MULLIN RICHTER &



**SOUTHERN CALIFORNIA GAS COMPANY**

**(DATA REQUEST CALADVOCATES-TB-SCG-2020-04)**

**Date Received: June 30, 2020**

**Responses to Questions [2-3, 7-11, 16-21, 23, 25] Submitted: July 10, 2020**

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15632	SHEPPARD MULLIN RICHTER &
15634	SHEPPARD MULLIN RICHTER &
106765	SIDEMAN & BANCROFT LLP
94080	SIDLEY AUSTIN LLP
93846	SIDLEY AUSTIN LLP
92062	STOEL RIVES LLP
92815	SULLIVAN & CROMWELL LLP
93347	SULLIVAN & CROMWELL LLP
93087	SULLIVAN & CROMWELL LLP
93779	SULLIVAN & CROMWELL LLP
119651	TROPIO & MORLAN A LAW CORPORATION
123697	TYSON & MENDES LLP
102907	VENABLE LLP
123551	WERKSMAN JACKSON HATHAWAY &
119724	WFBM LLP
125269	WHITE & CASE LLP
113785	WILLENKEN WILSON LOH & DELGADO LLP
103047	WILSON TURNER KOSMO LLP
129039	WILSON TURNER KOSMO LLP
128702	YOUNG & ZINN LLP
111354	ZUBER LAWLER & DEL DUCA LLP
111354	ZUBER LAWLER & DEL DUCA LLP
126680	ZUBER LAWLER & DEL DUCA LLP
111011	ZUBER LAWLER & DEL DUCA LLP

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**Exhibit 3 - \$140 million and counting – Legal bills scrutinized  
in PG&E bankruptcy, J.D. Morris, San Francisco Chronicle,  
October 3, 2019**

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# \$140 million and counting: Legal bills scrutinized in PG&E bankruptcy

J.D. Morris | Oct. 3, 2019 | Updated: Oct. 3, 2019 3:47 p.m.



Attorneys Tobias Keller, left, and Jane Kim, representing Pacific Gas & Electric Corp., arrive at a Federal Courthouse in San Francisco, Tuesday, Jan. 29, 2019. Faced with potentially ruinous lawsuits over California's recent wildfires, Pacific Gas & Electric Corp. filed for bankruptcy protection Tuesday in a move that could lead to higher bills for customers of the nation's biggest

Legal bills and other fees arising from PG&E Corp.'s bankruptcy already total an estimated \$140 million and the case is on track to rank among the most expensive proceedings of its kind, according to federal officials.

Attorneys for acting U.S. Trustee Andrew Vara made that claim in

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creditors, including victims of wildfires caused by PG&E.

The federal lawyers said law firms working on the PG&E case had submitted applications for payment that “reflect numerous instances of questionable billing judgment and overstaffing.” Oftentimes, law firms “appear to have simply disregarded” local guidelines, the trustee’s attorneys said Friday.

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As many as 22 attorneys from one firm billed for the same internal meeting or conference call in some instances, and firms have sent “large numbers” of lawyers to attend the same court hearing without providing “any explanation or justification” for why so many people had to be paid, according to the trustee.

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BY J.D. MORRIS

**‘Man, that is a lot of money’: Why PG&E spent at least \$84...**



BY J.D. MORRIS

**‘This is not a chess game:’ Tension escalates in PG&E...**

Firms also logged some “implausibly high numbers of billable hours” for individuals in a single day, including at least one case of a single person billing for a full 24 hours, the trustee’s attorneys said. Other problems the trustee’s team flagged included attorneys who billed for too much air travel time when they were not actually working and fees claimed by “recent law school graduates who had not yet been admitted to the bar of any jurisdiction, but who were billed at the same rate as admitted attorneys.”

The trustee noted that similar concerns could apply to non-legal professional expenses as well.

The trustee’s comments came in a response supporting a motion from the PG&E case’s official fee examiner, Bruce Markell, who has proposed a process for reviewing bills from lawyers and other professionals working on the case. One of the examiner’s proposals is to prevent attorneys from billing for travel time when they do not

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The federal trustee’s concerns were backed by the Utility Reform Network consumer group, which wrote in its own filing that PG&E’s bankruptcy fees “could easily eclipse those incurred ... in any case in history.” The group described the billing issues described by the trustee as “egregious.”

UCLA School of Law Professor Lynn LoPucki, who has expertise in bankruptcy proceedings, said he could not judge whether the fees charged by the law firms involved in the PG&E case were too high. But he said it was “kind of appalling” to see the alleged level at which firms were “ignoring ... the rules of their own local court.”

PG&E filed for bankruptcy protection in January because of its mounting liabilities after its power lines caused a series of major wildfires in recent years, including the historically deadly and destructive 2018 Camp Fire.

Even before seeking protection under Chapter 11 of the U.S. Bankruptcy Code, PG&E’s own legal bills were sizable: The company paid at least \$84 million to four outside law firms in the year leading up to its bankruptcy filing. And attorneys for PG&E aren’t the only ones involved now — lawyers for official creditors’ committees are also seeking payment from the company’s estate.

A group of law firms representing PG&E in the bankruptcy case pushed back on the fee examiner’s proposal, saying their fees were

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PG&E spokesman earlier had said that the company had hired “expert advisers to help guide us through the complex Chapter 11 process — and help shape the business for the future” so PG&E can stay focused on its customers, wildfire safety goals and other priorities.

A spokesman for the committee representing wildfire victims had no comment.

*J.D. Morris is a San Francisco Chronicle staff writer. Email: jd.morris@sfnchronicle.com Twitter: @thejdmorris*

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**CCPA**

## ATTACHMENT A

### TABLE CATALOGING OFFICE OF PUBLIC ADVOCATES' EFFORTS TO OBTAIN EVIDENCE OF PRIVILEGED INFORMATION IN ITS SAP SYSTEM FROM SOUTHERN CALIFORNIA GAS COMPANY BETWEEN MAY 1, 2020 AND SEPTEMBER 29, 2020 AND SUPPORTING EXHIBITS

#### BACKGROUND:

As a result of Southern California Gas Company's (SoCalGas) systemic refusal to comply with certain discovery requests, on May 1, 2020, the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) submitted a Data Request to SoCalGas to begin the process of auditing the utility's accounting records. Recognizing that the utility might take a Commission-issued subpoena more seriously, on May 5, 2020, Cal Advocates served on SoCalGas a subpoena signed by the Commission's Executive Director (Commission Subpoena) ordering the utility to make available to Cal Advocates no later than May 8, 2020 "access to all databases associated in any manner with the company's accounting system."<sup>1</sup> The Commission Subpoena is consistent with the Commission's statutory authority to review *at any time* a utility's books and records.<sup>2</sup>

In lieu of compliance, SoCalGas delayed its response to the Commission Subpoena and ultimately – on May 19, 2020 – filed an untimely motion to partially quash the Commission Subpoena.<sup>3</sup> SoCalGas' motion also sought to stay the Commission Subpoena until May 29, 2020, to implement a "custom software solution" to exclude

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<sup>1</sup> Exhibit C hereto - Subpoena to SoCalGas for Accounting Database Access - Service Copy.

<sup>2</sup> See Public Utilities Code § 314(a).

<sup>3</sup> See SoCalGas May 22, 2020 Motion to Quash. SoCalGas originally submitted this motion on May 19, 2020 with redacted declarations. The ALJ ordered SoCalGas to provide confidential electronic versions of the declarations to the Commission and Cal Advocates. SoCalGas elected to instead file a "substituted" version of the Motion to Quash on May 22, 2020. The motion is available on the Cal Advocates website at available on Cal Advocates website at <https://www.publicadvocates.cpuc.ca.gov/general.aspx?id=4444>.



from Cal Advocates’ review “information and transaction details (invoice transactions and accounting journal entries) pertaining to our outside counsel firms and also vendors performing 100% shareholder activities...”<sup>4</sup>

Significantly, SoCalGas has refused to provide any information confirming that its SAP system contains privileged attorney/client or work product information, notwithstanding Cal Advocates’ repeated requests for such information between May 1, 2020 and September 29, 2020.

The following Table identifies key dates wherein SoCalGas refused to provide any information, such as a privilege log, confirming the existence of the attorney/client and work product communications it claims are contained in its SAP system.

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<sup>4</sup> See Exhibit 1 to these Comments on the Draft Resolution - J.Wilson & T.Bone Emails to ALJ May 29-June 3 2020 Re Access to Accounts and Records.

DATE OF REQUEST	CAL ADVOCATES REQUEST	DATE OF RESPONSE	SOCALGAS RESPONSE	EXHIBIT
May 1, 2020	Cal Advocates issues data request (Ex. A hereto) for a conference call no later than Wednesday, May 6, 2020 to arrange for remote access to SoCalGas' SAP system no later than May 8, 2020, or physical access no later than May 11, 2020. Page 3 of that Data Request instructed SoCalGas to provide a privilege log supporting any privilege claims.	May 15 & 19, 2020	SoCalGas objects to the provision of a privilege log and does not provide one. See page 1, item 4 of Ex. B hereto.	Exhibit A - Data Request CalAdvocates-TB-SCG-2020-03 and Exhibit B - SoCalGas Response re SAP access - CalAdvocates-TB-SCG-2020-03
May 5-19, 2020	<p>On May 5, 2020 Cal Advocates serves SoCalGas with a subpoena signed by the Commission's Executive Director ordering the utility to make available to Cal Advocates no later than May 8, 2020 "access to all databases associated in any manner with the company's accounting system."</p> <p>Between May 5 and May 19, 2020 Cal Advocates has four conference calls with SoCalGas to discuss compliance with the subpoena. While SoCalGas offered assurances that it was working hard to comply with the Subpoena, it was actually developing its late-filed motion to quash.</p>	May 19 & 22, 2020	SoCalGas files a motion to partially quash the Commission Subpoena asserting at p. 2 that "SoCalGas's accounting database contains, among other things, documents and information protected from disclosure under the attorney-client privilege, the attorney work-product doctrine, and the First Amendment." In support, SoCalGas offers the Declarations of Dennis Enrique, Financial Systems and Client Support Manager and Kelly Contratto, IT Software Development Manager. However, those declarations do not substantiate any claims of privileged information contained in SoCalGas' SAP system. The most they say is "the system allows access to information that SoCalGas maintains should be excluded from Cal Advocates' view as a matter of law, including certain privileged and other protected information." Decl. of Kelly Contratto, ¶ 4.	<p>Exhibit C – Commission Subpoena</p> <p>Exhibit D – Declaration of Dennis Enrique</p> <p>Exhibit E – Declaration of Kelly Contratto</p> <p>Motion to Quash and other pleadings available at <a href="https://www.publicadvocates.cpuc.ca.gov/general.aspx?id=4444">https://www.publicadvocates.cpuc.ca.gov/general.aspx?id=4444</a></p>
June 23, 2020	Cal Advocates moves to find SoCalGas in contempt of this Commission for failure to comply with the subpoena, and to fine the utility for its violations from the effective date of the subpoena.	July 2, 2020	Confusing Cal Advocates' request for a privilege log with waiver of the attorney/client privilege, SoCalGas nonsensically responds at fn 138 of its response that it is not obligated to provide a privilege log because "waiver of the attorney-client privilege occurs only 'when	Motion for contempt and other pleadings available at <a href="https://www.publicadvocates.cpuc.ca.gov/general.aspx?id=4444">https://www.publicadvocates.cpuc.ca.gov/general.aspx?id=4444</a>

	<p>Cal Advocates explains at fn 38 of the motion that “SoCalGas may assert attorney/client communications and work product privileges, but must provide a privilege log to support such assertions, which it has not done here.</p> <p>At page 25 Cal Advocates requests that the Commission order SoCalGas “In addition to complying with GO-66 to require SoCalGas to support any privilege or confidentiality claim, provide a declaration under penalty of perjury from a SoCalGas attorney that the attorney has reviewed the materials associated with the privilege or confidentiality claims and that such claims have a good faith basis in the law.”</p>		<p>any holder of the privilege ‘has disclosed a significant part of the communication or has consented to such disclosure made by anyone...’ <i>Mitchell v. Superior Court</i> (1984) 37 Cal. 3d 591, 601 [citing Evid. Code § 912].</p>	
<p>July 16, 2020</p>	<p>Concerned that SoCalGas will use the need to create a privilege log to delay access to its SAP system once the Commission rules on its refusal to comply with the subpoena, Cal Advocates issues a data request asking SoCalGas to “provide a privilege log for all information in its SAP system that SoCalGas seeks to exclude from Commission review on the basis of privilege claims” and to “provide a declaration signed under penalty of perjury by a SoCalGas attorney affirming that there is a good faith basis in the law for all of the privilege claims asserted in the discovery log.” A sample privilege log from the ABA website was included with the following: “Note that Public Utilities Code § 581 requires you to provide the information in the form and detail that we request and failure to do so may result in fines or other penalties.”</p>	<p>July 30, 2020</p>	<p>SoCalGas objects to providing a privilege log or the declaration supporting the log on frivolous grounds including:</p> <ol style="list-style-type: none"> <li>1. Cal Advocates’ request for a privilege log and a declaration in support of that log from a SoCalGas attorney was a “[s]pecial interrogatory instruction[] ... expressly prohibited by California Code of Civil Procedure Section 2030.060(d)”</li> <li>2. Cal Advocates’ request “purport(s) to impose requirements exceeding that required by CPUC General Order 66-D or the Discovery Custom and Practice Guidelines provided by the CPUC.”</li> <li>3. Cal Advocates has mischaracterized the requirements of Public Utilities Code § 581 and the data request exceeded what was “required by Public Utilities Code § 581, the Commission’s Rules of Practice and Procedure, or the Discovery Custom and Practice Guidelines provided by</li> </ol>	<p>Exhibit F - Priv Log Data Request - CalAdvocates-TB-SCG-2020-05 at questions 2 and 3.</p> <p>Exhibit G - SoCalGas 7-30-20 Response to Data Request CalAdvocates-TB-SCG-2020-05</p>

			<p>the CPUC.”</p> <p>4. That it did not have to identify “the person providing the answer to each question and his/her contact information .... because [such a request] has no basis in the Commission’s Rules of Practice and Procedure and exceeds that required by the Discovery Custom and Practice Guidelines provided by the CPUC.”</p>	
September 22-29, 2020	<p>Cal Advocates engages in an email meet and confer process to obtain a privilege log from SoCalGas for its SAP system. Cal Advocates explains to SoCalGas that the law requires a party claiming privilege to provide sufficient factual information for others to evaluate the merits of the claim, including, if necessary, a privilege log. Cal. Code of Civ. Pro. § 2031.240(c)(1).</p> <p>Based on SoCalGas’ continued reliance on frivolous objections to providing a privilege log, Cal Advocates determines the parties were at impasse, leaving Cal Advocates with the obligation to file a motion to compel SoCalGas if it hopes to obtain a privilege log.</p>	September 22-29, 2020	SoCalGas claims that it need not provide a privilege log in support of its claims. In support, it cites to inapposite court cases for the proposition that the Commission may not inspect the utility’s privileged information.	<p>Exhibit H - Privilege Log M&amp;C Sept 22 2020</p> <p>Exhibit I - Privilege Log M&amp;C Sept 25 2020</p> <p>Exhibit J - Privilege Log M&amp;C Sept 28-29 2020.</p>

**Exhibit F - Priv Log Data Request –  
CalAdvocates-TB-SCG-2020-05**

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

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San Francisco, CA 94102  
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Fax: (415) 703-2057

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

**PUBLIC ADVOCATES OFFICE DATA REQUEST**  
**No. CalAdvocates-TB-SCG-2020-05**  
**Not In A Proceeding**

**Date Issued: July 16, 2020**

**Date Due: July 30, 2020**

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

**Elliott S. Henry** Phone: (213) 244-8234  
Attorney for SoCalGas Email: EHenry@socalgas.com

**Jason H. Wilson** Email: [jwilson@willenken.com](mailto:jwilson@willenken.com)  
Outside Counsel for SoCalGas Phone: 213.955.8020

**From: Traci Bone** Phone: (415) 713-3599  
Attorney for the Email: Traci.Bone@cpuc.ca.gov  
Public Advocates Office

**Alec Ward** Phone: (415) 703-2325  
Analyst for the Email: Alec.Ward@cpuc.ca.gov  
Public Advocates Office

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

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## INSTRUCTIONS<sup>1</sup>

### **General:**

You are instructed to answer the following Data Requests with written, verified responses pursuant to, without limitation, Public Utilities Code §§ 309.5(e), 311(a), 314, 314.5(a), 581, 582, 584, 701 and 702 and Rule 1.1 of the California Public Utilities Commission's Rules of Practice and Procedure within ten (10) business days. Note that Public Utilities Code § 581 requires you to provide the information in the form and detail that we request and failure to do so may result in fines or other penalties.

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

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

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

### **Responses:**

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

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

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<sup>1</sup> Because SoCalGas has routinely failed to comply with the Instructions provided in the data requests in this investigation, portions of these Instructions are highlighted to bring your attention to the Instructions. Cal Advocates' expects that you will comply with all of the Instructions, including those that are highlighted.

### **Requests for Clarification:**

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

### **Objections:**

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

### **Assertions of Privilege:**

If you assert any privilege for documents responsive to this data request, please notify Cal Advocates of your intent to make such claims within five (5) business days, and provide a privilege log no later than the due date of this data request, including: (a) a summary description of the document; (b) the date of the document; (c) the name of each author or preparer; (d) the name of each person who received the document; and (e) the legal basis for withholding the document.

### **Assertions of Confidentiality:**

If you assert confidentiality for any of the information provided, please identify the information that is confidential with highlights and provide a specific explanation of the basis for each such assertion. No confidential information should be blacked out. Assertions of confidentiality will be carefully scrutinized and are likely to be challenged absent a strong showing of the legal basis and need for confidentiality.

### **Signed Declaration:**

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

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



## DEFINITIONS

- A. As used herein, the terms “you,” “your(s),” “Company,” “SCG,” and “SoCalGas” and 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, including its parent, Sempra Energy Company.
- 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.

I. Terms related in any way to “lobbying,” lobbyist,” “lobbying firm” and “lobbyist employer” shall, without limitation, be construed broadly and, without limitation, to be inclusive of how those terms are described in the Sempra Energy Political Activities Policy (Policy) and the training materials related to the Policy.<sup>2</sup>

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<sup>2</sup> The Sempra Energy Political Activities Policy defines lobbying broadly on page 3 as: “any action intended to influence legislative or administrative action, including activities to influence government officials, political parties, or ballot measures. Lobbyists can be individual employees or the company that employees them, referred to as a Lobbyist-Employer.”

**DATA REQUEST**

1. Please provide any form of non-disclosure agreement between SoCalGas or Sempra Energy Company and the following former SoCalGas employees:
  - a. Kenneth Drew Chawkins
  - b. George Minter
  
2. Please provide a privilege log for all information in its SAP system that SoCalGas seeks to exclude from Commission review on the basis of privilege claims

Consistent with the Instructions above, the privilege log should be similar to the following sample and contain, at a minimum, all of the information identified in this sample so that the validity of the privilege claim is evident from the log:<sup>3</sup>

<i>Doc No.</i>	<i>Doc Location</i>	<i>Date</i>	<i>Author</i>	<i>Recipient</i>	<i>Privileges</i>	<i>Description</i>
				Sally Smith, CEO		
1-2		1/1/2015	John Doe, Sales Mgr.	Jane Roe,  General Counsel	Atty-Client	Portion of email to in-house counsel seeking advice on contract negotiations redacted.
15-20		7/1/2018	Jane Roe, General Counsel	Sally Smith, CEO	Atty-Client, Work Product	Memorandum from in-house counsel to CEO regarding options for litigation

<sup>3</sup> Cal Advocates notes that such a table is standard practice in the production of privilege logs. Indeed, this “sample” is the same as one recommended by in a practice article featured on the American Bar Association’s website, with a column added to identify the location of the document. Cal Advocates provides this sample to avoid any misunderstandings given that Cal Advocates has been advised that SoCalGas has failed to provide accurate and complete privilege logs in other investigations. See <https://www.lawpracticetoday.org/article/practical-advice-privilege-logs>

3. Please provide a declaration signed under penalty of perjury by a SoCalGas attorney affirming that there is a good faith basis in the law for all of the privilege claims asserted in the discovery log provided pursuant to Data Request 2 above.

Note that Public Utilities Code § 581 requires you to provide the information in the form and detail that we request and failure to do so may result in fines or other penalties.

**Exhibit G - SoCalGas 7-30-20 Response to Data Request  
CalAdvocates-TB-SCG-2020-05**

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

**SOUTHERN CALIFORNIA GAS COMPANY**

**(DATA REQUEST CALADVOCATES-TB-SCG-2020-05)**

**Date Received: July 16, 2020**

**Date Submitted: July 30, 2020**

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**GENERAL OBJECTIONS AND OBJECTIONS TO “INSTRUCTIONS”**

1. SoCalGas objects to the Instructions and Definitions submitted by Cal Advocates on the grounds that they are overbroad and unduly burdensome. Special interrogatory instructions of this nature are expressly prohibited by California Code of Civil Procedure Section 2030.060(d). SoCalGas further objects to the Instructions to the extent they purport to impose requirements exceeding that required by CPUC General Order 66-D or the Discovery Custom and Practice Guidelines provided by the CPUC.
2. SoCalGas objects to the Request’s characterization of what Public Utilities Code § 581 requires (as stated in the first paragraph under “General”) and disclaims any obligation to respond “in the form and detail that we request” to the extent the request exceeds that required by Public Utilities Code § 581, the Commission’s Rules of Practice and Procedure, or the Discovery Custom and Practice Guidelines provided by the CPUC.
3. The highlighted sentence in the second paragraph under “General” states that if SoCalGas “acquire[s] additional information after providing an answer to any request, [it] must supplement [its] response following the receipt of such additional information.” SoCalGas objects to this instruction on the grounds that it is a continuing interrogatory expressly prohibited by Code of Civil Procedure § 2030.060(g), has no basis in the Commission’s Rules of Practice and Procedure, and exceeds that required by the Discovery Custom and Practice Guidelines provided by the CPUC.
4. The highlighted paragraph under “Responses” purports to require SoCalGas identify “the person providing the answer to each question and his/her contact information.” SoCalGas objects to this instruction because it has no basis in the Commission’s Rules of Practice and Procedure and exceeds that required by the Discovery Custom and Practice Guidelines provided by the CPUC.
5. The highlighted portion of the paragraph under “Requests for Clarification” purports to require SoCalGas to notify Cal Advocates “within five (5) business days” if “a request, definition, or an instruction is unclear”; the highlighted paragraph under “Objections” purports to require SoCalGas to “submit specific objections, including the specific legal basis to the objection . . . within five (5) business days”; and the highlighted portion of the paragraph under “Assertions of Privilege” in the “Instructions” section of this Request further purports to require SoCalGas to “assert any privilege for documents responsive to this data request . . . within five (5) business days.” SoCalGas objects to these requirements as unduly burdensome and unreasonable as SoCalGas cannot determine which aspects of the Request need clarification, formulate objections or identify privileged information and documents until SoCalGas has otherwise completed its investigation and prepared its response to the Request.
6. The highlighted paragraph under “Assertions of Confidentiality” purports to require SoCalGas, “[i]f it assert[s] confidentiality for any of the information provided,” to “please identify the information that is confidential with highlights and provide a specific explanation of the basis for each such assertion.” SoCalGas objects to this request the extent it purports to impose requirements exceeding the process for submitting confidential information to the Commission outlined in GO 66-D § 3, has no

**SOUTHERN CALIFORNIA GAS COMPANY**

**(DATA REQUEST CALADVOCATES-TB-SCG-2020-05)**

**Date Received: July 16, 2020**

**Date Submitted: July 30, 2020**

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basis in the Code of Civil Procedure or the Commission's Rules of Practice and Procedure, and exceeds that required by the Discovery Custom and Practice Guidelines provided by the CPUC.

7. The first highlighted paragraph under "Signed Declaration" purports to require SoCalGas to provide "a signed declaration from a responsible officer or an attorney under penalty of perjury that [SoCalGas has] used all reasonable diligence in preparation of the data response, and that to the best of [his or her] knowledge, it is true and complete." SoCalGas objects to this instruction because it has no basis in the Code of Civil Procedure or the Commission's Rules of Practice and Procedure and exceeds that required by the Discovery Custom and Practice Guidelines provided by the CPUC. SoCalGas further objects to the extent it purports to limit SoCalGas from amending its responses should additional information be later discovered. SoCalGas reserves its right to amend its responses to these requests should additional information relevant to SoCalGas's responses is discovered at a later date.
8. SoCalGas objects to the second highlighted paragraph under "Signed Declaration" to the extent it purports to impose requirements exceeding the process for submitting confidential information to the Commission outlined in GO 66-D § 3, has no basis in the Code of Civil Procedure or the Commission's Rules of Practice and Procedure, and exceeds that required by the Discovery Custom and Practice Guidelines provided by the CPUC.
9. SoCalGas objects to the definition of "you," "your(s)," "Company," "SCG," and "SoCalGas" to the extent it seeks information from Sempra Energy. The responses below are made on behalf of SoCalGas only. SoCalGas objects to the definition of "you," "your(s)," "Company," "SCG," and "SoCalGas" to the extent it seeks information from Sempra Energy. The responses below are made on behalf of SoCalGas only.

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

**SOUTHERN CALIFORNIA GAS COMPANY**

**(DATA REQUEST CALADVOCATES-TB-SCG-2020-05)**

**Date Received: July 16, 2020**

**Date Submitted: July 30, 2020**

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**QUESTION 1:**

Please provide any form of non-disclosure agreement between SoCalGas or Sempra Energy Company and the following former SoCalGas employees:

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

- a.
- b. George Minter

**RESPONSE 1:**

See attached documents titled:  
Staff A\_Agreement\_Confidential  
Staff A\_NDA\_Confidential  
Staff B\_NDA\_Confidential

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



SOUTHERN CALIFORNIA GAS COMPANY

(DATA REQUEST CALADVOCATES-TB-SCG-2020-05)

Date Received: July 16, 2020

Date Submitted: July 30, 2020

**QUESTION 2:**

Please provide a privilege log for all information in its SAP system that SoCalGas seeks to exclude from Commission review on the basis of privilege claims

Consistent with the Instructions above, the privilege log should be similar to the following sample and contain, at a minimum, all of the information identified in this sample so that the validity of the privilege claim is evident from the log:

<i>Doc No.</i>	<i>Doc Location</i>	<i>Date</i>	<i>Author</i>	<i>Recipient</i>	<i>Privileges</i>	<i>Description</i>
				Sally Smith, CEO		
1-2		1/1/2015	John Doe, Sales Mgr.	Jane Roe, General Counsel	Atty-Client	Portion of email to in-house counsel seeking advice on contract negotiations redacted.
15-20		7/1/2018	Jane Roe, General Counsel	Sally Smith, CEO	Atty-Client, Work Product	Memorandum from in-house counsel to CEO regarding options for litigation

**RESPONSE 2:**

SoCalGas objects to this Request as overbroad and unduly burdensome, in that seeks on its face a log covering data on the SAP system since 1999, which is not reasonable or practicable. SoCalGas further objects to this Request as harassing and oppressive in that Cal Advocates explicitly declared in meet and confer discussions and in the declaration of Stephen Castello that “it had no desire to review any privileged information in the SAP database[.]” (Decl. of Stephen Castello, ¶ 13, May 28, 2020.)

SoCalGas is willing to meet and confer regarding a sufficiently narrowed request.

SOUTHERN CALIFORNIA GAS COMPANY

(DATA REQUEST CALADVOCATES-TB-SCG-2020-05)

Date Received: July 16, 2020

Date Submitted: July 30, 2020

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**QUESTION 3:**

Please provide a declaration signed under penalty of perjury by a SoCalGas attorney affirming that there is a good faith basis in the law for all of the privilege claims asserted in the discovery log provided pursuant to Data Request 2 above.

**RESPONSE 3:**

SoCalGas objects to this Request as overbroad, unduly burdensome, harassing and oppressive because it has no basis in the Code of Civil Procedure or the Commission's Rules of Practice and Procedure and exceeds that required by the Discovery Custom and Practice Guidelines provided by the CPUC. SoCalGas further objects to this Request in that it purports to require SoCalGas to create documents not already produced in the ordinary course of business, on the grounds that it exceeds SoCalGas's discovery obligations under the California Code of Civil Procedure.

SoCalGas further objects to this Request because it calls for information that is protected by the attorney-client privilege or the attorney work product doctrine. Indeed, this question seeks a forced waiver of the attorney-client privilege or the attorney work product doctrine. When an attorney verifies a discovery request (which is what this question seeks), the opposing party can claim that the attorney has waived attorney client privilege and attorney work product doctrine regarding the identity of the sources of the information contained in the response. *Melendrez v. Superior Court*, 215 Cal. App. 4th 1343, 1349 (2013) ("However, when an attorney verifies the response, the party "waives any lawyer-client privilege and any protection for work product ... during any subsequent discovery from that attorney *concerning the identity of the sources of the information contained in the response.*"); see also Cal. Civ. Proc. Code § 2030.250 (attorney verification of interrogatories causes limited waiver); Cal. Civ. Proc. Code § 2033.240 (same for requests for admission).

Furthermore, this question seeks to make counsel for SoCalGas a material witness in this matter. Depositions of counsel are highly disfavored, *Spectra-Physics, Inc. v. Superior Court*, 198 Cal.App.3d 1487, 1493 (1988) ("The practice of taking the deposition of opposing counsel should be severely restricted . . .") (citation omitted), yet this question seeks to make counsel for SoCalGas a witness in this case.

Finally, this question is completely contrary to black letter California law on privilege. "The party claiming the privilege has the burden of establishing the preliminary facts necessary to support its exercise, i.e., a communication made in the course of an

SOUTHERN CALIFORNIA GAS COMPANY

(DATA REQUEST CALADVOCATES-TB-SCG-2020-05)

Date Received: July 16, 2020

Date Submitted: July 30, 2020

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attorney-client relationship. [Citations omitted.] Once that party establishes facts necessary to support a prima facie claim of privilege, the communication is presumed to have been made in confidence and the opponent of the claim of privilege has the burden of proof to establish the communication was not confidential or that the privilege does not for other reasons apply.” *Costco Wholesale Corp. v. Superior Court*, 47 Cal.4th 725, 733 (2009). Now, Cal Advocates claims that its investigator powers enable it to change California law and add an additional requirement—which is unsupported by California law. (Nor can the ALJ or a court force a waiver of a privilege after an objection has been duly made. *Catalina Island Yacht Club v. Superior Court*, 242 Cal.App.4th 1116, 1126 (2015).)

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

**Exhibit H - Privilege Log M&C Sept 22 2020**

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

**From:** [Bone, Traci](#)  
**To:** [Sierzant, Corinne M](#); [Castello, Stephen](#); [Ward, Alec](#)  
**Cc:** [Jason Wilson](#); [Sherin Varghese](#)  
**Subject:** Meet and Confer re: SoCalGas Response - CalAdvocates-TB-SCG-2020-05  
**Date:** Tuesday, September 22, 2020 4:54:00 PM

---

Jason:

Cal Advocates notes that in response to data request CalAdvocates-TB-SCG-2020-05, SoCalGas objected to providing a privilege log for those portions of its SAP system that it claims are privileged, but that it proposed a meet and confer to discuss a “sufficiently narrowed request.” Specifically:

SoCalGas objects to this Request as overbroad and unduly burdensome, in that seeks on its face a log covering data on the SAP system since 1999, which is not reasonable or practicable. SoCalGas further objects to this Request as harassing and oppressive in that Cal Advocates explicitly declared in meet and confer discussions and in the declaration of Stephen Castello that “it had no desire to review any privileged information in the SAP database[.]” (Decl. of Stephen Castello, ¶ 13, May 28, 2020.)

SoCalGas is willing to meet and confer regarding a sufficiently narrowed request.

Cal Advocates would like to meet and confer via this email.

Cal Advocates proposes that SoCalGas provide the privilege log as set forth in the original data request for all documents that SoCalGas claims are privileged in its SAP system from 2015 to the present. Cal Advocates also proposes that the privilege log be provided no later than October 5, 2020.

We note that SoCalGas appeared to object to providing the log for information going as far back as 1999, and so this proposal addresses that concern.

We also note that SoCalGas asserted in its May 22, 2020 Motion to Quash that law firm invoices were privileged if they “communicate information for the purpose of legal consultation or risk exposing information that was communicated for such a purpose.” We also note that the declaration supporting the utility’s claim that the law firm invoices contained potentially confidential information was executed by a SoCalGas “Financial Systems and Client Support Manager.” (This declaration accompanied the May 22, 2020 Motion to Quash.) Clearly, such an individual has no expertise to make a legal determination regarding whether a document is privileged under the law.

Because utility books and records are open to regulator inspection pursuant to numerous statutes, SoCalGas law firm invoices should not contain such information as a matter of course. In my experience managing over 20 law firms, the invoices did not contain legal consultation. In addition, to Cal Advocates’ knowledge, this issue

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

has never been raised before to prevent CPUC staff from fully auditing a utility's books and records. Consequently, we anticipate that there will be very few legitimate claims of privilege. Further, given that such invoices, and how the costs of those invoices are booked, are directly relevant to the issue of Cal Advocates' AstroTurf Funding Investigation, it is necessary for Cal Advocates to have access to all of the non-privileged information in those invoices. In the unlikely event that privileged information is contained in a law firm invoice, SoCalGas should propose a process for providing redacted versions of those invoices to Cal Advocates.

Finally, any privilege log should specifically identify where the document can be found in the SAP system, as specified in the privilege log template provided with the original data request.

Please respond to this email at your earliest convenience. To the extent any proposal herein is not acceptable to SoCalGas, please propose a counter-proposal.

To the extent you believe that a telephonic meet and confer would be productive, please identify a date and time no later than September 25 for such a meeting.

We look forward to your prompt response to this proposal,

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

**From:** Sierzant, Corinne M <CSierzant@socalgas.com>  
**Sent:** Thursday, July 30, 2020 4:01 PM  
**To:** Bone, Traci <traci.bone@cpuc.ca.gov>; Castello, Stephen <Stephen.Castello@cpuc.ca.gov>; Ward, Alec <Alec.Ward@cpuc.ca.gov>  
**Cc:** Jason Wilson <jwilson@willenken.com>; Sherin Varghese <svarghese@willenken.com>  
**Subject:** SoCalGas Response - CalAdvocates-TB-SCG-2020-05

Good Afternoon,  
Attached is SoCalGas' response to CalAdvocates-TB-SCG-2020-05 (DR-16). This includes documents in response to question 1 with a confidentiality declaration. As these are sensitive documents, we appreciate you treating them as such.  
Sincerely,

Corinne Sierzant, Regulatory Affairs  
213-244-5354 (Office); 215-290-3144 (Cell)  
[csierzant@socalgas.com](mailto:csierzant@socalgas.com)

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

**Exhibit I - Privilege Log M&C Sept 25 2020**

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

**From:** [Bone, Traci](#)  
**To:** [Jason Wilson](#)  
**Cc:** [Sierzant, Corinne M](#); [Willenken-CalPA](#); [Ward, Alec](#); [Castello, Stephen](#)  
**Subject:** RE: DR 16, Privilege Log Issue: Meet and Confer  
**Date:** Friday, September 25, 2020 4:05:00 PM  
**Attachments:** [Meet and Confer re SoCalGas Response - CalAdvocates-TB-SCG-2020-05.msg](#)

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Jason:

Thank you for responding to Cal Advocates' meet and confer email of Tuesday, September 22, 2020. A copy of that email is attached hereto.

That email reflects that Cal Advocates made a good faith offer to narrow the scope of the privilege log and requested SoCalGas to either agree to the proposal, provide a counter proposal, or set a conference call to discuss the issues no later than Friday, September 25.

In lieu of providing a counter proposal, SoCalGas continues to raise legally infirm objections to providing a privilege log, which basic rules of Civil Procedure required SoCalGas to produce months ago.

It is clear the parties are at an impasse. Consequently, Cal Advocates will pursue other options to compel the production of the privilege log.

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

**From:** Jason Wilson <jwilson@willenken.com>  
**Sent:** Friday, September 25, 2020 10:28 AM  
**To:** Bone, Traci <traci.bone@cpuc.ca.gov>  
**Cc:** Sierzant, Corinne M <CSierzant@socalgas.com>; Willenken-CalPA <willenken-calpa@willenken.com>; Ward, Alec <Alec.Ward@cpuc.ca.gov>; Castello, Stephen <Stephen.Castello@cpuc.ca.gov>  
**Subject:** DR 16, Privilege Log Issue: Meet and Confer

Dear Traci,

Thank you for narrowing your request to cover documents only from 2015 to the present. While that is a step in the right direction to alleviate the extreme burden associated with Cal Advocates' original request, it still consists of nearly five years' of transactions and therefore does not entirely resolve our objections. Therefore, we would suggest we meet and confer via telephone. Would you be available next week Friday, October 2 at 11:30 am?

In addition, we would dispute certain characterizations in your email regarding the nature and scope of privilege of legal invoices, and their relevance to this matter.

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



First, you seem to cast doubt on the validity of having the manager in charge of the database to which Cal Advocates is seeking access testify about the contents of that database, because “such an individual has no expertise to make a legal determination regarding whether a document is privileged under the law.” This argument is misplaced. Cal Advocates has demanded unfettered access to SoCalGas’s database, which contains material that is likely privileged. SoCalGas has stated its legal objections, and provided evidence that potentially privileged information is contained in the database. Now the parties are meeting and conferring about a privilege log, which will establish “the preliminary facts necessary to support” the privilege. *Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 733.

It is true that the determination of privilege requires a document-by-document review. As the California Supreme Court has explained, “[T]he information contained within certain [billing] invoices may be within the scope of the [attorney-client] privilege.” *Los Angeles County Bd. of Supervisors v. Superior Court* (2016) 2 Cal. 5th 282, 298. For example, “[t]o the extent that billing information is conveyed ‘for the purpose of legal representation’—perhaps to inform the client of the nature or amount of work occurring in connection with a pending legal issue—such information lies in the heartland of the attorney-client privilege.” *Id.* Even amounts paid for legal services “may come close enough to this heartland to threaten the confidentiality of information directly relevant to the attorney’s distinctive professional role.” *Id.* Thus, as SoCalGas cited in its Motion to Quash, law firm invoices can be privileged “if they either communicate information for the purpose of legal consultation or risk exposing information that was communicated for such a purpose.” *Id.* at 300.

This is precisely why Cal Advocates’ request for a log on an entire database, or even five years’ of entries in that database, is incredibly burdensome. Determining whether a legal invoice threatens the heartland of the attorney-client privilege will take time and resources. Our preliminary rough estimate is that even limited to five years, there could be more than 10,000 entries to log. That is not reasonable or feasible, and requires additional narrowing via meet and confer.

Second, you also seem to be taking the incorrect position that SoCalGas may not even assert its privilege, because utility books and records “are open to regulator inspection pursuant to numerous statutes.” But inspection rights do not obviate a utility’s claim of legal privilege. SoCalGas and the Commission have litigated this very issue all the way to the California Supreme Court, and the Court has explicitly held that the Commission’s power to inspect SoCalGas’s books and records is “tempered by the attorney-client privilege” and that “no provision exempts [the Commission] from complying with the statutory attorney-client privilege.” *Southern California Gas Co. v. Public Utilities Com.* (1990) 50 Cal. 3d 31, 38-39. The US Supreme Court has also rejected this very argument. *United States v. Louisville & Nashville Railroad Co.* (1915) 236 U.S. 318, 336.

Finally, contrary to your office’s prior representation that “it had no desire to review any privileged information in the SAP database,” Decl. of Stephen Castello, ¶ 13, May 28, 2020, you now seem to suggest that such information is “directly relevant to the issue of Cal Advocates’ AstroTurf Funding Investigation.” We dispute this characterization, as certainly it is not the case that every law firm utilized by SoCalGas works on issues relevant to Cal Advocates’ AstroTurfing investigation. However, if Cal Advocates is able to identify particular law firms in which it is interested, we believe this would be a fruitful area for the parties to explore in meet and confer to narrow the scope of the log.

We look forward to discussing these issues with you further and are hopeful we can negotiate a

resolution.

All the best,

Jason



**Jason H. Wilson**

Direct: 213.955.8020 | Fax: 213.955.9250 | [jwilson@willenken.com](mailto:jwilson@willenken.com) | [www.linkedin.com/in/jason-h-wilson](http://www.linkedin.com/in/jason-h-wilson)

**WILLENKEN LLP** | 707 Wilshire Blvd. | Suite 3850 | Los Angeles, CA 90017 | [willenken.com](http://willenken.com)

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

**Exhibit J - Privilege Log M&C Sept 28-29 2020.**

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

**From:** [Bone, Traci](#)  
**To:** [Jason Wilson](#); [Ward, Alec](#); [Castello, Stephen](#)  
**Cc:** [Willenken-CalPA](#); [Sierzant, Corinne M](#)  
**Subject:** RE: DR 16, Privilege Log Issue: Meet and Confer  
**Date:** Tuesday, September 29, 2020 11:40:00 AM

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Jason:

Cal Advocates does not accept SoCalGas' proposal to limit the scope of the privilege log to only identify documents related to Cal Advocates' investigation of SoCalGas' astroturf funding activities. Consequently, Cal Advocates and SoCalGas are at impasse and Cal Advocates will pursue other options to compel the production of the privilege log.

To be clear, the subpoena providing Cal Advocates access to SoCalGas' books and records does not limit the scope of the materials that Cal Advocates may access. Rather, it required SoCalGas to "make available to the Public Advocates Office at the California Public Utilities Commission (Cal Advocates), and staff and consultants working on its behalf, **access to all databases associated in any manner with the company's accounting systems no later than three business days after service of this Subpoena.** (Emphasis added)." Thus, SoCalGas was ordered by the Commission to provide full access no later than Friday, May 8, 2020.

That has not occurred.

Instead, on May 22, 2020 – 13 days after it was required to comply with the subpoena - SoCalGas submitted a Motion to Partially Quash the subpoena on the basis that its accounts and records contain materials protected by the First Amendment right to association or the attorney-client or attorney work product privileges.

Because SoCalGas made such objections, the law required SoCalGas to provide "sufficient factual information for other parties to evaluate the merits of [those claims], including, if necessary, a privilege log." California Code of Civil Procedure §2031.240(c)(1). However, SoCalGas did not do this. Instead, it provided a declaration from a SoCalGas "Financial Systems and Client Support Manager" for the proposition that its accounts and records contained privileged information.

Clearly, such an individual has no expertise to make a legal determination regarding whether a document is privilege under the law, and even if they were, the facts set forth in the declaration do not provide information sufficient for other parties, such as Cal Advocates and the Commission, to evaluate the merits of the claims.

Based on the foregoing, it is clear that SoCalGas had, and continues to have, a statutory obligation to support its privilege claims in a specific manner. Cal Advocates agreed in its email of September 22, 2020, to limit the time frame of privilege log to January 1, 2015 to the present. However, SoCalGas' refusal to provide the privilege log unless Cal Advocates' agrees to narrow the scope of the inquiry to the astroturf funding investigation is not acceptable.

At this point, as explained above, Cal Advocates believes it is appropriate to move forward to compel the production of the appropriate privilege log.

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

Last, as a professional courtesy, we ask that you return to the procedure of responding to emails so that they include all of the preceding emails on a matter to facilitate understanding, access, and archiving.

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

**From:** Jason Wilson <jwilson@willenken.com>  
**Sent:** Monday, September 28, 2020 11:23 AM  
**To:** Bone, Traci <traci.bone@cpuc.ca.gov>; Ward, Alec <Alec.Ward@cpuc.ca.gov>; Castello, Stephen <Stephen.Castello@cpuc.ca.gov>  
**Cc:** Willenken-CalPA <willenken-calpa@willenken.com>; Sierzant, Corinne M <CSierzant@socalgas.com>  
**Subject:** DR 16, Privilege Log Issue: Meet and Confer

Traci:

We do not see an impasse and we believe that motion practice is unnecessary and premature at this point. We believe that this dispute can be resolved with further meet and confer. To be clear, SoCalGas is willing to do a privilege log consistent with the scope of your investigation, which you say is related to astroturfing. SoCalGas is not insisting on any further date limitation. Your proposed starting date of January 1, 2015 is fine.

The problem with your current position is that the vast majority of the law firms that SoCalGas retains cannot possibly have worked on matters related to the stated scope of your investigation. For example, SoCalGas retains law firm to handle employment matters. What does an employment lawsuit have to do with “astroturfing?” SoCalGas retains law firms represent them in personal injury matters. What does “astroturfing” have to do with personal injury matters? SoCalGas retains law firms to litigate commercial disputes with vendors. Again, what does a commercial dispute have to do with “astroturfing?” Does Cal Advocates really want to bring a motion to compel to force SoCalGas to do a privilege log on invoices from a personal injury case?

Why can't Cal Advocates exclude unrelated legal matters from the privilege log exercise? We understand that this dispute has grown contentious. However, in our view, distrust should not replace common sense. Can we talk on Friday to find common ground?

For the record, there are four statements we would like to dispute.

First, SoCalGas was not required by so-called “basic rules of Civil Procedure” to produce a log “months ago.” Rather, on July 30, 2020, SoCalGas stated its objections to Cal Advocates’ unduly burdensome request, and offered to meet and confer about reasonable means of narrowing the scope of the requested privilege log. Cal Advocates first responded on September 22, 2020, and SoCalGas believes the parties are still meeting and conferring on the scope of the requested log. After waiting 54 days to

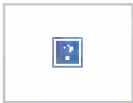
engage a meet and confer, Cal Advocates is now declaring an impasse in three days. This position is untenable.

Second, we disagree that SoCalGas’s objections to the privilege log request are “legally infirm.” We provided several relevant citations cited in our email that have gone unaddressed.

Third, your email states that SoCalGas did not “provid[e] a counter proposal.” We counter-proposed that “if Cal Advocates is able to identify particular law firms in which it is interested, we believe this would be a fruitful area for the parties to explore in meet and confer to narrow the scope of the log.” You have not responded to this proposal.

Finally, you claim you have properly met and conferred. We do not believe you have attempted to meet and confer in good faith. You have refused our offer to speak over the phone and to try to settle our differences. You have ignored our counterproposal. Instead, you just want SoCalGas to comply with your latest demand without providing any legal justification for your position or addressing the issues we have raised. The idea that further meet and confer would be pointless (as you claim) is contradicted by the fact that the parties have narrowed their differences. And our most recent counter proposal further narrows the gap.

Jason



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November 19, 2020

*VIA ELECTRONIC MAIL*

The Honorable Regina DeAngelis  
Administrative Law Judge Division  
California Public Utilities Commission  
[rmd@cpuc.ca.gov](mailto:rmd@cpuc.ca.gov)

**Re: Sierra Club and Earthjustice Comments on Draft Resolution ALJ-391**

To ALJ DeAngelis:

Pursuant to California Public Utilities Commission Rule 14.5, Earthjustice and Sierra Club respectfully submit these comments on the October 29, 2020 Draft Resolution ALJ-391 (“Draft Resolution”). The Draft Resolution properly rejects the meritless efforts of Southern California Gas Company (“SoCalGas”) to limit the investigation of the Public Advocates Office (“Cal Advocates”) into its misuse of ratepayer funds to thwart achievement of California’s decarbonization requirements through activities that include financing astroturf groups to oppose electrification. However, absent modifications, SoCalGas’ improper litigation tactics will only continue. The Draft Resolution leaves the door open for SoCalGas to continue to evade Cal Advocates’ investigation through specious claims of attorney-client privilege and imposes no consequence for SoCalGas’ vexatious obstruction of Cal Advocates’ statutory discovery rights that have resulted in over a year delay in its investigation. Because the Draft Resolution fails to impose consequences on SoCalGas, it functions to embolden investor-owned utilities (“IOUs”) to continue to raise specious objections to delay Commission investigations into their potential misconduct.

In addition, Cal Advocates’ investigation is a matter of significant public importance. Federal and state legislators have expressed their concerns over SoCalGas’ conduct, and exposure of astroturf groups and related tactics are necessary for decision-makers and the public to understand the origins of stakeholder opposition. Yet the extent to which Cal Advocates’ investigation and any additional action taken by the Commission will be publicly accessible is unclear.

To address these concerns, the Draft Resolution should be revised to:

- 1) Expressly prohibit SoCalGas from employing further delay tactics and abusing the discovery process by requiring an explicit deadline and required fields for SoCalGas' privilege log, and by requiring, as the California Superior Court did in *Gandsey v. So. Cal. Gas Co.*, that SoCalGas' counsel declare under penalty of perjury that any privilege claims it asserts going forward in this investigation are good faith objections to discovery;
- 2) Clarify that any protections that apply to SoCalGas' documents apply only to the specifically marked confidential portions of those documents, and that there is no blanket protection of entire documents;
- 3) Direct the appropriate division of the Commission to review SoCalGas' confidentiality claims on documents already produced, resolve any disputed or unsupported confidentiality claims promptly, and release to the public redacted versions of the documents it has collected in this investigation thus far;
- 4) Find SoCalGas in contempt of the Commission and levy appropriate fines;
- 5) Levy appropriate fines against SoCalGas for its violations of Commission Rule 1.1;
- 6) Open an Order Instituting Investigation ("OII") proceeding to resolve the substantive issues of SoCalGas' misuse of ratepayer funds in a transparent manner that allows for public participation.

**1. The Draft Resolution Should Expressly Prohibit SoCalGas From Employing Further Delay Tactics and Abusing the Discovery Process to Evade Its Statutory Obligations By Asserting Unsupported Claims Of Attorney-Client Privilege Or Attorney Work Product Privilege.**

The Draft Resolution should be revised to expressly prohibit SoCalGas from delaying compliance with its statutory obligation to provide the Commission access to its records by asserting voluminous and erroneous claims of attorney-client privilege and attorney work product privilege. SoCalGas has employed this delay tactic for months in this dispute, and has a well-documented pattern of doing so in bad faith across other proceedings before the Commission and the California courts. As currently written, the Draft Resolution simply directs SoCalGas to prepare a privilege log and comply with Cal Advocates' requests to review documents not subject to privilege.<sup>1</sup> This direction is insufficient, as SoCalGas already has an existing duty to comply with Cal Advocates' requests to review its books and records, and the

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<sup>1</sup> Draft Resolution at 26.



entire dispute revolves around SoCalGas' abusive discovery practices. Absent sanctions, or an explicit set of instructions with an explicit deadline, SoCalGas will not change its behavior. Accordingly, the Draft Resolution should be revised to set an explicit deadline and format for SoCalGas' privilege log, and to require SoCalGas' counsel to declare under penalty of perjury that any claims of privilege it asserts on the privilege log are good faith objections to discovery.

As the Draft Resolution acknowledges, the Public Utilities Code authorizes the Commission, and its officers and employees, to inspect the accounts, books, papers, and documents of any public utility "at any time."<sup>2</sup> Cal Advocates rightfully stressed in its Motion to Find SoCalGas in Contempt that this provision is crucial in preventing utilities from having the opportunity to destroy or otherwise tamper with evidence after learning that their regulators are requesting to review it.<sup>3</sup> Here, SoCalGas has abused the discovery process to evade its statutory obligation to provide regulators access to its documents for months, wasting Commission resources and willfully refusing to comply with Commission requests and orders.

This behavior is a pattern for SoCalGas, whether it is evading regulatory oversight or evading providing discovery to party opponents in litigation. For example, in February 2020 in *Gandsey v. S. Cal. Gas Co.*, the Superior Court ordered more than \$500,000 of monetary sanctions against SoCalGas in a case related to the Aliso Canyon gas leak for "engag[ing] in a pattern of abusive discovery by repeatedly withholding large numbers of documents without substantial justification and by producing privilege logs that are insufficient to allow Plaintiffs or the court to evaluate Defendants' claims of privilege."<sup>4</sup> There, SoCalGas provided a privilege log in 2017 with "an identifiable attorney listed on only 2% of the 12,000 entries," and another privilege log produced in 2018 in the same case had "39,000 entries [with] an attorney identified on only 2% of the entries."<sup>5</sup>

The court noted that even after a court order finding that SoCalGas' claims of privilege over a group of documents were not substantially justified, "the court continued to be faced with extensive, broad claims of privilege that were insufficiently described on existing privilege logs," such that the court "issued an order that the court never before had felt necessary in the court's previous 24 years of experience as a judge," requiring SoCalGas' counsel to declare under penalty of perjury that there was a good faith basis for the claim of privilege.<sup>6</sup> The court ultimately found that SoCalGas "stonewalled over an extended period of this litigation by misusing claims of privilege to attempt to throw Plaintiffs' counsel off the track with respect to

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<sup>2</sup> Pub. Util. Code § 314(a).

<sup>3</sup> *Public Advocates Office Motion to Find Southern California Gas Company in Contempt of this Commission in Violation of Commission Rule 1.1 for Failure to Comply with a Commission Subpoena Issued May 5, 2020, and Fined for Those Violations from the Effective Date of the Subpoena (Not in a Proceeding)*, submitted on June 23, 2020.

<sup>4</sup> Minute Order Ruling on Motion of Private Plaintiffs for Monetary, Evidentiary, and Issue Sanctions and an Adverse-Inference Jury Instruction at 1–2, *Gandsey v. S. Cal. Gas Co.*, No. BC601844 (Cal. Super. Ct. Feb. 20, 2020) (hereinafter "*Gandsey Order*").

<sup>5</sup> *Gandsey Order* at 17–18.

<sup>6</sup> *Id.* at 13.

documents to which they were entitled,”<sup>7</sup> and found that SoCalGas’ privilege claims were “a mere strategy for flaunting the discovery rules and thereby avoiding the disclosure of relevant information.”<sup>8</sup> The court also noted that “[t]he sheer number of privilege assertions that ultimately were unsupported is evidence that Defendants’ conduct is the result of a concerted policy, and not the hapless mistakes of a few document-review attorneys,”<sup>9</sup> and that imposing sanctions was the only way to avoid “an infinite process wherein Defendants’ logs are reviewed, challenged, and then ordered to be re-served with greater detail to justify the privileges.”<sup>10</sup>

Similarly, in the wider coordinated proceeding for the Aliso Canyon gas leaks, the Superior Court found that the “practice of abandoning their own initial privilege assertions when challenged” had become “a defining aspect of [SoCalGas’] discovery practice,” and that SoCalGas “engaged in a practice of making broad and unjustified assertions of privilege over large swathes of documents, only to back down when met with motion practice” under the guise of reducing disputes and seeking compromise.<sup>11</sup> In *Gandsey*, the court found, after examining the “tortured history” of the case, that SoCalGas’ “initial claims of privilege are unsupported and/or are withdrawn an average of 94 percent of the time.”<sup>12</sup> Ordering SoCalGas to produce a privilege log does nothing to avoid this “infinite process.”<sup>13</sup> Indeed, a vague order to comply with legal obligations that SoCalGas has already repeatedly ignored plays into the Company’s strategy by providing an additional opportunity for delay and imposing no consequences for SoCalGas’ ongoing violation of the rules. Accordingly, the Draft Resolution should be revised to provide an explicit deadline and explicit required fields for SoCalGas’ privilege log, as well as to require SoCalGas’ counsel to declare under penalty of perjury that any claims of privilege it asserts over the documents at issue in this Resolution are in good faith.

## **2. The Draft Resolution Should be Revised to Clarify that Any Documents Cal Advocates Has Obtained in the Course of This Investigation Can Be Publicized in Redacted Form.**

Sierra Club and Earthjustice support the Draft Resolution’s rejection of SoCalGas’ First Amendment claims, but respectfully request that the Draft Resolution be revised to further clarify that to the extent any confidentiality protections apply to information contained in SoCalGas’ documents, those protections apply only to the appropriate portions of the documents, and not as a blanket protection of entire documents. Accordingly, the Draft Resolution should also be revised to reflect that any documents that Cal Advocates has obtained in the course of

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<sup>7</sup> *Id.* at 18.

<sup>8</sup> *Id.* at 19.

<sup>9</sup> *Id.* at 20.

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

<sup>11</sup> Minute Order Ruling on Motion of Private Plaintiffs for Issue, Evidence, Monetary Sanctions, and other Remedies at 5, *Southern California Gas Leak Cases*, No. JCCP4861 (Cal. Super. Ct. Aug. 3, 2020).

<sup>12</sup> *Gandsey* Order at 3.

<sup>13</sup> *Id.* at 20.

this investigation are public documents—subject to redaction of any legitimately confidential information—and must be made available for public review upon request.<sup>14</sup>

Earthjustice has made a request for these public records pursuant to the California Public Records Act, which it understands is still partially outstanding after roughly ten months due to the Commission’s concerns about resolution of SoCalGas’ First Amendment claims. The Draft Resolution should be revised to make clear that any protection afforded to information within SoCalGas’ documents pursuant to the First Amendment—or any other confidentiality protection—only extends to such portions of the documents that are properly and legitimately confidential in the first place, and that redacted versions of the documents at issue are not protected from public access as they do not betray any of the confidential information.

As set forth in Section 1 above, SoCalGas has a well-documented history of making overbroad, frivolous confidentiality claims in discovery. To the extent that Cal Advocates makes redacted versions of the documents at issue in this resolution public, redactions should be limited only to those portions of the documents for which SoCalGas has provided a basis for marking confidential that meets the applicable legal standards for the type of protection asserted. With this outcome in mind, the Draft Resolution should be amended to direct the appropriate division of the Commission to review SoCalGas’ confidentiality designations on these particular documents and promptly resolve any disputed confidentiality claims, so that it may publicize appropriately redacted versions of the documents as expediently as possible. If the Commission anticipates significant delay in resolving confidentiality disputes, it should publicize versions of the documents with all of SoCalGas’ asserted confidentiality claims redacted promptly, and publicize updated versions of the documents with fewer redactions if those claims are found to be inconsistent with the applicable legal standards.

**3. The Draft Resolution Should Be Revised to Open an Order Instituting Investigation Proceeding to Resolve the Substantive Issues of Cal Advocates’ Investigation, and to Sanction SoCalGas For Its Discovery Violations.**

The Draft Resolution should be revised to open an OII Proceeding to resolve the substantive issues of Cal Advocates’ investigation. It should be further revised to sanction SoCalGas for its contempt of the Commission and its violations of Rule 1.1. If the Commission does not impose sanctions in this Resolution, it should, at a minimum, include an Order to Show Cause (“OSC”) within the OII proceeding to address SoCalGas’ contempt and discovery violations.

The Draft Resolution acknowledges that Cal Advocates’ investigation of SoCalGas’ activities with regard to funding anti-decarbonization groups was proper, due to Cal Advocates’ role as an advocate on behalf of residential and small commercial customers.<sup>15</sup> The Commission

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<sup>14</sup> Cal. Const., Article 1 § 3(b)(1); Cal. Gov’t Code § 6253(a).

<sup>15</sup> Draft Resolution at 27.

has long acknowledged that ratepayers have a “right to know whether . . . [they] are burdened with costs unrelated to the services for which [they] are being charged.”<sup>16</sup> Cal Advocates’ investigation into SoCalGas’ activities and where the costs of those activities are booked is directly relevant to the interests of SoCalGas’ residential and small commercial customers, and transparency of enforcement proceedings is crucial when matters that affect the public interest are being considered. Yet the Draft Resolution would have Cal Advocates refer its investigation to an unspecified “appropriate enforcement division” rather than continuing to pursue it in a public, adjudicatory process.<sup>17</sup> This is contrary to the Commission’s longstanding precedent favoring open and transparent proceedings,<sup>18</sup> and acknowledging the importance of “the public interest of having an open and credible regulatory process.”<sup>19</sup> An OII proceeding will provide an open and transparent opportunity for the public to review and respond to this investigation, rather than an unspecified, closed-doors process in an enforcement division. Accordingly, the Draft Resolution should be revised to open an OII into the substantive concerns of Cal Advocates’ investigation regarding SoCalGas’ activities and the funding sources for them.

Additionally, the Commission need not wait for another proceeding to order sanctions against SoCalGas for its contempt of the Commission and its Rule 1.1 violations through its abusive discovery practices. As the Draft Resolution acknowledges, the Public Utility Code grants Cal Advocates, as an independent division within the Commission, “broad authority to compel any entity regulated by the Commission to disclose any information it deems necessary in furtherance of those duties.”<sup>20</sup> The Draft Resolution also acknowledges that “if a utility does not comply with the requests from the Commission’s staff or more formal injunctions from the Commission, such as subpoenas, it is not unreasonable for the utility to expect to be subject to sanctions up to and including monetary penalties.”<sup>21</sup> Cal Advocates provided ample evidence in its June 23, 2020 Motion that SoCalGas willfully disregarded the Commission’s subpoena, which the Draft Resolution references repeatedly.<sup>22</sup> Yet, the Draft Resolution fails to take the necessary next step of resolving Cal Advocates’ Motion.

This approach is in error. Under Public Utility Code § 2113, a public utility is unequivocally in contempt of the Commission if it “fails to comply with any part of any order, decision, rule, regulation, direction, demand, or requirement of the commission . . . .”<sup>23</sup> Further, the Code empowers the Commission to punish a utility for contempt “in the same manner and to

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<sup>16</sup> *In re Pacific Bell*, D.94-02-007, 53 CPUC 2d 177, 1994 WL 106049 (Feb. 3, 1994).

<sup>17</sup> Draft Resolution at 27.

<sup>18</sup> *See, e.g.*, D.16-08-024; D.17-09-023; D.20-03-014.

<sup>19</sup> *In re Pacific Bell*, 20 CPUC 2d 237, 1986 WL 1300645 (Jan. 10, 1986).

<sup>20</sup> Draft Resolution at 27 (citing Pub. Util. Code § 309.5).

<sup>21</sup> *Id.*

<sup>22</sup> Draft Resolution at 4 (“SoCalGas refused, in part, to comply with [Cal Advocates’] DR.”), 21 (“[Cal Advocates’ DR] arose as part of an inquiry that escalated after SoCalGas did not disclose its affiliation with [C4BES] . . . SoCalGas refused to provide information about its affiliation, thereby leading to this series of data requests by Cal Advocates.”).

<sup>23</sup> Cal. Pub. Util. Code § 2113.

the same extent as contempt is punished by courts.”<sup>24</sup> Because such a remedy is cumulative, with no effect on any other remedies authorized under the code, the Commission has also found that it can levy additional fines for Rule 1.1 violations on top of those for contempt.<sup>25</sup> As Cal Advocates pointed out in its Motion for Contempt, the Commission has found Rule 1.1 violations where a utility has exhibited a “lack of candor, withholding of information, or failure to correct information or respond fully to data requests.”<sup>26</sup>

The Draft Resolution should be revised to find SoCalGas in contempt and order sanctions for the following abuses of the discovery process and noncompliance with Commission orders:

- 1) Failure to comply fully with Cal Advocates’ July 19, 2019 data request;
- 2) Failure to comply with Question 8 of Cal Advocates’ August 13, 2019 data request;
- 3) Failure to comply with ALJ DeAngelis’ September 10, 2019 ruling;
- 4) Failure to comply with ALJ DeAngelis’ November 1, 2019 ruling; and
- 5) Failure to comply with the May 5, 2020 Commission subpoena.

As discussed above, each of the above examples of contempt can also separately constitute a Rule 1.1 violation, for which SoCalGas should also face sanctions.

If sanctions are not imposed directly, then at a minimum, the Draft Resolution should be revised to issue an OSC regarding SoCalGas’ discovery violations within the OII for the substance of the investigation.

Thank you for your consideration of these comments.

Respectfully submitted,

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cc: Service List for ALJ-391

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

<sup>25</sup> *Id.*; D.15-08-032 at 34–36.

<sup>26</sup> D.15-08-032 at 38 (quoting D.13-12-053 at 21).

STATE OF CALIFORNIA GAVIN NEWSOM, Governor

~~PUBLIC UTILITIES COMMISSION~~

~~505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298~~

~~October 29, 2020~~

~~Agenda ID #18923~~

~~TO PARTIES OF RECORD IN DRAFT RESOLUTION ALJ-391:~~

~~This is the draft Resolution of Administrative Law Judge (ALJ) Regina DeAngelis regarding Denial of Southern California Gas Company's December 2, 2019 Motion for Reconsideration/Appeal of the November 1, 2019 Administrative Law Judge's Ruling and Addresses Other Related Motions. It will appear on the Commission's agenda no sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.~~

~~When the Commission acts on the draft resolution, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own order. Only when the Commission acts does the resolution become binding on the parties.~~

~~You must serve your comments on the draft resolution. Comments shall be served (but not filed) within 20 days of the date that the draft Resolution is noticed in the Commission's Daily Calendar, <http://docs.cpuc.ca.gov/SearchRes.aspx?DocTypeID=9&Latest=1>, as provided in Rule 14.5 of the Commission's Rules of Practice and Procedure. Comments shall be served via electronic mail upon all persons on the attached service list.~~

~~Comments must be served on ALJ DeAngelis at [rmd@cpuc.ca.gov](mailto:rmd@cpuc.ca.gov). No paper copies are required at this time.~~

~~\_\_\_\_\_  
/s/ ANNE E. SIMON  
Anne E. Simon  
Chief Administrative Law Judge~~

~~AES:sgu  
Attachment~~ PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-391  
Administrative Law Judge Division  
[Date]

**RESOLUTION**

RESOLUTION ALJ-391 Denies Southern California Gas Company's (SoCalGas') December 2, 2019 motion for reconsideration/appeal of the November 1, 2019 Administrative Law Judge's ruling and denies SoCalGas' May 22, 2020 motion to quash portions of the Commission's May 5, 2020 subpoena; grants SoCalGas' May 22, 2020 motion to supplement its December 2, 2019 motion for reconsideration/appeal; deems moot SoCalGas' May 22, 2020 motion to stay compliance with the May 5, 2020 subpoena until May 29, 2020; defers consideration of the Public Advocates Office at the California Public Utilities Commission's June 23, 2020 motion for contempt and sanctions for SoCalGas' failure to respond to the May 5, 2020 subpoena; and addresses other related motions.

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## SUMMARY

This Resolution denies Southern California Gas Company's (SoCalGas') December 2, 2019 motion for reconsideration/appeal of the November 1, 2019 Administrative Law Judge's ruling and denies SoCalGas' May 22, 2020 motion to quash portions of the Commission's May 5, 2020 subpoena. In denying these motions, the Commission rejects SoCalGas' argument that the Public Advocates Office at the California Public Utilities Commission's (Cal Advocates') discovery rights, set forth in the Public Utilities Code, are limited by SoCalGas' First Amendment rights to association, assuming that such a right exists, and rejects SoCalGas' argument that the Commission has violated its procedural due process rights.

In addition, this Resolution grants SoCalGas' December 2, 2019 motion for leave to file under seal confidential versions of certain declarations but, in doing so, confirms that SoCalGas must provide access to the unredacted versions of the confidential declarations to the Commission, including its staff, such as Cal Advocates, under existing protections.

This Resolution also deems moot SoCalGas' May 22, 2020 motion to stay compliance with the May 5, 2020 subpoena until May 29, 2020, grants SoCalGas' May 22, 2020 motion to supplement the December 2, 2019 motion for reconsideration/appeal, and defers consideration of Cal Advocates' June 23, 2020 motion for contempt and sanctions for SoCalGas' failure to respond to the May 5, 2020 subpoena. By granting SoCalGas' December 2, 2019 motion for leave to file under seal and directing it to provide unredacted, confidential versions to Commission staff, including Cal Advocates, this Resolution also deems moot Cal Advocates' July 9, 2020 motion to compel and defers consideration of Cal Advocates' request therein for monetary fines.

Other related motions are also addressed.

SoCalGas is directed to produce the information and documents requested by Cal Advocates in DR No. CalAdvocates-SC-SCG-2019-05, including the confidential declarations submitted under seal in support of SoCalGas' December 2, 2019 motion for reconsideration/appeal, and in the May 5, 2020 Commission subpoena within ~~15~~<sup>30</sup> days of the effective date of this Resolution.

## **BACKGROUND**

### **1. Rulemaking 19-01-011 and Cal Advocates' Data Requests to SoCalGas - Outside of a Proceeding**

In May 2019, the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) initiated a discovery inquiry into Southern California Gas Company's (SoCalGas') funding of anti-decarbonization campaigns using "astroturfing" groups.<sup>1</sup> Cal Advocates initiated this discovery inquiry "outside of a proceeding" pursuant to its statutory authority and for reasons more fully addressed below.<sup>2</sup> In particular, Cal Advocates' inquiry focused on the extent to which SoCalGas was using ratepayer funds to support organizations presenting themselves to the Commission as independent grassroots community organizations that also support anti-decarbonization positions held by SoCalGas, such as Californians for Balanced Energy Solutions (C4BES) and other similar organizations.

Cal Advocates' discovery inquiry was prompted by allegations initially raised in Rulemaking (R.) 19-01-011<sup>3</sup> when C4BES filed a motion for party status on May 13, 2019, and Sierra Club challenged the motion on May 14, 2019, claiming that, unbeknownst to the public, SoCalGas founded and funded C4BES.<sup>4</sup> Cal Advocates responded to Sierra Club's motion to deny party status and stated that Cal Advocates would investigate the allegations raised by Sierra Club.<sup>5</sup>

On May 23, 2019, Cal Advocates initiated this inquiry by issuing Data Request (DR) SCG051719 to SoCalGas regarding its involvement with C4BES. Cal Advocates issued this data request outside of R.19-01-011, as the scope of

<sup>1</sup> Astroturfing is a practice in which corporate sponsors of a message mask their identity by establishing separate organizations to state a position or make it appear as though the movement originates from and has grassroots support.

<sup>2</sup> All pleadings submitted to the Commission related to this discovery dispute "outside of a proceeding" are available on the Commission's website at the Cal Advocates' webpage at: <https://www.publicadvocates.cpuc.ca.gov/general.aspx?id=4444>.

<sup>3</sup> R.19-01-011 Order Instituting Rulemaking Regarding Building Decarbonization (January 31, 2019).

<sup>4</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 (May 14, 2019). See also Cal Advocates' 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 (May 29, 2019).

<sup>5</sup> See R.19-01-011, Cal Advocates' 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 (May 29, 2019) at 2.

R.19-01-011 was limited to de-carbonization matters. In contrast, Cal Advocates' inquiry focused on SoCalGas' financial relationship with C4BES and the use of ratepayer funds to support lobbying efforts by C4BES. In addition, Cal Advocates initiated this discovery outside of a proceeding because no other Commission proceeding encompassed this issue. SoCalGas responded to the DR. Based on this response, Cal Advocates alleged that justification existed to continue its inquiry.

On July 19, 2019, Cal Advocates issued DR CalAdvocates-SC-SCG-2019-04 to SoCalGas. In response, SoCalGas refused, in part, to comply with the DR. At this point, Cal Advocates and SoCalGas began to dispute the lawfulness of the ongoing discovery.

## 2. SoCalGas' December 2, 2019 Motion for Reconsideration/Appeal Requesting the Full Commission's Review of the November 1, 2019 ALJ Ruling

With this discovery dispute still unresolved, on August 13, 2019, Cal Advocates served SoCalGas with another data request, DR No.

CalAdvocates-SC-SCG-2019-05, which consisted of multiple questions built upon previous DRs. On August 27, 2019, SoCalGas responded to the DR with an objection to Question 8 based on the grounds that the requested production of its 100% shareholder-funded contracts related to C4BES fell outside the scope of Cal Advocates' statutory authority set forth in Public Utilities Code (Pub. Util. Code) §§ 309.5(a)<sup>6</sup> and 314.<sup>7</sup> Cal Advocates and SoCalGas engaged in discussions regarding Question 8 of the DR and after multiple attempts the parties agreed that they were at an impasse.

On October 7, 2019, Cal Advocates submitted a motion to compel responses from SoCalGas to the President of the Commission pursuant to Pub. Util. Code §

<sup>6</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>7</sup> See 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 [PROPOSED] Order (Not ~~in a~~ In A Proceeding) (December 2, 2019) at 6.

309.5(e).<sup>8</sup> SoCalGas responded in opposition to Cal Advocates' motion on October 17, 2019.<sup>9</sup> SoCalGas again argued that because the information sought was 100% shareholder funded, it fell beyond Cal Advocates' statutory purview. The President referred this discovery dispute to the Commission's Chief Administrative Law Judge.

On October 29, 2019, the Chief Administrative Law Judge assigned the dispute to Administrative Law Judge Regina DeAngelis (ALJ) and informed the parties in writing of certain procedural rules to follow since this discovery dispute was outside of any formal proceeding and, therefore, the Commission's Rules of Practice and Procedure (Title 20, Division 1, of the California Code of Regulations) (herein "Rules")<sup>10</sup> did not directly apply.

On October 31, 2019, Cal Advocates filed a reply to SoCalGas' response.<sup>11</sup> On November 1, 2019, the ALJ issued a ruling granting Cal Advocates' motion to compel responses to DR No. CalAdvocates-SC-SCG-2019-05.<sup>12</sup> On November 4, 2019, SoCalGas submitted an emergency motion for stay of the November 1, 2019 ALJ ruling but, with its motion for stay pending, on November 5, 2019, SoCalGas also submitted the DR responses to Cal Advocates under protest.<sup>13</sup>

<sup>8</sup> Cal Advocates' Motion to Compel Responses from Southern California Gas Company to Question 8 of Data Request CALADVOCATES-SC-SCG-2019-05 (Not In A Proceeding) submitted October 7, 2019.

<sup>9</sup> 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~~[In A](#) Proceeding) submitted October 17, 2019.

<sup>10</sup> All references to "Rules" are to the Commission's Rules of Practice and Procedure.

<sup>11</sup> 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~~[In A](#) Proceeding) submitted on October 31, 2019.

<sup>12</sup> 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.

<sup>13</sup> 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) submitted on November 4, 2019.

On December 2, 2019, SoCalGas submitted a motion for reconsideration/appeal requesting the full Commission's review of the ALJ's November 1, 2019 ruling.<sup>14</sup> SoCalGas' motion sought the Commission's review of that ruling and reversal.

In support of its motion, SoCalGas raised several constitutional arguments. SoCalGas alleged: (1) the materials sought by Cal Advocates unlawfully infringed on SoCalGas' First Amendment rights to association and (2) that, because the discovery dispute was occurring outside of a proceeding, the lack of procedural safeguards to govern the dispute violated SoCalGas' procedural due process rights.<sup>15</sup> SoCalGas also sought an order from the Commission directing Cal Advocates to return or destroy the constitutionally protected materials provided to Cal Advocates on November 5, 2019. (As noted below, SoCalGas subsequently supplemented this December 2, 2019 motion by a separate motion (dated May 22, 2020), discussed in more detail below). SoCalGas also filed a motion to file under seal certain declarations.<sup>16</sup> On December 17, 2019, Cal Advocates submitted a response.<sup>17</sup>

<sup>14</sup> 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) submitted on December 2, 2019. On December 2, 2019, SoCalGas also submitted a motion to file documents under seal.

<sup>15</sup> SoCalGas also contended that if the Commission did not stop Cal Advocates from invoking its statutory right to compel production of information, then it will continue with the data requests that allegedly infringe on SoCalGas' First Amendment rights.

<sup>16</sup> On December 2, 2019, SoCalGas concurrently filed Motion of Southern California Gas Company's (U 904 G) for Leave to File Under Seal Confidential Versions of Declarations Numbers 3, 4, 5, and 6 In Support of Its Motion ~~Fo~~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~~In A Proceeding).

<sup>17</sup> Public Advocates Office's Response ~~Te~~to Southern California Gas Company's (U 904 G) Motion ~~Fo~~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) submitted December 17, 2019.

On March 25, 2020, SoCalGas filed an emergency motion for a protective order staying all pending and future data requests from Cal Advocates served outside of any proceeding related to this dispute, and any motions and meet and confers related thereto, during the Governor of California's Covid-19 emergency "safer at home" executive orders.<sup>18</sup>

Before Cal Advocates had an opportunity to respond, the ALJ, via an email on April 6, 2020, reminded SoCalGas of Cal Advocates' statutory rights to inspect the accounts, books, papers, and documents of any public utility at any time and found that its request was contrary to California law. The ALJ advised parties to work together in these extraordinary times. We consider this March 25, 2020 SoCalGas motion resolved and do not address it further here.

This Resolution resolves SoCalGas' December 2, 2019 motion for reconsideration/appeal requesting the full Commission's review of the ALJ's November 1, 2019 ruling together with the other related motions, all pertaining to DR No. CalAdvocates-SC-SCG-2019-05 or the May 5, 2020 Commission subpoena, described below.<sup>19</sup>

<sup>18</sup> Southern California Gas Company's (H U 904 g G) emergency motion for a protective order staying all pending and future data requests from the California Public Advocates Office served outside of any proceeding (relating to the Building Decarbonization matter), and any motions and meet and confers related thereto, during California government Covid-19 emergency "safer at home" orders, submitted on March 25, 2020.

<sup>19</sup> Further addressed below and related to SoCalGas' December 2, 2019 motions, on July 9, 2020, Cal Advocates submitted a motion to compel SoCalGas to produce the confidential versions of the declarations submitted in support of SoCalGas' December 2, 2019 motion for reconsideration/appeal and for daily monetary fines, Public Advocates Office Motion To Compel Confidential Declarations Submitted In Support Of Southern California Gas Company's December 2, 2019 Motion For Reconsideration Of First Amendment Association Issues And Request For Monetary Fines For The Utility's Intentional Withholding Of This Information; [Proposed] Order, submitted on July 9, 2020. •

On July 17, 2020, SoCalGas filed response, Response to Public Advocates Office Motion to Compel Confidential Declarations Submitted in Support of Southern California Gas Company's December 2, 2019 Motion for Reconsideration of First Amendment Association Issues and Request for Monetary Fines for the Utility's Intentional Withholding of this Information. SoCalGas argues that Cal Advocates' Statutory Authority to inspect SoCalGas's books and records – including the confidential material in question - is limited by the First Amendment. Information includes: 100% shareholder-funded political activities. •

On July 24, 2020, Cal Advocates filed a reply, Public Advocates Office Reply to Southern California Gas Company's Opposition to Motion to Compel and for Fines Related to the Utility's Intentional Withholding of Confidential Declarations.

3. **SoCalGas' May 22, 2020 Motion to Quash/Stay the May 5, 2020 Subpoena Seeking Access to SoCalGas' Accounting System and May 22, 2020 Motion to Supplement its December 2, 2019 Motion**

On May 1, 2020, Cal Advocates served SoCalGas with another data request, DR CalAdvocates-TB-SCG-2020-03, seeking access to SoCalGas' accounting database, as Cal Advocates continued its inquiry into SoCalGas' use of ratepayer monies to fund an anti-decarbonization campaign through astroturf organizations. On May 5, 2020, Cal Advocates served a subpoena, signed by the Commission's Executive Director, on SoCalGas seeking the same information as set forth in DR CalAdvocates-TB-SCG-2020-03, access to SoCalGas' accounting databases.<sup>20</sup>

SoCalGas delayed responding to the subpoena and, instead, on May 22, 2020, SoCalGas submitted a motion to quash the subpoena and to stay the subpoena until May 29, 2020, to allow it an opportunity to implement software solutions to exclude what it deemed as materials protected by attorney-client and attorney work product privileges, as well as materials implicating the same First Amendment issues raised in SoCalGas' December 2, 2019 motion for reconsideration/appeal of the November 1, 2019 ALJ ruling.<sup>21</sup>

On May 22, 2020, SoCalGas also submitted a motion to supplement the record of its December 2, 2019 motion for reconsideration/appeal and to request an

<sup>20</sup> The Public Utilities Commission of the State of California's Subpoena to Produce Access to Company Accounting Databases dated May 4, 2020 and served on May 5, 2020.

<sup>21</sup> Southern California Gas Company's (U 904 G) Motion to Quash Portion of the Subpoena to Produce Access to Certain Materials in Accounting Databases and to Stay Compliance until the May 29<sup>th</sup> Completion of Software Solution to Exclude those Protected Materials ~~in~~ [in](#) The Databases (Not In A Proceeding) submitted May 22, 2020. SoCalGas originally submitted this motion on May 19, 2020 with redacted declarations. The ALJ ordered SoCalGas to provide confidential electronic versions of the declarations to the Commission and Cal Advocates. SoCalGas elected to instead file a "substituted" version of the Motion to Quash on May 22, 2020.



expedited Commission decision (in the event SoCalGas' May 22, 2020 motion for a stay of the subpoena was not granted).<sup>22</sup>

This Resolution resolves SoCalGas' May 22, 2020 motion to quash/stay the May 5, 2020 subpoena and May 22, 2020 Motion to Supplement its December 2, 2019 Motion.

#### 4. Cal Advocates' June 23, 2020 Motion for Contempt and Sanctions Related to SoCalGas' Failure to Comply with the May 5, 2020 Subpoena

On June 23, 2020, Cal Advocates submitted a motion to find SoCalGas in contempt and to impose fines on SoCalGas for noncompliance with the May 5, 2020 subpoena.<sup>23</sup> More specifically, Cal Advocates asserted that SoCalGas was continuing to avoid complying with the May 5, 2020 subpoena and that SoCalGas' conduct following the issuance of the subpoena constituted a violation of Rule 1.1 and Pub. Util. Code §§ 309.5, 311, 314, 314.5, 314.6, which warrants the imposition of daily penalties. Cal Advocates also sought an order requiring SoCalGas to, among other things, provide Cal Advocates with access to financial databases on a read-only basis and to provide additional information from its accounting and vendor records systems showing which of its accounts are 100% shareholder funded, which accounts have costs booked to them associated with activities that are claimed to be subject to First Amendment privileges or are shareholder funded and other information about vendors of SoCalGas.

On July 2, 2020, SoCalGas submitted a response challenging Cal Advocates' motion for contempt and sanctions, alleging that: (1) the underlying premise of the motion, Cal Advocates' authority to inspect SoCalGas' books and records, lacked legal basis (2) the motion was premature and should not be decided

<sup>22</sup> Southern California Gas Company's (U 904 G) Motion to Supplement the Record and Request for Expediated Decision by the Full Commission on Motion for Reconsideration/Appeal Regarding Administrative Law Judge's Ruling in the Discovery Dispute Between the Public Advocates Office and Southern California Gas Company, October 7, 2019 (Not In A Proceeding) if the Motion is not Granted to Quash Portion of the Subpoena to Produce Access to Certain Materials in Accounting Databases and to Stay Compliance Until the May 29<sup>th</sup> Completion of Software Solution to Exclude Those Protected Materials in the Databases (Not In A Proceeding) submitted on May 20, 2020. SoCalGas originally submitted this motion on May 20, 2020 with redacted declarations. The ALJ ordered SoCalGas to provide confidential electronic versions of the declarations to the Commission and Cal Advocates. SoCalGas elected to instead file a "substituted" version of the motion on May 22, 2020.

<sup>23</sup> Public Advocates Office Motion to Find Southern California Gas Company in Contempt of this Commission in Violation of Commission Rule 1.1 for Failure to Comply with a Commission Subpoena Issued May 5, 2020, and Fined for Those Violations From the Effective Date of the Subpoena (Not In A Proceeding) submitted on June 23, 2020.

before SoCalGas' motion to quash the subpoena, (3) that if the Cal Advocates' June 23, 2020 motion for contempt and sanctions was to be considered, then further procedural safeguards would be required under due process rights, and (4) the motion failed on its merits.<sup>24</sup>

On July 10, 2020, Cal Advocates submitted a reply addressing SoCalGas' arguments.<sup>25</sup>

In resolving SoCalGas' two May 22, 2020 motions related to the May 5, 2020 subpoena (the motion to quash/stay and the motion to supplement), this Resolution also addresses Cal Advocates' June 23, 2020 motion for contempt and sanctions. In addition, and as already stated above, this Resolution resolves SoCalGas' December 2, 2019 motion for reconsideration/appeal of the November 1, 2019 ALJ ruling.

All these requests for Commission action are reviewed together for reasons of administrative efficiency: all four motions address information sought by either DR No. CalAdvocates-SC-SCG-2019-05 or the May 5, 2020 subpoena; and all four motions rely on arguments related to the scope of Cal Advocates' statutory authority to engage in discovery of information from SoCalGas under the Pub. Util. Code and the application of the First Amendment right to association and procedural due process rights to protect SoCalGas from disclosure of shareholder-related information sought by Cal Advocates.

## **DISCUSSION**

### **1. Commission Staff's Statutory Right to Obtain Information to Exercise its Regulatory Oversight Over California's Investor-Owned Utilities**

There is clear statutory authority granting Commission staff the right to access the information at issue in DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 subpoena. The Commission, as a constitutionally-established state agency, is tasked with regulating public utilities under its jurisdiction.<sup>26</sup> The Pub.

<sup>24</sup> Southern California Gas Company's (U 904 G) Response to Public Advocates Office's Motion to find Southern California Gas Company in Contempt of this Commission in Violation of Commission Rule 1.1 for Failure to Comply with a Commission Subpoena Issued May 5, 2020, and Fined for those Violations from the Effective Date of the Subpoena (Not ~~in a~~ In A Proceeding) submitted on July 2, 2020.

<sup>25</sup> Public Advocates Office Reply to Southern California Gas Company's Response to Motion for Findings of Contempt and Fines for the Utility's Failure to Comply with a Commission Subpoena Issued May 5, 2020, submitted on July 10, 2020.

<sup>26</sup> Cal. Const., art. XII.

Util. Code grants broad authority to Commission staff to inspect the books and records of investor-owned utilities. The Pub. Util. Code states:

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.<sup>27</sup>

These broad powers apply:

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>28</sup>

This authority applies to all Commission staff without limitation, including Cal Advocates.

In addition to this statutory authorization for all Commission staff, an additional statutory provision allows Cal Advocates to issue subpoenas and data requests to regulated utilities.

<sup>27</sup> Pub. Util. Code § 314(a).

<sup>28</sup> Pub. Util. Code § 314(b).

The office [Cal Advocates] 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>29</sup>

The statutory scheme also recognizes that information provided to the Commission staff by utilities might sometimes involve sensitive and confidential material. Section 583 of the Pub. Util. Code provides ample protection for such information.<sup>30</sup> Further, General Order 66-D provides a process for submitting confidential information to the Commission staff. Information collected pursuant to a books and record request is used as part of the staff's internal review process and, if properly designated as confidential by utilities, will not be publicly disclosed until a process is followed where the Commission as a body determines that the information should be open to public inspection.<sup>31</sup>

These statutory provisions have been part of the regulatory scheme since 1951 and in similar form since 1911. These provisions represent a clear legislative determination that the exercise of the power to review material by the Commission staff, including Cal Advocates, is an integral part of California's scheme to regulate investor-owned public utilities. [In response to unique concerns raised by SoCalGas regarding protecting confidential information remotely available to Cal Advocates while reviewing its "live" SAP database, we direct Cal Advocates to provide a list to SoCalGas of the documents it seeks to print or copy from the SAP database and these documents will be treated as confidential for 20 days from the date of Cal Advocates' request to copy or print. Thereafter, documents that Cal Advocates requested to copy or print from the SAP database will only remain confidential if specifically designated as such by SoCalGas in accordance with the provisions of Pub. Util. Code § 583 and General Order 66-D.](#)

~~We~~ [For these reasons, we](#) find that, under the authority provided by the Pub. Util. Code, Cal Advocates is entitled to the information sought in DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 subpoena. We now address

<sup>29</sup> Pub. Util. Code § 309.5(e).

<sup>30</sup> Pub. Util. Code § 583.

<sup>31</sup> Ibid.

SoCalGas' argument that Cal Advocates' statutory authority is limited by SoCalGas' First Amendment and due process rights.

**2. SoCalGas' December 2, 2019 Motion for Reconsideration/Appeal of the November 1, 2019 ALJ Ruling to the Full Commission**

**a. First Amendment Privilege**

In SoCalGas' December 2, 2019 motion for reconsideration/appeal of the November 1, 2019 ALJ ruling directing it to respond to DR No.

CalAdvocates-SC-SCG-2019-05, SoCalGas argues that the Commission staff's statutory right to obtain information from a regulated utility does not apply because the DR, which seeks information about the utility's, its affiliates', or its contractors' activities taking positions on decarbonization, jeopardizes SoCalGas' First Amendment rights to association. SoCalGas makes the argument that the utility's ability to freely associate with others for political expression and to petition the government for political redress would be chilled if it provided the requested shareholder-related information to its regulator using normal procedures (a data request) as authorized by existing statutory provisions.

SoCalGas makes similar arguments in its May 22, 2020 motions opposing the May 5, 2020 subpoena seeking access to SoCalGas' accounting database. We address all these motions below.

We find that SoCalGas' arguments pertaining to the First Amendment lack merit. The First Amendment to the U.S. Constitution protects "persons" from government restrictions on speech, the right to assemble, and the right to petition the government for redress of grievances.<sup>32</sup> The First Amendment applies to the states, such as California, and state entities, such as the Commission, through the Fourteenth Amendment to the U.S. Constitution.<sup>33</sup> Under current case law, these protections apply to private organizations and corporations.<sup>34</sup> These rights are also contained in the California Constitution.<sup>35</sup> SoCalGas enjoys the same First Amendment rights as any other person or entity. Its status as a regulated public utility does not impair or lessen these rights.<sup>36</sup>

However, the right to associate for political expression is not absolute. If an action amounts to an infringement it may, nevertheless, "be justified by

<sup>32</sup> U.S. Const. amends I., XIV.

<sup>33</sup> Cent. Hudson Gas & Elec. Corp. v. Public Serv. Com. (1980) 447 U.S. 557, 561.

<sup>34</sup> Citizens United v. FEC (2010) 558 U.S. 310, 342 (Citizens United).

<sup>35</sup> Cal. Const., art. I, §§ 2(a), 3(a).

<sup>36</sup> Pac. Gas & Elec. Co. v. Public Utilities Com. (1986) 475 U.S. 1, 17; see also Pac. Gas & Elec. Co. v. Public Utilities Com. (2000) 85 Cal.App.4<sup>th</sup> 86, 93.

regulations adopted to serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms.”<sup>37</sup>

Courts evaluate First Amendment privilege claims in two steps. First, the party asserting the privilege to block disclosure of materials must make a showing of arguable First Amendment infringement,<sup>38</sup> which can be intentional or indirect.<sup>39</sup> If this showing is made, the burden shifts to the government to demonstrate that the information sought is rationally related to a compelling state interest.<sup>40</sup> The Commission’s analysis of SoCalGas’ alleged infringement and the existence of a compelling state interest follow.

i. **SoCalGas fails to establish that its First Amendment rights will be infringed by complying with Cal Advocates’ Data Request, DR No. CalAdvocates-SC-SCG-2019-05**

We first review whether SoCalGas made a showing of First Amendment infringement. In its December 2, 2019 motion for reconsideration/appeal, SoCalGas argues that DR No. CalAdvocates-SC-SCG-2019-05 seeks information about its political activity and, in doing so, chills its First Amendment rights. SoCalGas points out, and we agree, that the DR requests information on the topics of how SoCalGas funds its decarbonization campaign.<sup>41</sup> In support of its infringement claim, SoCalGas relies on a declaration from Sharon Tomkins, SoCalGas’ Vice President of Strategy and Engagement and Chief Environmental Officer, stating that she would be less likely to engage in certain communications and contracts if required to produce the requested information and stating her belief that other entities would be less likely to associate with SoCalGas if information about SoCalGas’ political efforts are disclosed to the Commission.<sup>42</sup> SoCalGas submitted additional declarations from private organizations specializing in government relations and public affairs, outside of SoCalGas,

<sup>37</sup> Roberts v. Jaycees (1984) 468 U.S. 609, 623 (Roberts).

<sup>38</sup> Perry v. Schwarzenegger (9th Cir. 2010) 591 F.3d 1147, 1160 (Perry).

<sup>39</sup> National Assn. for Advancement of Colored People v. Ala. ex rel. Patterson (1958) 357 U.S. 449, 461-62 (NAACP).

<sup>40</sup> Perry, supra, 591 F.3d at p. 1161.

<sup>41</sup> The May 5, 2020 subpoena contains a broader request that nevertheless focuses on determining, by way of partial example, what accounts are used to track shareholder-funded activity, what payments are made from those accounts, and what invoices were submitted in support of those payments.

<sup>42</sup> December 2, 2019 Motion for Reconsideration/Appeal, Declaration 3, ¶¶ 8-10.

including statements that disclosure to the Commission would dissuade them from communicating or contracting with SoCalGas.<sup>43</sup>

Meeting the initial showing of First Amendment infringement requires a showing that goes beyond a simplistic assertion that disclosure alone chills association. An organization must make a concrete showing that disclosure “is itself inherently damaging to the organization or will incite other consequences that objectively could dissuade persons from affiliating with the organization.”<sup>44</sup> The initial showing has been established where, for example, the state of Alabama sought the National Association for the Advancement of Colored People’s (NAACP’s) membership list during the civil rights movement.<sup>45</sup> The NAACP proved that this disclosure would subject its members to economic reprisals as well as threats of physical coercion.<sup>46</sup> On the other hand, if the threat to constitutional rights is not clearly demonstrated, there is no need to consider the state agency’s compelling interest.<sup>47</sup>

SoCalGas assertion that its First Amendment rights to association were or will be chilled by DR No. CalAdvocates-SC-SCG-2019-05 seeking documents about its decarbonization campaign is unconvincing. Although its declarations attempt to link the disclosure to the Commission of the political activity with repercussions — SoCalGas contends that if it responds to these DRs, it will discourage certain communications and contracts with outside entities<sup>48</sup> — these contentions are primarily hypothetical. Such threatened harm in communications and partnerships falls short of the palpable fear of harassment and retaliation in recognized instances of First Amendment infringement, such as that in NAACP.<sup>49</sup>

We find no infringement on SoCalGas’ First Amendment rights by disclosing to the Commission, including Cal Advocates, responses to DR No.

<sup>43</sup> December 2, 2019 Motion for Reconsideration/Appeal, Declarations 4, 5, 6.

<sup>44</sup> *Dole v. Local Union 375, Plumbers Int’l Union* (9th Cir. 1990) 921 F.2d 969, 973-974 (Dole).

<sup>45</sup> NAACP, *supra*, 357 U.S. at p. 462.

<sup>46</sup> *Ibid.*

<sup>47</sup> In *McLaughlin*, a court rejected a union’s attempt to block a Labor Management Reporting and Disclosure Act subpoena by submitting a declaration containing “argument – not facts – concerning the impact of an unrestricted administrative review” of meeting records. (*McLaughlin v. Service Employees Union, Local 208* (9th Cir. 1989) 888 F.2d 170, 175 (*McLaughlin*)). Similarly, in *Dole v. Local Union 375*, the court rejected claim that disclosing information about union’s operating fund, alone, would chill First Amendment rights. (*Dole, supra*, 921 F.2d at pp. 973-74.)

<sup>48</sup> SoCalGas’s December 2, 2019 Motion for Reconsideration/Appeal, Declaration 3, ¶¶ 8-10 and Declarations 4 - 6.

<sup>49</sup> NAACP, *supra*, 357 U.S. at p. 462.

CalAdvocates-SC-SCG-2019-05 seeking documents about its decarbonization campaign.

- ii. **Even if SoCalGas established the initial showing of First Amendment infringement, a compelling government interest exists in disclosure of this information to Cal Advocates**

In its December 2, 2019 motion for reconsideration/appeal, SoCalGas claims that because DR No. CalAdvocates-SC-SCG-2019-05 seeks information about political activities and activities that are “100% shareholder-funded,” the information does not need to be disclosed because such activities are not subject to Cal Advocates’ oversight. As shown above in this Resolution, this position advanced by SoCalGas has not met the threshold showing of First Amendment infringement. The Pub. Util. Code grants broad authority to Commission staff, including Cal Advocates, to inspect the books and records of investor-owned utilities. Therefore, even if SoCalGas had met the threshold showing, the compelling government interest in obtaining this data outweighs the potential infringement on First Amendment rights

Legal doctrine also permits government action that indirectly might impair First Amendment rights when the government has a compelling governmental interest, also described as a proper interest in fulfilling its mandate.<sup>50</sup> We find a compelling government interest here, Cal Advocates’ requests for information about SoCalGas’ decarbonization campaign are consistent with its broad

statutory authority to inspect the books and records of investor-owned utilities in furtherance of its proper interest in fulfilling the Commission’s mandate to regulate and oversee utilities.

After establishing a compelling governmental interest, the courts have applied a two-step analysis for evaluating whether government actions that arguably infringe on First Amendment rights may lawfully proceed as a compelling governmental interest. First, the action must be “rationally related to a compelling governmental interest” and second, the action must be narrowly tailored, such “that the least restrictive means of obtaining the desired information” have been used.<sup>51</sup>

<sup>50</sup> See e.g., Roberts, supra, 468 U.S. at p. 623 (finding the state’s interest in “eradicating discrimination against female citizens” justified any infringement of the associational freedoms in requiring all-male club to admit women).

<sup>51</sup> Perry, supra, 591 F.3d at p. 1161.



Cal Advocates' discovery pursuant to DR No. CalAdvocates-SC-SCG-2019-05 satisfies these two requirements.

iii. **DR No. CalAdvocates-SC-SCG-2019-05 is rationally related to a compelling government interest**

We now review the first step of the analysis for evaluating the constitutionality of the Cal Advocate's DR: whether the DR is rationally related to a compelling interest. In its December 2, 2019 motion for reconsideration/appeal, SoCalGas does not refute Cal Advocates' compelling interest in the data request beyond a broad assertion that, because its political activities are "100% shareholder-funded," they are not subject to Cal Advocates' oversight. SoCalGas' position is incorrect.

It is well-settled that state regulatory agencies, such as the Commission, can request information to fulfill their regulatory mandate, even where doing so may potentially impact First Amendment rights.<sup>52</sup> Indeed, this DR arises from the Commission's mandate to regulate investor-owned public utilities. This mandate includes ensuring that consumers have safe and reliable utility service at reasonable rates, protecting against fraud, and promoting the health of California's economy. Within the Commission, Cal Advocates is statutorily authorized 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

<sup>52</sup> See e.g., *Citizens United* (2010) 558 U.S. 310, 369 (upholding federal funding disclosure and disclaimer rules because the "public has an interest in knowing who is speaking about a candidate shortly before the election."); *Ams. for Prosperity Found. v. Becerra* (Prosperity Found.) (9th Cir. 2018) 903 F.3d 1000, 1004 (holding that the California Attorney General's requirement that regulated charities disclose information about large donors withstood exacting scrutiny because of the important state interest in regulating charitable fraud); *Dole*, supra, 921 F.2d at pp. 973-74 (upholding federal subpoena for union financial records authorized by statute over objections that the disclosure violated the union's free association rights); *United States v. Comley* (1st Cir. 1989) 890 F.2d 539 (upholding an federal investigation subpoena seeking tape recordings and transcripts of telephone conversation and rejecting arguments that disclosure violated right to freedom of association rights); *St. German v. United States* (2d Cir. 1988) 840 F.2d 1087, 1094 (upholding IRS third-party summons in tax fraud investigation over right of free association objections); *United States v. Duke Energy Corp.* (M.D.N.C. 2003) 218 F.R.D. 468, 473 (allowing discovery request for energy company's communications with trade association despite their potential to chill First Amendment rights).

design matters, the office shall primarily consider the interests of residential and small commercial customers.<sup>53</sup>

The briefing materials submitted by Cal Advocates show that the information sought by DR No. CalAdvocates-SC-SCG-2019-05 is necessary for Cal Advocates to evaluate the potential use of ratepayer funds for lobbying activity. Cal Advocates issued the DR after discovering that SoCalGas might have used ratepayer funds to support lobbying activity. It is well-established that regulated utilities may not use ratepayer funds for advocacy-related activities that are political or do not otherwise benefit ratepayers.<sup>54</sup> Regulated utilities carry the burden of demonstrating that their activities are eligible for cost recovery.<sup>55</sup> A statement of counsel for SoCalGas describing certain activities as “100% shareholder-funded” does not, in and of itself, deprive Cal Advocates of its statutory authority to review and make its own determinations regarding financial information from a regulated utility.<sup>56</sup>

As such, we find Cal Advocates’ DR No. CalAdvocates-SC-SCG-2019-05 is rationally related to a compelling government interest.

iv. **DR No. CalAdvocates-SC-SCG-2019-05 is narrowly tailored to that compelling government interest**

We now turn to the second steps of the analysis for evaluating the constitutionality of Cal Advocates DR No. CalAdvocates-SC-SCG-2019-05: whether the DR is narrowly tailored to a compelling governmental interest. SoCalGas again relies on its maxim that activities involving “100% shareholder-funded” activities are off limits to the Commission, including Cal Advocates, to assert that this DR is not narrowly tailored. This argument suggests, incorrectly, that a utility may unilaterally designate certain topics off-limits to Commission oversight.

<sup>53</sup> Pub. Util. Code § 309.5(a).

<sup>54</sup> Southern California Edison Co., 2012 Cal. PUC LEXIS 555, \*765 (D.12-11-051) (finding that membership subscriptions to organizations that advance tax reduction policies are inherently political and funding should not be permitted under rate recovery); Southern California Gas Co., 1993 Cal. PUC LEXIS 728, \*103 (D.93-12-043) (finding that “ratepayers should not have to bear the costs of public relations efforts in this area, which according to SoCalGas, are designed primarily to increase load by promoting natural gas use to business and government leaders”).

<sup>55</sup> Pac. Gas & Elec. Co., 2007 Cal. PUC LEXIS 173, \*66 (D.07-03-011) (requiring utility to keep records showing that program costs include funding for lobbying activities).

<sup>56</sup> December 2, 2019 SoCalGas Motion for Reconsideration/Appeal, Declaration of Johnny Q. Tran, Senior Counsel, Regulatory, SoCalGas.

In circumstances where the First Amendment privilege is involved, a government entity must ensure that its requests are narrowly tailored to achieve a compelling government interest. This means that the government request should not place a burden on more of the First Amendment right of associational privileges than necessary to achieve its interest.<sup>57</sup>

Cal Advocates' DR is straightforward and attempts to clearly define the information needed for its inquiry. The scope of the DR is consistent with numerous disclosure requirements upheld by other courts. For example, in *Duke Energy*, the court allowed a government request for a utility company's communications with a third-party, even though the disclosure infringed on First Amendment associational rights, because it was relevant to the subject matter of the litigation.<sup>58</sup> DR No. CalAdvocates-SC-SCG-2019-05 is narrowly tailored to seek specific contracts and information about SoCalGas' potential use of ratepayer funds for lobbying activities. Indeed, it arose as part of an inquiry that escalated after SoCalGas did not disclose its affiliation with an entity that sought party status in a rulemaking proceeding before the Commission.<sup>59</sup> SoCalGas refused to provide information about its affiliation, thereby leading to this series of data requests by Cal Advocates.

The Commission has the right to inspect all records necessary as part of its general supervisory authority over all regulated utilities. Statements asserting the conclusion that certain activities are "exclusively shareholder funded" do not deprive the Commission of its statutorily granted authority to review a utility's books and records to ensure compliance with applicable regulatory laws and

<sup>57</sup> *United States v. Baugh* (9th Cir. 1999) 187 F.3d 1037, 1043. See also *Frisby v. Schultz* (1988) 487 U.S. 474, 485 (a regulation is "narrowly tailored if it targets and eliminates no more than the exact source of the 'evil' it seeks to remedy"); *City of Cincinnati v. Discovery Network, Inc.* (1993) 507 U.S. 410, 417 n. 13. (a statute or regulation "need not be the least restrictive means of furthering [the government's] interests, but the restriction may not burden substantially more speech than necessary to further the interests").

<sup>58</sup> *Duke Energy*, supra, 218 F.R.D. at p. 473 (allowing discovery request for energy company's communications with trade association despite their potential to chill First Amendment rights). See also *Prosperity Found.*, 903 F.3d 1000, 1011 (finding state interest in regulating charities was sufficient to allow Attorney General to require disclosure of sensitive donor information despite potential to infringe First Amendment rights); *Dole*, supra, 921 F.2d at pp. 973-74 (upholding federal subpoena for union financial records despite possible infringement on First Amendment associational rights); *Comley* (1st Cir 1989) 890 F.2d 539 (allowing disclosure of transcripts and tape recordings despite possibility of infringing on First Amendment associational rights); *St. German v. United States* (2d Cir. 1988) 840 F.2d 1087, 1094 (allowing summons in tax fraud investigation despite possible infringement on First Amendment associational rights).

<sup>59</sup> R.19-01-011, Order Instituting Rulemaking Regarding Building Decarbonization (January 31, 2019).

standards. Moreover, SoCalGas' argument is circular and begs the question, since SoCalGas has not proven, but merely asserts, that the funds in question are truly separate. Taken to the logical conclusion, a utility might opt out of regulation at any time, at its own discretion, based on its self-serving description of its activities. SoCalGas' position that it may curtail Commission staff's ability to conduct its regulatory function of ensuring proper use of ratepayer funds – by making unsupported assertions - is fundamentally inconsistent with its status as a regulated public utility.

As such, we find Cal Advocates' DR No. CalAdvocates-SC-SCG-2019-05 is narrowly tailored, such that the least restrictive means of obtaining the desired information has been used.

#### b. Due Process Rights

SoCalGas alleges that its due process rights have been violated because there are no "procedural guardrails [as the discovery dispute falls outside of a formal proceeding] in place to protect parties against the excesses of the unlimited discovery authority" of Cal Advocates. This is not correct.

Procedural due process applies when a government function impacts certain protected interests centered around deprivation of liberty or property.<sup>60</sup> Regulatory commissions have flexibility in fashioning the form of due process provided in exercising their regulatory responsibilities.<sup>61</sup> Here, the Commission is deciding whether SoCalGas has presented sufficient justification to avoid the application of state statutes that specifically require regulated utilities to provide information to Commission staff (and specifically to Cal Advocates). The process involved has been extensive.

SoCalGas and Cal Advocates have presented their views on these questions in extensive pleadings and responsive rounds of pleadings, as described in this

<sup>60</sup> *Morrissey v. Brewer* (1982) 408 U.S. 471, 481. "The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property. When protected interests are implicated, the right to some kind of prior hearing is paramount. But the range of interests protected by procedural due process is not infinite." *Board of Regents v. Roth* (1972) 408 U.S. 564, 569–71.

<sup>61</sup> *Wood v. Public Utilities Commission* (1971) 4 Cal.3d 288, 292 (if a proceeding is quasi-legislative, as opposed to quasi-judicial, there are no vested interests being adjudicated, and therefore, there is no due process right to a hearing). See [United States v. Florida East Coast R. Co.](#) (1973) 410 U.S. 22; [Western Oil & Gas Ass'n v. Air Resources Bd.](#) (1984) 37 Cal.3d 502 (an administrative agency's proceedings in which guidelines, regulations, and rules for a class of public utilities are developed have consistently been considered quasi-legislative proceedings).

Resolution. SoCalGas has not identified any right or claim at issue here that would require any more specific form of process or any aspect of the process thus far relied upon by the Commission to receive pleadings that was insufficient.

To briefly review the process involved, this dispute started when, in a formal Commission proceeding, R.19-01-011, a potential financial relationship between SoCalGas and C4BES, the entity seeking party status in the proceeding, came to light in a pleading filed by Sierra Club. Based on the record of that proceeding, there was no transparency as to the source of C4BES' funding, as either shareholder or ratepayer, or the legitimacy of Sierra Club's claims about ratepayers funding C4BES. Cal Advocates then submitted a series of discreet DRs outside of any proceeding, as permitted by statute, which led to the DR in question, DR No. CalAdvocates-SC-SCG-2019-05. The DRs were focused to get to the root of the issue at hand. Cal Advocates exercised its oversight as allowed under California law and would have been entitled to propound these DRs outside of a proceeding even if these issues had not been raised by Sierra Club in R.19-01-011.

However, after encountering multiple instances where, despite frequent discussions, SoCalGas simply did not provide the specific information needed to get to the root of its inquiry, Cal Advocates invoked Pub. Util. Code § 309.5(e) which initiated a procedural process to address this DR dispute. Pub. Util. Code § 309.5(e) allows Cal Advocates to compel "production or disclosure of any information it deems necessary to perform its duties from any entity regulated by the commission" and to bring any resulting discovery disputes to the President of the Commission, if the discovery dispute is occurring outside of any proceeding.

Soon after the President's receipt of Cal Advocates' motion to compel on October 7, 2019,<sup>62</sup> the President referred this matter to the Chief Administrative Law Judge to provide for a process and procedural path to address the dispute. On October 29, 2019, the Chief Administrative Law Judge assigned an ALJ to preside over the dispute and provided the parties with certain procedural rules to follow.

At each step of this process and prior to any decision or ruling, SoCalGas had an opportunity to submit responses to Cal Advocates' motions, submit motions

<sup>62</sup> Cal Advocates' Motion to Compel Responses from Southern California Gas Company to Question 8 of Data Request CALADVOCATES-SC-SCG-2019-05 (Not In A Proceeding) submitted October 7, 2019.

itself, and even further, submit motions for the full Commission to act on its requests, such as its December 2, 2019 motion for reconsideration/appeal of the November 1, 2019 ALJ ruling, which is one of the bases of this Resolution. Except regarding the Commission's consideration of contempt and sanctions (which are not resolved here), SoCalGas did not request evidentiary hearings and did not contest relying on written pleadings to resolve the issues set forth herein.

In addition, Cal Advocates exercised its statutory oversight discreetly in initial requests and in all cases focused on the information it needed to perform its statutory duties. SoCalGas had multiple opportunities and continues to have opportunities to challenge these discovery requests. Further, as a result of SoCalGas' repeated submissions challenging Cal Advocates' statutory authority, a simple request for information has turned into an extensive inquiry. Delays in the release of information often frustrate this agency's regulatory purposes. In this case, SoCalGas has had more, not less, due process than is necessary under the law.

Moreover, SoCalGas bases its claim of a violation of due process on a false premise. SoCalGas' claim that a certain amount of process is due rests on its assertion that requests for information made by Commission staff amount to "excesses of ... unlimited discovery authority" that are so significant that they require constitutional protection.<sup>63</sup> This is a rhetorical complaint that attempts to imply that some harm occurs when regulatory staff gather information to assist them in performing their regulatory duties. That is not the case. Cal Advocates has broad discovery rights, conferred by statute, because its staff are regulators. As a regulated public utility, SoCalGas is guaranteed certain privileges that are subject to the oversight of the Commission and its staff. Cal Advocates rightfully exercised that oversight in the manner allowed by statute, the U.S. Constitution, and the California Constitution. The exercise of clear statutory authority is not an improper "excess" that needs to be constrained.

We therefore find that Cal Advocates' request for information, as set forth in DR No. CalAdvocates-SC-SCG-2019-05, and the process relied upon by the Commission to resolve this discovery dispute outside of a proceeding, do not violate SoCalGas' procedural due process rights.

<sup>63</sup> 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) submitted on December 2, 2019 at 22.

Therefore, SoCalGas' December 2, 2019 motion for reconsideration/appeal of the November 1, 2019 ALJ ruling is denied.

**3. SoCalGas' May 22, 2020 Motions to Quash Portions of/Stay the May 5, 2020 Subpoena and Motion to Supplement Record and Request for Expedited Decision by the Full Commission**

This discovery dispute continued into 2020 and centered around Cal Advocates' May 5, 2020 subpoena. The May 5, 2020 subpoena, which related to the same information as DR CalAdvocates-TB-SCG-2020-03, required SoCalGas to give Cal Advocates access to its accounting database. In response to the subpoena, on May 22, 2020, SoCalGas concurrently submitted two motions, a motion to quash portions of and stay the May 5, 2020 subpoena, and a motion to supplement the record of its previously filed December 2, 2019 motion for reconsideration/appeal. In the May 22, 2020 motion to quash/stay, SoCalGas made several requests. We address each of these requests below.

First, SoCalGas requested a stay of complying with the subpoena until May 29, 2020, to complete software solutions to bar Cal Advocates' access to what it deemed protected materials and to quash the subpoena, asserting the same arguments previously presented, that Cal Advocates' statutory discovery rights were limited by the First Amendment and by laws governing protected materials. SoCalGas defined protected materials as documents and information protected under attorney-client privilege and attorney work-product doctrine.

The crux of SoCalGas' May 22, 2020 motion to stay is to obtain additional time to place a firewall to limit Cal Advocates' access to certain "protected" records in its database. Cal Advocates gave SoCalGas the additional time it requested to create that firewall. The May 22, 2020 motion to stay is deemed moot since the time requested has passed and relief requested, an opportunity to provide screening to remote users of the accounting systems Cal Advocates requested to review, has occurred.

Second, SoCalGas requests to quash the subpoena to exclude information and records based on its First Amendment privilege and other privileges. We find that, to the extent the information and records relate to Cal Advocates' inquiry into specific contracts and information about SoCalGas' potential use of ratepayer funds for political activities, it was improper for SoCalGas to block access to those records. Cal Advocates has statutory authority to access those records. Furthermore, as laid out above, SoCalGas has failed to demonstrate its First Amendment rights have been infringed, and even assuming, arguendo, it

made such an initial showing, the request for access to accounting information maintained by SoCalGas is in furtherance of Commission staff review of potential use of ratepayer funds for political activities and is, therefore, designed to allow staff to accomplish a compelling government interest. In addition, SoCalGas may not unilaterally designate information as being not subject to inspection by Commission staff by asserting that the information relates to activities that are shareholder, not ratepayer, funded.

Therefore, SoCalGas' May 22, 2020 motion to quash is denied. The other privileges asserted by SoCalGas in this May 22, 2020 motion to prevent disclosure of the information to Cal Advocates, including the attorney-client and attorney work-product privileges, are addressed below.

Lastly, we address the remaining May 22, 2020 motion. In the May 22, 2020 motion to supplement the record of the December 2, 2019 motion for reconsideration/appeal, SoCalGas requested permission to supplement its December 2, 2019 motion and an expedited resolution of that motion in the event its motion to quash is denied. This May 22, 2020 motion to supplement the record of the December 2, 2019 motion for reconsideration/appeal is granted. Furthermore, because we resolve the December 2, 2019 motion for reconsideration/appeal herein, SoCalGas' request for expedited consideration is moot.

#### 4. Attorney-Client or Attorney Work Product Privileges

To the extent SoCalGas seeks to assert attorney-client or attorney work product privileges, it must prepare and provide to Cal Advocates a privilege log listing the information withheld and comply with all requests from Cal Advocates to provide access to the portions of the documents or other materials not subject to these privileges. Specifically, SoCalGas must follow the below directives when asserting these privileges:

- (1) SoCalGas must provide a privilege log to Cal Advocates concurrent with the production of documents.
- (2) SoCalGas must provide sufficient information in any privilege log to enable Cal Advocates to evaluate the merits of the privilege claim. At a minimum, the privilege log must include the following: (a) summary description of the document (b) date of the document (c) the name of each author or preparer (d) the name of each person who received the



document (e) legal basis for withholding the document, and (f) the document number.

(3) If providing a privilege log, SoCalGas must concurrently provide Cal Advocates with a declaration under penalty of perjury by a SoCalGas attorney that the attorney has reviewed the materials associated with the privilege claim and that such privilege claim has a good faith basis in the law, and the specific legal basis, with a citation, for withholding the document.

(4) Pursuant to Pub. Util. Code § 581, SoCalGas must provide the information in the form and detail requested by Cal Advocates.

**5. Cal Advocates' June 23, 2020 Motion for the Commission to Find SoCalGas in Contempt and to Levy a Fine**

This Resolution does not resolve Cal Advocates' June 23, 2020 motion for the Commission to find SoCalGas in contempt and to levy a fine. This Resolution only addresses those claims that may be resolved as a matter of law based upon the submitted pleadings. This Resolution, and more specifically, the underlying process, is not the proper means for the Commission to consider such fines and contempt.

This does not mean that Cal Advocates' claims must fall by the wayside. As described in detail above, a regulated utility's obligation to provide the Commission's staff with requested information is a significant element of the regulatory framework for utilities in California. If a utility does not comply with the requests from the Commission's staff or more formal injunctions from the Commission, such as subpoenas, it is not unreasonable for the utility to expect to be subject to sanctions up to and including monetary penalties. Indeed, Cal Advocates cites to past instances where the Commission has applied such sanctions to situations similar to the dispute presented here.<sup>64</sup>

As described herein and set forth in Pub. Util. Code § 309.5, Cal Advocates is an independent division within the Commission that advocates on behalf of the interests of residential and small commercial customers of public utilities. The Pub. Util. Code grants Cal Advocates broad authority to compel any entity regulated by the Commission to disclose any information it deems necessary in furtherance of those duties. Accordingly, Cal Advocates' inquiry into whether SoCalGas' funding of its activities relating to decarbonization was proper, and

<sup>64</sup> See Public Advocates Office Motion to Find Southern California Gas Company in Contempt of this Commission in Violation of Commission Rule 1.1 for Failure to Comply with a Commission Subpoena Issued May 5, 2020, and Fined for Those Violations From the Effective Date of the Subpoena (Not In A Proceeding) submitted on June 23, 2020 at 16-22.

this ongoing inquiry can also include the question of whether SoCalGas' responses to discovery requests were proper and met appropriate legal requirements.

~~Any~~The Commission may conduct a further investigation of SoCalGas' conduct ~~will be referred to an~~through the appropriate enforcement division within the Commission. ~~In its referral and, based on any resulting recommendation by such enforcement division, the Commission may elect to initiate an order instituting investigation. If so,~~ Cal Advocates may decide to participate in such a proceeding and include instances where it found SoCalGas improperly responded or failed to timely provide information in response to Cal Advocates' discovery requests and ~~should be penalized. The appropriate enforcement division then will be tasked with investigating the alleged violations and recommending fines and penalties, should the Director of that division deem it appropriate~~recommend penalties.

## CONCLUSION

Pursuant to this Resolution, SoCalGas shall provide within 30 days from the effective date, with exceptions only based on attorney-client and attorney work product privileges, the information Cal Advocates has requested in DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 subpoena. The Commission may at another time consider if sanctions or penalties are appropriate, after undertaking a thorough and comprehensive review of all the facts regarding SoCalGas' activities and its responses to Cal Advocates' discovery requests.

## COMMENTS

Pub. Util. Code § 311(g)(1) requires that a draft resolution be served on all parties and be subject to a public review and comment period of 30 days or more, prior to a vote of the Commission on the resolution.<sup>65</sup>

The 30-day comment period was provided.

<sup>65</sup> Pub. Util. Code § 311 (g) states, in relevant part, as follows: "Before voting on any commission decision not subject to subdivision (d), the decision shall be served on parties and subject to at least 30 days public review and comment. . . . For purposes of this subdivision, 'decision' also includes resolutions, including resolutions on advice letter filings."•

Regarding comments in response to the draft resolution, Rule 14.5 specifies that “Any person may comment on a draft or alternate draft resolution by serving (but not filing) comments on the Commission within 20 days of the date of its notice in the Commission’s Daily Calendar and in accordance with the instructions accompanying the notice.”

Pursuant to Rule 14.5, comments on this draft resolution are due within 20 days of the date notice this draft resolution was posted in the Commission’s Daily Calendar.<sup>66</sup>

Regarding service of a draft resolution, Rule 14.2 (d) further specifies that, a draft resolution shall not be filed with the Commission but shall be served on other persons as the Commission deems appropriate.

The Commission served this draft resolution on the attached service list. Parties are directed to serve their comments regarding this draft Resolution, which resolves a discovery dispute ~~outside~~ “outside” of a proceeding,†” on Administrative Law Judge Regina DeAngelis on the attached service list, and on the President of the Commission. Service shall be performed in accordance with the Commission’s Rules of Practice and Procedure. Service shall be performed by electronic mail only.

[SoCalGas, Cal Advocates, and Earthjustice jointly with Sierra Club filed comments to the draft resolution on November 19, 2020. Based on these comments, the following modifications were made to the draft resolution consistent with the law:](#)

[In response to comments by SoCalGas, the Commission’s process for initiating a possible investigation into SoCalGas’ discovery practices is clarified.](#)

[In response to comments by Cal Advocates, Sierra Club, and Earthjustice, specific directives are added to the resolution should SoCalGas assert a privilege to protect the disclosure of information or document so that the exchange of information proceeds in an orderly fashion consistent with the law.](#)

[In response to comments by SoCalGas regarding its unique concerns about having sufficient time to designate as confidential the documents and](#)

<sup>66</sup> The Daily Calendar is available on the Commission’s website.

information in the "live" database via remote access, we direct Cal Advocates to provide a list to SoCalGas of the documents that Cal Advocates seeks to print or copy from the SAP database and these documents will be treated as confidential for 20 days from the date of Cal Advocates' request to copy or print. Thereafter, documents that Cal Advocates requested to copy or print from the SAP database will only remain confidential if specifically designated as such by SoCalGas in accordance with the provisions of Pub. Util. Code § 583 and General Order 66-D.

In response to SoCalGas' request that the Commission stay enforcement of at least the portion of the resolution that requires SoCalGas to produce information "protected by its First Amendment rights" while SoCalGas pursues an application for rehearing before the Commission and, if needed, a petition for writ of review with the Court of Appeals, we deny this request. As set forth in Pub. Util. Code § 1735 "An application for rehearing shall not excuse any corporation or person from complying with and obeying any order or decision, or any requirement of any order or decision of the commission theretofore made, or operate in any manner to stay or postpone the enforcement thereof, except in such cases and upon such terms as the commission by order directs."<sup>67</sup> As such, SoCalGas is directed to comply with the discovery requests, as set forth herein.

Lastly, in response to SoCalGas' request that the Commission order Cal Advocates to execute a non-disclosure agreement prior to accessing its SAP database or, in the alternative, enter into a protective order, we deny this request. Existing law and regulations, as discussed herein, provide SoCalGas with sufficient protections for confidential information. To the extent SoCalGas has specific concerns regarding remote access to its "live" SAP database, additional protections are required herein.

The deadline for compliance with this resolution is modified from 15 days to 30 days from the effective date due to the intervening holidays.

~~To be added to the service list of this discovery dispute, send an email to the Administrative Law Judge at [regina.deangelis@cpuc.ca.gov](mailto:regina.deangelis@cpuc.ca.gov).~~

<sup>67</sup> Pub. Util. Code § 1735.

## FINDINGS

1. Pursuant to Pub. Util. Code § 309.5, Cal Advocates is an independent division within the Commission that advocates on behalf of the interests of residential and small commercial customers of public utilities.
2. Cal Advocates may compel any entity regulated by the Commission to disclose any information it deems necessary in furtherance of its duty to represent customers of public utilities and consistent with the rights of Commission staff.
3. Cal Advocates initiated a discovery inquiry outside of a proceeding after discovering that SoCalGas might have used ratepayer funds to support lobbying activity.
4. Regulated utilities, such as SoCalGas, may not use ratepayer funds for advocacy-related activities that are political or do not otherwise benefit ratepayers.
5. SoCalGas' statement describing certain activities as "100% shareholder-funded" does not, in and of itself, deprive Cal Advocates of its statutory authority to obtain, review, and make its own determinations regarding documents and financial information from a regulated utility, such as SoCalGas.
6. The Pub. Util. Code grants broad authority to the Commission to inspect the books and records of investor-owned utilities, such as SoCalGas.
7. The Commission's authority to inspect books and records of investor-owned utilities applies to all Commission staff without limitation, including Cal Advocates.
8. The statutory scheme regarding the Commission's discovery authority recognizes that information provided to the Commission, including Cal Advocates, by utilities might involve sensitive and confidential materials.
9. Pub. Util. Code § 583 and General Order 66-D provide ample protection and processes for utilities to submit confidential information to the Commission, including Cal Advocates, [however, additional protections are adopted here to provide SoCalGas with time to review, and designate as confidential, information and documents sought by Cal Advocates via remote access from the "live" SAP database.](#)
10. The statutory provisions regarding discovery authority in the Pub. Util. Code have been part of the regulatory scheme since 1951 and in similar

form since 1911. As such, these provisions represent a clear legislative determination that the exercise of the authority to review materials by the Commission staff, including Cal Advocates, is an integral part of California's scheme to regulate investor-owned public utilities.

11. SoCalGas may assert attorney-client or attorney work product privileges in response to the information sought by DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 Commission subpoena but it must prepare and provide to Cal Advocates a privilege log listing the information withheld and comply with all requests from Cal Advocates to provide access to the portions of the documents or other materials, including confidential information, not subject to privilege.
12. The First Amendment protects "persons" from government restrictions on speech, the right to assemble, and the right to petition the government for redress of grievances and applies to states and state entities, such as the Commission, through the Fourteenth Amendment.
13. The First Amendment protections apply to private organizations and corporations, such as SoCalGas.
14. Under the First Amendment, SoCalGas' right to associate for political expression is not absolute.
15. Courts evaluate First Amendment privilege claims in two steps. First, the party asserting the privilege to block disclosure of materials must make a showing of arguable First Amendment infringement, which can be intentional or indirect. If this showing is made, the burden shifts to the government entity to demonstrate that the information sought is rationally related to a compelling state interest and narrowly tailored.
16. Meeting the initial threshold of First Amendment infringement requires a showing that goes beyond a simplistic assertion that disclosure alone chills association. An organization must make a concrete showing that disclosure "is itself inherently damaging to the organization or will incite other consequences that objectively could dissuade persons from affiliating with the organization."
17. SoCalGas failed to demonstrate that its First Amendment rights to associate would be chilled, or infringed upon, by responding to Cal Advocates' DR No. CalAdvocates-SC-SCG-2019-05 or the May 5, 2020 subpoena seeking documents and financial information related to 100% shareholder funded activities about its decarbonization campaign.

18. Even if SoCalGas established the initial showing of First Amendment infringement, a compelling government interest exists in fulfilling the Commission's mandate to regulate and oversee utilities in SoCalGas' disclosure of the information requested by DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 subpoena to the Commission.
- 19.
20. Cal Advocates' requests for information from SoCalGas, DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 Commission subpoena, are straightforward, and Cal Advocates attempts to clearly define the information needed for its discovery inquiry.
21. Cal Advocates' requests for information from SoCalGas, DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 Commission subpoena, do not place a burden on more First Amendment rights of associational privileges than necessary to achieve its interest.
22. Cal Advocates' requests for information from SoCalGas, DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 Commission subpoena, are narrowly tailored to achieve a compelling government interest under the First Amendment privilege.
23. Procedural due process applies when a government function impacts certain protected interests centered around deprivation of liberty or property.
24. Regulatory agencies, such as the Commission, have flexibility in fashioning the form of procedural due process provided in exercising their regulatory responsibilities and oversight.
25. Cal Advocates exercised its statutory oversight discreetly in initial requests and in all requests, including DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 Commission subpoena, which focused on the information needed to perform Cal Advocates' regulatory duties set forth in statute.
26. In extensive rounds of pleadings, SoCalGas has had multiple opportunities and continues to have opportunities to challenge Cal Advocates' requests for information set forth in DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 Commission subpoena.
27. No merit exists to SoCalGas' assertion that the Commission did not provided an appropriate level of procedural due process.

28. A significant element of the regulatory framework for utilities in California, such as SoCalGas, is the utility's obligation to provide the Commission and its staff, such as Cal Advocates, with requested information pertaining to regulatory oversight.
29. If a utility, such as SoCalGas, does not comply with the requests for information, such as DR No. CalAdvocates-SC-SCG-2019-05, from the Commission or its staff, including Cal Advocates, or more formal injunctions from the Commission, such as the May 5, 2020 subpoena, it is not unreasonable for the utility to expect to be subject to sanctions up to and including monetary penalties.

**THEREFORE, IT IS ORDERED that:**

1. Southern California Gas Company's December 2, 2019 motion, 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), requesting the full Commission's review of the ALJ's November 1, 2019 ruling based on violations of its constitutional rights and the limits of the Commission's discovery rights under the Public Utilities Code, is denied.
2. Southern California Gas Company's (SoCalGas') December 2, 2019 motion, Motion of Southern California Gas Company's (U 904 G) for Leave to File Under Seal Confidential Versions of Declarations 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~~[In A](#) Proceeding), is granted but SoCalGas must provide access to the unredacted versions of the confidential declarations to the Commission, including its staff, the Public Advocates Office at the California Public Utilities Commission, under existing protections.
3. Southern California Gas Company's (SoCalGas') May 22, 2020 motion, Southern California Gas Company's (U 904 G) Motion to Quash Portion of the Subpoena to Produce Access to Certain Materials in Accounting Databases and to Stay Compliance until the May 29<sup>th</sup> Completion of Software Solution to Exclude those Protected Materials In The Databases (Not In A Proceeding), requesting to quash portions of the May 5, 2020 Commission subpoena that requires SoCalGas to produce certain materials in and access to its accounting databases, is denied and, to the extent the motion requests to stay compliance



with the May 5, 2020 subpoena until May 29, 2020, the motion is deemed moot.

- 4.
5. Southern California Gas Company's May 22, 2020 motion, Southern California Gas Company's (U 904 G) Motion to Supplement the Record and Request for Expedited Decision by the Full Commission on Motion for Reconsideration/Appeal Regarding Administrative Law Judge's Ruling in the Discovery Dispute Between the Public Advocates Office and Southern California Gas Company, October 7, 2019 (Not In A Proceeding) if the Motion is not Granted to Quash Portion of the Subpoena to Produce Access to Certain Materials in Accounting Databases and to Stay Compliance Until the May 29<sup>th</sup> Completion of Software Solution to Exclude Those Protected Materials in the Databases (Not In A Proceeding), is granted.
6. Southern California Gas Company's March 25, 2020 motion, Southern California Gas Company's (U 904 G) Emergency Motion for a Protective Order Staying All Pending and Future Data Requests from the California Public Advocates Office Served Outside of Any Proceeding (Relating to the Building Decarbonization Matter), and Any Motions and Meet and Confers Related Thereto, During California Government Covid-19 Emergency "Safer at Home" Orders, was resolved by the Administrative Law Judge's email of April 6, 2020.
7. The Public Advocates Office at the California Public Utilities Commission's June 23, 2020 motion, Public Advocates Office Motion to Find Southern California Gas Company in Contempt of this Commission in Violation Of Commission Rule 1.1 for Failure to Comply with a Commission Subpoena Issued May 5, 2020, and Fined for Those Violations From the Effective Date of the Subpoena (Not In A Proceeding), requesting that the Commission provide relief in the form of a contempt ruling and the levying of sanctions against Southern California Gas Company, is deferred and may be resubmitted at a later date.
8. The Public Advocates Office at the California Public Utilities Commission's July 9, 2020 motion, Public Advocates Office Motion To Compel Confidential Declarations Submitted In Support Of Southern California Gas Company's December 2, 2019 Motion For Reconsideration Of First Amendment Association Issues And Request For Monetary Fines For The Utility's Intentional Withholding Of This Information; [Proposed] Order, is deemed moot to the extent it requests the disclosure of information already addressed here and, to the extent the

motion requests monetary fines against Southern California Gas Company, the motion is deferred and may be resubmitted at a later date.

9. Southern California Gas Company shall produce the information and documents requested by Public Advocates Office at the California Public Utilities Commission, including all confidential information not otherwise privileged as attorney-client or attorney work product, in DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 Commission subpoena, with any related privilege log, within ~~15~~30 days of the effective date of this Resolution. SoCalGas must follow all of the below directives when asserting privileges:

- (1) SoCalGas must provide a privilege log to Cal Advocates concurrent with the production of documents.
- (2) SoCalGas must provide sufficient information in any privilege log to enable Cal Advocates to evaluate the merits of the privilege claim. At a minimum, the privilege log must include the following: (a) summary description of the document (b) date of the document (c) the name of each author or preparer (d) the name of each person who received the document (e) legal basis for withholding the document, and (f) the document number.
- (3) If providing a privilege log, SoCalGas must concurrently provide Cal Advocates with a declaration under penalty of perjury by a SoCalGas attorney that the attorney has reviewed the materials associated with the privilege claim and that such privilege claim has a good faith basis in the law, and the specific legal basis, with a citation, for withholding the document.
- (4) Pursuant to Pub. Util. Code § 581, SoCalGas must provide the information in the form and detail requested by Cal Advocates.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on \_\_\_\_\_, the following Commissioners voting favorably thereon:

---

Rachel Peterson  
Acting Executive Director

# ~~ATTACHMENT~~

## ~~Service List~~

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

Resolution ALJ-391  
Administrative Law Judge Division  
[Date]

**RESOLUTION**

RESOLUTION ALJ-391 Denies Southern California Gas Company's (SoCalGas') December 2, 2019 motion for reconsideration/appeal of the November 1, 2019 Administrative Law Judge's ruling and denies SoCalGas' May 22, 2020 motion to quash portions of the Commission's May 5, 2020 subpoena; grants SoCalGas' May 22, 2020 motion to supplement its December 2, 2019 motion for reconsideration/appeal; deems moot SoCalGas' May 22, 2020 motion to stay compliance with the May 5, 2020 subpoena until May 29, 2020; defers consideration of the Public Advocates Office at the California Public Utilities Commission's June 23, 2020 motion for contempt and sanctions for SoCalGas' failure to respond to the May 5, 2020 subpoena; and addresses other related motions.

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**Attachment - Service List**



## SUMMARY

This Resolution denies Southern California Gas Company's (SoCalGas') December 2, 2019 motion for reconsideration/appeal of the November 1, 2019 Administrative Law Judge's ruling and denies SoCalGas' May 22, 2020 motion to quash portions of the Commission's May 5, 2020 subpoena. In denying these motions, the Commission rejects SoCalGas' argument that the Public Advocates Office at the California Public Utilities Commission's (Cal Advocates') discovery rights, set forth in the Public Utilities Code, are limited by SoCalGas' First Amendment rights to association, assuming that such a right exists, and rejects SoCalGas' argument that the Commission has violated its procedural due process rights.

In addition, this Resolution grants SoCalGas' December 2, 2019 motion for leave to file under seal confidential versions of certain declarations but, in doing so, confirms that SoCalGas must provide access to the unredacted versions of the confidential declarations to the Commission, including its staff, such as Cal Advocates, under existing protections.

This Resolution also deems moot SoCalGas' May 22, 2020 motion to stay compliance with the May 5, 2020 subpoena until May 29, 2020, grants SoCalGas' May 22, 2020 motion to supplement the December 2, 2019 motion for reconsideration/appeal, and defers consideration of Cal Advocates' June 23, 2020 motion for contempt and sanctions for SoCalGas' failure to respond to the May 5, 2020 subpoena. By granting SoCalGas' December 2, 2019 motion for leave to file under seal and directing it to provide unredacted, confidential versions to Commission staff, including Cal Advocates, this Resolution also deems moot Cal Advocates' July 9, 2020 motion to compel and defers consideration of Cal Advocates' request therein for monetary fines.

Other related motions are also addressed.

SoCalGas is directed to produce the information and documents requested by Cal Advocates in DR No. CalAdvocates-SC-SCG-2019-05, including the confidential declarations submitted under seal in support of SoCalGas' December 2, 2019 motion for reconsideration/appeal, and in the May 5, 2020 Commission subpoena within 30 days of the effective date of this Resolution.

## **BACKGROUND**

### **1. Rulemaking 19-01-011 and Cal Advocates' Data Requests to SoCalGas - Outside of a Proceeding**

In May 2019, the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) initiated a discovery inquiry into Southern California Gas Company's (SoCalGas') funding of anti-decarbonization campaigns using "astroturfing" groups.<sup>1</sup> Cal Advocates initiated this discovery inquiry "outside of a proceeding" pursuant to its statutory authority and for reasons more fully addressed below.<sup>2</sup> In particular, Cal Advocates' inquiry focused on the extent to which SoCalGas was using ratepayer funds to support organizations presenting themselves to the Commission as independent grassroots community organizations that also support anti-decarbonization positions held by SoCalGas, such as Californians for Balanced Energy Solutions (C4BES) and other similar organizations.

Cal Advocates' discovery inquiry was prompted by allegations initially raised in Rulemaking (R.) 19-01-011<sup>3</sup> when C4BES filed a motion for party status on May 13, 2019, and Sierra Club challenged the motion on May 14, 2019, claiming that, unbeknownst to the public, SoCalGas founded and funded C4BES.<sup>4</sup> Cal Advocates responded to Sierra Club's motion to deny party status and stated that Cal Advocates would investigate the allegations raised by Sierra Club.<sup>5</sup>

On May 23, 2019, Cal Advocates initiated this inquiry by issuing Data Request (DR) SCG051719 to SoCalGas regarding its involvement with C4BES. Cal Advocates issued this data request outside of R.19-01-011, as the scope of

<sup>1</sup> Astroturfing is a practice in which corporate sponsors of a message mask their identity by establishing separate organizations to state a position or make it appear as though the movement originates from and has grassroots support.

<sup>2</sup> All pleadings submitted to the Commission related to this discovery dispute "outside of a proceeding" are available on the Commission's website at the Cal Advocates' webpage at: <https://www.publicadvocates.cpuc.ca.gov/general.aspx?id=4444>.

<sup>3</sup> R.19-01-011 *Order Instituting Rulemaking Regarding Building Decarbonization* (January 31, 2019).

<sup>4</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* (May 14, 2019). See also Cal Advocates' *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* (May 29, 2019).

<sup>5</sup> See R.19-01-011, *Cal Advocates' 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* (May 29, 2019) at 2.

R.19-01-011 was limited to de-carbonization matters. In contrast, Cal Advocates' inquiry focused on SoCalGas' financial relationship with C4BES and the use of ratepayer funds to support lobbying efforts by C4BES. In addition, Cal Advocates initiated this discovery outside of a proceeding because no other Commission proceeding encompassed this issue. SoCalGas responded to the DR. Based on this response, Cal Advocates alleged that justification existed to continue its inquiry.

On July 19, 2019, Cal Advocates issued DR CalAdvocates-SC-SCG-2019-04 to SoCalGas. In response, SoCalGas refused, in part, to comply with the DR. At this point, Cal Advocates and SoCalGas began to dispute the lawfulness of the ongoing discovery.

## **2. SoCalGas' December 2, 2019 Motion for Reconsideration/Appeal Requesting the Full Commission's Review of the November 1, 2019 ALJ Ruling**

With this discovery dispute still unresolved, on August 13, 2019, Cal Advocates served SoCalGas with another data request, DR No.

CalAdvocates-SC-SCG-2019-05, which consisted of multiple questions built upon previous DRs. On August 27, 2019, SoCalGas responded to the DR with an objection to Question 8 based on the grounds that the requested production of its 100% shareholder-funded contracts related to C4BES fell outside the scope of Cal Advocates' statutory authority set forth in Public Utilities Code (Pub. Util. Code) §§ 309.5(a)<sup>6</sup> and 314.<sup>7</sup> Cal Advocates and SoCalGas engaged in discussions regarding Question 8 of the DR and after multiple attempts the parties agreed that they were at an impasse.

On October 7, 2019, Cal Advocates submitted a motion to compel responses from SoCalGas to the President of the Commission pursuant to Pub. Util. Code §

<sup>6</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>7</sup> See 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 [PROPOSED] Order (Not In A Proceeding) (December 2, 2019) at 6.

309.5(e).<sup>8</sup> SoCalGas responded in opposition to Cal Advocates' motion on October 17, 2019.<sup>9</sup> SoCalGas again argued that because the information sought was 100% shareholder funded, it fell beyond Cal Advocates' statutory purview. The President referred this discovery dispute to the Commission's Chief Administrative Law Judge.

On October 29, 2019, the Chief Administrative Law Judge assigned the dispute to Administrative Law Judge Regina DeAngelis (ALJ) and informed the parties in writing of certain procedural rules to follow since this discovery dispute was outside of any formal proceeding and, therefore, the Commission's Rules of Practice and Procedure (Title 20, Division 1, of the California Code of Regulations) (herein "Rules")<sup>10</sup> did not directly apply.

On October 31, 2019, Cal Advocates filed a reply to SoCalGas' response.<sup>11</sup> On November 1, 2019, the ALJ issued a ruling granting Cal Advocates' motion to compel responses to DR No. CalAdvocates-SC-SCG-2019-05.<sup>12</sup> On November 4, 2019, SoCalGas submitted an emergency motion for stay of the November 1, 2019 ALJ ruling but, with its motion for stay pending, on November 5, 2019, SoCalGas also submitted the DR responses to Cal Advocates under protest.<sup>13</sup>

<sup>8</sup> Cal Advocates' Motion to Compel Responses from Southern California Gas Company to Question 8 of Data Request CALADVOCATES-SC-SCG-2019-05 (Not In A Proceeding) submitted October 7, 2019.

<sup>9</sup> 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) submitted October 17, 2019.

<sup>10</sup> All references to "Rules" are to the Commission's Rules of Practice and Procedure.

<sup>11</sup> 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) submitted on October 31, 2019.

<sup>12</sup> 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.

<sup>13</sup> 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) submitted on November 4, 2019.

On December 2, 2019, SoCalGas submitted a motion for reconsideration/appeal requesting the full Commission's review of the ALJ's November 1, 2019 ruling.<sup>14</sup> SoCalGas' motion sought the Commission's review of that ruling and reversal.

In support of its motion, SoCalGas raised several constitutional arguments. SoCalGas alleged: (1) the materials sought by Cal Advocates unlawfully infringed on SoCalGas' First Amendment rights to association and (2) that, because the discovery dispute was occurring outside of a proceeding, the lack of procedural safeguards to govern the dispute violated SoCalGas' procedural due process rights.<sup>15</sup> SoCalGas also sought an order from the Commission directing Cal Advocates to return or destroy the constitutionally protected materials provided to Cal Advocates on November 5, 2019. (As noted below, SoCalGas subsequently supplemented this December 2, 2019 motion by a separate motion (dated May 22, 2020), discussed in more detail below). SoCalGas also filed a motion to file under seal certain declarations.<sup>16</sup> On December 17, 2019, Cal Advocates submitted a response.<sup>17</sup>

<sup>14</sup> *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)* submitted on December 2, 2019. On December 2, 2019, SoCalGas also submitted a motion to file documents under seal.

<sup>15</sup> SoCalGas also contended that if the Commission did not stop Cal Advocates from invoking its statutory right to compel production of information, then it will continue with the data requests that allegedly infringe on SoCalGas' First Amendment rights.

<sup>16</sup> On December 2, 2019, SoCalGas concurrently filed *Motion of Southern California Gas Company's (U 904 G) for Leave to File Under Seal Confidential Versions of Declarations 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)*.

<sup>17</sup> *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)* submitted December 17, 2019.

On March 25, 2020, SoCalGas filed an emergency motion for a protective order staying all pending and future data requests from Cal Advocates served outside of any proceeding related to this dispute, and any motions and meet and confers related thereto, during the Governor of California's Covid-19 emergency "safer at home" executive orders.<sup>18</sup>

Before Cal Advocates had an opportunity to respond, the ALJ, via an email on April 6, 2020, reminded SoCalGas of Cal Advocates' statutory rights to inspect the accounts, books, papers, and documents of any public utility at any time and found that its request was contrary to California law. The ALJ advised parties to work together in these extraordinary times. We consider this March 25, 2020 SoCalGas motion resolved and do not address it further here.

This Resolution resolves SoCalGas' December 2, 2019 motion for reconsideration/appeal requesting the full Commission's review of the ALJ's November 1, 2019 ruling together with the other related motions, all pertaining to DR No. CalAdvocates-SC-SCG-2019-05 or the May 5, 2020 Commission subpoena, described below.<sup>19</sup>

<sup>18</sup> *Southern California Gas Company's (U 904 G) emergency motion for a protective order staying all pending and future data requests from the California Public Advocates Office served outside of any proceeding (relating to the Building Decarbonization matter), and any motions and meet and confers related thereto, during California government Covid-19 emergency "safer at home" orders, submitted on March 25, 2020.*

<sup>19</sup> Further addressed below and related to SoCalGas' December 2, 2019 motions, on July 9, 2020, Cal Advocates submitted a motion to compel SoCalGas to produce the confidential versions of the declarations submitted in support of SoCalGas' December 2, 2019 motion for reconsideration/appeal and for daily monetary fines, *Public Advocates Office Motion To Compel Confidential Declarations Submitted In Support Of Southern California Gas Company's December 2, 2019 Motion For Reconsideration Of First Amendment Association Issues And Request For Monetary Fines For The Utility's Intentional Withholding Of This Information; [Proposed] Order*, submitted on July 9, 2020. ¶

On July 17, 2020, SoCalGas filed response, *Response to Public Advocates Office Motion to Compel Confidential Declarations Submitted in Support of Southern California Gas Company's December 2, 2019 Motion for Reconsideration of First Amendment Association Issues and Request for Monetary Fines for the Utility's Intentional Withholding of this Information*. SoCalGas argues that Cal Advocates' Statutory Authority to inspect SoCalGas's books and records - including the confidential material in question - is limited by the First Amendment. Information includes: 100% shareholder-funded political activities. ¶

On July 24, 2020, Cal Advocates filed a reply, *Public Advocates Office Reply to Southern California Gas Company's Opposition to Motion to Compel and for Fines Related to the Utility's Intentional Withholding of Confidential Declarations*.

**3. SoCalGas' May 22, 2020 Motion to Quash/Stay the May 5, 2020 Subpoena Seeking Access to SoCalGas' Accounting System and May 22, 2020 Motion to Supplement its December 2, 2019 Motion**

On May 1, 2020, Cal Advocates served SoCalGas with another data request, DR CalAdvocates-TB-SCG-2020-03, seeking access to SoCalGas' accounting database, as Cal Advocates continued its inquiry into SoCalGas' use of ratepayer monies to fund an anti-decarbonization campaign through astroturf organizations. On May 5, 2020, Cal Advocates served a subpoena, signed by the Commission's Executive Director, on SoCalGas seeking the same information as set forth in DR CalAdvocates-TB-SCG-2020-03, access to SoCalGas' accounting databases.<sup>20</sup>

SoCalGas delayed responding to the subpoena and, instead, on May 22, 2020, SoCalGas submitted a motion to quash the subpoena and to stay the subpoena until May 29, 2020, to allow it an opportunity to implement software solutions to exclude what it deemed as materials protected by attorney-client and attorney work product privileges, as well as materials implicating the same First Amendment issues raised in SoCalGas' December 2, 2019 motion for reconsideration/appeal of the November 1, 2019 ALJ ruling.<sup>21</sup>

On May 22, 2020, SoCalGas also submitted a motion to supplement the record of its December 2, 2019 motion for reconsideration/appeal and to request an

<sup>20</sup> The Public Utilities Commission of the State of California's *Subpoena to Produce Access to Company Accounting Databases* dated May 4, 2020 and served on May 5, 2020.

<sup>21</sup> *Southern California Gas Company's (U 904 G) Motion to Quash Portion of the Subpoena to Produce Access to Certain Materials in Accounting Databases and to Stay Compliance until the May 29<sup>th</sup> Completion of Software Solution to Exclude those Protected Materials in The Databases (Not In A Proceeding)* submitted May 22, 2020. SoCalGas originally submitted this motion on May 19, 2020 with redacted declarations. The ALJ ordered SoCalGas to provide confidential electronic versions of the declarations to the Commission and Cal Advocates. SoCalGas elected to instead file a "substituted" version of the Motion to Quash on May 22, 2020.

expedited Commission decision (in the event SoCalGas' May 22, 2020 motion for a stay of the subpoena was not granted).<sup>22</sup>

This Resolution resolves SoCalGas' May 22, 2020 motion to quash/stay the May 5, 2020 subpoena and May 22, 2020 Motion to Supplement its December 2, 2019 Motion.

**4. Cal Advocates' June 23, 2020 Motion for Contempt and Sanctions Related to SoCalGas' Failure to Comply with the May 5, 2020 Subpoena**

On June 23, 2020, Cal Advocates submitted a motion to find SoCalGas in contempt and to impose fines on SoCalGas for noncompliance with the May 5, 2020 subpoena.<sup>23</sup> More specifically, Cal Advocates asserted that SoCalGas was continuing to avoid complying with the May 5, 2020 subpoena and that SoCalGas' conduct following the issuance of the subpoena constituted a violation of Rule 1.1 and Pub. Util. Code §§ 309.5, 311, 314, 314.5, 314.6, which warrants the imposition of daily penalties. Cal Advocates also sought an order requiring SoCalGas to, among other things, provide Cal Advocates with access to financial databases on a read-only basis and to provide additional information from its accounting and vendor records systems showing which of its accounts are 100% shareholder funded, which accounts have costs booked to them associated with activities that are claimed to be subject to First Amendment privileges or are shareholder funded and other information about vendors of SoCalGas.

On July 2, 2020, SoCalGas submitted a response challenging Cal Advocates' motion for contempt and sanctions, alleging that: (1) the underlying premise of the motion, Cal Advocates' authority to inspect SoCalGas' books and records, lacked legal basis (2) the motion was premature and should not be decided

<sup>22</sup> *Southern California Gas Company's (U 904 G) Motion to Supplement the Record and Request for Expedited Decision by the Full Commission on Motion for Reconsideration/Appeal Regarding Administrative Law Judge's Ruling in the Discovery Dispute Between the Public Advocates Office and Southern California Gas Company, October 7, 2019 (Not In A Proceeding) if the Motion is not Granted to Quash Portion of the Subpoena to Produce Access to Certain Materials in Accounting Databases and to Stay Compliance Until the May 29<sup>th</sup> Completion of Software Solution to Exclude Those Protected Materials in the Databases (Not In A Proceeding)* submitted on May 20, 2020. SoCalGas originally submitted this motion on May 20, 2020 with redacted declarations. The ALJ ordered SoCalGas to provide confidential electronic versions of the declarations to the Commission and Cal Advocates. SoCalGas elected to instead file a "substituted" version of the motion on May 22, 2020.

<sup>23</sup> *Public Advocates Office Motion to Find Southern California Gas Company in Contempt of this Commission in Violation of Commission Rule 1.1 for Failure to Comply with a Commission Subpoena Issued May 5, 2020, and Fined for Those Violations From the Effective Date of the Subpoena (Not In A Proceeding)* submitted on June 23, 2020.



before SoCalGas' motion to quash the subpoena, (3) that if the Cal Advocates' June 23, 2020 motion for contempt and sanctions was to be considered, then further procedural safeguards would be required under due process rights, and (4) the motion failed on its merits.<sup>24</sup>

On July 10, 2020, Cal Advocates submitted a reply addressing SoCalGas' arguments.<sup>25</sup>

In resolving SoCalGas' two May 22, 2020 motions related to the May 5, 2020 subpoena (the motion to quash/stay and the motion to supplement), this Resolution also addresses Cal Advocates' June 23, 2020 motion for contempt and sanctions. In addition, and as already stated above, this Resolution resolves SoCalGas' December 2, 2019 motion for reconsideration/appeal of the November 1, 2019 ALJ ruling.

All these requests for Commission action are reviewed together for reasons of administrative efficiency: all four motions address information sought by either DR No. CalAdvocates-SC-SCG-2019-05 or the May 5, 2020 subpoena; and all four motions rely on arguments related to the scope of Cal Advocates' statutory authority to engage in discovery of information from SoCalGas under the Pub. Util. Code and the application of the First Amendment right to association and procedural due process rights to protect SoCalGas from disclosure of shareholder-related information sought by Cal Advocates.

## **DISCUSSION**

### **1. Commission Staff's Statutory Right to Obtain Information to Exercise its Regulatory Oversight Over California's Investor-Owned Utilities**

There is clear statutory authority granting Commission staff the right to access the information at issue in DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 subpoena. The Commission, as a constitutionally-established state agency, is tasked with regulating public utilities under its jurisdiction.<sup>26</sup> The Pub. Util.

<sup>24</sup> *Southern California Gas Company's (U 904 G) Response to Public Advocates Office's Motion to find Southern California Gas Company in Contempt of this Commission in Violation of Commission Rule 1.1 for Failure to Comply with a Commission Subpoena Issued May 5, 2020, and Fined for those Violations from the Effective Date of the Subpoena (Not In A Proceeding)* submitted on July 2, 2020.

<sup>25</sup> *Public Advocates Office Reply to Southern California Gas Company's Response to Motion for Findings of Contempt and Fines for the Utility's Failure to Comply with a Commission Subpoena Issued May 5, 2020*, submitted on July 10, 2020.

<sup>26</sup> Cal. Const., art. XII.

Code grants broad authority to Commission staff to inspect the books and records of investor-owned utilities. The Pub. Util. Code states:

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.<sup>27</sup>

These broad powers apply:

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>28</sup>

This authority applies to all Commission staff without limitation, including Cal Advocates.

In addition to this statutory authorization for all Commission staff, an additional statutory provision allows Cal Advocates to issue subpoenas and data requests to regulated utilities.

<sup>27</sup> Pub. Util. Code § 314(a).

<sup>28</sup> Pub. Util. Code § 314(b).

The office [Cal Advocates] 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>29</sup>

The statutory scheme also recognizes that information provided to the Commission staff by utilities might sometimes involve sensitive and confidential material. Section 583 of the Pub. Util. Code provides ample protection for such information.<sup>30</sup> Further, General Order 66-D provides a process for submitting confidential information to the Commission staff. Information collected pursuant to a books and record request is used as part of the staff's internal review process and, if properly designated as confidential by utilities, will not be publicly disclosed until a process is followed where the Commission as a body determines that the information should be open to public inspection.<sup>31</sup>

These statutory provisions have been part of the regulatory scheme since 1951 and in similar form since 1911. These provisions represent a clear legislative determination that the exercise of the power to review material by the Commission staff, including Cal Advocates, is an integral part of California's scheme to regulate investor-owned public utilities. In response to unique concerns raised by SoCalGas regarding protecting confidential information remotely available to Cal Advocates while reviewing its "live" SAP database, we direct Cal Advocates to provide a list to SoCalGas of the documents it seeks to print or copy from the SAP database and these documents will be treated as confidential for 20 days from the date of Cal Advocates' request to copy or print. Thereafter, documents that Cal Advocates requested to copy or print from the SAP database will only remain confidential if specifically designated as such by SoCalGas in accordance with the provisions of Pub. Util. Code § 583 and General Order 66-D.

For these reasons, we find that, under the authority provided by the Pub. Util. Code, Cal Advocates is entitled to the information sought in DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 subpoena. We now address SoCalGas' argument that Cal Advocates' statutory authority is limited by SoCalGas' First Amendment and due process rights.

<sup>29</sup> Pub. Util. Code § 309.5(e).

<sup>30</sup> Pub. Util. Code § 583.

<sup>31</sup> *Ibid.*

## 2. SoCalGas' December 2, 2019 Motion for Reconsideration/Appeal of the November 1, 2019 ALJ Ruling to the Full Commission

### a. First Amendment Privilege

In SoCalGas' December 2, 2019 motion for reconsideration/appeal of the November 1, 2019 ALJ ruling directing it to respond to DR No.

CalAdvocates-SC-SCG-2019-05, SoCalGas argues that the Commission staff's statutory right to obtain information from a regulated utility does not apply because the DR, which seeks information about the utility's, its affiliates', or its contractors' activities taking positions on decarbonization, jeopardizes SoCalGas' First Amendment rights to association. SoCalGas makes the argument that the utility's ability to freely associate with others for political expression and to petition the government for political redress would be chilled if it provided the requested shareholder-related information to its regulator using normal procedures (a data request) as authorized by existing statutory provisions.

SoCalGas makes similar arguments in its May 22, 2020 motions opposing the May 5, 2020 subpoena seeking access to SoCalGas' accounting database. We address all these motions below.

We find that SoCalGas' arguments pertaining to the First Amendment lack merit. The First Amendment to the U.S. Constitution protects "persons" from government restrictions on speech, the right to assemble, and the right to petition the government for redress of grievances.<sup>32</sup> The First Amendment applies to the states, such as California, and state entities, such as the Commission, through the Fourteenth Amendment to the U.S. Constitution.<sup>33</sup> Under current case law, these protections apply to private organizations and corporations.<sup>34</sup> These rights are also contained in the California Constitution.<sup>35</sup> SoCalGas enjoys the same First Amendment rights as any other person or entity. Its status as a regulated public utility does not impair or lessen these rights.<sup>36</sup>

However, the right to associate for political expression is not absolute. If an action amounts to an infringement it may, nevertheless, "be justified by regulations adopted to serve compelling state interests, unrelated to the

<sup>32</sup> U.S. Const. amends I., XIV.

<sup>33</sup> *Cent. Hudson Gas & Elec. Corp. v. Public Serv. Com.* (1980) 447 U.S. 557, 561.

<sup>34</sup> *Citizens United v. FEC* (2010) 558 U.S. 310, 342 (*Citizens United*).

<sup>35</sup> Cal. Const., art. I, §§ 2(a), 3(a).

<sup>36</sup> *Pac. Gas & Elec. Co. v. Public Utilities Com.* (1986) 475 U.S. 1, 17; see also *Pac. Gas & Elec. Co. v. Public Utilities Com.* (2000) 85 Cal.App.4th 86, 93.

suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms.”<sup>37</sup>

Courts evaluate First Amendment privilege claims in two steps. First, the party asserting the privilege to block disclosure of materials must make a showing of arguable First Amendment infringement,<sup>38</sup> which can be intentional or indirect.<sup>39</sup> If this showing is made, the burden shifts to the government to demonstrate that the information sought is rationally related to a compelling state interest.<sup>40</sup> The Commission’s analysis of SoCalGas’ alleged infringement and the existence of a compelling state interest follow.

i. **SoCalGas fails to establish that its First Amendment rights will be infringed by complying with Cal Advocates’ Data Request, DR No. CalAdvocates-SC-SCG-2019-05**

We first review whether SoCalGas made a showing of First Amendment infringement. In its December 2, 2019 motion for reconsideration/appeal, SoCalGas argues that DR No. CalAdvocates-SC-SCG-2019-05 seeks information about its political activity and, in doing so, chills its First Amendment rights. SoCalGas points out, and we agree, that the DR requests information on the topics of how SoCalGas funds its decarbonization campaign.<sup>41</sup> In support of its infringement claim, SoCalGas relies on a declaration from Sharon Tomkins, SoCalGas’ Vice President of Strategy and Engagement and Chief Environmental Officer, stating that she would be less likely to engage in certain communications and contracts if required to produce the requested information and stating her belief that other entities would be less likely to associate with SoCalGas if information about SoCalGas’ political efforts are disclosed to the Commission.<sup>42</sup> SoCalGas submitted additional declarations from private organizations specializing in government relations and public affairs, outside of SoCalGas, including statements that disclosure to the Commission would dissuade them from communicating or contracting with SoCalGas.<sup>43</sup>

<sup>37</sup> *Roberts v. Jaycees* (1984) 468 U.S. 609, 623 (*Roberts*).

<sup>38</sup> *Perry v. Schwarzenegger* (9th Cir. 2010) 591 F.3d 1147, 1160 (*Perry*).

<sup>39</sup> *National Assn. for Advancement of Colored People v. Ala. ex rel. Patterson* (1958) 357 U.S. 449, 461-62 (*NAACP*).

<sup>40</sup> *Perry, supra*, 591 F.3d at p. 1161.

<sup>41</sup> The May 5, 2020 subpoena contains a broader request that nevertheless focuses on determining, by way of partial example, what accounts are used to track shareholder-funded activity, what payments are made from those accounts, and what invoices were submitted in support of those payments.

<sup>42</sup> December 2, 2019 Motion for Reconsideration/ Appeal, Declaration 3, ¶¶ 8-10.

<sup>43</sup> December 2, 2019 Motion for Reconsideration/ Appeal, Declarations 4, 5, 6.

Meeting the initial showing of First Amendment infringement requires a showing that goes beyond a simplistic assertion that disclosure alone chills association. An organization must make a concrete showing that disclosure “is itself inherently damaging to the organization or will incite other consequences that objectively could dissuade persons from affiliating with the organization.”<sup>44</sup> The initial showing has been established where, for example, the state of Alabama sought the National Association for the Advancement of Colored People’s (NAACP’s) membership list during the civil rights movement.<sup>45</sup> The NAACP proved that this disclosure would subject its members to economic reprisals as well as threats of physical coercion.<sup>46</sup> On the other hand, if the threat to constitutional rights is not clearly demonstrated, there is no need to consider the state agency’s compelling interest.<sup>47</sup>

SoCalGas assertion that its First Amendment rights to association were or will be chilled by DR No. CalAdvocates-SC-SCG-2019-05 seeking documents about its decarbonization campaign is unconvincing. Although its declarations attempt to link the disclosure to the Commission of the political activity with repercussions – SoCalGas contends that if it responds to these DRs, it will discourage certain communications and contracts with outside entities<sup>48</sup> – these contentions are primarily hypothetical. Such threatened harm in communications and partnerships falls short of the palpable fear of harassment and retaliation in recognized instances of First Amendment infringement, such as that in *NAACP*.<sup>49</sup>

We find no infringement on SoCalGas’ First Amendment rights by disclosing to the Commission, including Cal Advocates, responses to DR No. CalAdvocates-SC-SCG-2019-05 seeking documents about its decarbonization campaign.

<sup>44</sup> *Dole v. Local Union 375, Plumbers Int’l Union* (9th Cir. 1990) 921 F.2d 969, 973-974 (*Dole*).

<sup>45</sup> *NAACP, supra*, 357 U.S. at p. 462.

<sup>46</sup> *Ibid.*

<sup>47</sup> In *McLaughlin*, a court rejected a union’s attempt to block a Labor Management Reporting and Disclosure Act subpoena by submitting a declaration containing “argument – not facts – concerning the impact of an unrestricted administrative review” of meeting records. (*McLaughlin v. Service Employees Union, Local 208* (9th Cir. 1989) 888 F.2d 170, 175 (*McLaughlin*)). Similarly, in *Dole v. Local Union 375*, the court rejected claim that disclosing information about union’s operating fund, alone, would chill First Amendment rights. (*Dole, supra*, 921 F.2d at pp. 973-74.)

<sup>48</sup> SoCalGas’s December 2, 2019 Motion for Reconsideration/ Appeal, Declaration 3, ¶¶ 8-10 and Declarations 4 - 6.

<sup>49</sup> *NAACP, supra*, 357 U.S. at p. 462.

- ii. **Even if SoCalGas established the initial showing of First Amendment infringement, a compelling government interest exists in disclosure of this information to Cal Advocates**

In its December 2, 2019 motion for reconsideration/appeal, SoCalGas claims that because DR No. CalAdvocates-SC-SCG-2019-05 seeks information about political activities and activities that are “100% shareholder-funded,” the information does not need to be disclosed because such activities are not subject to Cal Advocates’ oversight. As shown above in this Resolution, this position advanced by SoCalGas has not met the threshold showing of First Amendment infringement. The Pub. Util. Code grants broad authority to Commission staff, including Cal Advocates, to inspect the books and records of investor-owned utilities. Therefore, even if SoCalGas had met the threshold showing, the compelling government interest in obtaining this data outweighs the potential infringement on First Amendment rights

Legal doctrine also permits government action that indirectly might impair First Amendment rights when the government has a compelling governmental interest, also described as a proper interest in fulfilling its mandate.<sup>50</sup> We find a compelling government interest here, Cal Advocates’ requests for information about SoCalGas’ decarbonization campaign are consistent with its broad

statutory authority to inspect the books and records of investor-owned utilities in furtherance of its proper interest in fulfilling the Commission’s mandate to regulate and oversee utilities.

After establishing a compelling governmental interest, the courts have applied a two-step analysis for evaluating whether government actions that arguably infringe on First Amendment rights may lawfully proceed as a compelling governmental interest. First, the action must be “rationally related to a compelling governmental interest” and second, the action must be narrowly tailored, such “that the least restrictive means of obtaining the desired information” have been used.<sup>51</sup>

Cal Advocates’ discovery pursuant to DR No. CalAdvocates-SC-SCG-2019-05 satisfies these two requirements.

<sup>50</sup> See *e.g.*, *Roberts, supra*, 468 U.S. at p. 623 (finding the state’s interest in “eradicating discrimination against female citizens” justified any infringement of the associational freedoms in requiring all-male club to admit women).

<sup>51</sup> *Perry, supra*, 591 F.3d at p. 1161.

iii. **DR No. CalAdvocates-SC-SCG-2019-05 is rationally related to a compelling government interest**

We now review the first step of the analysis for evaluating the constitutionality of the Cal Advocate's DR: whether the DR is rationally related to a compelling interest. In its December 2, 2019 motion for reconsideration/appeal, SoCalGas does not refute Cal Advocates' compelling interest in the data request beyond a broad assertion that, because its political activities are "100% shareholder-funded," they are not subject to Cal Advocates' oversight. SoCalGas' position is incorrect.

It is well-settled that state regulatory agencies, such as the Commission, can request information to fulfill their regulatory mandate, even where doing so may potentially impact First Amendment rights.<sup>52</sup> Indeed, this DR arises from the Commission's mandate to regulate investor-owned public utilities. This mandate includes ensuring that consumers have safe and reliable utility service at reasonable rates, protecting against fraud, and promoting the health of California's economy. Within the Commission, Cal Advocates is statutorily authorized 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>53</sup>

<sup>52</sup> See e.g., *Citizens United* (2010) 558 U.S. 310, 369 (upholding federal funding disclosure and disclaimer rules because the "public has an interest in knowing who is speaking about a candidate shortly before the election."); *Ams. for Prosperity Found. v. Becerra* (*Prosperity Found.*) (9th Cir. 2018) 903 F.3d 1000, 1004 (holding that the California Attorney General's requirement that regulated charities disclose information about large donors withstood exacting scrutiny because of the important state interest in regulating charitable fraud); *Dole, supra*, 921 F.2d at pp. 973-74 (upholding federal subpoena for union financial records authorized by statute over objections that the disclosure violated the union's free association rights); *United States v. Comley* (1st Cir 1989) 890 F.2d 539 (upholding an federal investigation subpoena seeking tape recordings and transcripts of telephone conversation and rejecting arguments that disclosure violated right to freedom of association rights); *St. German v. United States* (2d Cir. 1988) 840 F.2d 1087, 1094 (upholding IRS third-party summons in tax fraud investigation over right of free association objections); *United States v. Duke Energy Corp.* (M.D.N.C. 2003) 218 F.R.D. 468, 473 (allowing discovery request for energy company's communications with trade association despite their potential to chill First Amendment rights).

<sup>53</sup> Pub. Util. Code § 309.5(a).



The briefing materials submitted by Cal Advocates show that the information sought by DR No. CalAdvocates-SC-SCG-2019-05 is necessary for Cal Advocates to evaluate the potential use of ratepayer funds for lobbying activity. Cal Advocates issued the DR after discovering that SoCalGas might have used ratepayer funds to support lobbying activity. It is well-established that regulated utilities may not use ratepayer funds for advocacy-related activities that are political or do not otherwise benefit ratepayers.<sup>54</sup> Regulated utilities carry the burden of demonstrating that their activities are eligible for cost recovery.<sup>55</sup> A statement of counsel for SoCalGas describing certain activities as “100% shareholder-funded” does not, in and of itself, deprive Cal Advocates of its statutory authority to review and make its own determinations regarding financial information from a regulated utility.<sup>56</sup>

As such, we find Cal Advocates’ DR No. CalAdvocates-SC-SCG-2019-05 is rationally related to a compelling government interest.

iv. **DR No. CalAdvocates-SC-SCG-2019-05 is narrowly tailored to that compelling government interest**

We now turn to the second steps of the analysis for evaluating the constitutionality of Cal Advocates DR No. CalAdvocates-SC-SCG-2019-05: whether the DR is narrowly tailored to a compelling governmental interest. SoCalGas again relies on its maxim that activities involving “100% shareholder-funded” activities are off limits to the Commission, including Cal Advocates, to assert that this DR is not narrowly tailored. This argument suggests, incorrectly, that a utility may unilaterally designate certain topics off-limits to Commission oversight.

In circumstances where the First Amendment privilege is involved, a government entity must ensure that its requests are narrowly tailored to achieve a compelling government interest. This means that the government request

<sup>54</sup> *Southern California Edison Co.*, 2012 Cal. PUC LEXIS 555, \*765 (D.12-11-051) (finding that membership subscriptions to organizations that advance tax reduction policies are inherently political and funding should not be permitted under rate recovery); *Southern California Gas Co.*, 1993 Cal. PUC LEXIS 728, \*103 (D.93-12-043) (finding that “ratepayers should not have to bear the costs of public relations efforts in this area, which according to SoCalGas, are designed primarily to increase load by promoting natural gas use to business and government leaders”).

<sup>55</sup> *Pac. Gas & Elec. Co.*, 2007 Cal. PUC LEXIS 173, \*66 (D.07-03-011) (requiring utility to keep records showing that program costs include funding for lobbying activities).

<sup>56</sup> December 2, 2019 SoCalGas Motion for Reconsideration/Appeal, Declaration of Johnny Q. Tran, Senior Counsel, Regulatory, SoCalGas.

should not place a burden on more of the First Amendment right of associational privileges than necessary to achieve its interest.<sup>57</sup>

Cal Advocates' DR is straightforward and attempts to clearly define the information needed for its inquiry. The scope of the DR is consistent with numerous disclosure requirements upheld by other courts. For example, in *Duke Energy*, the court allowed a government request for a utility company's communications with a third-party, even though the disclosure infringed on First Amendment associational rights, because it was relevant to the subject matter of the litigation.<sup>58</sup> DR No. CalAdvocates-SC-SCG-2019-05 is narrowly tailored to seek specific contracts and information about SoCalGas' potential use of ratepayer funds for lobbying activities. Indeed, it arose as part of an inquiry that escalated after SoCalGas did not disclose its affiliation with an entity that sought party status in a rulemaking proceeding before the Commission.<sup>59</sup> SoCalGas refused to provide information about its affiliation, thereby leading to this series of data requests by Cal Advocates.

The Commission has the right to inspect all records necessary as part of its general supervisory authority over all regulated utilities. Statements asserting the conclusion that certain activities are "exclusively shareholder funded" do not deprive the Commission of its statutorily granted authority to review a utility's books and records to ensure compliance with applicable regulatory laws and standards. Moreover, SoCalGas' argument is circular and begs the question, since SoCalGas has not proven, but merely asserts, that the funds in question are

<sup>57</sup> *United States v. Baugh* (9th Cir. 1999) 187 F.3d 1037, 1043. See also *Frisby v. Schultz* (1988) 487 U.S. 474, 485 (a regulation is "narrowly tailored if it targets and eliminates no more than the exact source of the 'evil' it seeks to remedy"); *City of Cincinnati v. Discovery Network, Inc.* (1993) 507 U.S. 410, 417 n. 13. (a statute or regulation "need not be the least restrictive means of furthering [the government's] interests, but the restriction may not burden substantially more speech than necessary to further the interests").

<sup>58</sup> *Duke Energy, supra*, 218 F.R.D. at p. 473 (allowing discovery request for energy company's communications with trade association despite their potential to chill First Amendment rights). See also *Prosperity Found.*, 903 F.3d 1000, 1011 (finding state interest in regulating charities was sufficient to allow Attorney General to require disclosure of sensitive donor information despite potential to infringe First Amendment rights); *Dole, supra*, 921 F.2d at pp. 973-74 (upholding federal subpoena for union financial records despite possible infringement on First Amendment associational rights); *Comley* (1st Cir 1989) 890 F.2d 539 (allowing disclosure of transcripts and tape recordings despite possibility of infringing on First Amendment associational rights); *St. German v. United States* (2d Cir. 1988) 840 F.2d 1087, 1094 (allowing summons in tax fraud investigation despite possible infringement on First Amendment associational rights).

<sup>59</sup> R.19-01-011, *Order Instituting Rulemaking Regarding Building Decarbonization* (January 31, 2019).

truly separate. Taken to the logical conclusion, a utility might opt out of regulation at any time, at its own discretion, based on its self-serving description of its activities. SoCalGas' position that it may curtail Commission staff's ability to conduct its regulatory function of ensuring proper use of ratepayer funds – by making unsupported assertions - is fundamentally inconsistent with its status as a regulated public utility.

As such, we find Cal Advocates' DR No. CalAdvocates-SC-SCG-2019-05 is narrowly tailored, such that the least restrictive means of obtaining the desired information has been used.

### b. Due Process Rights

SoCalGas alleges that its due process rights have been violated because there are no “procedural guardrails [as the discovery dispute falls outside of a formal proceeding] in place to protect parties against the excesses of the unlimited discovery authority” of Cal Advocates. This is not correct.

Procedural due process applies when a government function impacts certain protected interests centered around deprivation of liberty or property.<sup>60</sup> Regulatory commissions have flexibility in fashioning the form of due process provided in exercising their regulatory responsibilities.<sup>61</sup> Here, the Commission is deciding whether SoCalGas has presented sufficient justification to avoid the application of state statutes that specifically require regulated utilities to provide information to Commission staff (and specifically to Cal Advocates). The process involved has been extensive.

SoCalGas and Cal Advocates have presented their views on these questions in extensive pleadings and responsive rounds of pleadings, as described in this Resolution. SoCalGas has not identified any right or claim at issue here that

<sup>60</sup> *Morrissey v. Brewer* (1982) 408 U.S. 471, 481. “The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment’s protection of liberty and property. When protected interests are implicated, the right to some kind of prior hearing is paramount. But the range of interests protected by procedural due process is not infinite.” *Board of Regents v. Roth* (1972) 408 U.S. 564, 569–71, 571.

<sup>61</sup> ~~*Wood v. Public Utilities Commission* (1971) 4 Cal.3d 288, 292 (if a proceeding is quasi-legislative, as opposed to quasi-judicial, there are no vested interests being adjudicated, and therefore, there is no due process right to a hearing).~~ *Wood v. Public Utilities Commission* (1971) 4 Cal.3d 288, 292 (if a proceeding is quasi-legislative, as opposed to quasi-judicial, there are no vested interests being adjudicated, and therefore, there is no due process right to a hearing). See *United States v. Florida East Coast R. Co.* (1973) 410 U.S. 22; *Western Oil & Gas Ass'n v. Air Resources Bd.* (1984) 37 Cal.3d 502 (an administrative agency's proceedings in which guidelines, regulations, and rules for a class of public utilities are developed have consistently been considered quasi-legislative proceedings).

would require any more specific form of process or any aspect of the process thus far relied upon by the Commission to receive pleadings that was insufficient.

To briefly review the process involved, this dispute started when, in a formal Commission proceeding, R.19-01-011, a potential financial relationship between SoCalGas and C4BES, the entity seeking party status in the proceeding, came to light in a pleading filed by Sierra Club. Based on the record of that proceeding, there was no transparency as to the source of C4BES' funding, as either shareholder or ratepayer, or the legitimacy of Sierra Club's claims about ratepayers funding C4BES. Cal Advocates then submitted a series of discreet DRs outside of any proceeding, as permitted by statute, which led to the DR in question, DR No. CalAdvocates-SC-SCG-2019-05. The DRs were focused to get to the root of the issue at hand. Cal Advocates exercised its oversight as allowed under California law and would have been entitled to propound these DRs outside of a proceeding even if these issues had not been raised by Sierra Club in R.19-01-011.

However, after encountering multiple instances where, despite frequent discussions, SoCalGas simply did not provide the specific information needed to get to the root of its inquiry, Cal Advocates invoked Pub. Util. Code § 309.5(e) which initiated a procedural process to address this DR dispute. Pub. Util. Code § 309.5(e) allows Cal Advocates to compel "production or disclosure of any information it deems necessary to perform its duties from any entity regulated by the commission" and to bring any resulting discovery disputes to the President of the Commission, if the discovery dispute is occurring outside of any proceeding.

Soon after the President's receipt of Cal Advocates' motion to compel on October 7, 2019,<sup>62</sup> the President referred this matter to the Chief Administrative Law Judge to provide for a process and procedural path to address the dispute. On October 29, 2019, the Chief Administrative Law Judge assigned an ALJ to preside over the dispute and provided the parties with certain procedural rules to follow.

At each step of this process and prior to any decision or ruling, SoCalGas had an opportunity to submit responses to Cal Advocates' motions, submit motions itself, and even further, submit motions for the full Commission to act on its requests, such as its December 2, 2019 motion for reconsideration/appeal of the November 1, 2019 ALJ ruling, which is one of the bases of this Resolution.

<sup>62</sup> Cal Advocates' *Motion to Compel Responses from Southern California Gas Company to Question 8 of Data Request CALADVOCATES-SC-SCG-2019-05* (Not In A Proceeding) submitted October 7, 2019.

Except regarding the Commission's consideration of contempt and sanctions (which are not resolved here), SoCalGas did not request evidentiary hearings and did not contest relying on written pleadings to resolve the issues set forth herein.

In addition, Cal Advocates exercised its statutory oversight discreetly in initial requests and in all cases focused on the information it needed to perform its statutory duties. SoCalGas had multiple opportunities and continues to have opportunities to challenge these discovery requests. Further, as a result of SoCalGas' repeated submissions challenging Cal Advocates' statutory authority, a simple request for information has turned into an extensive inquiry. Delays in the release of information often frustrate this agency's regulatory purposes. In this case, SoCalGas has had more, not less, due process than is necessary under the law.

Moreover, SoCalGas bases its claim of a violation of due process on a false premise. SoCalGas' claim that a certain amount of process is due rests on its assertion that requests for information made by Commission staff amount to "excesses of ... unlimited discovery authority" that are so significant that they require constitutional protection.<sup>63</sup> This is a rhetorical complaint that attempts to imply that some harm occurs when regulatory staff gather information to assist them in performing their regulatory duties. That is not the case. Cal Advocates has broad discovery rights, conferred by statute, because its staff are regulators. As a regulated public utility, SoCalGas is guaranteed certain privileges that are subject to the oversight of the Commission and its staff. Cal Advocates rightfully exercised that oversight in the manner allowed by statute, the U.S. Constitution, and the California Constitution. The exercise of clear statutory authority is not an improper "excess" that needs to be constrained.

We therefore find that Cal Advocates' request for information, as set forth in DR No. CalAdvocates-SC-SCG-2019-05, and the process relied upon by the Commission to resolve this discovery dispute outside of a proceeding, do not violate SoCalGas' procedural due process rights.

Therefore, SoCalGas' December 2, 2019 motion for reconsideration/appeal of the November 1, 2019 ALJ ruling is denied.

<sup>63</sup> *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)* submitted on December 2, 2019 at 22.

**3. SoCalGas' May 22, 2020 Motions to Quash Portions of/Stay the May 5, 2020 Subpoena and Motion to Supplement Record and Request for Expedited Decision by the Full Commission**

This discovery dispute continued into 2020 and centered around Cal Advocates' May 5, 2020 subpoena. The May 5, 2020 subpoena, which related to the same information as DR CalAdvocates-TB-SCG-2020-03, required SoCalGas to give Cal Advocates access to its accounting database. In response to the subpoena, on May 22, 2020, SoCalGas concurrently submitted two motions, a motion to quash portions of and stay the May 5, 2020 subpoena, and a motion to supplement the record of its previously filed December 2, 2019 motion for reconsideration/appeal. In the May 22, 2020 motion to quash/stay, SoCalGas made several requests. We address each of these requests below.

First, SoCalGas requested a stay of complying with the subpoena until May 29, 2020, to complete software solutions to bar Cal Advocates' access to what it deemed protected materials and to quash the subpoena, asserting the same arguments previously presented, that Cal Advocates' statutory discovery rights were limited by the First Amendment and by laws governing protected materials. SoCalGas defined protected materials as documents and information protected under attorney-client privilege and attorney work-product doctrine.

The crux of SoCalGas' May 22, 2020 motion to stay is to obtain additional time to place a firewall to limit Cal Advocates' access to certain "protected" records in its database. Cal Advocates gave SoCalGas the additional time it requested to create that firewall. The May 22, 2020 motion to stay is deemed moot since the time requested has passed and relief requested, an opportunity to provide screening to remote users of the accounting systems Cal Advocates requested to review, has occurred.

Second, SoCalGas requests to quash the subpoena to exclude information and records based on its First Amendment privilege and other privileges. We find that, to the extent the information and records relate to Cal Advocates' inquiry into specific contracts and information about SoCalGas' potential use of ratepayer funds for political activities, it was improper for SoCalGas to block access to those records. Cal Advocates has statutory authority to access those records. Furthermore, as laid out above, SoCalGas has failed to demonstrate its First Amendment rights have been infringed, and even assuming, *arguendo*, it made such an initial showing, the request for access to accounting information maintained by SoCalGas is in furtherance of Commission staff review of potential use of ratepayer funds for political activities and is, therefore, designed to allow

staff to accomplish a compelling government interest. In addition, SoCalGas may not unilaterally designate information as being not subject to inspection by Commission staff by asserting that the information relates to activities that are shareholder, not ratepayer, funded.

Therefore, SoCalGas' May 22, 2020 motion to quash is denied. The other privileges asserted by SoCalGas in this May 22, 2020 motion to prevent disclosure of the information to Cal Advocates, including the attorney-client and attorney work-product privileges, are addressed below.

Lastly, we address the remaining May 22, 2020 motion. In the May 22, 2020 motion to supplement the record of the December 2, 2019 motion for reconsideration/appeal, SoCalGas requested permission to supplement its December 2, 2019 motion and an expedited resolution of that motion in the event its motion to quash is denied. This May 22, 2020 motion to supplement the record of the December 2, 2019 motion for reconsideration/appeal is granted. Furthermore, because we resolve the December 2, 2019 motion for reconsideration/appeal herein, SoCalGas' request for expedited consideration is moot.

#### 4. Attorney-Client or Attorney Work Product Privileges

To the extent SoCalGas seeks to assert attorney-client or attorney work product privileges, it must prepare and provide to Cal Advocates a privilege log listing the information withheld and comply with all requests from Cal Advocates to provide access to the portions of the documents or other materials not subject to these privileges. Specifically, SoCalGas must follow the below directives when asserting these privileges:

- (1) SoCalGas must provide a privilege log to Cal Advocates concurrent with the production of documents.
- (2) SoCalGas must provide sufficient information in any privilege log to enable Cal Advocates to evaluate the merits of the privilege claim. At a minimum, the privilege log must include the following: (a) summary description of the document (b) date of the document (c) the name of each author or preparer (d) the name of each person who received the document (e) legal basis for withholding the document, and (f) the document number.
- (3) If providing a privilege log, SoCalGas must concurrently provide Cal Advocates with a declaration under penalty of perjury by a SoCalGas attorney that the attorney has reviewed the materials associated with

the privilege claim and that such privilege claim has a good faith basis in the law, and the specific legal basis, with a citation, for withholding the document.

(4) Pursuant to Pub. Util. Code § 581, SoCalGas must provide the information in the form and detail requested by Cal Advocates.

**5. Cal Advocates' June 23, 2020 Motion for the Commission to Find SoCalGas in Contempt and to Levy a Fine**

This Resolution does not resolve Cal Advocates' June 23, 2020 motion for the Commission to find SoCalGas in contempt and to levy a fine. This Resolution only addresses those claims that may be resolved as a matter of law based upon the submitted pleadings. ~~This Resolution, and more specifically, the underlying process, is not the proper means for the Commission to consider such fines and contempt.~~

This does not mean that Cal Advocates' claims must fall by the wayside. As described in detail above, a regulated utility's obligation to provide the Commission's staff with requested information is a significant element of the regulatory framework for utilities in California. If a utility does not comply with the requests from the Commission's staff or more formal injunctions from the Commission, such as subpoenas, it is not unreasonable for the utility to expect to be subject to sanctions up to and including monetary penalties. Indeed, Cal Advocates cites to past instances where the Commission has applied such sanctions to situations similar to the dispute presented here.<sup>64</sup>

As described herein and set forth in Pub. Util. Code § 309.5, Cal Advocates is an independent division within the Commission that advocates on behalf of the interests of residential and small commercial customers of public utilities. The Pub. Util. Code grants Cal Advocates broad authority to compel any entity regulated by the Commission to disclose any information it deems necessary in furtherance of those duties. Accordingly, Cal Advocates' inquiry into whether SoCalGas' funding of its activities relating to decarbonization was proper, and this ongoing inquiry can also include the question of whether SoCalGas' responses to discovery requests were proper and met appropriate legal requirements.

The Commission may conduct a further investigation of SoCalGas' conduct through the appropriate enforcement division within the Commission and, based

<sup>64</sup> See *Public Advocates Office Motion to Find Southern California Gas Company in Contempt of this Commission in Violation of Commission Rule 1.1 for Failure to Comply with a Commission Subpoena Issued May 5, 2020, and Fined for Those Violations From the Effective Date of the Subpoena (Not In A Proceeding)* submitted on June 23, 2020 at 16-22.



on any resulting recommendation by such enforcement division, the Commission may elect to initiate an order instituting investigation. If so, Cal Advocates may decide to participate in such a proceeding and include instances where it found SoCalGas improperly responded or failed to timely provide information in response to Cal Advocates' discovery requests and recommend penalties.

## CONCLUSION

Pursuant to this Resolution, SoCalGas shall provide within 30 days from the effective date, with exceptions only based on attorney-client and attorney work product privileges, the information Cal Advocates has requested in DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 subpoena. The Commission may at another time consider if sanctions or penalties are appropriate, after undertaking a thorough and comprehensive review of all the facts regarding SoCalGas' activities and its responses to Cal Advocates' discovery requests.

## COMMENTS

Pub. Util. Code § 311(g)(1) requires that a draft resolution be served on all parties and be subject to a public review and comment period of 30 days or more, prior to a vote of the Commission on the resolution.<sup>65</sup>

The 30-day comment period was provided.

Regarding comments in response to the draft resolution, Rule 14.5 specifies that "Any person may comment on a draft or alternate draft resolution by serving (but not filing) comments on the Commission within 20 days of the date of its notice in the Commission's Daily Calendar and in accordance with the instructions accompanying the notice."

Pursuant to Rule 14.5, comments on this draft resolution are due within 20 days of the date notice this draft resolution was posted in the Commission's Daily Calendar.<sup>66</sup>

<sup>65</sup> Pub. Util. Code § 311 (g) states, in relevant part, as follows: "Before voting on any commission decision not subject to subdivision (d), the decision shall be served on parties and subject to at least 30 days public review and comment. . . . For purposes of this subdivision, 'decision' also includes resolutions, including resolutions on advice letter filings."¶

<sup>66</sup> The Daily Calendar is available on the Commission's website.

Regarding service of a draft resolution, Rule 14.2 (d) further specifies that, a draft resolution shall not be filed with the Commission but shall be served on other persons as the Commission deems appropriate.

The Commission served this draft resolution on the attached service list. Parties are directed to serve their comments regarding this draft Resolution, which resolves a discovery dispute “outside of a proceeding,” on Administrative Law Judge Regina DeAngelis on the attached service list, and on the President of the Commission. Service shall be performed in accordance with the Commission’s Rules of Practice and Procedure. Service shall be performed by electronic mail only.

SoCalGas, Cal Advocates, and Earthjustice jointly with Sierra Club filed comments to the draft resolution on November 19, 2020. Based on these comments, the following modifications were made to the draft resolution consistent with the law:

In response to comments by SoCalGas, the Commission’s process for initiating a possible investigation into SoCalGas’ discovery practices is clarified.

In response to comments by Cal Advocates, Sierra Club, and Earthjustice, specific directives are added to the resolution should SoCalGas assert a privilege to protect the disclosure of information or document so that the exchange of information proceeds in an orderly fashion consistent with the law.

In response to comments by SoCalGas regarding its unique concerns about having sufficient time to designate as confidential the documents and information in the “live” database via remote access, we direct Cal Advocates to provide a list to SoCalGas of the documents that Cal Advocates seeks to print or copy from the SAP database and these documents will be treated as confidential for 20 days from the date of Cal Advocates’ request to copy or print. Thereafter, documents that Cal Advocates requested to copy or print from the SAP database will only remain confidential if specifically designated as such by SoCalGas in accordance with the provisions of Pub. Util. Code § 583 and General Order 66-D.

In response to SoCalGas’ request that the Commission stay enforcement of at least the portion of the resolution that requires SoCalGas to produce information “protected by its First Amendment rights” while SoCalGas pursues an

application for rehearing before the Commission and, if needed, a petition for writ of review with the Court of Appeals, we deny this request. As set forth in Pub. Util. Code § 1735 “An application for rehearing shall not excuse any corporation or person from complying with and obeying any order or decision, or any requirement of any order or decision of the commission theretofore made, or operate in any manner to stay or postpone the enforcement thereof, except in such cases and upon such terms as the commission by order directs.”<sup>67</sup> As such, SoCalGas is directed to comply with the discovery requests, as set forth herein.

Lastly, in response to SoCalGas’ request that the Commission order Cal Advocates to execute a non-disclosure agreement prior to accessing its SAP database or, in the alternative, enter into a protective order, we deny this request. Existing law and regulations, as discussed herein, provide SoCalGas with sufficient protections for confidential information. To the extent SoCalGas has specific concerns regarding remote access to its “live” SAP database, additional protections are required herein.

The deadline for compliance with this resolution is modified from 15 days to 30 days from the effective date due to the intervening holidays.

## **FINDINGS**

1. Pursuant to Pub. Util. Code § 309.5, Cal Advocates is an independent division within the Commission that advocates on behalf of the interests of residential and small commercial customers of public utilities.
2. Cal Advocates may compel any entity regulated by the Commission to disclose any information it deems necessary in furtherance of its duty to represent customers of public utilities and consistent with the rights of Commission staff.
3. Cal Advocates initiated a discovery inquiry outside of a proceeding after discovering that SoCalGas might have used ratepayer funds to support lobbying activity.
4. Regulated utilities, such as SoCalGas, may not use ratepayer funds for advocacy-related activities that are political or do not otherwise benefit ratepayers.

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<sup>67</sup> Pub. Util. Code § 1735.

5. SoCalGas' statement describing certain activities as "100% shareholder-funded" does not, in and of itself, deprive Cal Advocates of its statutory authority to obtain, review, and make its own determinations regarding documents and financial information from a regulated utility, such as SoCalGas.
6. The Pub. Util. Code grants broad authority to the Commission to inspect the books and records of investor-owned utilities, such as SoCalGas.
7. The Commission's authority to inspect books and records of investor-owned utilities applies to all Commission staff without limitation, including Cal Advocates.
8. The statutory scheme regarding the Commission's discovery authority recognizes that information provided to the Commission, including Cal Advocates, by utilities might involve sensitive and confidential materials.
9. Pub. Util. Code § 583 and General Order 66-D provide ample protection and processes for utilities to submit confidential information to the Commission, including Cal Advocates, however, additional protections are adopted here to provide SoCalGas with time to review, and designate as confidential, information and documents sought by Cal Advocates via remote access from the "live" SAP database.
10. The statutory provisions regarding discovery authority in the Pub. Util. Code have been part of the regulatory scheme since 1951 and in similar form since 1911. As such, these provisions represent a clear legislative determination that the exercise of the authority to review materials by the Commission staff, including Cal Advocates, is an integral part of California's scheme to regulate investor-owned public utilities.
11. SoCalGas may assert attorney-client or attorney work product privileges in response to the information sought by DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 Commission subpoena but it must prepare and provide to Cal Advocates a privilege log listing the information withheld and comply with all requests from Cal Advocates to provide access to the portions of the documents or other materials, including confidential information, not subject to privilege.
12. The First Amendment protects "persons" from government restrictions on speech, the right to assemble, and the right to petition the government for redress of grievances and applies to states and state entities, such as the Commission, through the Fourteenth Amendment.

13. The First Amendment protections apply to private organizations and corporations, such as SoCalGas.
14. Under the First Amendment, SoCalGas' right to associate for political expression is not absolute.
15. Courts evaluate First Amendment privilege claims in two steps. First, the party asserting the privilege to block disclosure of materials must make a showing of arguable First Amendment infringement, which can be intentional or indirect. If this showing is made, the burden shifts to the government entity to demonstrate that the information sought is rationally related to a compelling state interest and narrowly tailored.
16. Meeting the initial threshold of First Amendment infringement requires a showing that goes beyond a simplistic assertion that disclosure alone chills association. An organization must make a concrete showing that disclosure "is itself inherently damaging to the organization or will incite other consequences that objectively could dissuade persons from affiliating with the organization."
17. SoCalGas failed to demonstrate that its First Amendment rights to associate would be chilled, or infringed upon, by responding to Cal Advocates' DR No. CalAdvocates-SC-SCG-2019-05 or the May 5, 2020 subpoena seeking documents and financial information related to 100% shareholder funded activities about its decarbonization campaign.
18. Even if SoCalGas established the initial showing of First Amendment infringement, a compelling government interest exists in fulfilling the Commission's mandate to regulate and oversee utilities in SoCalGas' disclosure of the information requested by DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 subpoena to the Commission.
- 19.
20. Cal Advocates' requests for information from SoCalGas, DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 Commission subpoena, are straightforward, and Cal Advocates attempts to clearly define the information needed for its discovery inquiry.
21. Cal Advocates' requests for information from SoCalGas, DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 Commission subpoena, do not place a burden on more First Amendment rights of associational privileges than necessary to achieve its interest.

22. Cal Advocates' requests for information from SoCalGas, DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 Commission subpoena, are narrowly tailored to achieve a compelling government interest under the First Amendment privilege.
23. Procedural due process applies when a government function impacts certain protected interests centered around deprivation of liberty or property.
24. Regulatory agencies, such as the Commission, have flexibility in fashioning the form of procedural due process provided in exercising their regulatory responsibilities and oversight.
25. Cal Advocates exercised its statutory oversight discreetly in initial requests and in all requests, including DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 Commission subpoena, which focused on the information needed to perform Cal Advocates' regulatory duties set forth in statute.
26. In extensive rounds of pleadings, SoCalGas has had multiple opportunities and continues to have opportunities to challenge Cal Advocates' requests for information set forth in DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 Commission subpoena.
27. No merit exists to SoCalGas' assertion that the Commission did not provide an appropriate level of procedural due process.
28. A significant element of the regulatory framework for utilities in California, such as SoCalGas, is the utility's obligation to provide the Commission and its staff, such as Cal Advocates, with requested information pertaining to regulatory oversight.
29. If a utility, such as SoCalGas, does not comply with the requests for information, such as DR No. CalAdvocates-SC-SCG-2019-05, from the Commission or its staff, including Cal Advocates, or more formal injunctions from the Commission, such as the May 5, 2020 subpoena, it is not unreasonable for the utility to expect to be subject to sanctions up to and including monetary penalties.

**THEREFORE, IT IS ORDERED that:**

1. Southern California Gas Company's December 2, 2019 motion, *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)*, requesting the full Commission's review of the

ALJ's November 1, 2019 ruling based on violations of its constitutional rights and the limits of the Commission's discovery rights under the Public Utilities Code, is denied.

2. Southern California Gas Company's (SoCalGas') December 2, 2019 motion, *Motion of Southern California Gas Company's (U 904 G) for Leave to File Under Seal Confidential Versions of Declarations 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)*, is granted but SoCalGas must provide access to the unredacted versions of the confidential declarations to the Commission, including its staff, the Public Advocates Office at the California Public Utilities Commission, under existing protections.
3. Southern California Gas Company's (SoCalGas') May 22, 2020 motion, *Southern California Gas Company's (U 904 G) Motion to Quash Portion of the Subpoena to Produce Access to Certain Materials in Accounting Databases and to Stay Compliance until the May 29<sup>th</sup> Completion of Software Solution to Exclude those Protected Materials In The Databases (Not In A Proceeding)*, requesting to quash portions of the May 5, 2020 Commission subpoena that requires SoCalGas to produce certain materials in and access to its accounting databases, is denied and, to the extent the motion requests to stay compliance with the May 5, 2020 subpoena until May 29, 2020, the motion is deemed moot.
- 4.
5. Southern California Gas Company's May 22, 2020 motion, *Southern California Gas Company's (U 904 G) Motion to Supplement the Record and Request for Expediated Decision by the Full Commission on Motion for Reconsideration/Appeal Regarding Administrative Law Judge's Ruling in the Discovery Dispute Between the Public Advocates Office and Southern California Gas Company, October 7, 2019 (Not In A Proceeding) if the Motion is not Granted to Quash Portion of the Subpoena to Produce Access to Certain Materials in Accounting Databases and to Stay Compliance Until the May 29<sup>th</sup> Completion of Software Solution to Exclude Those Protected Materials in the Databases (Not In A Proceeding)*, is granted.
6. Southern California Gas Company's March 25, 2020 motion, *Southern California Gas Company's (U 904 G) Emergency Motion for a Protective Order Staying All Pending and Future Data Requests from the California Public Advocates Office Served Outside of Any Proceeding (Relating to the Building Decarbonization*

*Matter), and Any Motions and Meet and Confers Related Thereto, During California Government Covid-19 Emergency "Safer at Home" Orders, was resolved by the Administrative Law Judge's email of April 6, 2020.*

7. The Public Advocates Office at the California Public Utilities Commission 's June 23, 2020 motion, *Public Advocates Office Motion to Find Southern California Gas Company in Contempt of this Commission in Violation Of Commission Rule 1.1 for Failure to Comply with a Commission Subpoena Issued May 5, 2020, and Fined for Those Violations From the Effective Date of the Subpoena (Not In A Proceeding)*, requesting that the Commission provide relief in the form of a contempt ruling and the levying of sanctions against Southern California Gas Company, is deferred and may be resubmitted at a later date.
8. The Public Advocates Office at the California Public Utilities Commission's July 9, 2020 motion, *Public Advocates Office Motion To Compel Confidential Declarations Submitted In Support Of Southern California Gas Company's December 2, 2019 Motion For Reconsideration Of First Amendment Association Issues And Request For Monetary Fines For The Utility's Intentional Withholding Of This Information; [Proposed] Order*, is deemed moot to the extent it requests the disclosure of information already addressed here and, to the extent the motion requests monetary fines against Southern California Gas Company, the motion is deferred and may be resubmitted at a later date.
9. Southern California Gas Company shall produce the information and documents requested by Public Advocates Office at the California Public Utilities Commission, including all confidential information not otherwise privileged as attorney-client or attorney work product, in DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 Commission subpoena, with any related privilege log, within 30 days of the effective date of this Resolution. SoCalGas must follow all of the below directives when asserting privileges:
  - (1) SoCalGas must provide a privilege log to Cal Advocates concurrent with the production of documents.
  - (2) SoCalGas must provide sufficient information in any privilege log to enable Cal Advocates to evaluate the merits of the privilege claim. At a minimum, the privilege log must include the following: (a) summary description of the document (b) date of the document (c) the name of each author or preparer (d) the name of each person who received the



document (e) legal basis for withholding the document, and (f) the document number.

- (3) If providing a privilege log, SoCalGas must concurrently provide Cal Advocates with a declaration under penalty of perjury by a SoCalGas attorney that the attorney has reviewed the materials associated with the privilege claim and that such privilege claim has a good faith basis in the law, and the specific legal basis, with a citation, for withholding the document.
- (4) Pursuant to Pub. Util. Code § 581, SoCalGas must provide the information in the form and detail requested by Cal Advocates.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on \_\_\_\_\_, the following Commissioners voting favorably thereon:

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Rachel Peterson  
Acting Executive Director

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

Resolution ALJ-391  
Administrative Law Judge Division  
December 17, 2020

**RESOLUTION**

RESOLUTION ALJ-391 Denies Southern California Gas Company's (SoCalGas') December 2, 2019 motion for reconsideration/appeal of the November 1, 2019 Administrative Law Judge's ruling and denies SoCalGas' May 22, 2020 motion to quash portions of the Commission's May 5, 2020 subpoena; grants SoCalGas' May 22, 2020 motion to supplement its December 2, 2019 motion for reconsideration/appeal; deems moot SoCalGas' May 22, 2020 motion to stay compliance with the May 5, 2020 subpoena until May 29, 2020; defers consideration of the Public Advocates Office at the California Public Utilities Commission's June 23, 2020 motion for contempt and sanctions for SoCalGas' failure to respond to the May 5, 2020 subpoena; and addresses other related motions.

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**Attachment - Service List**

## SUMMARY

This Resolution denies Southern California Gas Company's (SoCalGas') December 2, 2019 motion for reconsideration/appeal of the November 1, 2019 Administrative Law Judge's ruling and denies SoCalGas' May 22, 2020 motion to quash portions of the Commission's May 5, 2020 subpoena. In denying these motions, the Commission rejects SoCalGas' argument that the Public Advocates Office at the California Public Utilities Commission's (Cal Advocates') discovery rights, set forth in the Public Utilities Code, are limited by SoCalGas' First Amendment rights to association, assuming that such a right exists, and rejects SoCalGas' argument that the Commission has violated its procedural due process rights.

In addition, this Resolution grants SoCalGas' December 2, 2019 motion for leave to file under seal confidential versions of certain declarations but, in doing so, confirms that SoCalGas must provide access to the unredacted versions of the confidential declarations to the Commission, including its staff, such as Cal Advocates, under existing protections.

This Resolution also deems moot SoCalGas' May 22, 2020 motion to stay compliance with the May 5, 2020 subpoena until May 29, 2020, grants SoCalGas' May 22, 2020 motion to supplement the December 2, 2019 motion for reconsideration/appeal, and defers consideration of Cal Advocates' June 23, 2020 motion for contempt and sanctions for SoCalGas' failure to respond to the May 5, 2020 subpoena. By granting SoCalGas' December 2, 2019 motion for leave to file under seal and directing it to provide unredacted, confidential versions to Commission staff, including Cal Advocates, this Resolution also deems moot Cal Advocates' July 9, 2020 motion to compel and defers consideration of Cal Advocates' request therein for monetary fines.

Other related motions are also addressed.

SoCalGas is directed to produce the information and documents requested by Cal Advocates in DR No. CalAdvocates-SC-SCG-2019-05, including the confidential declarations submitted under seal in support of SoCalGas' December 2, 2019 motion for reconsideration/appeal, and in the May 5, 2020 Commission subpoena within 30 days of the effective date of this Resolution.

## **BACKGROUND**

### **1. Rulemaking 19-01-011 and Cal Advocates' Data Requests to SoCalGas - Outside of a Proceeding**

In May 2019, the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) initiated a discovery inquiry into Southern California Gas Company's (SoCalGas') funding of anti-decarbonization campaigns using "astroturfing" groups.<sup>1</sup> Cal Advocates initiated this discovery inquiry "outside of a proceeding" pursuant to its statutory authority and for reasons more fully addressed below.<sup>2</sup> In particular, Cal Advocates' inquiry focused on the extent to which SoCalGas was using ratepayer funds to support organizations presenting themselves to the Commission as independent grassroots community organizations that also support anti-decarbonization positions held by SoCalGas, such as Californians for Balanced Energy Solutions (C4BES) and other similar organizations.

Cal Advocates' discovery inquiry was prompted by allegations initially raised in Rulemaking (R.) 19-01-011<sup>3</sup> when C4BES filed a motion for party status on May 13, 2019, and Sierra Club challenged the motion on May 14, 2019, claiming that, unbeknownst to the public, SoCalGas founded and funded C4BES.<sup>4</sup> Cal Advocates responded to Sierra Club's motion to deny party status and stated that Cal Advocates would investigate the allegations raised by Sierra Club.<sup>5</sup>

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<sup>1</sup> Astroturfing is a practice in which corporate sponsors of a message mask their identity by establishing separate organizations to state a position or make it appear as though the movement originates from and has grassroots support.

<sup>2</sup> All pleadings submitted to the Commission related to this discovery dispute "outside of a proceeding" are available on the Commission's website at the Cal Advocates' webpage at: <https://www.publicadvocates.cpuc.ca.gov/general.aspx?id=4444>.

<sup>3</sup> R.19-01-011 *Order Instituting Rulemaking Regarding Building Decarbonization* (January 31, 2019).

<sup>4</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* (May 14, 2019). See also Cal Advocates' *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* (May 29, 2019).

<sup>5</sup> See R.19-01-011, *Cal Advocates' 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* (May 29, 2019) at 2.



On May 23, 2019, Cal Advocates initiated this inquiry by issuing Data Request (DR) SCG051719 to SoCalGas regarding its involvement with C4BES.

Cal Advocates issued this data request outside of R.19-01-011, as the scope of R.19-01-011 was limited to de-carbonization matters. In contrast, Cal Advocates' inquiry focused on SoCalGas' financial relationship with C4BES and the use of ratepayer funds to support lobbying efforts by C4BES. In addition, Cal Advocates initiated this discovery outside of a proceeding because no other Commission proceeding encompassed this issue. SoCalGas responded to the DR. Based on this response, Cal Advocates alleged that justification existed to continue its inquiry.

On July 19, 2019, Cal Advocates issued DR CalAdvocates-SC-SCG-2019-04 to SoCalGas. In response, SoCalGas refused, in part, to comply with the DR. At this point, Cal Advocates and SoCalGas began to dispute the lawfulness of the ongoing discovery.

## **2. SoCalGas' December 2, 2019 Motion for Reconsideration/Appeal Requesting the Full Commission's Review of the November 1, 2019 ALJ Ruling**

With this discovery dispute still unresolved, on August 13, 2019, Cal Advocates served SoCalGas with another data request, DR No.

CalAdvocates-SC-SCG-2019-05, which consisted of multiple questions built upon previous DRs. On August 27, 2019, SoCalGas responded to the DR with an objection to Question 8 based on the grounds that the requested production of its 100% shareholder-funded contracts related to C4BES fell outside the scope of Cal Advocates' statutory authority set forth in Public Utilities Code (Pub. Util. Code) §§ 309.5(a)<sup>6</sup> and 314.<sup>7</sup> Cal Advocates and SoCalGas engaged in discussions regarding Question 8 of the DR and after multiple attempts the parties agreed that they were at an impasse.

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<sup>6</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>7</sup> See 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 [PROPOSED] Order (Not In A Proceeding) (December 2, 2019) at 6.

On October 7, 2019, Cal Advocates submitted a motion to compel responses from SoCalGas to the President of the Commission pursuant to Pub. Util. Code § 309.5(e).<sup>8</sup> SoCalGas responded in opposition to Cal Advocates' motion on October 17, 2019.<sup>9</sup> SoCalGas again argued that because the information sought was 100% shareholder funded, it fell beyond Cal Advocates' statutory purview. The President referred this discovery dispute to the Commission's Chief Administrative Law Judge.

On October 29, 2019, the Chief Administrative Law Judge assigned the dispute to Administrative Law Judge Regina DeAngelis (ALJ) and informed the parties in writing of certain procedural rules to follow since this discovery dispute was outside of any formal proceeding and, therefore, the Commission's Rules of Practice and Procedure (Title 20, Division 1, of the California Code of Regulations) (herein "Rules")<sup>10</sup> did not directly apply.

On October 31, 2019, Cal Advocates filed a reply to SoCalGas' response.<sup>11</sup> On November 1, 2019, the ALJ issued a ruling granting Cal Advocates' motion to compel responses to DR No. CalAdvocates-SC-SCG-2019-05.<sup>12</sup> On November 4, 2019, SoCalGas submitted an emergency motion for stay of the November 1, 2019 ALJ ruling but, with its motion for stay pending, on November 5, 2019, SoCalGas also submitted the DR responses to Cal Advocates under protest.<sup>13</sup>

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<sup>8</sup> Cal Advocates' Motion to Compel Responses from Southern California Gas Company to Question 8 of Data Request CALADVOCATES-SC-SCG-2019-05 (Not In A Proceeding) submitted October 7, 2019.

<sup>9</sup> 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) submitted October 17, 2019.

<sup>10</sup> All references to "Rules" are to the Commission's Rules of Practice and Procedure.

<sup>11</sup> 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) submitted on October 31, 2019.

<sup>12</sup> 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.

<sup>13</sup> 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) submitted on November 4, 2019.

On December 2, 2019, SoCalGas submitted a motion for reconsideration/appeal requesting the full Commission's review of the ALJ's November 1, 2019 ruling.<sup>14</sup> SoCalGas' motion sought the Commission's review of that ruling and reversal.

In support of its motion, SoCalGas raised several constitutional arguments. SoCalGas alleged: (1) the materials sought by Cal Advocates unlawfully infringed on SoCalGas' First Amendment rights to association and (2) that, because the discovery dispute was occurring outside of a proceeding, the lack of procedural safeguards to govern the dispute violated SoCalGas' procedural due process rights.<sup>15</sup> SoCalGas also sought an order from the Commission directing Cal Advocates to return or destroy the constitutionally protected materials provided to Cal Advocates on November 5, 2019. (As noted below, SoCalGas subsequently supplemented this December 2, 2019 motion by a separate motion (dated May 22, 2020), discussed in more detail below). SoCalGas also filed a motion to file under seal certain declarations.<sup>16</sup> On December 17, 2019, Cal Advocates submitted a response.<sup>17</sup>

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<sup>14</sup> *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)* submitted on December 2, 2019. On December 2, 2019, SoCalGas also submitted a motion to file documents under seal.

<sup>15</sup> SoCalGas also contended that if the Commission did not stop Cal Advocates from invoking its statutory right to compel production of information, then it will continue with the data requests that allegedly infringe on SoCalGas' First Amendment rights.

<sup>16</sup> On December 2, 2019, SoCalGas concurrently filed *Motion of Southern California Gas Company's (U 904 G) for Leave to File Under Seal Confidential Versions of Declarations 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)*.

<sup>17</sup> *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)* submitted December 17, 2019.

On March 25, 2020, SoCalGas filed an emergency motion for a protective order staying all pending and future data requests from Cal Advocates served outside of any proceeding related to this dispute, and any motions and meet and confers related thereto, during the Governor of California's Covid-19 emergency "safer at home" executive orders.<sup>18</sup>

Before Cal Advocates had an opportunity to respond, the ALJ, via an email on April 6, 2020, reminded SoCalGas of Cal Advocates' statutory rights to inspect the accounts, books, papers, and documents of any public utility at any time and found that its request was contrary to California law. The ALJ advised parties to work together in these extraordinary times. We consider this March 25, 2020 SoCalGas motion resolved and do not address it further here.

This Resolution resolves SoCalGas' December 2, 2019 motion for reconsideration/appeal requesting the full Commission's review of the ALJ's November 1, 2019 ruling together with the other related motions, all pertaining to DR No. CalAdvocates-SC-SCG-2019-05 or the May 5, 2020 Commission subpoena, described below.<sup>19</sup>

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<sup>18</sup> *Southern California Gas Company's (U 904 G) emergency motion for a protective order staying all pending and future data requests from the California Public Advocates Office served outside of any proceeding (relating to the Building Decarbonization matter), and any motions and meet and confers related thereto, during California government Covid-19 emergency "safer at home" orders, submitted on March 25, 2020.*

<sup>19</sup> Further addressed below and related to SoCalGas' December 2, 2019 motions, on July 9, 2020, Cal Advocates submitted a motion to compel SoCalGas to produce the confidential versions of the declarations submitted in support of SoCalGas' December 2, 2019 motion for reconsideration/appeal and for daily monetary fines, *Public Advocates Office Motion To Compel Confidential Declarations Submitted In Support Of Southern California Gas Company's December 2, 2019 Motion For Reconsideration Of First Amendment Association Issues And Request For Monetary Fines For The Utility's Intentional Withholding Of This Information; [Proposed] Order*, submitted on July 9, 2020.

On July 17, 2020, SoCalGas filed response, *Response to Public Advocates Office Motion to Compel Confidential Declarations Submitted in Support of Southern California Gas Company's December 2, 2019 Motion for Reconsideration of First Amendment Association Issues and Request for Monetary Fines for the Utility's Intentional Withholding of this Information*. SoCalGas argues that Cal Advocates' Statutory Authority to inspect SoCalGas's books and records - including the confidential material in question - is limited by the First Amendment. Information includes: 100% shareholder-funded political activities.

On July 24, 2020, Cal Advocates filed a reply, *Public Advocates Office Reply to Southern California Gas Company's Opposition to Motion to Compel and for Fines Related to the Utility's Intentional Withholding of Confidential Declarations*.

**3. SoCalGas' May 22, 2020 Motion to Quash/Stay the May 5, 2020 Subpoena Seeking Access to SoCalGas' Accounting System and May 22, 2020 Motion to Supplement its December 2, 2019 Motion**

On May 1, 2020, Cal Advocates served SoCalGas with another data request, DR CalAdvocates-TB-SCG-2020-03, seeking access to SoCalGas' accounting database, as Cal Advocates continued its inquiry into SoCalGas' use of ratepayer monies to fund an anti-decarbonization campaign through astroturf organizations. On May 5, 2020, Cal Advocates served a subpoena, signed by the Commission's Executive Director, on SoCalGas seeking the same information as set forth in DR CalAdvocates-TB-SCG-2020-03, access to SoCalGas' accounting databases.<sup>20</sup>

SoCalGas delayed responding to the subpoena and, instead, on May 22, 2020, SoCalGas submitted a motion to quash the subpoena and to stay the subpoena until May 29, 2020, to allow it an opportunity to implement software solutions to exclude what it deemed as materials protected by attorney-client and attorney work product privileges, as well as materials implicating the same First Amendment issues raised in SoCalGas' December 2, 2019 motion for reconsideration/appeal of the November 1, 2019 ALJ ruling.<sup>21</sup>

On May 22, 2020, SoCalGas also submitted a motion to supplement the record of its December 2, 2019 motion for reconsideration/appeal and to request an expedited Commission decision (in the event SoCalGas' May 22, 2020 motion for a stay of the subpoena was not granted).<sup>22</sup>

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<sup>20</sup> The Public Utilities Commission of the State of California's *Subpoena to Produce Access to Company Accounting Databases* dated May 4, 2020 and served on May 5, 2020.

<sup>21</sup> *Southern California Gas Company's (U 904 G) Motion to Quash Portion of the Subpoena to Produce Access to Certain Materials in Accounting Databases and to Stay Compliance until the May 29<sup>th</sup> Completion of Software Solution to Exclude those Protected Materials in The Databases (Not In A Proceeding)* submitted May 22, 2020. SoCalGas originally submitted this motion on May 19, 2020 with redacted declarations. The ALJ ordered SoCalGas to provide confidential electronic versions of the declarations to the Commission and Cal Advocates. SoCalGas elected to instead file a "substituted" version of the Motion to Quash on May 22, 2020.

<sup>22</sup> *Southern California Gas Company's (U 904 G) Motion to Supplement the Record and Request for Expedited Decision by the Full Commission on Motion for Reconsideration/Appeal Regarding Administrative Law Judge's Ruling in the Discovery Dispute Between the Public Advocates Office and Southern California Gas Company, October 7, 2019 (Not In A Proceeding) if the Motion is not Granted to Quash Portion of the Subpoena to Produce Access to Certain Materials in Accounting Databases and to Stay Compliance Until the May 29<sup>th</sup> Completion of Software Solution to Exclude Those Protected Materials in the Databases (Not In A Proceeding)* submitted on May 20, 2020. SoCalGas originally

This Resolution resolves SoCalGas' May 22, 2020 motion to quash/stay the May 5, 2020 subpoena and May 22, 2020 Motion to Supplement its December 2, 2019 Motion.

**4. Cal Advocates' June 23, 2020 Motion for Contempt and Sanctions Related to SoCalGas' Failure to Comply with the May 5, 2020 Subpoena**

On June 23, 2020, Cal Advocates submitted a motion to find SoCalGas in contempt and to impose fines on SoCalGas for noncompliance with the May 5, 2020 subpoena.<sup>23</sup> More specifically, Cal Advocates asserted that SoCalGas was continuing to avoid complying with the May 5, 2020 subpoena and that SoCalGas' conduct following the issuance of the subpoena constituted a violation of Rule 1.1 and Pub. Util. Code §§ 309.5, 311, 314, 314.5, 314.6, which warrants the imposition of daily penalties. Cal Advocates also sought an order requiring SoCalGas to, among other things, provide Cal Advocates with access to financial databases on a read-only basis and to provide additional information from its accounting and vendor records systems showing which of its accounts are 100% shareholder funded, which accounts have costs booked to them associated with activities that are claimed to be subject to First Amendment privileges or are shareholder funded and other information about vendors of SoCalGas.

On July 2, 2020, SoCalGas submitted a response challenging Cal Advocates' motion for contempt and sanctions, alleging that: (1) the underlying premise of the motion, Cal Advocates' authority to inspect SoCalGas' books and records, lacked legal basis (2) the motion was premature and should not be decided before SoCalGas' motion to quash the subpoena, (3) that if the Cal Advocates' June 23, 2020 motion for contempt and sanctions was to be considered, then further procedural safeguards would be required under due process rights, and (4) the motion failed on its merits.<sup>24</sup>

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submitted this motion on May 20, 2020 with redacted declarations. The ALJ ordered SoCalGas to provide confidential electronic versions of the declarations to the Commission and Cal Advocates. SoCalGas elected to instead file a "substituted" version of the motion on May 22, 2020.

<sup>23</sup> *Public Advocates Office Motion to Find Southern California Gas Company in Contempt of this Commission in Violation of Commission Rule 1.1 for Failure to Comply with a Commission Subpoena Issued May 5, 2020, and Fined for Those Violations From the Effective Date of the Subpoena (Not In A Proceeding)* submitted on June 23, 2020.

<sup>24</sup> *Southern California Gas Company's (U 904 G) Response to Public Advocates Office's Motion to find Southern California Gas Company in Contempt of this Commission in Violation of Commission Rule 1.1*

On July 10, 2020, Cal Advocates submitted a reply addressing SoCalGas' arguments.<sup>25</sup>

In resolving SoCalGas' two May 22, 2020 motions related to the May 5, 2020 subpoena (the motion to quash/stay and the motion to supplement), this Resolution also addresses Cal Advocates' June 23, 2020 motion for contempt and sanctions. In addition, and as already stated above, this Resolution resolves SoCalGas' December 2, 2019 motion for reconsideration/appeal of the November 1, 2019 ALJ ruling.

All these requests for Commission action are reviewed together for reasons of administrative efficiency: all four motions address information sought by either DR No. CalAdvocates-SC-SCG-2019-05 or the May 5, 2020 subpoena; and all four motions rely on arguments related to the scope of Cal Advocates' statutory authority to engage in discovery of information from SoCalGas under the Pub. Util. Code and the application of the First Amendment right to association and procedural due process rights to protect SoCalGas from disclosure of shareholder-related information sought by Cal Advocates.

## DISCUSSION

### **1. Commission Staff's Statutory Right to Obtain Information to Exercise its Regulatory Oversight Over California's Investor-Owned Utilities**

There is clear statutory authority granting Commission staff the right to access the information at issue in DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 subpoena. The Commission, as a constitutionally-established state agency, is tasked with regulating public utilities under its jurisdiction.<sup>26</sup> The Pub. Util. Code grants broad authority to Commission staff to inspect the books and records of investor-owned utilities. The Pub. Util. Code states:

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*for Failure to Comply with a Commission Subpoena Issued May 5, 2020, and Fined for those Violations from the Effective Date of the Subpoena (Not In A Proceeding)* submitted on July 2, 2020.

<sup>25</sup> *Public Advocates Office Reply to Southern California Gas Company's Response to Motion for Findings of Contempt and Fines for the Utility's Failure to Comply with a Commission Subpoena Issued May 5, 2020*, submitted on July 10, 2020.

<sup>26</sup> Cal. Const., art. XII.

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.<sup>27</sup>

These broad powers apply:

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>28</sup>

This authority applies to all Commission staff without limitation, including Cal Advocates.

In addition to this statutory authorization for all Commission staff, an additional statutory provision allows Cal Advocates to issue subpoenas and data requests to regulated utilities.

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<sup>27</sup> Pub. Util. Code § 314(a).

<sup>28</sup> Pub. Util. Code § 314(b).



The office [Cal Advocates] 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>29</sup>

The statutory scheme also recognizes that information provided to the Commission staff by utilities might sometimes involve sensitive and confidential material. Section 583 of the Pub. Util. Code provides ample protection for such information.<sup>30</sup> Further, General Order 66-D provides a process for submitting confidential information to the Commission staff. Information collected pursuant to a books and record request is used as part of the staff's internal review process and, if properly designated as confidential by utilities, will not be publicly disclosed until a process is followed where the Commission as a body determines that the information should be open to public inspection.<sup>31</sup>

These statutory provisions have been part of the regulatory scheme since 1951 and in similar form since 1911. These provisions represent a clear legislative determination that the exercise of the power to review material by the Commission staff, including Cal Advocates, is an integral part of California's scheme to regulate investor-owned public utilities. In response to unique concerns raised by SoCalGas regarding protecting confidential information remotely available to Cal Advocates while reviewing its "live" SAP database, we direct Cal Advocates to provide a list to SoCalGas of the documents it seeks to print or copy from the SAP database and these documents will be treated as confidential for 20 days from the date of Cal Advocates' request to copy or print. Thereafter, documents that Cal Advocates requested to copy or print from the SAP database will only remain confidential if specifically designated as such by SoCalGas in accordance with the provisions of Pub. Util. Code § 583 and General Order 66-D.

For these reasons, we find that, under the authority provided by the Pub. Util. Code, Cal Advocates is entitled to the information sought in DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 subpoena. We now address

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<sup>29</sup> Pub. Util. Code § 309.5(e).

<sup>30</sup> Pub. Util. Code § 583.

<sup>31</sup> *Ibid.*

SoCalGas' argument that Cal Advocates' statutory authority is limited by SoCalGas' First Amendment and due process rights.

**2. SoCalGas' December 2, 2019 Motion for Reconsideration/Appeal of the November 1, 2019 ALJ Ruling to the Full Commission**

**a. First Amendment Privilege**

In SoCalGas' December 2, 2019 motion for reconsideration/appeal of the November 1, 2019 ALJ ruling directing it to respond to DR No. CalAdvocates-SC-SCG-2019-05, SoCalGas argues that the Commission staff's statutory right to obtain information from a regulated utility does not apply because the DR, which seeks information about the utility's, its affiliates', or its contractors' activities taking positions on decarbonization, jeopardizes SoCalGas' First Amendment rights to association. SoCalGas makes the argument that the utility's ability to freely associate with others for political expression and to petition the government for political redress would be chilled if it provided the requested shareholder-related information to its regulator using normal procedures (a data request) as authorized by existing statutory provisions.

SoCalGas makes similar arguments in its May 22, 2020 motions opposing the May 5, 2020 subpoena seeking access to SoCalGas' accounting database. We address all these motions below.

We find that SoCalGas' arguments pertaining to the First Amendment lack merit. The First Amendment to the U.S. Constitution protects "persons" from government restrictions on speech, the right to assemble, and the right to petition the government for redress of grievances.<sup>32</sup> The First Amendment applies to the states, such as California, and state entities, such as the Commission, through the Fourteenth Amendment to the U.S. Constitution.<sup>33</sup> Under current case law, these protections apply to private organizations and corporations.<sup>34</sup> These rights are also contained in the California Constitution.<sup>35</sup> SoCalGas enjoys the same First

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<sup>32</sup> U.S. Const. amends I., XIV.

<sup>33</sup> *Cent. Hudson Gas & Elec. Corp. v. Public Serv. Com.* (1980) 447 U.S. 557, 561.

<sup>34</sup> *Citizens United v. FEC* (2010) 558 U.S. 310, 342 (*Citizens United*).

<sup>35</sup> Cal. Const., art. I, §§ 2(a), 3(a).

Amendment rights as any other person or entity. Its status as a regulated public utility does not impair or lessen these rights.<sup>36</sup>

However, the right to associate for political expression is not absolute. If an action amounts to an infringement it may, nevertheless, “be justified by regulations adopted to serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms.”<sup>37</sup>

Courts evaluate First Amendment privilege claims in two steps. First, the party asserting the privilege to block disclosure of materials must make a showing of arguable First Amendment infringement,<sup>38</sup> which can be intentional or indirect.<sup>39</sup> If this showing is made, the burden shifts to the government to demonstrate that the information sought is rationally related to a compelling state interest.<sup>40</sup> The Commission’s analysis of SoCalGas’ alleged infringement and the existence of a compelling state interest follow.

**i. SoCalGas fails to establish that its First Amendment rights will be infringed by complying with Cal Advocates’ Data Request, DR No. CalAdvocates-SC-SCG-2019-05**

We first review whether SoCalGas made a showing of First Amendment infringement. In its December 2, 2019 motion for reconsideration/appeal, SoCalGas argues that DR No. CalAdvocates-SC-SCG-2019-05 seeks information about its political activity and, in doing so, chills its First Amendment rights. SoCalGas points out, and we agree, that the DR requests information on the topics of how SoCalGas funds its decarbonization campaign.<sup>41</sup> In support of its infringement claim, SoCalGas relies on a declaration from Sharon Tomkins,

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<sup>36</sup> *Pac. Gas & Elec. Co. v. Public Utilities Com.* (1986) 475 U.S. 1, 17; see also *Pac. Gas & Elec. Co. v. Public Utilities Com.* (2000) 85 Cal.App.4<sup>th</sup> 86, 93.

<sup>37</sup> *Roberts v. Jaycees* (1984) 468 U.S. 609, 623 (*Roberts*).

<sup>38</sup> *Perry v. Schwarzenegger* (9<sup>th</sup> Cir. 2010) 591 F.3d 1147, 1160 (*Perry*).

<sup>39</sup> *National Assn. for Advancement of Colored People v. Ala. ex rel. Patterson* (1958) 357 U.S. 449, 461-62 (*NAACP*).

<sup>40</sup> *Perry, supra*, 591 F.3d at p. 1161.

<sup>41</sup> The May 5, 2020 subpoena contains a broader request that nevertheless focuses on determining, by way of partial example, what accounts are used to track shareholder-funded activity, what payments are made from those accounts, and what invoices were submitted in support of those payments.

SoCalGas' Vice President of Strategy and Engagement and Chief Environmental Officer, stating that she would be less likely to engage in certain communications and contracts if required to produce the requested information and stating her belief that other entities would be less likely to associate with SoCalGas if information about SoCalGas' political efforts are disclosed to the Commission.<sup>42</sup> SoCalGas submitted additional declarations from private organizations specializing in government relations and public affairs, outside of SoCalGas, including statements that disclosure to the Commission would dissuade them from communicating or contracting with SoCalGas.<sup>43</sup>

Meeting the initial showing of First Amendment infringement requires a showing that goes beyond a simplistic assertion that disclosure alone chills association. An organization must make a concrete showing that disclosure "is itself inherently damaging to the organization or will incite other consequences that objectively could dissuade persons from affiliating with the organization."<sup>44</sup> The initial showing has been established where, for example, the state of Alabama sought the National Association for the Advancement of Colored People's (NAACP's) membership list during the civil rights movement.<sup>45</sup> The NAACP proved that this disclosure would subject its members to economic reprisals as well as threats of physical coercion.<sup>46</sup> On the other hand, if the threat to constitutional rights is not clearly demonstrated, there is no need to consider the state agency's compelling interest.<sup>47</sup>

SoCalGas assertion that its First Amendment rights to association were or will be chilled by DR No. CalAdvocates-SC-SCG-2019-05 seeking documents about its decarbonization campaign is unconvincing. Although its declarations attempt to link the disclosure to the Commission of the political activity with repercussions

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<sup>42</sup> December 2, 2019 Motion for Reconsideration/ Appeal, Declaration 3, ¶¶ 8-10.

<sup>43</sup> December 2, 2019 Motion for Reconsideration/ Appeal, Declarations 4, 5, 6.

<sup>44</sup> *Dole v. Local Union 375, Plumbers Int'l Union* (9th Cir. 1990) 921 F.2d 969, 973-974 (*Dole*).

<sup>45</sup> *NAACP, supra*, 357 U.S. at p. 462.

<sup>46</sup> *Ibid.*

<sup>47</sup> In *McLaughlin*, a court rejected a union's attempt to block a Labor Management Reporting and Disclosure Act subpoena by submitting a declaration containing "argument - not facts - concerning the impact of an unrestricted administrative review" of meeting records. (*McLaughlin v. Service Employees Union, Local 208* (9th Cir. 1989) 888 F.2d 170, 175 (*McLaughlin*).) Similarly, in *Dole v. Local Union 375*, the court rejected claim that disclosing information about union's operating fund, alone, would chill First Amendment rights. (*Dole, supra*, 921 F.2d at pp. 973-74.)

– SoCalGas contends that if it responds to these DRs, it will discourage certain communications and contracts with outside entities<sup>48</sup> – these contentions are primarily hypothetical. Such threatened harm in communications and partnerships falls short of the palpable fear of harassment and retaliation in recognized instances of First Amendment infringement, such as that in *NAACP*.<sup>49</sup>

We find no infringement on SoCalGas’ First Amendment rights by disclosing to the Commission, including Cal Advocates, responses to DR No. CalAdvocates-SC-SCG-2019-05 seeking documents about its decarbonization campaign.

**ii. Even if SoCalGas established the initial showing of First Amendment infringement, a compelling government interest exists in disclosure of this information to Cal Advocates**

In its December 2, 2019 motion for reconsideration/appeal, SoCalGas claims that because DR No. CalAdvocates-SC-SCG-2019-05 seeks information about political activities and activities that are “100% shareholder-funded,” the information does not need to be disclosed because such activities are not subject to Cal Advocates’ oversight. As shown above in this Resolution, this position advanced by SoCalGas has not met the threshold showing of First Amendment infringement. The Pub. Util. Code grants broad authority to Commission staff, including Cal Advocates, to inspect the books and records of investor-owned utilities. Therefore, even if SoCalGas had met the threshold showing, the compelling government interest in obtaining this data outweighs the potential infringement on First Amendment rights

Legal doctrine also permits government action that indirectly might impair First Amendment rights when the government has a compelling governmental interest, also described as a proper interest in fulfilling its mandate.<sup>50</sup> We find a compelling government interest here, Cal Advocates’ requests for information about SoCalGas’ decarbonization campaign are consistent with its broad

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<sup>48</sup> SoCalGas’s December 2, 2019 Motion for Reconsideration/Appeal, Declaration 3, ¶¶ 8-10 and Declarations 4 - 6.

<sup>49</sup> *NAACP*, *supra*, 357 U.S. at p. 462.

<sup>50</sup> See *e.g.*, *Roberts*, *supra*, 468 U.S. at p. 623 (finding the state’s interest in “eradicating discrimination against female citizens” justified any infringement of the associational freedoms in requiring all-male club to admit women).

statutory authority to inspect the books and records of investor-owned utilities in furtherance of its proper interest in fulfilling the Commission's mandate to regulate and oversee utilities.

After establishing a compelling governmental interest, the courts have applied a two-step analysis for evaluating whether government actions that arguably infringe on First Amendment rights may lawfully proceed as a compelling governmental interest. First, the action must be "rationally related to a compelling governmental interest" and second, the action must be narrowly tailored, such "that the least restrictive means of obtaining the desired information" have been used.<sup>51</sup>

Cal Advocates' discovery pursuant to DR No. CalAdvocates-SC-SCG-2019-05 satisfies these two requirements.

**iii. DR No. CalAdvocates-SC-SCG-2019-05 is rationally related to a compelling government interest**

We now review the first step of the analysis for evaluating the constitutionality of the Cal Advocate's DR: whether the DR is rationally related to a compelling interest. In its December 2, 2019 motion for reconsideration/appeal, SoCalGas does not refute Cal Advocates' compelling interest in the data request beyond a broad assertion that, because its political activities are "100% shareholder-funded," they are not subject to Cal Advocates' oversight. SoCalGas' position is incorrect.

It is well-settled that state regulatory agencies, such as the Commission, can request information to fulfill their regulatory mandate, even where doing so may potentially impact First Amendment rights.<sup>52</sup> Indeed, this DR arises from the

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<sup>51</sup> *Perry, supra*, 591 F.3d at p. 1161.

<sup>52</sup> See e.g., *Citizens United* (2010) 558 U.S. 310, 369 (upholding federal funding disclosure and disclaimer rules because the "public has an interest in knowing who is speaking about a candidate shortly before the election."); *Ams. for Prosperity Found. v. Becerra (Prosperity Found.)* (9th Cir. 2018) 903 F.3d 1000, 1004 (holding that the California Attorney General's requirement that regulated charities disclose information about large donors withstood exacting scrutiny because of the important state interest in regulating charitable fraud); *Dole, supra*, 921 F.2d at pp. 973-74 (upholding federal subpoena for union financial records authorized by statute over objections that the disclosure violated the union's free association rights); *United States v. Comley* (1st Cir 1989) 890 F.2d 539 (upholding an federal investigation subpoena seeking tape recordings and transcripts of telephone conversation and rejecting arguments that disclosure violated right to freedom of association rights); *St. German v. United States* (2d Cir. 1988) 840 F.2d 1087, 1094 (upholding IRS third-party summons in tax fraud investigation over right of

Commission's mandate to regulate investor-owned public utilities. This mandate includes ensuring that consumers have safe and reliable utility service at reasonable rates, protecting against fraud, and promoting the health of California's economy. Within the Commission, Cal Advocates is statutorily authorized 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>53</sup>

The briefing materials submitted by Cal Advocates show that the information sought by DR No. CalAdvocates-SC-SCG-2019-05 is necessary for Cal Advocates to evaluate the potential use of ratepayer funds for lobbying activity. Cal Advocates issued the DR after discovering that SoCalGas might have used ratepayer funds to support lobbying activity. It is well-established that regulated utilities may not use ratepayer funds for advocacy-related activities that are political or do not otherwise benefit ratepayers.<sup>54</sup> Regulated utilities carry the burden of demonstrating that their activities are eligible for cost recovery.<sup>55</sup> A statement of counsel for SoCalGas describing certain activities as "100% shareholder-funded" does not, in and of itself, deprive Cal Advocates of its statutory authority to review and make its own determinations regarding financial information from a regulated utility.<sup>56</sup>

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free association objections); *United States v. Duke Energy Corp.* (M.D.N.C. 2003) 218 F.R.D. 468, 473 (allowing discovery request for energy company's communications with trade association despite their potential to chill First Amendment rights).

<sup>53</sup> Pub. Util. Code § 309.5(a).

<sup>54</sup> *Southern California Edison Co.*, 2012 Cal. PUC LEXIS 555, \*765 (D.12-11-051) (finding that membership subscriptions to organizations that advance tax reduction policies are inherently political and funding should not be permitted under rate recovery); *Southern California Gas Co.*, 1993 Cal. PUC LEXIS 728, \*103 (D.93-12-043) (finding that "ratepayers should not have to bear the costs of public relations efforts in this area, which according to SoCalGas, are designed primarily to increase load by promoting natural gas use to business and government leaders").

<sup>55</sup> *Pac. Gas & Elec. Co.*, 2007 Cal. PUC LEXIS 173, \*66 (D.07-03-011) (requiring utility to keep records showing that program costs include funding for lobbying activities).

<sup>56</sup> December 2, 2019 SoCalGas Motion for Reconsideration/ Appeal, Declaration of Johnny Q. Tran, Senior Counsel, Regulatory, SoCalGas.

As such, we find Cal Advocates' DR No. CalAdvocates-SC-SCG-2019-05 is rationally related to a compelling government interest.

**iv. DR No. CalAdvocates-SC-SCG-2019-05 is narrowly tailored to that compelling government interest**

We now turn to the second steps of the analysis for evaluating the constitutionality of Cal Advocates DR No. CalAdvocates-SC-SCG-2019-05: whether the DR is narrowly tailored to a compelling governmental interest. SoCalGas again relies on its maxim that activities involving "100% shareholder-funded" activities are off limits to the Commission, including Cal Advocates, to assert that this DR is not narrowly tailored. This argument suggests, incorrectly, that a utility may unilaterally designate certain topics off-limits to Commission oversight.

In circumstances where the First Amendment privilege is involved, a government entity must ensure that its requests are narrowly tailored to achieve a compelling government interest. This means that the government request should not place a burden on more of the First Amendment right of associational privileges than necessary to achieve its interest.<sup>57</sup>

Cal Advocates' DR is straightforward and attempts to clearly define the information needed for its inquiry. The scope of the DR is consistent with numerous disclosure requirements upheld by other courts. For example, in *Duke Energy*, the court allowed a government request for a utility company's communications with a third-party, even though the disclosure infringed on First Amendment associational rights, because it was relevant to the subject matter of the litigation.<sup>58</sup> DR No. CalAdvocates-SC-SCG-2019-05 is narrowly tailored to

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<sup>57</sup> *United States v. Baugh* (9th Cir. 1999) 187 F.3d 1037, 1043. See also *Frisby v. Schultz* (1988) 487 U.S. 474, 485 (a regulation is "narrowly tailored if it targets and eliminates no more than the exact source of the 'evil' it seeks to remedy"); *City of Cincinnati v. Discovery Network, Inc.* (1993) 507 U.S. 410, 417 n. 13. (a statute or regulation "need not be the least restrictive means of furthering [the government's] interests, but the restriction may not burden substantially more speech than necessary to further the interests").

<sup>58</sup> *Duke Energy, supra*, 218 F.R.D. at p. 473 (allowing discovery request for energy company's communications with trade association despite their potential to chill First Amendment rights). See also *Prosperity Found.*, 903 F.3d 1000, 1011 (finding state interest in regulating charities was sufficient to allow Attorney General to require disclosure of sensitive donor information despite potential to infringe First Amendment rights); *Dole, supra*, 921 F.2d at pp. 973-74 (upholding federal subpoena for union financial records despite possible infringement on First Amendment associational rights); *Comley* (1st Cir 1989) 890 F.2d 539 (allowing disclosure of transcripts and tape recordings despite possibility of infringing on First Amendment associational rights); *St.*



seek specific contracts and information about SoCalGas' potential use of ratepayer funds for lobbying activities. Indeed, it arose as part of an inquiry that escalated after SoCalGas did not disclose its affiliation with an entity that sought party status in a rulemaking proceeding before the Commission.<sup>59</sup> SoCalGas refused to provide information about its affiliation, thereby leading to this series of data requests by Cal Advocates.

The Commission has the right to inspect all records necessary as part of its general supervisory authority over all regulated utilities. Statements asserting the conclusion that certain activities are "exclusively shareholder funded" do not deprive the Commission of its statutorily granted authority to review a utility's books and records to ensure compliance with applicable regulatory laws and standards. Moreover, SoCalGas' argument is circular and begs the question, since SoCalGas has not proven, but merely asserts, that the funds in question are truly separate. Taken to the logical conclusion, a utility might opt out of regulation at any time, at its own discretion, based on its self-serving description of its activities. SoCalGas' position that it may curtail Commission staff's ability to conduct its regulatory function of ensuring proper use of ratepayer funds - by making unsupported assertions - is fundamentally inconsistent with its status as a regulated public utility.

As such, we find Cal Advocates' DR No. CalAdvocates-SC-SCG-2019-05 is narrowly tailored, such that the least restrictive means of obtaining the desired information has been used.

#### **b. Due Process Rights**

SoCalGas alleges that its due process rights have been violated because there are no "procedural guardrails [as the discovery dispute falls outside of a formal proceeding] in place to protect parties against the excesses of the unlimited discovery authority" of Cal Advocates. This is not correct.

Procedural due process applies when a government function impacts certain protected interests centered around deprivation of liberty or property.<sup>60</sup>

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*German v. United States* (2d Cir. 1988) 840 F.2d 1087, 1094 (allowing summons in tax fraud investigation despite possible infringement on First Amendment associational rights).

<sup>59</sup> R.19-01-011, *Order Instituting Rulemaking Regarding Building Decarbonization* (January 31, 2019).

<sup>60</sup> *Morrissey v. Brewer* (1982) 408 U.S. 471, 481. "The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property. When protected interests are implicated, the right to some

Regulatory commissions have flexibility in fashioning the form of due process provided in exercising their regulatory responsibilities.<sup>61</sup> Here, the Commission is deciding whether SoCalGas has presented sufficient justification to avoid the application of state statutes that specifically require regulated utilities to provide information to Commission staff (and specifically to Cal Advocates). The process involved has been extensive.

SoCalGas and Cal Advocates have presented their views on these questions in extensive pleadings and responsive rounds of pleadings, as described in this Resolution. SoCalGas has not identified any right or claim at issue here that would require any more specific form of process or any aspect of the process thus far relied upon by the Commission to receive pleadings that was insufficient.

To briefly review the process involved, this dispute started when, in a formal Commission proceeding, R.19-01-011, a potential financial relationship between SoCalGas and C4BES, the entity seeking party status in the proceeding, came to light in a pleading filed by Sierra Club. Based on the record of that proceeding, there was no transparency as to the source of C4BES' funding, as either shareholder or ratepayer, or the legitimacy of Sierra Club's claims about ratepayers funding C4BES. Cal Advocates then submitted a series of discreet DRs outside of any proceeding, as permitted by statute, which led to the DR in question, DR No. CalAdvocates-SC-SCG-2019-05. The DRs were focused to get to the root of the issue at hand. Cal Advocates exercised its oversight as allowed under California law and would have been entitled to propound these DRs outside of a proceeding even if these issues had not been raised by Sierra Club in R.19-01-011.

However, after encountering multiple instances where, despite frequent discussions, SoCalGas simply did not provide the specific information needed to get to the root of its inquiry, Cal Advocates invoked Pub. Util. Code § 309.5(e) which initiated a procedural process to address this DR dispute. Pub. Util. Code

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kind of prior hearing is paramount. But the range of interests protected by procedural due process is not infinite." *Board of Regents v. Roth* (1972) 408 U.S. 564, 569-571.

<sup>61</sup> *Wood v. Public Utilities Commission* (1971) 4 Cal.3d 288, 292 (if a proceeding is quasi-legislative, as opposed to quasi-judicial, there are no vested interests being adjudicated, and therefore, there is no due process right to a hearing). See *United States v. Florida East Coast R. Co.* (1973) 410 U.S. 22; *Western Oil & Gas Ass'n v. Air Resources Bd.* (1984) 37 Cal.3d 502 (an administrative agency's proceedings in which guidelines, regulations, and rules for a class of public utilities are developed have consistently been considered quasi-legislative proceedings).

§ 309.5(e) allows Cal Advocates to compel “production or disclosure of any information it deems necessary to perform its duties from any entity regulated by the commission” and to bring any resulting discovery disputes to the President of the Commission, if the discovery dispute is occurring outside of any proceeding.

Soon after the President’s receipt of Cal Advocates’ motion to compel on October 7, 2019,<sup>62</sup> the President referred this matter to the Chief Administrative Law Judge to provide for a process and procedural path to address the dispute. On October 29, 2019, the Chief Administrative Law Judge assigned an ALJ to preside over the dispute and provided the parties with certain procedural rules to follow.

At each step of this process and prior to any decision or ruling, SoCalGas had an opportunity to submit responses to Cal Advocates’ motions, submit motions itself, and even further, submit motions for the full Commission to act on its requests, such as its December 2, 2019 motion for reconsideration/appeal of the November 1, 2019 ALJ ruling, which is one of the bases of this Resolution. Except regarding the Commission’s consideration of contempt and sanctions (which are not resolved here), SoCalGas did not request evidentiary hearings and did not contest relying on written pleadings to resolve the issues set forth herein.

In addition, Cal Advocates exercised its statutory oversight discreetly in initial requests and in all cases focused on the information it needed to perform its statutory duties. SoCalGas had multiple opportunities and continues to have opportunities to challenge these discovery requests. Further, as a result of SoCalGas’ repeated submissions challenging Cal Advocates’ statutory authority, a simple request for information has turned into an extensive inquiry. Delays in the release of information often frustrate this agency’s regulatory purposes. In this case, SoCalGas has had more, not less, due process than is necessary under the law.

Moreover, SoCalGas bases its claim of a violation of due process on a false premise. SoCalGas’ claim that a certain amount of process is due rests on its assertion that requests for information made by Commission staff amount to “excesses of ... unlimited discovery authority” that are so significant that they

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<sup>62</sup> Cal Advocates’ *Motion to Compel Responses from Southern California Gas Company to Question 8 of Data Request CALADVOCATES-SC-SCG-2019-05* (Not In A Proceeding) submitted October 7, 2019.

require constitutional protection.<sup>63</sup> This is a rhetorical complaint that attempts to imply that some harm occurs when regulatory staff gather information to assist them in performing their regulatory duties. That is not the case. Cal Advocates has broad discovery rights, conferred by statute, because its staff are regulators. As a regulated public utility, SoCalGas is guaranteed certain privileges that are subject to the oversight of the Commission and its staff. Cal Advocates rightfully exercised that oversight in the manner allowed by statute, the U.S. Constitution, and the California Constitution. The exercise of clear statutory authority is not an improper “excess” that needs to be constrained.

We therefore find that Cal Advocates’ request for information, as set forth in DR No. CalAdvocates-SC-SCG-2019-05, and the process relied upon by the Commission to resolve this discovery dispute outside of a proceeding, do not violate SoCalGas’ procedural due process rights.

Therefore, SoCalGas’ December 2, 2019 motion for reconsideration/appeal of the November 1, 2019 ALJ ruling is denied.

**3. SoCalGas’ May 22, 2020 Motions to Quash Portions of/Stay the May 5, 2020 Subpoena and Motion to Supplement Record and Request for Expedited Decision by the Full Commission**

This discovery dispute continued into 2020 and centered around Cal Advocates’ May 5, 2020 subpoena. The May 5, 2020 subpoena, which related to the same information as DR CalAdvocates-TB-SCG-2020-03, required SoCalGas to give Cal Advocates access to its accounting database. In response to the subpoena, on May 22, 2020, SoCalGas concurrently submitted two motions, a motion to quash portions of and stay the May 5, 2020 subpoena, and a motion to supplement the record of its previously filed December 2, 2019 motion for reconsideration/appeal. In the May 22, 2020 motion to quash/stay, SoCalGas made several requests. We address each of these requests below.

First, SoCalGas requested a stay of complying with the subpoena until May 29, 2020, to complete software solutions to bar Cal Advocates’ access to what it deemed protected materials and to quash the subpoena, asserting the same arguments previously presented, that Cal Advocates’ statutory discovery

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<sup>63</sup> *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)* submitted on December 2, 2019 at 22.

rights were limited by the First Amendment and by laws governing protected materials. SoCalGas defined protected materials as documents and information protected under attorney-client privilege and attorney work-product doctrine.

The crux of SoCalGas' May 22, 2020 motion to stay is to obtain additional time to place a firewall to limit Cal Advocates' access to certain "protected" records in its database. Cal Advocates gave SoCalGas the additional time it requested to create that firewall. The May 22, 2020 motion to stay is deemed moot since the time requested has passed and relief requested, an opportunity to provide screening to remote users of the accounting systems Cal Advocates requested to review, has occurred.

Second, SoCalGas requests to quash the subpoena to exclude information and records based on its First Amendment privilege and other privileges. We find that, to the extent the information and records relate to Cal Advocates' inquiry into specific contracts and information about SoCalGas' potential use of ratepayer funds for political activities, it was improper for SoCalGas to block access to those records. Cal Advocates has statutory authority to access those records. Furthermore, as laid out above, SoCalGas has failed to demonstrate its First Amendment rights have been infringed, and even assuming, *arguendo*, it made such an initial showing, the request for access to accounting information maintained by SoCalGas is in furtherance of Commission staff review of potential use of ratepayer funds for political activities and is, therefore, designed to allow staff to accomplish a compelling government interest. In addition, SoCalGas may not unilaterally designate information as being not subject to inspection by Commission staff by asserting that the information relates to activities that are shareholder, not ratepayer, funded.

Therefore, SoCalGas' May 22, 2020 motion to quash is denied. The other privileges asserted by SoCalGas in this May 22, 2020 motion to prevent disclosure of the information to Cal Advocates, including the attorney-client and attorney work-product privileges, are addressed below.

Lastly, we address the remaining May 22, 2020 motion. In the May 22, 2020 motion to supplement the record of the December 2, 2019 motion for reconsideration/appeal, SoCalGas requested permission to supplement its December 2, 2019 motion and an expedited resolution of that motion in the event its motion to quash is denied. This May 22, 2020 motion to supplement the record of the December 2, 2019 motion for reconsideration/appeal is granted. Furthermore, because we resolve the December 2, 2019 motion for

reconsideration/appeal herein, SoCalGas' request for expedited consideration is moot.

#### **4. Attorney-Client or Attorney Work Product Privileges**

To the extent SoCalGas seeks to assert attorney-client or attorney work product privileges, it must prepare and provide to Cal Advocates a privilege log listing the information withheld and comply with all requests from Cal Advocates to provide access to the portions of the documents or other materials not subject to these privileges. Specifically, SoCalGas must follow the below directives when asserting these privileges:

- (1) SoCalGas must provide a privilege log to Cal Advocates concurrent with the production of documents.
- (2) SoCalGas must provide sufficient information in any privilege log to enable Cal Advocates to evaluate the merits of the privilege claim. At a minimum, the privilege log must include the following: (a) summary description of the document (b) date of the document (c) the name of each author or preparer (d) the name of each person who received the document (e) legal basis for withholding the document, and (f) the document number.
- (3) If providing a privilege log, SoCalGas must concurrently provide Cal Advocates with a declaration under penalty of perjury by a SoCalGas attorney that the attorney has reviewed the materials associated with the privilege claim and that such privilege claim has a good faith basis in the law, and the specific legal basis, with a citation, for withholding the document.
- (4) Pursuant to Pub. Util. Code § 581, SoCalGas must provide the information in the form and detail requested by Cal Advocates.

#### **5. Cal Advocates' June 23, 2020 Motion for the Commission to Find SoCalGas in Contempt and to Levy a Fine**

This Resolution does not resolve Cal Advocates' June 23, 2020 motion for the Commission to find SoCalGas in contempt and to levy a fine. This Resolution only addresses those claims that may be resolved as a matter of law based upon the submitted pleadings.

This does not mean that Cal Advocates' claims must fall by the wayside. As described in detail above, a regulated utility's obligation to provide the Commission's staff with requested information is a significant element of the

regulatory framework for utilities in California. If a utility does not comply with the requests from the Commission's staff or more formal injunctions from the Commission, such as subpoenas, it is not unreasonable for the utility to expect to be subject to sanctions up to and including monetary penalties. Indeed, Cal Advocates cites to past instances where the Commission has applied such sanctions to situations similar to the dispute presented here.<sup>64</sup>

As described herein and set forth in Pub. Util. Code § 309.5, Cal Advocates is an independent division within the Commission that advocates on behalf of the interests of residential and small commercial customers of public utilities. The Pub. Util. Code grants Cal Advocates broad authority to compel any entity regulated by the Commission to disclose any information it deems necessary in furtherance of those duties. Accordingly, Cal Advocates' inquiry into whether SoCalGas' funding of its activities relating to decarbonization was proper, and this ongoing inquiry can also include the question of whether SoCalGas' responses to discovery requests were proper and met appropriate legal requirements.

The Commission may conduct a further investigation of SoCalGas' conduct through the appropriate enforcement division within the Commission and, based on any resulting recommendation by such enforcement division, the Commission may elect to initiate an order instituting investigation. If so, Cal Advocates may decide to participate in such a proceeding and include instances where it found SoCalGas improperly responded or failed to timely provide information in response to Cal Advocates' discovery requests and recommend penalties.

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<sup>64</sup> See *Public Advocates Office Motion to Find Southern California Gas Company in Contempt of this Commission in Violation of Commission Rule 1.1 for Failure to Comply with a Commission Subpoena Issued May 5, 2020, and Fined for Those Violations From the Effective Date of the Subpoena (Not In A Proceeding)* submitted on June 23, 2020 at 16-22.

## CONCLUSION

Pursuant to this Resolution, SoCalGas shall provide within 30 days from the effective date, with exceptions only based on attorney-client and attorney work product privileges, the information Cal Advocates has requested in DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 subpoena. The Commission may at another time consider if sanctions or penalties are appropriate, after undertaking a thorough and comprehensive review of all the facts regarding SoCalGas' activities and its responses to Cal Advocates' discovery requests.

## COMMENTS

Pub. Util. Code § 311(g)(1) requires that a draft resolution be served on all parties and be subject to a public review and comment period of 30 days or more, prior to a vote of the Commission on the resolution.<sup>65</sup>

The 30-day comment period was provided.

Regarding comments in response to the draft resolution, Rule 14.5 specifies that "Any person may comment on a draft or alternate draft resolution by serving (but not filing) comments on the Commission within 20 days of the date of its notice in the Commission's Daily Calendar and in accordance with the instructions accompanying the notice."

Pursuant to Rule 14.5, comments on this draft resolution are due within 20 days of the date notice this draft resolution was posted in the Commission's Daily Calendar.<sup>66</sup>

Regarding service of a draft resolution, Rule 14.2 (d) further specifies that, a draft resolution shall not be filed with the Commission but shall be served on other persons as the Commission deems appropriate.

The Commission served this draft resolution on the attached service list. Parties are directed to serve their comments regarding this draft Resolution, which resolves a discovery dispute "outside of a proceeding," on Administrative Law Judge Regina

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<sup>65</sup> Pub. Util. Code § 311 (g) states, in relevant part, as follows: "Before voting on any commission decision not subject to subdivision (d), the decision shall be served on parties and subject to at least 30 days public review and comment. . . . For purposes of this subdivision, 'decision' also includes resolutions, including resolutions on advice letter filings."

<sup>66</sup> The Daily Calendar is available on the Commission's website.



DeAngelis on the attached service list, and on the President of the Commission. Service shall be performed in accordance with the Commission's Rules of Practice and Procedure. Service shall be performed by electronic mail only.

SoCalGas, Cal Advocates, and Earthjustice jointly with Sierra Club filed comments to the draft resolution on November 19, 2020. Based on these comments, the following modifications were made to the draft resolution consistent with the law:

In response to comments by SoCalGas, the Commission's process for initiating a possible investigation into SoCalGas' discovery practices is clarified.

In response to comments by Cal Advocates, Sierra Club, and Earthjustice, specific directives are added to the resolution should SoCalGas assert a privilege to protect the disclosure of information or document so that the exchange of information proceeds in an orderly fashion consistent with the law.

In response to comments by SoCalGas regarding its unique concerns about having sufficient time to designate as confidential the documents and information in the "live" database via remote access, we direct Cal Advocates to provide a list to SoCalGas of the documents that Cal Advocates seeks to print or copy from the SAP database and these documents will be treated as confidential for 20 days from the date of Cal Advocates' request to copy or print. Thereafter, documents that Cal Advocates requested to copy or print from the SAP database will only remain confidential if specifically designated as such by SoCalGas in accordance with the provisions of Pub. Util. Code § 583 and General Order 66-D.

In response to SoCalGas' request that the Commission stay enforcement of at least the portion of the resolution that requires SoCalGas to produce information "protected by its First Amendment rights" while SoCalGas pursues an application for rehearing before the Commission and, if needed, a petition for writ of review with the Court of Appeals, we deny this request. As set forth in Pub. Util. Code § 1735 "An application for rehearing shall not excuse any corporation or person from complying with and obeying any order or decision, or any requirement of any order or decision of the commission theretofore made, or operate in any manner to stay or postpone the enforcement thereof, except in such cases and

upon such terms as the commission by order directs.”<sup>67</sup>As such, SoCalGas is directed to comply with the discovery requests, as set forth herein.

Lastly, in response to SoCalGas’ request that the Commission order Cal Advocates to execute a non-disclosure agreement prior to accessing its SAP database or, in the alternative, enter into a protective order, we deny this request. Existing law and regulations, as discussed herein, provide SoCalGas with sufficient protections for confidential information. To the extent SoCalGas has specific concerns regarding remote access to its “live” SAP database, additional protections are required herein.

The deadline for compliance with this resolution is modified from 15 days to 30 days from the effective date due to the intervening holidays.

## **FINDINGS**

1. Pursuant to Pub. Util. Code § 309.5, Cal Advocates is an independent division within the Commission that advocates on behalf of the interests of residential and small commercial customers of public utilities.
2. Cal Advocates may compel any entity regulated by the Commission to disclose any information it deems necessary in furtherance of its duty to represent customers of public utilities and consistent with the rights of Commission staff.
3. Cal Advocates initiated a discovery inquiry outside of a proceeding after discovering that SoCalGas might have used ratepayer funds to support lobbying activity.
4. Regulated utilities, such as SoCalGas, may not use ratepayer funds for advocacy-related activities that are political or do not otherwise benefit ratepayers.

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<sup>67</sup> Pub. Util. Code § 1735.

5. SoCalGas' statement describing certain activities as "100% shareholder-funded" does not, in and of itself, deprive Cal Advocates of its statutory authority to obtain, review, and make its own determinations regarding documents and financial information from a regulated utility, such as SoCalGas.
6. The Pub. Util. Code grants broad authority to the Commission to inspect the books and records of investor-owned utilities, such as SoCalGas.
7. The Commission's authority to inspect books and records of investor-owned utilities applies to all Commission staff without limitation, including Cal Advocates.
8. The statutory scheme regarding the Commission's discovery authority recognizes that information provided to the Commission, including Cal Advocates, by utilities might involve sensitive and confidential materials.
9. Pub. Util. Code § 583 and General Order 66-D provide ample protection and processes for utilities to submit confidential information to the Commission, including Cal Advocates, however, additional protections are adopted here to provide SoCalGas with time to review, and designate as confidential, information and documents sought by Cal Advocates via remote access from the "live" SAP database.
10. The statutory provisions regarding discovery authority in the Pub. Util. Code have been part of the regulatory scheme since 1951 and in similar form since 1911. As such, these provisions represent a clear legislative determination that the exercise of the authority to review materials by the Commission staff, including Cal Advocates, is an integral part of California's scheme to regulate investor-owned public utilities.
11. SoCalGas may assert attorney-client or attorney work product privileges in response to the information sought by DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 Commission subpoena but it must prepare and provide to Cal Advocates a privilege log listing the information withheld and comply with all requests from Cal Advocates to provide access to the portions of the documents or other materials, including confidential information, not subject to privilege.
12. The First Amendment protects "persons" from government restrictions on speech, the right to assemble, and the right to petition the government for redress of grievances and applies to states and state entities, such as the Commission, through the Fourteenth Amendment.

13. The First Amendment protections apply to private organizations and corporations, such as SoCalGas.
14. Under the First Amendment, SoCalGas' right to associate for political expression is not absolute.
15. Courts evaluate First Amendment privilege claims in two steps. First, the party asserting the privilege to block disclosure of materials must make a showing of arguable First Amendment infringement, which can be intentional or indirect. If this showing is made, the burden shifts to the government entity to demonstrate that the information sought is rationally related to a compelling state interest and narrowly tailored.
16. Meeting the initial threshold of First Amendment infringement requires a showing that goes beyond a simplistic assertion that disclosure alone chills association. An organization must make a concrete showing that disclosure "is itself inherently damaging to the organization or will incite other consequences that objectively could dissuade persons from affiliating with the organization."
17. SoCalGas failed to demonstrate that its First Amendment rights to associate would be chilled, or infringed upon, by responding to Cal Advocates' DR No. CalAdvocates-SC-SCG-2019-05 or the May 5, 2020 subpoena seeking documents and financial information related to 100% shareholder funded activities about its decarbonization campaign.
18. Even if SoCalGas established the initial showing of First Amendment infringement, a compelling government interest exists in fulfilling the Commission's mandate to regulate and oversee utilities in SoCalGas' disclosure of the information requested by DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 subpoena to the Commission.
19. Cal Advocates' requests for information from SoCalGas, DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 Commission subpoena, are straightforward, and Cal Advocates attempts to clearly define the information needed for its discovery inquiry.
20. Cal Advocates' requests for information from SoCalGas, DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 Commission subpoena, do not place a burden on more First Amendment rights of associational privileges than necessary to achieve its interest.
21. Cal Advocates' requests for information from SoCalGas, DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 Commission

- subpoena, are narrowly tailored to achieve a compelling government interest under the First Amendment privilege.
22. Procedural due process applies when a government function impacts certain protected interests centered around deprivation of liberty or property.
  23. Regulatory agencies, such as the Commission, have flexibility in fashioning the form of procedural due process provided in exercising their regulatory responsibilities and oversight.
  24. Cal Advocates exercised its statutory oversight discreetly in initial requests and in all requests, including DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 Commission subpoena, which focused on the information needed to perform Cal Advocates' regulatory duties set forth in statute.
  25. In extensive rounds of pleadings, SoCalGas has had multiple opportunities and continues to have opportunities to challenge Cal Advocates' requests for information set forth in DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 Commission subpoena.
  26. No merit exists to SoCalGas' assertion that the Commission did not provided an appropriate level of procedural due process.
  27. A significant element of the regulatory framework for utilities in California, such as SoCalGas, is the utility's obligation to provide the Commission and its staff, such as Cal Advocates, with requested information pertaining to regulatory oversight.
  28. If a utility, such as SoCalGas, does not comply with the requests for information, such as DR No. CalAdvocates-SC-SCG-2019-05, from the Commission or its staff, including Cal Advocates, or more formal injunctions from the Commission, such as the May 5, 2020 subpoena, it is not unreasonable for the utility to expect to be subject to sanctions up to and including monetary penalties.

**THEREFORE, IT IS ORDERED that:**

1. Southern California Gas Company's December 2, 2019 motion, *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)*, requesting the full Commission's review of the ALJ's November 1, 2019 ruling based on violations of its constitutional rights

and the limits of the Commission's discovery rights under the Public Utilities Code, is denied.

2. Southern California Gas Company's (SoCalGas') December 2, 2019 motion, *Motion of Southern California Gas Company's (U 904 G) for Leave to File Under Seal Confidential Versions of Declarations 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)*, is granted but SoCalGas must provide access to the unredacted versions of the confidential declarations to the Commission, including its staff, the Public Advocates Office at the California Public Utilities Commission, under existing protections.
3. Southern California Gas Company's (SoCalGas') May 22, 2020 motion, *Southern California Gas Company's (U 904 G) Motion to Quash Portion of the Subpoena to Produce Access to Certain Materials in Accounting Databases and to Stay Compliance until the May 29<sup>th</sup> Completion of Software Solution to Exclude those Protected Materials In The Databases (Not In A Proceeding)*, requesting to quash portions of the May 5, 2020 Commission subpoena that requires SoCalGas to produce certain materials in and access to its accounting databases, is denied and, to the extent the motion requests to stay compliance with the May 5, 2020 subpoena until May 29, 2020, the motion is deemed moot.
4. Southern California Gas Company's May 22, 2020 motion, *Southern California Gas Company's (U 904 G) Motion to Supplement the Record and Request for Expediated Decision by the Full Commission on Motion for Reconsideration/Appeal Regarding Administrative Law Judge's Ruling in the Discovery Dispute Between the Public Advocates Office and Southern California Gas Company, October 7, 2019 (Not In A Proceeding) if the Motion is not Granted to Quash Portion of the Subpoena to Produce Access to Certain Materials in Accounting Databases and to Stay Compliance Until the May 29<sup>th</sup> Completion of Software Solution to Exclude Those Protected Materials in the Databases (Not In A Proceeding)*, is granted.
5. Southern California Gas Company's March 25, 2020 motion, *Southern California Gas Company's (U 904 G) Emergency Motion for a Protective Order Staying All Pending and Future Data Requests from the California Public Advocates Office Served Outside of Any Proceeding (Relating to the Building Decarbonization Matter), and Any Motions and Meet and Confers Related Thereto, During California*

*Government Covid-19 Emergency "Safer at Home" Orders*, was resolved by the Administrative Law Judge's email of April 6, 2020.

6. The Public Advocates Office at the California Public Utilities Commission's June 23, 2020 motion, *Public Advocates Office Motion to Find Southern California Gas Company in Contempt of this Commission in Violation Of Commission Rule 1.1 for Failure to Comply with a Commission Subpoena Issued May 5, 2020, and Fined for Those Violations From the Effective Date of the Subpoena (Not In A Proceeding)*, requesting that the Commission provide relief in the form of a contempt ruling and the levying of sanctions against Southern California Gas Company, is deferred and may be resubmitted at a later date.
7. The Public Advocates Office at the California Public Utilities Commission's July 9, 2020 motion, *Public Advocates Office Motion To Compel Confidential Declarations Submitted In Support Of Southern California Gas Company's December 2, 2019 Motion For Reconsideration Of First Amendment Association Issues And Request For Monetary Fines For The Utility's Intentional Withholding Of This Information; [Proposed] Order*, is deemed moot to the extent it requests the disclosure of information already addressed here and, to the extent the motion requests monetary fines against Southern California Gas Company, the motion is deferred and may be resubmitted at a later date.
8. Southern California Gas Company shall produce the information and documents requested by Public Advocates Office at the California Public Utilities Commission, including all confidential information not otherwise privileged as attorney-client or attorney work product, in DR No. CalAdvocates-SC-SCG-2019-05 and the May 5, 2020 Commission subpoena, with any related privilege log, within 30 days of the effective date of this Resolution. SoCalGas must follow all of the below directives when asserting privileges:
  - (1) SoCalGas must provide a privilege log to Cal Advocates concurrent with the production of documents.
  - (2) SoCalGas must provide sufficient information in any privilege log to enable Cal Advocates to evaluate the merits of the privilege claim. At a minimum, the privilege log must include the following: (a) summary description of the document (b) date of the document (c) the name of each author or preparer (d) the name of each person who received the

document (e) legal basis for withholding the document, and (f) the document number.

- (3) If providing a privilege log, SoCalGas must concurrently provide Cal Advocates with a declaration under penalty of perjury by a SoCalGas attorney that the attorney has reviewed the materials associated with the privilege claim and that such privilege claim has a good faith basis in the law, and the specific legal basis, with a citation, for withholding the document.
- (4) Pursuant to Pub. Util. Code § 581, SoCalGas must provide the information in the form and detail requested by Cal Advocates.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on December 17, 2020, the following Commissioners voting favorably thereon:

          /s/ RACHEL PETERSON            
Rachel Peterson  
Acting Executive Director

MARYBEL BATJER  
President  
LIANE M. RANDOLPH  
MARTHA GUZMAN ACEVES  
CLIFFORD RECHTSCHAFFEN  
GENEVIEVE SHIROMA  
Commissioners

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



Resolution ALJ-391 Service List

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## **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>
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\*Volume 10 was not served on California Advocates for reasons discussed in Petitioner's Application for Leave to File Under Seal, but was served by messenger service to the California Public Utilities Commission and the Court of Appeal.

- BY MESSENGER SERVICE:** I placed a true copy in a sealed envelope or package addressed to the persons at the addresses listed above and provided them to a professional messenger service for delivery before 5:00 p.m. on the above-mentioned date.
- BY ELECTRONIC SERVICE THROUGH TRUEFILING:** I caused the documents to be electronically served through TrueFiling.
- BY ELECTRONIC SERVICE:** On the above-mentioned date at \_\_\_\_\_ [a.m./p.m] , I caused the documents to be sent to the persons at the electronic notification addresses as shown above.
- (STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 8, 2021.

  
\_\_\_\_\_  
Ashley Moser