

No. _____

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

SECOND APPELLATE DISTRICT, DIVISION ____

SOUTHERN CALIFORNIA GAS COMPANY,

Petitioner,

v.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA,

Respondent.

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

VOLUME 7 OF 10 (PAGES 1504 TO 1702 OF 2015)

IMMEDIATE RELIEF REQUESTED BY MARCH 16, 2021

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

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

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Application For Rehearing Of Resolution
ALJ-391

**SOUTHERN CALIFORNIA GAS COMPANY'S APPLICATION FOR REHEARING OF
RESOLUTION ALJ-391 AND REQUEST FOR ORAL ARGUMENT**

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

Application For Rehearing Of Resolution
ALJ-391

**SOUTHERN CALIFORNIA GAS COMPANY’S APPLICATION FOR REHEARING OF
RESOLUTION ALJ-391 AND REQUEST FOR ORAL ARGUMENT**

Pursuant to §§ 1731(b) and 1732 of the Public Utilities Code (Cal. Pub. Util. Code), Rule 16.1 of the California Public Utilities Commission’s (Commission or CPUC) Rules of Practice and Procedure and General Order 96-B, General Rule 8.1, Southern California Gas Company (SoCalGas) files this Application for Rehearing (AFR) of Resolution ALJ-391 (Resolution). SoCalGas also respectfully requests that the Commission hold oral arguments pursuant to Rule 16.3(a) of the Commission Rules of Practice and Procedure.

I. INTRODUCTION

The fundamental question at issue is whether SoCalGas, as a regulated entity, has the same First Amendment rights to freedom of association and freedom speech as any other entity. The Resolution, consistent with the United States Supreme Court and the California Supreme Court, correctly concludes that SoCalGas “enjoys the same First Amendment rights as any other person or entity” and that “[i]ts status as a regulated public utility does not impair or lessen its rights.”¹ However, this conclusion rings hollow in light of the Resolution’s legal and factual errors. The impact of these errors is forced waiver of those rights entirely which contravenes the U.S. Supreme Court’s assurances of a utility’s First Amendment rights in *Pacific Gas & Elec.*

¹ Resolution (“Res.”), p. 12.

Co. v. Public Utilities Com. (1986) 475 U.S. 1 and *Consolidated Edison Co. of New York, Inc. v. Public Service Commission of New York* (1980) 447 US. 530, 533.

At the foundation of this dispute is Public Advocates Office’s (Cal Advocates) stated investigation into SoCalGas’s “Accounting Practices, *Use of Ratepayer Monies* to Fund Activities Related to Anti-Decarbonization and Gas Throughput Policies.”² However, SoCalGas is increasingly concerned that Cal Advocates investigation is now being used as pretext for a different agenda: to single out and punish SoCalGas for the viewpoint it holds regarding promoting natural gas, renewable gas, and other clean fuels as an integral part of the State’s decarbonization plans.

These concerns are further validated by the Common Interest, Joint Prosecution, and Confidentiality Agreement (Joint Prosecution Agreement) between Cal Advocates and Sierra Club whereby those two entities have apparently been jointly investigating and prosecuting SoCalGas for its alleged “anti-electrification” activities since August 2019.³ This Joint Prosecution Agreement was not disclosed to SoCalGas until nearly a year later despite numerous opportunities and filings with the Commission on matters covered by the agreement.⁴ It is questionable whether Cal Advocates is still interested in investigating ratepayer-funded issues. Cal Advocates opposed SoCalGas’s request for a statewide Order Instituting Rulemaking (OIR) to establish clarity for all investor-owned utilities on ratemaking treatment for lobbying and other

² This is how Cal Advocates titled its captions in its filings in this non-proceeding manner.

³ See Exhibit 4 to the Declaration of Jason H. Wilson, submitted in support of SoCalGas’s Comment, Nov. 19, 2020 [“Joint Prosecution Agreement”].

⁴ Cal Advocates had numerous opportunities to disclose the existence of the Joint Prosecution Agreement and did not do so. In the non-proceeding alone, Cal Advocates did not disclose the Joint Prosecution Agreement when it filed its October 7, 2019 Motion to Compel the DR-05 Contracts, June 23, 2020 Motion for Contempt and Sanctions, July 9, 2020 Motion to Compel the Confidential Declarations and Fines, and November 19, 2020 Comments on Draft Resolution ALJ-391. All of these motions are the subject of this Resolution.

advocacy activity, and Order Instituting Investigation (OII) on SoCalGas itself.⁵ Cal Advocates also opposes the Resolution’s referral of the investigation to an “appropriate enforcement division within the Commission” and instead prefers to continue its investigation outside of any formal Commission rules or procedures.⁶ Instead of supporting a formal OII into SoCalGas’s accounting of ratepayer funds for lobbying activities which Cal Advocates claims is the purpose of its investigation, it appears that Cal Advocates is more intent on punishing SoCalGas with sanctions and fines.⁷ SoCalGas is concerned Cal Advocates has chosen to investigate SoCalGas’s political activities and threaten it with fines and sanctions to suppress or stifle its viewpoint. Governmental regulators are not allowed to misuse their investigatory power to punish entities with contempt, fines, and sanctions merely for expressing their political viewpoints. The United States Constitution protects individuals, entities, and regulated utilities alike against such viewpoint discrimination.

Further, if Sierra Club through the Joint Prosecution Agreement has coopted or inappropriately taken advantage of Cal Advocates’ statutory authority for its own benefit, it would be an abuse of Cal. Pub. Util. Code § 309.5. Under Cal. Pub. Util. Code § 309.5, Cal Advocates was created and funded by ratepayers for the purpose of fulfilling its statutory obligation to obtain the lowest possible rates for ratepayers.⁸ To perform its duties, Cal Advocates was specifically granted discovery authority that no other intervenor is entitled to.⁹

⁵ SoCalGas’s OIR/OII letter July 17, 2020 letter to Commissioner Batjer, Exhibit 2 to Cal Advocates’ Reply In Further Support of Motion to Compel and For Fines Related to the Utilities Withhold of Confidential Declaration (Cal Advocates’ July 28, 2020 Response to SoCalGas Request for OIR/OII (“Cal Advocates Response to OIR/OII Letter”), Exhibit 4 to Jason Wilson Declaration Dated December 18, 2020 in Support of Motion to Stay (“Wilson December 18, 2020 Decl.”).

⁶ Cal Advocates’ November 19 Comment to Draft Resolution ALJ 391 (“Cal Advocates Comment”) at 5.

⁷ Cal Advocates Response to OIR/OII Letter at 2 and Cal Advocates Comment at 3-6.

⁸ Cal. Pub. Util. Code § 309.5(a), (f).

⁹ Cal. Pub. Util. Code § 309.5(e).

Sierra Club, on the other hand, has no obligation to ratepayers and should not be permitted to make use of the discovery powers under Cal. Pub. Util. Code § 309.5. This disconnect between the goals of Cal Advocates and Sierra Club was recently highlighted in a letter by California State Legislators who expressed concerns over the legitimacy of the Joint Prosecution Agreement and whether Cal Advocates “new focus,” which appears to be “to aid the Sierra Club in their effort to seek the ban of natural gas usage in California even though it is proven to be favored by customers as a fuel source because of the affordable cost,” violates its stated mission under Cal. Pub. Util. Code § 309.5.¹⁰

In light of the prosecutorial purpose of Cal Advocates’ and Sierra Club’s investigation, and because the discovery at issue in the Resolution is solely about SoCalGas’s First Amendment-protected political activities that are 100% shareholder-funded, there is heightened scrutiny that the Commission should have applied in justifying the purpose of that discovery and the Resolution fails to meet that heavy burden under the law. As the California Supreme Court has summarized, “recognizing that compelled disclosure of private associational affiliations or activities will *inevitably* deter many individuals from exercising their constitutional right of association,” both it and the U.S. Supreme Court “have established that . . . intrusion into associational privacy may be sanctioned only upon the demonstration of a very important, indeed, ‘compelling,’ state interest which necessitates the disclosure.”¹¹ Further, as the United

¹⁰ Declaration of Jason H. Wilson, December 18, 2020, Exhibit 3 - November 30, 2020 letter from Assembly members Blanca Rubio and Jim Cooper to CPUC President Marybel Batjer, p. 2; *see also*, California’s Natural Gas Bans Are Drawing Fire From Black and Latino Leaders, Robert Bryce, (Forbes December 15, 2020) available at https://www.forbes.com/sites/robertbryce/2020/12/15/californias-natural-gas-bans-are-drawing-fire-from-black-and-latino-leaders/?_twitter_impression=true&sh=36c807b557d3

¹¹ *Britt v. Sup. Ct.* (1978) 20 Cal.3d 844, 848-49 [emphasis added].

States Supreme Court and California Supreme Court has recognized time and time again “First Amendment freedoms, such as the right of association, ‘are protected not only against heavy-handed frontal attack, but also from being stifled by more subtle governmental interference.’”¹² In fact, as is the case here, “compelled disclosure of an individual’s private associational affiliations and activities, . . . frequently poses one of the most serious threats to the free exercise of this constitutionally endowed right.”¹³ Yet, the Resolution would permit the exact interference that the United States Supreme Court and California Supreme Court have sought to protect.

The information at issue in the Resolution would reveal the identities of organizations and individuals and the specific advice of political consultants who are advising SoCalGas as it exercises its right to petition the government and advocate for its position, publicly and privately, to decarbonize its gas system and molecules. The level of detail sought by the discovery goes far beyond what any company is required to report under California or federal law. For example, the discovery here would require SoCalGas to disclose the details of its contracts and detailed strategic political thinking, which exceeds its reporting requirements under California’s Political Reform Act¹⁴ and the United States Lobbying Disclosure Act.¹⁵ Moreover, SoCalGas is not even required to report many of the consultants at issue here under California or Federal lobbying disclosure laws. Therefore, but for Cal Advocates’ discovery, SoCalGas, and no other company for that matter, would have to disclose this information publicly. However, Cal Advocates argues that because SoCalGas is a regulated utility, it has “no First Amendment basis

¹² *Britt, supra*, 20 Cal.3d at p. 852.

¹³ *Id.*

¹⁴ California Political Reform Act, California Government Code Section 81000, et. seq.

¹⁵ Lobbying Disclosure Act, 2 United States Code Section 1601, et. seq.

to withhold from the public the identity of any person or any entity the utility pays to advocate, ‘influence’ or ‘educate’ on its behalf.”¹⁶ This is in clear conflict with the Resolution’s finding that SoCalGas “enjoys the same First Amendment rights as any other person or entity” and that “[i]ts status as a regulated public utility does not impair or lessen its rights.”¹⁷

As further evidence that Cal Advocates may be using its stated investigation into SoCalGas’s misuse of ratepayer funds to achieve a different agenda, Cal Advocates’ has provided no evidence that its discovery into SoCalGas’s 100% *shareholder-funded*, First Amendment-protected political activities has any nexus to Cal Advocates’ investigation into SoCalGas’s alleged misuse of *ratepayer funds*. If Cal Advocates was really interested in whether SoCalGas inappropriately used ratepayer monies to fund political activities, it need only conduct an accounting exercise by examining SoCalGas’s above-the-line accounts (i.e., accounts typically recovered from ratepayers). Cal Advocates will not find any inappropriate charges to above-the-line accounts by examining below-the-line accounts, because alleged mischarges to above-the-line accounts will only be reflected in above-the-line accounts. In examining the below-the-line accounts, Cal Advocates could potentially identify charges that were incorrectly recorded below-the-line that should have been recorded above-the-line, but not the other way around. Despite this fact, Cal Advocates unjustifiably demands the discovery at issue and threatens SoCalGas with contempt, fines, and sanctions for exercising its due process rights to challenge the intrusive discovery.

This should give the Commission pause and consider as part of this AFR the real possibility that this Resolution could be taken by Cal Advocates as precedent encouraging it to

¹⁶ Cal Advocates Comment at 20.

¹⁷ Res., p. 12.

investigate and punish entities with fines and sanctions merely for the content of their political viewpoints. Such a scheme would be ripe for abuse and violate fundamental First Amendment rights, particularly in situations similar to here where the party has a differing (but valid) viewpoint than Cal Advocates (and the Sierra Club). Sierra Club has made no secret of its position against natural gas and renewable natural gas and its position that 100% electrification is the only viable pathway to meet the State’s climate goals.¹⁸ As evidenced by the Joint Prosecution Agreement, Cal Advocates and Sierra Club are investigating SoCalGas’s alleged “anti-electrification activities.”¹⁹ SoCalGas disagrees with Cal Advocates’ and Sierra Club’s characterization of its activities as “anti-electrification.” SoCalGas’s mission is to build the cleanest, safest, and most innovative energy company in America. SoCalGas intends to be a leader in decarbonization. Working towards clean fuels alongside clean molecules as part of a diverse energy mix in the State is essential to meeting SoCalGas’s obligation to safely, reliably, and affordably serve its customers. For example, SoCalGas has established a voluntary goal of 5% core customer deliveries from renewable natural gas by 2022, and that goal ramps up to 20% by 2030.²⁰ To accomplish this, SoCalGas has proposed a voluntary Renewable Gas Tariff for its customers, which was approved yesterday²¹ and was also supportive of SB 1440 (Hueso) which

¹⁸ See SoCalGas’s Motion to Stay to Enforcement of Resolution which will be filed concurrently herewith.

¹⁹ Joint Prosecution Agreement, *supra* note 4.

²⁰ See R.19-01-011, March 11, 2019 Opening Comments of Southern California Gas Company on Order Instituting Rulemaking Regarding Building Decarbonization at 13. Pursuant to Rule 13.9 of the CPUC’s Rules of Practice and Procedure, SoCalGas requests that the Commission take judicial notice of this publicly available document.

²¹ See A.19-02-015, October 27, 2020 Proposed Decision adopting Voluntary Pilot Renewable Natural Gas Tariff Program, approved December 17, 2020 (Decision number currently unavailable). Pursuant to Rule 13.9 of the CPUC’s Rules of Practice and Procedure, SoCalGas requests that the Commission take judicial notice of this publicly available document.

would create a “Renewable Gas Standard.”²² SoCalGas (along with San Diego Gas and Electric Company) has also outlined several demonstration projects to ultimately move toward blending hydrogen into the pipeline system.²³ As recognized by a recent Commission staff report, SoCalGas’s gas system is a key component of the State’s decarbonization goals.²⁴ Further, as the Commission itself has recognized, “decarbonization will take many paths, some of which are clearly defined and some of which are yet to be determined. Building electrification is one of those paths whose exact route is not yet clear and where we are at the early stages of our journey. . . . [W]e will continue to explore the financial impacts of building electrification on customers, particularly low-income customers and those residing in disadvantaged communities[.]”²⁵ However, SoCalGas is concerned that because SoCalGas does not endorse the same pathway to decarbonization as Cal Advocates and the Sierra Club, they have chosen to investigate SoCalGas’s political activities and threaten it with fines and sanctions to suppress or stifle its viewpoint.

²² See, e.g., R.13-02-008, May 2, 2019 Opening Comments of SoCalGas, SDG&E, PG&E, and Southwest Gas on Alternate Decision Regarding Biomethane Tasks in Senate Bill 840. Pursuant to Rule 13.9 of the CPUC’s Rules of Practice and Procedure, SoCalGas requests that the Commission take judicial notice of this publicly available document.

²³ See A.20-11-004, Application of Joint Application of Southern California Gas Company (U904G), San Diego Gas & Electric Company (U902G), Pacific Gas And Electric Company (U39G), and Southwest Gas Corporation (U905G) Regarding Hydrogen-Related Additions or Revisions To The Standard Renewable Gas Interconnection Tariff. Pursuant to Rule 13.9 of the CPUC’s Rules of Practice and Procedure, SoCalGas requests that the Commission take judicial notice of this publicly available document.

²⁴ R.20-01-007 Track 1A: Reliability Standards and Track 1B: Market Structure and Regulations – Workshop Report and Staff Recommendations, dated Oct. 2, 2020, available at <https://www.cpuc.ca.gov/gasplanningoir> (Workshop Report). For example, CPUC Staff’s recommendations expressly “call[] attention . . . to the two rotating power outages of August 2020” as a “cautionary tale” noting that “[t]he role of California’s natural gas infrastructure is especially important during times of low renewable generation.” Workshop Report at 8.

²⁵ Exhibit 1 to Wilson Stay Decl., August 7, 2020 letter from CPUC President Marybel Batjer to Assemblymembers Patrick O’Donnell, Jim Cooper, and Blanca Rubio at 1.

As further discussed below, the Resolution proceeds in a manner contrary to law, is unsupported by evidence, and constitutes an abuse of discretion.²⁶ Further, the Resolution, as a whole, violates SoCalGas's First Amendment rights under the U.S. Constitution and Article I of the California Constitution.²⁷ Thus, the Resolution erred by denying SoCalGas's Motion for Reconsideration/Appeal and its Motion to Quash and commits the following factual and legal errors:

- The Resolution erred in finding that SoCalGas did not make a *prima facie* showing of arguable First Amendment infringement. The Resolution's analysis runs afoul of *Britt v. Superior Court*, where, when faced with discovery analogous to the discovery here, the California Supreme Court *assumed* that disclosure alone of individuals' organizational affiliations would cause First Amendment harm.
- The Resolution applied the wrong legal standard of relevancy to conclude that Cal Advocates discovery is appropriate when it should have applied the correct strict scrutiny standard;²⁸
- The Resolution erred in concluding that the First Amendment's "chilling" test required SoCalGas to show past harm. Instead, evidence of future "chilling" is sufficient to present a *prima facie* case of First Amendment harm;
- The Resolution failed to recognize that the harm presented in SoCalGas's declarations is identical to the harm presented in the declarations submitted by appellants in *Perry v. Schwarzenegger*, which the Ninth Circuit found to be a sufficient *prima facie* showing;
- The Resolution incorrectly identified the Commission's broader general mandate to regulate and oversee utilities as the "compelling government interest" at issue instead of Cal Advocates' scope of investigation;
- The Resolution failed to establish how Cal Advocates' discovery into SoCalGas's *shareholder-funded* political activities is rationally related to Cal Advocates' investigation of whether SoCalGas misused *ratepayer funds* for improper political activities. In fact, the record lacks any evidence showing how the discovery in dispute (SoCalGas's 100% *shareholder-funded* activities) has any nexus to Cal Advocates' investigation (alleged misuse of *ratepayer funds*);

²⁶ Cal. Pub. Util. Code § 1757.1, subd. (a)(1), (2), (4).

²⁷ Cal. Pub. Util. Code § 1757.1, subd. (a)(6).

²⁸ Res., pp. 17-18.

- The Resolution erred in adopting Cal Advocates’ arguments, despite the fact that it presented no evidence supporting its heavy burden in demonstrating the discovery sought was narrowly tailored to meet a compelling government interest;
 - There is no evidence to support a finding that examining details of SoCalGas’s First Amendment protected activity charged to *below-the-line accounts* (i.e., accounts typically not recovered from ratepayers) will allow Cal Advocates to determine whether SoCalGas improperly charged political activity to *above-the-line* accounts (i.e., accounts that are typically recovered from ratepayers);
 - The Resolution’s finding that Cal Advocates’ demand for the DR-05 “is narrowly tailored to seek specific contracts and information about SoCalGas’ potential use of *ratepayer funds* for lobbying activities”²⁹ is not supported by the evidence, since the DR-05 Contracts are not ratepayer funded;
 - There is no evidence to support a finding that access to SoCalGas’s entire SAP Database (including both above-the-line and below-the-line accounts) is narrowly tailored for Cal Advocates to obtain information related to whether SoCalGas improperly charged political activities to above-the-line accounts. Instead, the evidence dictates that examining the transactions in the above-the-line accounts is all that is necessary;
 - The Resolution failed to establish how SoCalGas’s proposed customer software solution to access its SAP Database is not an appropriate least restrictive means;
 - There is no evidence to support a finding that examining the unredacted versions of the Confidential Declarations is narrowly tailored for Cal Advocates to obtain information related to whether SoCalGas improperly charged political activities to above-the-line accounts. To the contrary, the Confidential Declarations would only reveal the identity of SoCalGas’s associations and scope of the First Amendment political activity in which it engaged—nothing about how the contracts are funded (i.e., above-the-line vs. below-the-line);
- The Resolution also imposes an illegal obligation on SoCalGas in the provision of the privilege log in the unprecedented form required, namely that, “[i]f 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,

²⁹ Res., p. 18.

for withholding the document.”³⁰ In other words, in addition to providing a privilege log, the Resolution compels an attorney to provide testimony about the privilege log’s creation. This unprecedented requirement violates the attorney-client privilege and work product doctrines by forcing an attorney to reveal, put at issue, and therefore waive, his or her legal opinions, advice, and client communications regarding the claim of privilege. This violates Evidence Code sections 954, 955, 915, and 912, and exceeds the power of this Commission by seeking to modify the legislatively mandated privilege. It further violates Cal. Code Civ. Pro. sections 128.7, 2018.030(a), and 2031.250(a), and as such exceeds the power of the Commission by setting rules in conflict with statute. It further interferes with the attorney’s ethical and legal duties to his or her client, and ability to conduct his or her work in creating the log without interference.

For the reasons explained herein, therefore, the Commission should grant SoCalGas’s AFR to reconsider the Resolution’s legally and factually incorrect First Amendment analysis. The Commission should also grant the AFR to reconsider the Resolution’s unprecedented and illegal invasion of SoCalGas’s attorney-client and attorney-work product privileges. In addition, because of the important fundamental rights at stake and legal errors committed by the Resolution, SoCalGas intends to concurrently file its Motion to Stay pursuant to Cal. Pub. Util. Code §1735 and requests an expedited ruling on the Motion to Stay so that those rights are not forcibly waived before the Commission or the Court of Appeal can consider and remedy these errors.³¹

II. LEGAL STANDARD

After any Commission order or decision, including a Resolution such as here, a party “may apply for a rehearing in respect to matters determined in the action or proceeding and specified in the application for rehearing.”³² Commission Rule 16.1 specifies that applications

³⁰ Res., p. 24.

³¹ SoCalGas understands that it may not be able to file its Motion to Stay concurrently with the AFR as it may have to wait for the Commission to assign a proceeding number. SoCalGas will endeavor to file the Motion to Stay as soon possible once the Commission assigns a proceeding number.

³² Cal. Pub. Util. Code § 1731, subd. (b)(1).

for rehearing “shall set forth specifically the grounds on which the applicant considers the order or decision of the Commission to be unlawful or erroneous,” and further, that the purpose of such an application “is to alert the Commission to a legal error, so that the Commission may correct it expeditiously.”³³ Rehearing of the Resolution is warranted for the reasons set forth herein and pursuant to Cal. Pub. Util. Code § 1757.1. Should a petition for writ of review be filed in the Court of Appeal, the Court of Appeal may find the Commission’s decision cannot be upheld because (1) the Resolution “was an abuse of discretion”; (2) the Commission “has not proceeded in the manner required by law”; (3) the Commission “acted without, or in excess of, its powers or jurisdiction”; (4) the Resolution “is not supported by the findings”; or (5) the Resolution “violates any right of the petitioner under the Constitution of the United States or the California Constitution.”³⁴

On the First Amendment issue, pursuant to Cal. Pub. Util. Code § 1760, “in any proceeding wherein the validity of any order or decision is challenged on the ground that it violates any right of petitioner under the United States Constitution or the California Constitution, the Supreme Court or court of appeal shall exercise independent judgment on the law and the facts, and the findings or conclusions of the commission material to the determination of the constitutional question shall not be final.”³⁵ Thus, should SoCalGas need to petition for writ review, mandamus, an injunction, stay, and/or other appropriate relief, the Court of Appeal may review the Resolution *de novo*.³⁶

This application for rehearing is timely under Rule 16.1(a).

³³ CPUC Rule 16.1(c).

³⁴ Cal. Pub. Util. Code § 1757.1

³⁵ Cal. Pub. Util. Code § 1760.

³⁶ *Id.*

III. ARGUMENT

A. The Resolution Erred in Concluding Cal Advocates' Discovery Did Not Infringe on SoCalGas's First Amendment Rights.

The First Amendment to the United States Constitution and Article I of the California Constitution provide for the freedoms of speech and association, as well as the right to petition the government for redress of grievances.³⁷ The Resolution correctly concludes that “SoCalGas enjoys the same First Amendment rights as any other person or entity.”³⁸ Indeed, the United States Supreme Court has confirmed as much on multiple occasions.³⁹

As the California Supreme Court has summarized, “recognizing that compelled disclosure of private associational affiliations or activities will *inevitably* deter many individuals from exercising their constitutional right of association,” both it and the U.S. Supreme Court “have held that . . . intrusion into associational privacy may be sanctioned only upon the demonstration of a very important, indeed, ‘compelling,’ state interest which necessitates the disclosure.”⁴⁰ Courts use a two-part framework to evaluate whether the government can meet its heavy burden to justify such an incursion into a party’s First Amendment privilege. First, “[t]he

³⁷ U.S. Const., amends. I, XIV; Cal. Const., art. I, §§ 2(a), 3(a). SoCalGas will refer herein to the “First Amendment” but the arguments apply equally under the California Constitution, which is in fact “broader and more protective than the free speech clause of the First Amendment.” *Los Angeles Alliance for Survival v. City of Los Angeles* (2000) 22 Cal.4th 352, 366. Although Article I provides independent free-speech rights, California courts typically “consider federal First Amendment [cases]” in analyzing Article I issues. *Snatchko v. Westfield LLC* (2010) 187 Cal.App.4th 469, 481.

³⁸ Res., p. 12.

³⁹ *Pacific Gas & Elec. Co. v. Public Utilities Com.* (1986) 475 U.S. 1, 17 n. 14 [“[The CPUC] argue[s] that appellant’s status as a regulated utility company lessens its right to be free from state regulation that burdens its speech. We have previously rejected this argument.”]; *Consolidated Edison Co. of New York, Inc. v. Public Service Commission of New York* (1980) 447 U.S. 530 [holding utility entitled to freedom of speech]; see also *Pacific Gas & Elec. Co. v. Public Utilities Com.* (2000) 85 Cal.App.4th 86, 93 [“It is well established that corporations such as PG&E have the right to freedom of speech, since ‘[t]he inherent worth of the speech in terms of its capacity for informing the public does not depend upon the identity of its source, whether corporation, association, union, or individual.’”(citation omitted)].

⁴⁰ *Britt v. Sup. Ct.* (1978) 20 Cal.3d 844, 848-49 [emphasis added].

party asserting the privilege ‘must demonstrate . . . a ‘prima facie showing of arguable first amendment infringement’ . . . This prima facie showing requires appellants to demonstrate that enforcement of the [discovery requests] will result in (1) harassment, membership withdrawal, or discouragement of new members, or (2) other consequences which objectively suggest an impact on, or ‘chilling’ of, the members’ associational rights.”⁴¹ Second, “the evidentiary burden will then shift to the government . . . [to] demonstrate that the information sought through the [discovery] is rationally related to a compelling governmental interest . . . [and] the ‘least restrictive means’ of obtaining the desired information.”⁴² The ultimate “question” courts consider is “whether the party seeking the discovery ‘has demonstrated an interest in obtaining the disclosures it seeks . . . which is sufficient to justify the deterrent effect . . . on the free exercise . . . of [the] constitutionally protected right of association.’”⁴³

The Resolution erred in concluding that SoCalGas failed to meet its *prima facie* showing of First Amendment infringement. The Resolution erroneously ignored and discounted the numerous declarations submitted by SoCalGas which were nearly identical in substance to those submitted by appellants in *Perry v. Schwarzenegger (Perry)* and which the Ninth Circuit held showed sufficient harm. Furthermore, once this *prima facie* showing is made, First Amendment protection is presumed, and no state statute can overcome the constitutional protection the First Amendment affords,⁴⁴ *unless* it meets the “particularly heavy” burden of justifying those demands, which are subject to strict (or in the words of the California Supreme Court,

⁴¹ *Perry v. Schwarzenegger* (9th Cir. 2010) 591 F.3d 1147, 1160 [citations omitted].

⁴² *Id.* [citations omitted].

⁴³ *Id.* [quoting *NAACP v. Alabama* (1958) 357 U.S. 449, 463].

⁴⁴ U.S. Const., article VI, par. 2.

“exacting”) scrutiny.⁴⁵ The Resolution erred in concluding Cal Advocates—which submitted *no* evidence—met its “evidentiary burden” demonstrating the discovery it seeks is “rationally related to a compelling government interest” and the “least restrictive means of obtaining the desired information.”⁴⁶

1. The Resolution Committed Legal Error in Failing to Hold Disclosure Alone Is Sufficient to Prove First Amendment Harm, As in *Britt v. Superior Court*.

“As both the United States Supreme Court and [the California Supreme Court] have observed time and time again, . . . First Amendment freedoms, such as the right of association, ‘are protected not only against heavy-handed frontal attack, but also from being stifled by more subtle governmental interference.’”⁴⁷ “[N]umerous cases establish that compelled disclosure of an individual’s private associational affiliations and activities, . . . frequently poses one of the most serious threats to the free exercise of this constitutionally endowed right.”⁴⁸ Because “[t]he right to free speech and association is fundamental,” “any governmental restraint is subject to the closest scrutiny.”⁴⁹

“Chilling” occurs “when governmental action ‘would have the practical effect of discouraging the exercise of constitutionally protected political rights.’”⁵⁰ As the Ninth Circuit has stated, “The compelled disclosure of political associations can have just such a chilling effect.”⁵¹ Indeed, the United States Supreme Court has “repeatedly found that compelled

⁴⁵ *Britt, supra*, 20 Cal.3d at p. 855; *see NAACP v. Alabama, supra*, 357 U.S. at pp. 460–461 [governmental actions curtailing freedom of association are “subject to the closest scrutiny”].

⁴⁶ *Perry, supra*, 591 F.3d at p. 1161 [citations omitted].

⁴⁷ *Britt, supra*, 20 Cal.3d at p. 852 [citations omitted].

⁴⁸ *Id.*

⁴⁹ *Governor Gray Davis Committee v. Am. Taxpayers Alliance* (2002) 102 Cal.App.4th 449, 464 [internal quotation marks omitted].

⁵⁰ *Perry, supra*, 591 F.3d at p. 1160 [quoting *NAACP v. Alabama, supra*, 357 U.S. at p. 461].

⁵¹ *Id.*

disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment.”⁵² Similarly, as the Tenth Circuit has explained, “[T]he First Amendment privilege . . . generally ensures privacy in association when exposure of that association will make it less likely that association will occur in the future, or when exposure will make it more difficult for members of an association to foster their beliefs. These are the ‘chilling effects,’ or consequences of disclosure, that the First Amendment privilege seeks to avoid.”⁵³

SoCalGas’s association with political consultants and strategists to promote a decarbonization pathway to meeting the State’s climate goals is constitutionally protected activity. Indeed, the Resolution does not appear to contest that SoCalGas’s associational rights are constitutionally protected; only that disclosure of those associations posed no “threat” of chilling those activities.⁵⁴ However, the Resolution ignores the fact that Cal Advocates intends and desires to disclose all of SoCalGas’s associational information publicly as soon as possible. Cal Advocates’ intentions are made clear in its Comments on Draft Resolution ALJ-391, “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.”⁵⁵ It requests that the Commission confirm that SoCalGas does not have First Amendment rights “so that the Commission may [publicly] release a significant portion of the information that is still pending as soon as practicable.”⁵⁶

⁵² *Buckley v. Valeo* (1976) 424 U.S. 1, 64 [collecting cases].

⁵³ *In re Motor Fuel Temperature Sales Practices Litigation* (10th Cir. 2011) 641 F.3d 470, 489.

⁵⁴ Res., pp. 13-14.

⁵⁵ Cal Advocates Comments at 20.

⁵⁶ Cal Advocates Comments at 21.

This admission by Cal Advocates belies the stated purpose of their joint prosecution with Sierra Club. This is not about a compelling state interest around Cal Advocates' mission to ensure the lowest possible rates; it is now evident with their explicit inquiry into 100% shareholder-funded activities at issue in the Resolution, in conjunction with the Joint Prosecution Agreement and this admission, that the real purpose is about SoCalGas's political viewpoint, detailed strategies, and affiliations that they jointly want to suppress and chill.

Moreover, the Resolution erroneously concludes that SoCalGas failed to meet its *prima facie* showing of First Amendment harm because it "requires a showing that goes beyond a simplistic assertion that disclosure alone chills association."⁵⁷ The Resolution's analysis is incorrect. The California Supreme Court expressly rejected this reasoning in *Britt v. Superior Court*, which *assumed* that disclosure alone of individuals' organizational affiliations would cause First Amendment harm.⁵⁸ In *Britt*, the California Supreme Court reversed the trial court's grant of discovery into plaintiffs' local political activities, including their membership in any meetings opposed to the Port District, the identity of others at the meetings, content of the discussions at those meetings, and any financial contributions by plaintiffs to those organizations.⁵⁹ It described the discovery at issue as seeking "information concerning both [the plaintiffs'] and others' affiliations with, and activities in, organizations which, at various times, have protested operations at the San Diego airport and have attempted through traditional political efforts to influence the future conduct of such operations."⁶⁰ Without any additional

⁵⁷ Res., p. 14.

⁵⁸ *Britt, supra*, 20 Cal.3d at p. 860 [describing membership and meeting attendee lists as "presumptively privileged information"].

⁵⁹ *Id.* at pp. 849-50.

⁶⁰ *Id.* at p. 852.

evidentiary support required, the Court held that “such peaceful and lawful associational activity is, without question, constitutionally protected activity which, under both our state and federal Constitutions, enjoys special safeguard from governmental interference.”⁶¹ The Court reasoned that “the source of the constitutional protection of associational privacy is the recognition that, as a practical matter, compelled disclosure will often deter such constitutionally protected activities as potently as direct prohibition.”⁶²

This is precisely analogous to the discovery here. The DR-05 Contracts, Confidential Declarations, and the small number of withheld entries at issue in SoCalGas’s SAP Database would reveal identities, contracts, scope of work information, and financial information about SoCalGas’s “traditional political efforts to influence the future conduct” of the State’s decarbonization pathway.⁶³ Beyond strategy and messaging, courts routinely hold the First Amendment protects identities and political expenditures.⁶⁴ Cal Advocates seeks to investigate SoCalGas’s political associations and activities, and threatens it with fines and sanctions, apparently because SoCalGas does not endorse the same pathway to decarbonization as Cal Advocates (and the Sierra Club, with whom Cal Advocates is apparently sharing information and investigational strategy under a Joint Prosecution Agreement).⁶⁵ This raises precisely the same

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Britt, supra*, 20 Cal.3d at p. 852.

⁶⁴ *Perry, supra*, 591 F.3d at pp. 1162–1163 [right to associate and exchange ideas in private is protectable]; *Buckley v. American Constitutional Law Foundation, Inc.* (1999) 525 U.S. 182, 203–204 [shielding the names of persons paid to disseminate political messages and collect petition signatures, as well as the specific amounts paid to each of them]; *Barnes v. State Farm Mut. Auto. Ins. Co.* (1993) 16 Cal.App.4th 365, 372 [“Political expenditures and contributions are forms of political speech at the core of . . . First Amendment freedoms.”].

⁶⁵ During a meet and confer concerning SoCalGas’s confidential information, when pressed as to why Cal Advocates was intent on making information public, Cal Advocates stated “SoCalGas’s use of ratepayer funds to develop business plans that undermine California’s climate change goals were an issue of public

specter as the First Amendment harm in *Britt*. Cal Advocates seeks discovery into what is, “without question, constitutionally protected activity.”⁶⁶

The Resolution erred in concluding that anything more was required to trigger strict scrutiny of Cal Advocates’ discovery requests. Compelled disclosure of associational and political activity can be presumed to have deterrent, chilling effects based on the nature of the discovery requests themselves. Indeed, in *Britt*, the Court elaborated that “in some respects, the threat to First Amendment rights may be more severe in a discovery context, since the party directing the inquiry is a litigation adversary who may well attempt to harass his opponent and gain strategic advantage by probing deeply into areas which an individual may prefer to keep confidential.”⁶⁷ Here, for proof of the threat to SoCalGas’s First Amendment rights, the Commission need look no further than to the record in this very “non-proceeding.” Cal Advocates has filed multiple motions threatening contempt and millions of dollars in fines and sanctions (totaling over \$38.4 million as of the date of this filing)⁶⁸ in retaliation for SoCalGas asserting its First Amendment rights and its attorney-client and work product privileges.⁶⁹ The

importance that the public has a right to know about.” When SoCalGas explained that its advocacy in favor of natural gas and renewable gas was consistent with California policies, Cal Advocates responded “that was an open debate that requires an open forum.” See SoCalGas’ Motion to Supplement filed on May 20, 2020, (March 20, 2020 Email from Traci Bone to Shawane Lee and Johnny Tran re Confidentiality of Information in SoCalGas DRs provided to the Public Advocates Office.)

⁶⁶ *Britt*, *supra*, 20 Cal.3d at p. 852

⁶⁷ *Id.*

⁶⁸ Cal Advocates’ June 26, 2020 Motion for Contempt and Cal Advocates’ July 9, 2020 Motion to Compel. The Joint Prosecution Agreement also covers the CPUC Rulemaking Energy Efficiency Rolling Portfolios, Policies, Programs, Evaluations, and Related Issues (R.13-11-005) whereby Cal Advocates has demanded almost \$380 million in penalties **against SoCalGas in connection with the two Orders to Show Cause.**

⁶⁹ Cal Advocates exerted extreme pressure on SoCalGas to waive its fundamental rights, including by threatening millions of dollars in fines because SoCalGas merely sought Commission review of an order requiring the production of constitutionally protected materials. But SoCalGas had no procedural protections on which to rely in confronting Cal Advocates’ threats. The Resolution suggests that

California Supreme Court recognized in *Britt* that the harassment and abuse of the discovery process by a litigation opponent poses an especially dire threat to First Amendment and Article I rights.⁷⁰ Further, as the U.S. Supreme Court has stated, “The threat of sanctions may deter [speech] almost as potently as the actual application of sanctions.”⁷¹

Cal Advocates has also apparently shared its investigatory power with Sierra Club under a Joint Prosecution Agreement specifically to investigate SoCalGas’s “use of consumer funds for anti-electrification activities.”⁷² Thus, the threat of disclosure extends even further than Cal Advocates itself. Indeed, based on the breadth of the discovery it seeks, which (as discussed below) has nothing to do with Cal Advocates’ ratepayer protection mandate or “consumer funds,” deterring SoCalGas from pursuing “traditional political efforts to influence”⁷³ future action on decarbonization appears to be the precise purpose of Cal Advocates’ investigation, because it seeks to deter SoCalGas’s expressive activity involving the different pathway toward decarbonization SoCalGas prefers. This is not permitted under the Constitution.

protections were there all along, but no Commission rule says that. Indeed, Chief ALJ Anne Simon’s confirmed in her email instruction for this non-proceeding that disputes in this non-proceeding was not subject to the Commission’s rules. Particularly where Cal Advocates is claiming an essentially boundless authority to intrude on SoCalGas’ shareholder-funded activities (even while working in concert with a private litigant opposing SoCalGas), the absence of procedural protections is especially harmful and prone to abuse. SoCalGas still faces the prospect of huge fines at Cal Advocates’ urging. And it may be in the same position in response to a future intrusive request. Then, as now, SoCalGas will have no established procedural safeguards to protect itself. An entity, even a regulated one, that has the same constitutional rights as everyone else cannot be forced to face the government’s coercive threats without any defined recourse. It is an improper denial of due process that undermines the legitimacy of any “non-proceeding” order that follows, including this one.

⁷⁰ *Britt*, *supra*, 20 Cal.3d at p. 857.

⁷¹ *NAACP v. Button* (1963) 371 U.S. 415, 433.

⁷² Joint Prosecution Agreement, *supra* note 4.

⁷³ *Britt*, *supra*, 20 Cal.3d at p. 852.

2. The Resolution Committed Legal Error in Failing to Weigh the Evidence of Future Harm in SoCalGas’s Declarations Under the Proper *Perry v. Schwarzenegger* Standard.

The Resolution erroneously concludes that the declarations SoCalGas submitted in support of its First Amendment claims were “unconvincing” because they were “primarily hypothetical” and “[f]ell short of the palpable fear of harassment and retaliation” it determined was required.⁷⁴ It then concluded that *NAACP v. Ala. ex rel. Patterson* (1958) 357 U.S. 449, 461-62, required SoCalGas to show some harm above or beyond the fact that disclosure of First Amendment protected information itself chills its political rights. This is not the appropriate standard. The harm need not have occurred before one can enforce one’s First Amendment rights. To hold otherwise would allow a party’s First Amendment rights to be trampled upon before a party can assert its rights under the First Amendment. This is not and cannot be the law. As the United States Supreme Court has held, the evidence of *prima facie* harm must simply show “**a reasonable probability** that the compelled disclosure . . . **will subject** them to threats, harassment, or reprisals from either Government officials or private parties.”⁷⁵ Further, the Ninth Circuit has made clear in *White v. Lee* that “[i]n making their First Amendment claim, the plaintiffs were obligated to prove only that the officials’ actions would have chilled or silenced ‘a person of ordinary firmness from **future** First Amendment activities’”⁷⁶

In support of its *prima facie* showing of arguable First Amendment infringement, SoCalGas submitted declarations that amply demonstrated such future harm, and in fact, were almost identically worded to declarations in *Perry v. Schwarzenegger*, which the Ninth Circuit

⁷⁵ *Buckley v. Valeo* (1976) 424 U.S. 1, 74 [emphasis added].

⁷⁶ *White v. Lee* (9th Cir. 2000) 227 F.3d 1214, 1241 [emphasis added] [citation omitted].

found to be “self-evident.”⁷⁷ In *Perry*, the Ninth Circuit quoted at length from one of the declarations that it found sufficient in supporting a *prima facie* case of arguable First Amendment infringement. The declarant testified to the *future harm* they would suffer should the discovery into their political communications be permitted:

I can unequivocally state that if the personal, non-public communications I have had regarding this ballot initiative—communications that expressed my personal political and moral views—are ordered to be disclosed through discovery in this matter, it will drastically alter how I communicate in the future

I will be less willing to engage in such communications knowing that my private thoughts on how to petition the government and my private political and moral views may be disclosed simply because of my involvement in a ballot initiative campaign. I also would have to seriously consider whether to even become an official proponent again.⁷⁸

The Ninth Circuit reasoned that “[a]lthough the evidence presented by Proponents is lacking in particularity, it is consistent with the self-evident conclusion that important First Amendment interests are implicated by the plaintiffs’ discovery request. The declaration creates a reasonable inference that disclosure would have the practical effects of discouraging political association and inhibiting internal campaign communications that are essential to effective association and expression.”⁷⁹

⁷⁷ In support of its claims of First Amendment harm in its December 2, 2019 Motion for Reconsideration/Appeal, SoCalGas submitted: (1) a declaration from Sharon Tomkins, SoCalGas’ Vice President of Strategy and Engagement and Chief Environmental Officer (Tomkins Declaration); and (2) three declarations from third-party government-relations professionals (Confidential Declarations), attesting that disclosure of their identities and/or activities to Cal Advocates will have serious chilling effects on their political activities.⁷⁷ Then, in support of its May 22, 2020 Motion to Quash the Subpoena, SoCalGas submitted (3) a further declaration from Andy Carrasco, SoCalGas’s new Vice President, Strategy and Engagement, and Chief Environmental Officer (Carrasco Declaration).⁷⁷ *Perry, supra*, 591 F.3d at p. 1163.

⁷⁸ *Perry, supra*, 591 F.3d at p. 1163.

⁷⁹ *Id.* at p. 1163.

The Tomkins Declaration, the Confidential Declarations, and the Carrasco Declaration are nearly word-for-word equivalent to those in *Perry*. The Resolution describes the Tomkins and Confidential Declarations as follows:

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.** SoCalGas submitted additional declarations [the Confidential 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.**⁸⁰

More specifically, in Confidential Declaration No. 6, the declarant testifies that:

I can unequivocally state that if the non-public contract I have with SoCalGas regarding the public affairs work I am doing with the company is ordered to be disclosed in response to the demand of the California Public Advocates Office, **it will drastically alter how I communicate in the future.**⁸¹

It continues,

In the future, **I will be less willing to engage in communications knowing my non-public association with SoCalGas and private discussions and views may be (and have been) disclosed simply because of my association with SoCalGas** in connection with its efforts to petition the government on political matters related to, among other things, rulemaking. **I am also seriously considering whether to associate with SoCalGas in [the] future regarding ballot initiatives, rulemaking, or any other political process** due to the breach of privacy that comes with disclosure of my thoughts, processes, decisions, and strategies.⁸²

The other Confidential Declarations state similar concerns. These alone readily meet the standard set by the Ninth Circuit.

⁸⁰ Res., p. 13.

⁸¹ Decl. No. 6 i/s/o Mot. for Reconsideration/Appeal, ¶ 4.

⁸² *Id.* at ¶ 5.

Moreover, even if the law requires SoCalGas show past, “concrete” harm—which it does not—SoCalGas has done so. In November 2019, SoCalGas was forced to produce the DR-05 Contracts to Cal Advocates under protest. As a result, SoCalGas, and its consultants, in fact suffered actual harm. The Carrasco Declaration explains the chilling effect that the production of the DR-05 Contracts had on SoCalGas’s associational rights:

As a result of even the December disclosures of several 100% non-ratepayer funded Balanced Energy IO contracts, the information regarding these associations disclosed to Cal Advocates **has altered how SoCalGas and its consultant, partner or vendor associates with each other, and it has had a chilling effect on these associations.** Such a result has (and would further) unduly impinge upon SoCalGas’s constitutional right to free association, and to associate with organizations and individuals of its choosing in exercise of its right to petition the government and advocate its position relating to natural gas, renewable natural gas, and green gas solutions.⁸³

Further, “due to the compelled contract disclosures that SoCalGas previously made, and the specter of additional compelled disclosures [of the SAP Database], SoCalGas is being forced to reconsider its decisions relating to political activities and associations.”⁸⁴ And “SoCalGas will be less willing to engage in contracts and communications knowing that its non-public association and communications with consultants, business partners and others on SoCalGas’s political interests may be subject to compulsory disclosure.”⁸⁵

In addition to the evidence in the record, SoCalGas intended to file additional declarations from its consultants in support of its Motion to Quash. However, ALJ DeAngelis ordered SoCalGas to serve the unredacted versions of the consultants’ declarations on Cal Advocates, and as such, SoCalGas had no real choice but to withdraw the declarations in order to

⁸³ Carrasco Decl., ¶ 6.

⁸⁴ *Id.* at ¶ 9.

⁸⁵ *Id.*

preserve the content of its First Amendment rights at issue in the pending motions.⁸⁶ This was the only way for SoCalGas to avoid the chilling effect at issue in its substantive arguments that would result from the disclosure of those consultants' identities to Cal Advocates (and Sierra Club under the Joint Prosecution Agreement, which was unknown at the time the Motion to Quash was filed in May). As evidenced in the Carrasco Declaration, those consultant declarations attested to further concerns. One consultant stated a fear that disclosure of the consultant's relationship with SoCalGas to Cal Advocates would cause "negative consequences—including financial and strategic information being released to its competitors, the breach of confidentiality its clients require for its services, the cost of responding to inquiries, and the breach of privacy that comes with disclosure of its contract."⁸⁷ Another consultant, which also works with government entities, "indicated to SoCalGas that it has serious concerns about its business," and "even indicated that it would not have done business with SoCalGas if it had known its information and contract details would have been disclosed."⁸⁸

The Resolution committed legal error in failing to analyze the Tomkins Declaration, the Confidential Declarations, and the Carrasco Declaration under the proper *Perry* standard. The Resolution failed to even consider or cite the Carrasco Declaration, which is particularly puzzling given that the Resolution grants SoCalGas's Motion to Supplement the Record of the December 2, 2019 Motion for Reconsideration/Appeal, which cites the Carrasco Declaration at

⁸⁶ This is explained in SoCalGas's Response to Cal Advocates' Motion to Compel, Southern California Gas Company's (U 904 G) 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, July 17, 2020, at pp. 6-7; *see also* Exhibit 7 [Email from R. DeAngelis dated May 22, 2020] attached to Cal Advocates' Motion to Compel.

⁸⁷ Carrasco Decl., ¶ 8.

⁸⁸ *Id.*

length at pp. 15-17 precisely to demonstrate the continuing, expanding First Amendment harm via the SAP subpoena since this harm was first spoken of in the original December 2019 motion related to a small set of contracts. Based on the Tomkins Declaration, Confidential Declarations, and Carrasco Declaration, SoCalGas has amply shown a chilling effect on its own political speech and its political associations as required by *Perry*.

3. The Resolution Committed Legal Error by Misidentifying the “Compelling Government Interest” As the CPUC’s General Investigatory Power Rather than Cal Advocates’ Scope of Investigation.

The Resolution asserts that the “compelling government interest” here is the Commission’s “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.”⁸⁹ This is error. First, the Commission’s mandate to regulate and oversee utilities is not implicated here. For example, the Confidential Declarations at issue have been filed with the Commission conditionally under seal. The Commission itself has access to the Confidential Declarations. SoCalGas has sought to protect disclosure of the Confidential Declarations to Cal Advocates, not to the Commission.

Second, the Commission’s mandate to regulate and oversee utilities is not tied to the existing need for the First Amendment-protected information. As the United States Supreme Court has held, “Lawmaking at the investigatory stage may properly probe historic events for any light that may be thrown on present conditions and problems. But the First Amendment prevents use of the power to investigate enforced by the contempt power to probe at will and

⁸⁹ Res., p. 15.

without relation to existing need.”⁹⁰ To overcome First Amendment protection, any compelling government interest must be clearly defined and tied to the existing need for the First-Amendment-protected information.⁹¹ Indeed, as the Ninth Circuit has explained, the Supreme Court has “concluded that ‘an adequate foundation for inquiry must be laid before proceeding in such a manner as will substantially intrude upon and severely curtail or inhibit . . . protected associational rights.’”⁹²

Here, the existing need is Cal Advocates’ desire to obtain information in order to investigate SoCalGas’s alleged misuse of ratepayer funds for political activity. Cal Advocates states that it is investigating “SoCalGas’ **use of ratepayer monies** to fund anti-decarbonization campaigns through ‘astroturf’ organizations, including efforts to both promote the use of natural and renewable gas, and to defeat state and local laws and ordinances proposed to limit the use of these resources.”⁹³ Cal Advocates relies on its authority under Cal. Pub. Util. Code section 309.5(a) for its investigation. Section 309.5(a) states that Cal Advocates’ goal is to “obtain the lowest possible rate for service consistent with reliable and safe service levels.” The Resolution similarly understood the scope of Cal Advocates’ investigation to be focused on ratepayer funding issues: “the extent to which SoCalGas was **using ratepayer funds** to support organizations . . . that also support anti-decarbonization positions held by SoCalGas”⁹⁴ In

⁹⁰ *DeGregory v. Attorney General of State of N.H.* (1966) 383 U.S. 825, 829 [ruling general investigatory power was not a “compelling state interest”]; *id.* at p. 830 [holding general investigatory power was “too remote and conjectural to override the guarantee of the First Amendment”].

⁹¹ *Id.*

⁹² *U.S. v. Mayer* (9th Cir. 2007) 503 F.3d 740, 748 [citation omitted].

⁹³ Motion for Contempt and Fines, June 23, 2020, p. 3; *see also* Motion to Compel and for Fines, July 9, 2020, p. 1.

⁹⁴ Res., p. 2 (emphasis added); *See also id.* at p. 7 [“Cal Advocates continued its inquiry into SoCalGas’ use of **ratepayer monies** to fund an anti-decarbonization campaign through astroturf organizations” (emphasis added)]; *id.* at p. 22 [“. . . Cal Advocates’ inquiry into specific contracts and information about SoCalGas’ potential use of **ratepayer funds** for political activities” (Emphasis added).]

other words, it is the use of ratepayer funds that Cal Advocates should be investigating according to its own statement, but that is not what is actually at issue for the disputed 100% shareholder-funded activity in the Resolution.

Cal Advocates' investigation (and its mandate) is much narrower than the Commission's general broad oversight authority. The Resolution's failure to recognize this distinction can have significant unintended consequences. For example, if Cal Advocates is permitted to use the Commission's "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"⁹⁵ as a compelling government interest with no further particularized reason required, it would swallow up any and all constitutional protections, as well as any other privileges or rights.⁹⁶ If that were the case, there would literally be no area into which Cal Advocates could not probe relating to SoCalGas's First-Amendment-protected associations and political strategies. Moreover, even if the Commission's broad authority to regulate and oversee utilities is a compelling government interest, it does not extend to the Commission's regulation of SoCalGas's use of *shareholder funds* for social, political, or public-relations purposes.⁹⁷

The Resolution failed to recognize the distinction between Cal Advocates' need for the discovery (and its narrower Cal. Pub. Util. Code § 309.5 mandate) and the Commission's broad

⁹⁵ Res., p. 15.

⁹⁶ See *Gibson v. Florida Leg. Invest. Com.* (1963) 372 U.S. 539, 551 (The Supreme Court held that the broad investigatory power was insufficient, because it lacked a nexus with the proposed information sought).

⁹⁷ Even if the Resolution relies on the Commission's broad authority to regulate and oversee utilities, the Commission has made clear that "[t]he only commitment of shareholder earnings enforced by the Commission is the overarching requirement that the shareholders maintain sufficient invested capital to sustain the authorized capital structure of the company to finance its used and useful plant and equipment necessary to serve the ratepayers." *In Re S. California Gas Co.*, No. 02-12-027, 2004 WL 2963807, at *1 (Dec. 2, 2004).

oversight authority. In doing so, the Resolution committed legal error by applying the incorrect compelling government interest in its analysis.

4. The Resolution Committed Legal Error in Failing to Establish How Cal Advocates' Discovery is Rationally Related to the Scope of Cal Advocates' Investigation.

The Resolution committed legal error in failing to establish an adequate “nexus” between the compelling government interest (Cal Advocates’ stated investigation into the *use of ratepayer funds*), and Cal Advocates’ alleged need for discovery into SoCalGas’s First Amendment-protected *political* activities.⁹⁸ Cal Advocates’ discovery would reveal the identity of, amounts spent on, and the activities undertaken by SoCalGas’s partners, consultants and vendors in connection with its non-public, below-the-line, shareholder-funded political activities. Importantly, this discovery would not provide information concerning whether ratepayer funds were used for political activities, which is the crux of the stated rationale given for Cal Advocates’ investigation. The Resolution failed to address the record on this argument in the motions and simply accepted Cal Advocates’ irrational and insufficient claim that access to SoCalGas’s *below-the-line* accounts will somehow allow it to verify misclassifications inappropriately charged to *above-the-line* accounts.

The scope of Cal Advocates’ investigation is SoCalGas’s alleged misuse of ratepayer funds to support its political activities. If Cal Advocates was really interested in whether SoCalGas inappropriately used ratepayer monies to fund political activity, it need only conduct

⁹⁸ See *Gibson, supra*, 372 U.S. at p. 546 [“We understand this to mean—regardless of the label applied, be it ‘nexus,’ ‘foundation,’ or whatever—that it is an essential prerequisite to the validity of an investigation which intrudes into the area of constitutionally protected rights of speech, press, association and petition that the State convincingly show a substantial relation between the information sought and a subject of overriding and compelling state interest.”].

an accounting exercise by examining SoCalGas's above-the-line accounts. That is, if there were any inappropriate lobbying or political activities mischarged to above-the-line accounts, Cal Advocates would be able to find those inappropriate charges **in the above-the-line accounts**. Cal Advocates will not find any inappropriate charges to above-the-line accounts by examining below-the-line accounts. In examining the below-the-line accounts, Cal Advocates could potentially identify charges that were incorrectly recorded below-the-line that should have been recorded above-the-line, but not the other way around. SoCalGas made the above-the-line accounts available to Cal Advocates approximately six months ago (provided Cal Advocates sign an NDA, as it offered to do, to protect SoCalGas's confidential information): SoCalGas created a custom software solution in its SAP Database that would have provided Cal Advocates access to all of its above-the-line accounts, with the exception of invoices from law firms or other records of legal expenditures that might reflect attorney-client or attorney-work-product privileged information. In addition, Cal Advocates would have also gained access to SoCalGas's below-the-line accounts (even though it does not need that information for its stated investigation), except for the narrow scope of information that is protected by the First Amendment. That access would have provided Cal Advocates with all the information it needed to conduct its investigation. Cal Advocates refused that access.

Instead, in seeking the DR-05 Contracts, the SAP Database, and the Confidential Declarations, Cal Advocates makes it clear that it wants to investigate SoCalGas's 100% shareholder-funded political activities, including the identity of who engaged in those activities and the details of the underlying First Amendment-protected activity. Indeed, Cal Advocates has admitted that SoCalGas's shareholder accounts are precisely the types of accounts Cal Advocates

wanted to examine.⁹⁹ This intrusive discovery goes far beyond an accounting exercise of whether SoCalGas used ratepayer funds to pay for political activities. The discovery is not geared towards actually investigating the alleged wrongful use of ratepayer funds, but instead, the content and manifestation of SoCalGas’s political opinions and ideas, including the identities and activities protected by the First Amendment.

SoCalGas has increasing concerns that it is in fact Cal Advocates’ goal now to single out and punish SoCalGas for the viewpoint it holds regarding promoting natural gas and renewable gas as an integral part of the State’s decarbonization plans, and not to investigate the allocation of ratepayer funds.¹⁰⁰ This concern is animated by the fact that Cal Advocates has aligned with Sierra Club under a Joint Prosecution Agreement to investigate SoCalGas’s “anti-electrification” activities, which it has mischaracterized for the past year as an anti-decarbonization campaign. But simply because SoCalGas believes in a different pathway to decarbonization than Cal Advocates does—one that, as the Commission staff agrees, plays a vital role in California’s energy future¹⁰¹—and works to educate customers and policymakers about emerging clean energy technology and fuel options, does not mean SoCalGas is working contrary to achieving

⁹⁹ Response Of Public Advocates Office To Southern California Gas Company Motion To Quash Portion Of Subpoena, For An Extension, And To Stay Compliance (Not In A Proceeding) [hereinafter “Response to Motion to Quash”], June 1, 2020 (“Response to Motion to Quash”), at pp. 9-10 [accounts protected by the First Amendment are “precisely the types of accounts . . . that Cal Advocates intends to audit”].

¹⁰⁰ Indeed, a discrepancy between an articulated state interest and the effect of the law—or here, discovery request—can raise suspicion of content or viewpoint discrimination. *See First Nat. Bank of Bos. v. Bellotti* (1978) 435 U.S. 765, 793 [“The fact that a particular kind of ballot question has been singled out for special treatment undermines the likelihood of a genuine state interest in protecting shareholders.”].

¹⁰¹ *See, e.g.*, R.20-01-007 Track 1A: Reliability Standards and Track 1B: Market Structure and Regulations – Workshop Report and Staff Recommendations, p. 37, Oct. 2, 2020, *available at* <https://www.cpuc.ca.gov/gasplanningoir> [CPUC Staff’s recommendations expressly “call[] attention . . . to the two rotating power outages of August 2020” as a “cautionary tale” noting that “[t]he role of California’s natural gas infrastructure is especially important during times of low renewable generation.”].

the State’s ultimate decarbonization goals. Furthermore, regardless of whether it agrees with those views, governmental regulators are not allowed to misuse their investigatory power to punish entities with fines and sanctions merely for expressing their political viewpoint. The Constitution does not permit such viewpoint discrimination. In *Consolidated Edison Co. of New York, Inc. v. Public Service Commission of New York* (1980) 447 U.S. 530, the Commission sought to restrict the energy company’s support of nuclear power via a ban on inserts in utility bills. The U.S. Supreme Court held that this constituted impermissible viewpoint discrimination in violation of the utility’s freedom of speech.¹⁰² If in fact Cal Advocates seeks to suppress or stifle SoCalGas’s lawful speech in support of natural gas and renewable gas through its investigation, then the investigation itself would violate the Constitution.

Even if Cal Advocates is not motivated by such animus, the Resolution has failed to demonstrate that the discovery into SoCalGas’s 100% shareholder-funded political activity is rationally related to Cal Advocates’ investigation into whether SoCalGas misused ratepayer monies. This lack of a nexus between the stated purpose of Cal Advocates’ investigation and the discovery it seeks compels a finding that Cal Advocates has failed to meet its heavy burden of justifying its infringement on SoCalGas’s First Amendment rights.

5. The Resolution Erred in Adopting Cal Advocates’ Deficient Arguments that the Discovery it Seeks is Narrowly Tailored.

As the Resolution recognizes, a governmental request for First Amendment-protected information must be narrowly tailored, “such ‘that the least restrictive means of obtaining the desired information’ have been used”¹⁰³—i.e., the means that put the least amount of restrictions

¹⁰² *Consolidated Edison, supra*, 447 U.S. at p. 543-44.

¹⁰³ Res., p. 15 [citing *Perry, supra*, 591 F.3d at p. 1161].

on a party’s First Amendment rights. As clear from the above discussion, Cal Advocates’ investigation can in fact be “achieved through means significantly less restrictive.”¹⁰⁴ Cal Advocates need only examine the above-the-line accounts to find out whether political activity has been misclassified in above-the-line accounts. There is simply no need for Cal Advocates to investigate the details of SoCalGas’s First Amendment-protected political activity, or to compel the identities of SoCalGas’s political partners and vendors that are recorded below-the-line. As in *Britt*, “Instead of carefully delimiting the areas of private associational conduct as to which [Cal Advocates] has demonstrated a compelling need for disclosure,” the Resolution “opens virtually all of [SoCalGas]’[s] most intimate information to wholesale disclosure.”¹⁰⁵ “The very breadth of the required disclosure establishes that [the Resolution] did not apply traditional First Amendment analysis in passing on the validity of [Cal Advocates’] inquir[i]es into the private associational realm, and in particular did not heed the constitutional mandate that ‘precision of (disclosure) is required so that the exercise of our most precious freedoms will not be unduly curtai[l]ed’”¹⁰⁶ The Resolution erred in simply adopting Cal Advocates’ deficient conclusions to the contrary.

a. **The DR-05 Contracts Are Recorded Below-the-Line and Are Not Narrowly Tailored to Provide Cal Advocates with Above-the-Line Information to Further its Investigation.**

Cal Advocates’ Data Request CalAdvocates-SC-SCG-2019-05, Question 8 sought “all contracts (and contract amendments) covered by the [Work Order Authorization] which created the BALANCED ENERGY IO.” The Balanced Energy IO is an internal order for which costs

¹⁰⁴ *Roberts v. U.S. Jaycees* (1984) 468 U.S. 609, 623.

¹⁰⁵ *Britt, supra*, 20 Cal.3d at p. 861.

¹⁰⁶ *Ibid.*, quoting *Vogel v. County of Los Angeles* (1967) 68 Cal.2d 18, 22.

are classified in a below-the-line account and tracks, among other things, costs associated with SoCalGas's political activities related to the promotion of renewable natural gas in achieving the State's decarbonization goals.¹⁰⁷ In response to the request, SoCalGas produced contracts that were funded by both ratepayers and shareholders, but objected to the production of five contracts that were 100% shareholder-funded. Cal Advocates has not provided any justification as to how compelling the production of these five contracts that are charged to below-the-line accounts is narrowly tailored to achieve its goals of obtaining the information—because it cannot do so. Instead, in its response to SoCalGas's Motion for Reconsideration/Appeal, Cal Advocates argued that seeking the DR-05 Contracts was narrowly tailored because it “did not seek, for example, all contracts SoCalGas entered into regarding all lobbying activities, . . . [but only those] related to the Balanced Energy IO.”¹⁰⁸ Simply stating that it could have asked for a broader set of information is inadequate to prove that it in fact exercised its power in the least restrictive means possible. Further, as noted in SoCalGas's reply brief, even at the time it was made, Cal Advocates' argument was belied by the breadth of its other requests, including PubAdv-SCG-001-SCS, which (as Cal Advocates clarified in meet and confers) requests “contracts related to Communications, Advocacy and Public Outreach aimed at local, state and federal government audiences.”¹⁰⁹

¹⁰⁷ The Balanced Energy IO was always intended to be classified to a below-the-line account. However, an incorrect settlement rule originally settled this account in an incorrect FERC account. This was promptly corrected and disclosed to Cal Advocates in R.13-11-005 Data Response CalAdvocates-SK-SCG-2020-01 Q4.

¹⁰⁸ Cal Advocates Response to Mot. for Reconsideration/Appeal, p. 15.

¹⁰⁹ Southern California Gas Company's (U 904 G) Reply In Support Of Its Motion For Reconsideration/Appeal To The Full Commission Regarding Administrative Law Judge's Ruling In The Discovery Dispute Between Public Advocates Office And Southern California Gas Company, October 7, 2019 (Not In A Proceeding), Dec. 27, 2019, p. 12 and n. 9. SoCalGas has cooperated with the Cal Advocates' wide-ranging investigation, responding to over 150 questions (not including subparts),

Further, the Resolution commits error in finding that the discovery “is narrowly tailored to seek specific contracts and information about SoCalGas’ potential use of *ratepayer funds* for lobbying activities.”¹¹⁰ The five contracts at issue here are charged to below-the-line accounts, not above-the-line accounts. In fact, the data request itself was not narrowly tailored to seek contracts that are recorded to above-the-line accounts at all. Quite the opposite, Cal Advocates demanded broadly the production of *all* contracts that were charged to the Balanced Energy IO (an internal order for which costs are classified in a below-the-line account).

The Resolution further cites C4BES as an example of how the discovery is relevant.¹¹¹ However, C4BES is a red herring, which Cal Advocates is using as a pretext to engage in otherwise impermissible discovery.¹¹² Cal Advocates already has the information related to the SoCalGas’s founding and funding of C4BES. Through its investigation, Cal Advocates identified certain expenses that had been erroneously recorded to above-the-line accounts. It worth noting that Cal Advocates identified these expenses by examining information in above-the-line accounts not below-the-line accounts. SoCalGas voluntarily recategorized certain

producing approximately 8,000 documents, and making access available to over 96% of the financial information contained in its SAP database.

¹¹⁰ Res., p. 18 (emphasis added).

¹¹¹ Res., p. 20.

¹¹² In its Motion for Reconsideration/Appeal, SoCalGas pointed out that absent the full Commission’s intervention, Cal Advocates’ increasing incursion onto the constitutional rights of not just SoCalGas, but also others, would continue. Unfortunately, this has come to fruition, not only with other discovery at issue here, but also in discovery it has continued to serve. Cal Advocates continued to serve extensive discovery requests on SoCalGas throughout the Summer of 2020. On June 30, 2020, Cal Advocates served Public Advocates Office Data Request No. CalAdvocates-TB-SCG-2020-04 (“DR-15”) on SoCalGas, which contained 25 questions with dozens of subparts. This data request expressly called for information protected by the First Amendment as well as the attorney-client privilege, as it requested information on SoCalGas’s relationships and financial support of third parties, including vendors, lobbying groups, consulting and communications groups, and, inexplicably, its outside counsel Willenken LLP.

expenses from above-the-line to below-the-line accounts.¹¹³ The five contracts at issue here are unrelated to C4BES. What Cal Advocates actually seeks are the names of SoCalGas's other political partners, descriptions of the strategic public-policy and government-relations work they do for SoCalGas, and amounts SoCalGas spends on its political messaging that are recorded below-the-line. Therefore, DR-05 Question 8 is not narrowly tailored for Cal Advocates to obtain the information it needs for its investigation.

b. There is No Evidence to Support a Finding that Access to SoCalGas's Entire SAP Database is Narrowly Tailored for Cal Advocates to Obtain Information Needed for its Investigation.

The Resolution's finding that the Subpoena seeking access to SoCalGas's entire SAP Database is narrowly tailored is not supported by the record. Cal Advocates does not even attempt to argue that its request for SoCalGas's entire SAP Database was narrowly tailored¹¹⁴—because it cannot. Instead, it argued that SoCalGas had no First Amendment rights in its political activities at all and intends to disclose all of SoCalGas's associational information publicly as soon as possible.¹¹⁵ Since the Resolution rejected this position in re-affirming that SoCalGas is also protected by the First Amendment, as are other entities and individuals,¹¹⁶ the Commission should find (and the Resolution should have found) that Cal Advocates failed to prove up this element.

Indeed, the Resolution committed legal error by failing to specifically analyze how the Subpoena for SoCalGas's entire SAP Database is narrowly tailored or the “least restrictive

¹¹³ See Response to Q3-Q5, Amended Submission to Data Request CALPA-SCG-051719, July 12, 2019; R.13-11-005 Data Response CalAdvocates-SK-SCG-2020-01 Q4.

¹¹⁴ Cal Advocates' Response to Mot. to Quash.

¹¹⁵ Cal Advocates Comments at 20-21.

¹¹⁶ Res., p. 12.

means” to obtain the needed information to inform Cal Advocates’ investigation into SoCalGas’s alleged misuse of ratepayer funds. Instead, the Resolution summarily dismisses SoCalGas’s First Amendment rights by simply referring back to its discussion related to the DR-05 Contracts. The Resolution fails to explain, and cannot explain, how access to all of SoCalGas’s accounts (above-the-line and below-the-line) in the SAP Database is the least restrictive means of investigating the use of ratepayer funds (i.e., the above-the-line accounts). To be clear, the Subpoena’s demand for SAP access is different than from prior fixed databases that SoCalGas typically provides Cal Advocates in the GRC. The Subpoena requires unprecedented “live” access to the SoCalGas’s entire SAP database.¹¹⁷

The Resolution commits further legal error by failing to analyze why SoCalGas’s proposed custom software solution was not the appropriate least restrictive means. This solution would have provided Cal Advocates with all the information in SoCalGas’s SAP (both above-the-line and below-the-line accounts) except for (1) less than 20 vendors out of approximately 2,300 vendors for which expense are recorded below-the-line and protected by SoCalGas’s First Amendment rights and (2) information protected by the attorney-client and attorney-work product privileges. This solution puts fewer restrictions on SoCalGas’s exercise of its First Amendment rights, while still providing Cal Advocates the ability to conduct its accounting exercise—the ostensible reason for its investigation—to determine whether SoCalGas charged

¹¹⁷ It is worth noting that while SoCalGas was developing the custom software solution, SoCalGas provided Cal Advocates with fixed databases from its SAP database per its request. Cal Advocates did not object to the fixed database and has not asserted that the fix databases are not sufficient for its purposes.

any inappropriate political activity to ratepayers.¹¹⁸ The Resolution fails to discuss or analyze this solution at all. This also constitutes clear error as a matter of law.

c. **There is No Evidence to Support a Finding that Examining the Unredacted Versions of the Confidential Declarations Are Narrowly Tailored to Enable Cal Advocates to Obtain the Information Needed for its Investigation.**

Cal Advocates also does not put forth any justification as to how obtaining the Confidential Declarations will further its investigation.¹¹⁹ Once again, Cal Advocates has failed to do so, because it cannot do so. The Confidential Declarations were submitted in support of SoCalGas's Motion for Reconsideration/Appeal on December 2, 2019.¹²⁰ SoCalGas filed four Confidential Declarations conditionally under seal, with a concurrent motion to file under seal, and served redacted versions on Cal Advocates.¹²¹ One of these Confidential Declarations was from Sharon Tomkins, SoCalGas' Vice President of Strategy and Engagement and Chief Environmental Officer, attesting to the "chilling effect" disclosure of SoCalGas's political associations and activities to Cal Advocates would have on SoCalGas. The other three Confidential Declarations were declarations from SoCalGas's contracting partners, including

¹¹⁸ SoCalGas invested substantial resources and hours to develop the custom software solution. SoCalGas spent over three hundred hours building, testing, and completing the customized access solution. SoCalGas's Response to Motion for Contempt filed on July 2, 2020 at 9.

¹¹⁹ Nor could Cal Advocates make the argument that they needed the Confidential Declarations in order to respond to SoCalGas's Motion for Reconsideration/Appeal since Cal Advocates had already filed its response seven (7) months before it filed its Motion to Compel.

¹²⁰ 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), Dec. 2, 2019.

¹²¹ Motion Of Southern California Gas Company's (U 904 G) For Leave To File Under Seal Confidential Versions Of Declaration Numbers 3, 4, 5 And 6 In Support Of Its Motion For Reconsideration/Appeal To The Full Commission Regarding Administrative Law Judge's Ruling In The Discovery Dispute Between Public Advocates Office And Southern California Gas Company, October 7, 2019; [Proposed] Order (Not In A Proceeding), Dec. 2, 2019.

government relations and public affairs firms, who testified to the harm they and SoCalGas would incur if their non-public association and activities were disclosed to Cal Advocates.¹²² The unredacted versions of the Confidential Declarations would only reveal the identity of SoCalGas’s associations and the scope of the First- Amendment-protected political activity in which it has engaged—rather than anything about how the contracts are funded (i.e., above-the-line or below-the-line). The Resolution similarly fails to explain how obtaining the Confidential Declarations is narrowly tailored to further Cal Advocates’ investigation into misuse of ratepayer funds.

6. The Resolution Erred in Relying on *Duke Energy’s* Relevance Standard to Justify Cal Advocates’ Discovery Instead of the Appropriate Strict Scrutiny Standard.

The Resolution erred in relying on *United States v. Duke Energy Corp.* (M.D.N.C. 2003) 218 F.R.D. 468 to conclude the discovery sought by Cal Advocates was appropriate. First, *Duke Energy* is not a strict scrutiny case; it applies a mere “relevance” standard and expressly states it is not “employ[ing] a higher level of scrutiny” reserved for discovery that directly implicates First Amendment concerns.¹²³ The Resolution committed legal error in applying this lower “relevance” standard.¹²⁴ The court in *Duke Energy* determined the discovery sought did not go “to the heart of the group’s associational activities.”¹²⁵ Here, it does: As discussed above, the DR-05 Contracts, Confidential Declarations and the small number of protected vendors would

¹²² See Motion for Reconsideration/Appeal, pp. 14-15 (describing contents of declarations).

¹²³ See *United States v. Duke Energy Corp.* (M.D.N.C. 2003) 218 F.R.D. 468, 473 [applying “relevance” standard]; see also *id.* [“Of course, if the scope of the lawsuit and the discovery goes to the heart of the group’s associational activities, then the Court will employ a higher level of scrutiny.”].

¹²⁴ Res., p. 18 [applying *Duke Energy* to conclude Cal Advocates’ discovery is permitted “because it was relevant to the subject matter of the litigation.”].

¹²⁵ *Duke Energy, supra*, 218 F.R.D. at p. 473.

reveal the identities, contracts, scope of work information, and financial information about SoCalGas’s political activities. In *Britt*, a group of owners and residents of homes sued the San Diego Unified Port District, a governmental agency that operated the nearby airport, seeking compensation for diminished property values, personal injuries, and emotional distress caused by the operation of the airport.¹²⁶ In response, the District sought discovery into plaintiffs’ local political activities, including their membership in any meetings opposed to the District, the identity of others at the meetings, and content of the discussions at those meetings, and any financial contributions by plaintiffs to those organizations.¹²⁷ The Court found that the government sought “information concerning both [the plaintiffs’] and others’ affiliations with, and activities in, organizations which, at various times, have protested operations at the San Diego airport and have attempted through traditional political efforts to influence the future conduct of such operations.”¹²⁸ The Court determined such discovery implicated First Amendment harm. Similarly, the Commission must apply the strict scrutiny standard established by the California Supreme Court in *Britt v. Super. Ct.* and the Ninth Circuit in *Perry*.¹²⁹

Second, the discovery requests in *Duke Energy* were very different factually from those here. In that case, the information sought was restricted to communications between the defendant utility company and an advocacy group “which would tend to show whether Duke Energy had actual or constructive notice of the meaning of National Source Review (“NSR”) regulations and interpretations.”¹³⁰ It did not seek *all* communications between Duke Energy

¹²⁸ *Id.* at p. 852.

¹²⁹ *Britt v. Super. Ct.* (1978) 20 Cal.3d 844, 855 [government’s burden is “particularly heavy” to show demands are “precisely tailored” to serve a “compelling state interest”].

¹³⁰ *Duke Energy, supra*, 218 F.R.D. at p. 472.

and the advocacy group. The court found that the discovery order was “limited to a specific purpose” (whether Duke Energy had knowledge of a particular fact) separate from the organization’s “associational activities.”¹³¹ The government was not engaged in a “general fishing expedition.”¹³² Unlike *Duke Energy*, Cal Advocates’ investigation is not targeted, and goes straight to the heart of SoCalGas’s associational and expressive activities. The discovery seeks *all* of SoCalGas’s financial information in SAP, including SoCalGas’s 100% shareholder-funded political activities, which Cal Advocates has admitted is the precise information it wants to audit. Cal Advocates’ discovery demand is akin to the dangerous fishing expedition referenced in *Duke Energy*. Instead of limiting its discovery to above-the-line accounts to determine whether ratepayer funds were improperly used, Cal Advocates is fishing for information that goes to the heart of SoCalGas’s associational and expressive activities (SoCalGas’s detailed strategies and association with organizations and individuals in exercising its right to petition the government and advocate its position, publicly and privately, relating to natural gas, renewable natural gas, and green gas solutions)¹³³ so that it and Sierra Club can jointly investigate, prosecute and punish SoCalGas with threats of contempt, fines and sanctions to suppress or stifle its viewpoint, as evidence by the Joint Prosecution Agreement.¹³⁴

Third, in *Duke Energy*, the parties failed “to offer any proposal for protection less than suppression.”¹³⁵ Here, even though it was Cal Advocates’ burden to narrowly tailor a solution, SoCalGas has offered and enabled since May 29 a less restrictive means for Cal Advocates to

¹³¹ *Id.* at p. 473.

¹³² *Id.*

¹³³ Carrasco Decl., ¶ 6.

¹³⁴ Common Interest Agreement, Exhibit 4 to Wilson Declaration filed in Support of SoCalGas’s November 19, 2020 Comment at 1.

¹³⁵ *Id.* at p. 473.

obtain information it needs for its investigation: SoCalGas's proposed SAP custom software solution. The solution would have provided Cal Advocates with what it needed to investigate the use of *ratepayer* funds.¹³⁶ As discussed above, the Resolution fails to explain why this is not the appropriate least restrictive means that provides Cal Advocates with the information it needs to address the stated goals of its investigation.

Overall, Cal Advocates failed to meet its evidentiary burden to prove that its discovery requests were narrowly tailored to meet a compelling government interest. The Resolution erred in concluding otherwise.

B. The Resolution Committed Legal Error in Requiring an Attorney Declaration Accompanying the Privilege Log.

The Resolution commits legal error in requiring that, "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."¹³⁷ To be clear, SoCalGas does not object to providing a reasonable privilege log, where appropriate. What SoCalGas does object to is this unprecedented requirement of compelled attorney testimony. The requirement is illegal at heart because it puts at issue an attorney's determination of whether something is privileged or not, which violates the attorney-client privilege and the attorney work-product doctrines.¹³⁸ By

¹³⁶ Beyond what is needed, Cal Advocates would have had access to all of SoCalGas's below-the-line accounts that were not covered by this First Amendment dispute.

¹³⁷ Res. p. 24.

¹³⁸ The attorney-client privilege in California is codified by the Legislature in the Evidence Code. Evidence Code 954 establishes that "the client, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer

requiring an attorney to testify as to the substance of his or her own legal advice, process, research, and conclusions, it effectively causes the attorney to become a witness against his or her own client. This is an unprecedented invasion of the attorney-client privilege and work product doctrines, which contravenes the will of the Legislature and places an impermissible divide between an attorney and his or her client. The California Supreme Court has concluded that proceedings before the Commission, including in investigations, are “tempered by the attorney-client privilege.”¹³⁹ Therefore it cannot require this declaration.

A detailed look at the requirement demonstrates the many ways it contravenes the law. Most importantly, it compels testimony of “a SoCalGas attorney” regarding the attorney’s legal conclusions about the utility’s privilege claims. Such compelled testimony effects a forced waiver of privilege, which can occur via implied waiver when “the client has put [an] otherwise privileged communication directly at issue” in an action.¹⁴⁰ Where “a client has placed in issue the *decisions, conclusions, and mental state of the attorney who will be called as a witness to prove such matters,*” a party impliedly waives its attorney-client privilege.¹⁴¹ Similarly, waiver

. . . .” Evid. Code § 954. A “confidential communication” means “information transmitted between a client and his or her lawyer in the course of that relationship and in confidence . . . and includes a legal opinion formed and the advice given by the lawyer in the course of that relationship” Evid. Code § 952. As the California Supreme Court has held, “[T]he privilege is absolute and disclosure may not be ordered, without regard to relevance, necessity or any particular circumstances peculiar to the case.” *Costco Wholesale Corp. v. Sup. Ct.* (2009) 47 Cal.4th 725, 732. The attorney work-product doctrine, meanwhile, is a discovery rule codified in the Code of Civil Procedure that protects any “writing that reflects an attorney’s impressions, conclusions, opinions, or legal research or theories.” Code Civ. Proc. §2018.030(a). Such work product is “not discoverable under any circumstances.” *Id.* This is referred to as “absolute” work product.

¹³⁹ *Southern Cal. Gas Co. v. Public Util. Comm.* (1990) 50 Cal.3d 31, 38.

¹⁴⁰ *Id.* at p. 40.

¹⁴¹ *Id.* at p. 42-43 [quoting *Mitchell v. Sup. Ct.*, (1984) 37 Cal.3d 591 at p. 605] [emphasis added by Court]. Relatedly, where an attorney verifies a discovery response as a corporate officer or agent, such verification constitutes a limited waiver of the attorney-client and work product privileges. *Melendrez v. Sup. Ct.* (2013) 215 Cal.App.4th 1343, 1351.

of work product protection “is generally found . . . by failing to assert the protection, by tendering certain issues, and by conduct inconsistent with claiming the protection.”¹⁴² This is precisely what the Commission has ordered SoCalGas to do—have its attorney present testimony as a witness, via a declaration, regarding his or her conclusion that “such privilege claim has a good faith basis in the law, and the specific legal basis, with a citation, for withholding the document.”¹⁴³ In doing so, the Commission is forcing the attorney to potentially waive the attorney’s legal conclusions, facts upon which the attorney has based those conclusions, including attorney-client privileged communications with the client. Further, this calls for absolute attorney work product on its face, which protects from discovery any “writing that reflects an attorney’s impressions, conclusions, opinions, or legal research or theories.”¹⁴⁴ In fact, because it is impossible for a single attorney to review every single document on the privilege log requested by Cal Advocates,¹⁴⁵ it *necessarily* involves waiver as to the information on which the attorney has relied in substantiating the privilege claim. “When a client calls that party’s attorney to testify . . . to information the attorney could have only learned through the attorney client privilege, the privilege is waived.”¹⁴⁶

This coerced waiver puts an attorney in an impossible position of violating his or her legal and ethical duties to the client. “It is the duty of an attorney to . . . maintain inviolate the

¹⁴² *DeLuca v. State Fish Co.* (2013) 217 Cal.App.4th 671, 688.

¹⁴³ Res. p. 24.

¹⁴⁴ Cal. Code Civ. Proc. § 2018.030(a).

¹⁴⁵ Indeed, this requirement alone puts any attorney in jeopardy of perjuring him or herself and being potentially in violation of Rule 1, because it is impossible to comply with the Resolution’s requirement on its face in that a single attorney simply cannot personally review the number of documents at issue, as requested by Cal Advocates, in the time frame mandated. Inability to review an unreasonable number documents personally should not be a basis on which the Commission could assess a finding of perjury, Rule 1 violations, and subsequent possible disbarment or other professional discipline.

¹⁴⁶ *DeLuca, supra*, 271 Cal.App.4th at p. 689.

confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.”¹⁴⁷ This duty of confidentiality, among other things, *requires* an attorney to claim the attorney-client privilege in any situation where a client communication is threatened to be disclosed: Evidence Code § 955 reads, “The lawyer who received or made a communication subject to the privilege under this article **shall claim** the privilege whenever he is present when the communication is sought to be disclosed and is authorized to claim the privilege”¹⁴⁸ This coerced waiver of privilege jeopardizes the individual attorney’s legal duties to his or her client.

The Commission cannot coerce a waiver of the attorney-client privilege or work product doctrine. The attorney-client privilege is a creature of statute, and as the California Supreme Court has held, “[T]he privilege is absolute and disclosure may not be ordered, without regard to relevance, necessity or any particular circumstances peculiar to the case.”¹⁴⁹ “[T]he attorney-client privilege is a legislative creation, which courts have no power to limit by recognizing implied exceptions.”¹⁵⁰ In fact, so strong is the protection of the attorney-client privilege and attorney work product in California that the Evidence Code forbids disclosure of privileged and absolute work product information in order to rule on a claim of privilege.¹⁵¹ The Evidence Code mandates that “the presiding officer [ruling on a claim of privilege] may not require disclosure of information claimed to be privileged under this division or attorney work product under subdivision (a) of Section 2018.030 of the Code of Civil Procedure in order to rule on the

¹⁴⁷ Bus. & Prof. Code § 6068(e)(1).

¹⁴⁸ Evid. Code § 955 (emphasis added).

¹⁴⁹ *Costco Wholesale Corp. v. Sup. Ct.* (2009) 47 Cal.4th 725, 732.

¹⁵⁰ *Costco, supra*, at p. 739; *see also Wells Fargo Bank v. Sup. Ct.* (2000) 22 Cal.4th 201, 209 [“What courts in other jurisdictions give as common law privileges they may take away as exceptions. We, in contrast, do not enjoy the freedom to restrict California’s statutory attorney-client privilege based on notions of policy or ad hoc justification.”].)

¹⁵¹ Evid. Code § 915.

claim of privilege”¹⁵² Therefore, the Commission may not require SoCalGas to disclose privileged and work-product protected information via a compelled declaration in order to rule on the claim of privilege of the materials listed in the privilege log.¹⁵³ Moreover, privilege objections do not need to be verified under oath.¹⁵⁴ A court, and by extension the Commission, “has no authority to issue courtroom rules that are in conflict or inconsistent with statute.”¹⁵⁵

Furthermore, the Commission is improperly increasing the burden of proof in conflict with law. The California Supreme Court has noted that a party claiming privilege only has to present a prima facie evidence of a privilege claim. And “[o]nce 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.” (Evid.Code, § 917, subd. (a); *Wellpoint Health Networks, Inc.*, at pp. 123–124, 68 Cal.Rptr.2d 844.) *Costco Wholesale Corp. v. Superior Court*, 47 Cal. 4th 725, 733, 219 P.3d 736, 741 (2009). Here, the Commission is requiring more than a prima facie case, but specific evidence in the form of an attorney declaration. The Commission has no authority to change the burden of proof established by law.

The Commission cannot rewrite the bounds of attorney-client and attorney-work product privileges. Particularly, since the attorney-client and the attorney-work product privileges are creatures of legislative creation and the Commission has no particular expertise on the subject

¹⁵² *Id.*

¹⁵³ See *Costco Wholesale Corp. v. Sup. Ct.* (2009) 47 Cal.4th 725, 732.

¹⁵⁴ Cal. Code Civ. Proc. § 2031.250(a) (“The party to whom the demand for inspection, copying, testing, or sampling is directed shall sign the response under oath unless the response contains only objections.”); see also *Blue Ridge Ins. Co. v. Sup. Ct.* (1988) 202 Cal.App.3d 339, 344-345.

¹⁵⁵ *Bank of America, N.A. v. Sup. Ct.* (2013) 212 Cal.App.4th 1076, 1098.

matter. Moreover, there is no good policy reason to force a litigant to waive attorney-client and attorney-work product privileges regarding the creation of the privilege log.¹⁵⁶

In addition, this requirement is not necessary given the existence of Rule 1. SoCalGas as a regulated entity must comply with Rule 1 and takes its obligations to comply with seriously. Under Rule 1, whenever a person transacts business with the Commission, including by submitting a privilege log, the person may never mislead the Commission or its staff by an artifice or false statement of fact or law. Should any person or entity violate Rule 1, the Commission may impose fines on the person or entity. As such, the Commission already has recourse should any entity assert frivolous attorney-client or work product privileges.

Finally, the Commission cannot make an attorney choose between signing the declaration to support its claim of privilege under threat of penalty and waiving its client's privilege rights. An inadequate log, or inadequate verifications of objections (which are not necessary in any event) do not waive the privilege itself, which is governed by the Evidence Code.¹⁵⁷ “[The attorney-client privilege] is not to be whittled away by means of specious argument that it has been waived. Least of all should the courts seize upon slight and equivocal circumstances as a technical reason for destroying the privilege.”¹⁵⁸

The requirement that SoCalGas compel its own attorney to testify, subjecting him or her to cross-examination against it with respect to the client's privilege claims, has no basis in the law.

¹⁵⁶ If the Commission insists on this new standard, SoCalGas presumes that the Commission's legal division would also be required to abide by this new standard as well.

¹⁵⁷ *Blue Ridge Ins. Co. v. Sup. Ct.* (1988) 202 Cal.App.3d 339, 345; *see also Catalina Island Yacht Club v. Sup. Ct.* (2015) 242 Cal.App.4th 1116, 1120 [“May a trial court find a waiver of the attorney-client privilege and work product doctrine when the objecting party submits an inadequate privilege log that fails to provide sufficient information to evaluate the merits of the objections? No.”].

¹⁵⁸ *Blue Ridge Ins. Co., supra*, 202 Cal. App. 3d at p. 345.

IV. SOCALGAS REQUESTS ORAL ARGUMENTS ON THIS MATTER OF UTMOST PUBLIC IMPORTANCE.

Pursuant to Commission Rule 16.3, an application may request oral arguments in the application for hearing. The request for oral argument should explain how oral argument will materially assist the Commission in resolving the application, and demonstrate that the application raises issues of major significance for the Commission because the challenged order or decision: “(1) adopts new Commission precedent or departs from existing Commission precedent without adequate explanation; (2) changes or refines existing Commission precedent; (3) presents legal issues of exceptional controversy, complexity, or public importance; and/or (4) raises questions of first impression that are likely to have significant precedential impact.”¹⁵⁹

The Resolution’s forced waiver of a utility’s First Amendment rights contravenes numerous precedents of the United States and California Supreme Court, including in *Pacific Gas & Elec. Co. v. Public Utilities Com.* (1986) 475 U.S. 1, *Consolidated Edison Co. of New York, Inc. v. Public Service Commission of New York* (1980) 447 US. 530, 533 and is a matter of utmost public importance warranting oral argument and rehearing by the Commission.¹⁶⁰

Therefore, SoCalGas respectfully requests the Commission schedule oral arguments. There are serious unanswered questions and concerns raised by the Joint Prosecution Agreement, when and who knew about the Joint Prosecution Agreement, and whether the decisionmakers (the ALJ and Executive Director) would have made the decisions they made had they known about the existence and intent of the Joint Prosecution Agreement. Further, SoCalGas can present in further detail its arguments as to the broad and dangerous precedent this Resolution

¹⁵⁹ CPUC Rule 16.3(a).

¹⁶⁰ CPUC Rule 16.3(a).

will set for utilities' First Amendment rights and the effects on entities that may have a political or public-policy viewpoint that does not align with Cal Advocates (and Sierra Club); explain the new precedent and broad implications of how the Resolution would force waiver of attorney-client privilege and work product by requiring an attorney sign a declaration to accompany a privilege log; explain how Cal Advocates' discovery will not provide it with information to further its investigation from an accounting perspective; and explain how SoCalGas's SAP custom software solution will provide Cal Advocates with all the information it needs to conduct its accounting exercise. This information would materially assist the Commission in resolving this AFR in a manner that protects SoCalGas's First Amendment Rights and rights to assert attorney-client privileges.

V. CONCLUSION

The Resolution's analysis of the First Amendment issue is not supportable by the evidence and commits legal error. This issue is ripe for rehearing to provide the Commission an opportunity to correct the Resolution's error. Furthermore, the Commission should consider the policy implications implicit in the Resolution's findings and conclusions. If Cal Advocates may investigate any aspect of SoCalGas's political activity, even when 100% shareholder-funded, then neither SoCalGas, nor any other investor-owned utility, has any meaningful First Amendment rights vis-a-vis Cal Advocates (and by extension, Sierra Club). Cal Advocates should not be allowed to misuse its investigatory power outside of any proceeding to expose and threaten entities with fines and sanctions merely for the content of their political views—views that, while they may differ from Cal Advocates, are aligned with the many statements of

Commission staff who acknowledge that natural gas infrastructure has an important role to play in achieving the state’s decarbonization goals.¹⁶¹

Furthermore, the Resolution’s unprecedented effort to add a declaration requirement to privilege logs is an illegal order. This declaration requirement is a forced waiver of SoCalGas’s attorney-client and attorney-work product privileges. Such a forced waiver is not permitted under the legislature’s statutory scheme for attorney-client and attorney-work product privileges. Finally, SoCalGas respectfully requests the Commission schedule oral arguments as the Resolution contravenes numerous precedents of the United States and California Supreme Court and is a matter of utmost public importance warranting oral argument and rehearing by the Commission.¹⁶²

Respectfully submitted,



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¹⁶¹ See, e.g., R.20-01-007 Track 1A: Reliability Standards and Track 1B: Market Structure and Regulations – Workshop Report and Staff Recommendations, p. 37, Oct. 2, 2020, *available at* <https://www.cpuc.ca.gov/gasplanningoir> [CPUC Staff’s recommendations expressly “call[] attention . . . to the two rotating power outages of August 2020” as a “cautionary tale” noting that “[t]he role of California’s natural gas infrastructure is especially important during times of low renewable generation.”].

¹⁶² CPUC Rule 16.3(a)(3).



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

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Application For Rehearing Of Resolution
ALJ-391

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing **SOUTHERN CALIFORNIA GAS COMPANY'S APPLICATION FOR REHEARING OF RESOLUTION ALJ-391 AND REQUEST FOR ORAL ARGUMENT** 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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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application For Rehearing Of Resolution
ALJ-391

A.20-12-011
(Filed: December 21, 2020)

**SOUTHERN CALIFORNIA GAS COMPANY'S (U 904 G) MOTION TO STAY
RESOLUTION ALJ-391, TO SHORTEN TIME TO RESPOND TO MOTION, AND
EXPEDITED RULING ON THE MOTION**

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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application For Rehearing Of Resolution
ALJ-391

A.20-12-011
(Filed: December 21, 2020)

**SOUTHERN CALIFORNIA GAS COMPANY’S MOTION TO STAY RESOLUTION
ALJ-391, TO SHORTEN TIME TO RESPOND TO MOTION, AND EXPEDITED
RULING ON THE MOTION**

I. INTRODUCTION

Pursuant to § 1735 of the Public Utilities Code (Pub. Util. Code), and the California Public Utilities Commission’s (CPUC or Commission) Rules of Practice and Procedure 11.1, Southern California Gas Company (SoCalGas) moves the Commission: (1) to stay the Resolution ALJ-391 (Resolution) in its entirety, or in the alternative, to partially stay enforcement of the Resolution as it pertains to information protected by SoCalGas’s First Amendment rights and to the requirement that “[i]f 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”; (2) to shorten parties’ response time to December 28, 2020; and (3) for an expedited ruling before December 31, 2020. This motion is necessary to (1) protect SoCalGas against the potential misuse of the Public Advocates Office’s (Cal Advocates) investigatory power to punish entities with contempt, fines, and sanctions merely for expressing their political viewpoints; and (2) protect against unlawful, forced waiver of the attorney-client privilege and work product.

As discussed in detail in the Application for Rehearing (AFR), the Resolution correctly concludes that SoCalGas “enjoys the same First Amendment rights as any other person or entity” and that “[i]ts status as a regulated public utility does not impair or lessen its rights.”¹ However, this conclusion rings hollow in light of the Resolution’s legal errors. The impact of the errors is forced waiver of those rights entirely which contravenes the U.S. Supreme Court’s assurances of a utility’s First Amendment rights in *Pacific Gas & Elec. Co. v. Public Utilities Com.* (1986) 475

¹ Resolution (“Res.”), p. 14.

U.S. 1 and *Consolidated Edison Co. of New York, Inc. v. Public Service Commission of New York* (1980) 447 US. 530, 533. Absent a stay of the entire Resolution while there are still unanswered questions about the purpose of Cal Advocates' joint prosecution with Sierra Club and the circumstances around CPUC decisionmakers' knowledge before the relevant motions and subpoena were granted, SoCalGas will suffer serious or irreparable harm. SoCalGas would be required to turn over vast amounts of information including its First Amendment-protected information, to Cal Advocates and be forced to waive its attorney-client and work product privileges before the Commission can issue its final decision on the AFR and, if necessary, a final resolution from the appellate court. Cal Advocates would be able to see SoCalGas's First Amendment-protected information and will be forever privy to the information. In addition, SoCalGas would be forced to waive its attorney-client privilege and work product. Neither harm can be undone even if the Commission or the Court of Appeals later finds that the Resolution violates SoCalGas's First Amendment rights.

There are legitimate concerns raised by SoCalGas and California Legislators that Cal Advocates is using its investigation as pretext for a different agenda: to single out and punish SoCalGas for the viewpoint it holds regarding promoting natural gas, renewable gas, and other clean fuels as an integral part of the State's decarbonization plans. These concerns are further validated by the Common Interest, Joint Prosecution, and Confidentiality Agreement (Joint Prosecution Agreement) between Cal Advocates and Sierra Club whereby those two entities have apparently been jointly investigating and prosecuting SoCalGas for its "anti-electrification" activities since August 2019.² This Joint Prosecution Agreement was not disclosed to SoCalGas until nearly a year later, and there is no indication or response to the Legislators thus far by Cal Advocates that it notified any of the relevant CPUC decisionmakers (ALJ, Executive Director, or Commissioners) so that they would know about its existence and relevance to these disputed issues despite numerous opportunities and filings with the Commission on matters covered by the agreement.³ Further, if Sierra Club through the Joint Prosecution Agreement has coopted or

² See Exhibit 4 to the Declaration of Jason H. Wilson, submitted in support of SoCalGas's Comment, Nov. 19, 2020 ["Joint Prosecution Agreement"].

³ Cal Advocates had numerous opportunities to disclose the existence of the Joint Prosecution Agreement and did not do so in this non-proceeding, R.19-01-011, and R.13-11-005. In the non-proceeding alone, Cal Advocates did not disclose the Joint Prosecution Agreement when it filed its October 7, 2019 Motion to Compel the DR-05 Contract, June 23, 2020 Motion for Contempt and Sanctions, July 9, 2020 Motion

inappropriately taken advantage of Cal Advocates' statutory authority for its own benefit (authority that was specifically granted to Cal Advocates as a division of the Commission and that no other intervenor is entitled to), it would be an abuse of Pub. Util. Code § 309.5. Under Pub. Util. Code § 309.5, Cal Advocates was created and funded by ratepayers for the purpose of fulfilling its statutory obligation to obtain the lowest possible rates for ratepayers.⁴ To perform its duties, Cal Advocates was specifically granted discovery authority that no other intervenor is entitled to.⁵ Sierra Club, on the other hand, has no obligation to ratepayers and should not be permitted to make use of the discovery powers under Pub. Util. Code § 309.5. These same concerns were raised by State Legislators in a letter to Commission President Batjer. In the letter, the Legislators expressed concerns over the legitimacy of the Joint Prosecution Agreement and whether Cal Advocates "new focus," which appears to be "to aid the Sierra Club in their effort to seek the ban of natural gas usage in California even though it is proven to be favored by customers as a fuel source because of the affordable cost," violates its stated mission under Pub. Util. Code § 309.5.⁶ They also raised questions about who knew about the Joint Prosecution Agreement, when they knew about it, and whether there are other similar agreements.⁷ It is unclear whether the decisionmakers (the ALJ, Executive Director, or Commissioners) would have made the decisions they made had they known about the existence and intent of the Joint Prosecution Agreement. More specifically, for example, if the ALJ had known about the agreement, she may not have granted the original Motions to Compel or the Executive Director may not have granted the SAP subpoena. These questions remain unanswered and should be addressed before SoCalGas is required to comply with any part of the Resolution. Moreover, whatever response Cal Advocates provides to the Legislators may prompt further questions by them, the Commission, or other relevant stakeholders responsible for government and political accountability, and thus warrants this broader stay of the Resolution. If such new, material facts arise, the Commission should allow time and set a schedule for further briefing in SoCalGas's AFR docket to address what may be additional legal errors that could not have been known or

to Compel the Confidential Declarations and Fines, and November 19, 2020 Comments on Draft Resolution ALJ-391. All of these motions are the subject of this Resolution.

⁴ Cal. Pub. Util. Code § 309.5(a), (f).

⁵ Cal. Pub. Util. Code § 309.5(e).

⁶ Declaration of Jason H. Wilson, December 18, 2020, Exhibit 3 - November 30, 2020 letter from Assembly members Blanca Rubio and Jim Cooper to CPUC President Marybel Batjer, p. 2.

⁷ *Id.*

addressed by SoCalGas before Rule 16.1(a)'s 30-day AFR deadline after the final Resolution's mailing date. Such additional facts may perhaps be unknown even as far back as when the SAP subpoena was first issued.

In the alternative, if the Commission does not grant SoCalGas's request to stay the Resolution in its entirety, the Commission should, at the very least, grant a partial stay of the Resolution as it pertains to (1) information protected by SoCalGas's First Amendment rights and (2) to the requirement that an attorney provide a declaration under penalty of perjury in connection with a privilege log. Aside from the potential impropriety of Cal Advocates' investigation and the Joint Prosecution Agreement, Cal Advocates has failed to meet its heavy evidentiary burden under the strict scrutiny standard applied by the courts to overcome SoCalGas's fundamental First Amendment rights of free association and free speech. As such, SoCalGas should not be required to produce information protected by its First Amendment rights. In granting this alternative partial stay, Cal Advocates will still have access to all of the remaining information required by the Resolution and all the information Cal Advocates needs for its stated investigation into whether SoCalGas misused ratepayer funds for political activities. Therefore, Cal Advocates will not be prejudiced by the partial stay.

As part of the partial stay, the Commission should also stay the requirement that "[i]f 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."⁸

To be clear, SoCalGas does not object to providing a reasonable privilege log, where appropriate. What SoCalGas does object to is this unprecedented requirement of compelled attorney testimony. The requirement is illegal at heart because it puts at issue an attorney's determination of whether something is privileged or not, which violates the attorney-client privilege and the attorney work-product doctrines.⁹ By requiring an attorney to testify as to the

⁸ Res., p. 24.

⁹ The attorney-client privilege in California is codified by the Legislature in the Evidence Code. Evidence Code 954 establishes that "the client, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer . . ." Evid. Code § 954. A "confidential communication" means "information transmitted between a client and his or her lawyer in the course of that relationship and in confidence . . . and includes a legal

substance of his or her own legal advice, process, research, and conclusions, it effectively causes the attorney to become a witness against his or her own client. This is an unprecedented invasion of the attorney-client privilege and work product doctrines, which contravenes the will of the Legislature and places an impermissible divide between an attorney and his or her client. The California Supreme Court has concluded that proceedings before the Commission, including in investigations, are “tempered by the attorney-client privilege.”¹⁰ Therefore it cannot require this declaration.

For the reasons set forth herein, the Commission should exercise its discretion to stay enforcement of the entire Resolution or, in the alternative, the portion of the Resolution pertaining to information protected by SoCalGas’s First Amendment rights and to the requirement that an attorney provide a declaration under penalty of perjury “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” until it issues a final decision on the AFR (and final resolution of a subsequent appeal to an appellate court)

Time is of the essence as Ordering Paragraph 9 of the Resolution requires SoCalGas to comply with the Resolution by no later than January 19, 2021. SoCalGas will be required to produce unprecedented, vast amounts of information including its First Amendment protected information and waive its attorney-client and work product in connection with its privilege log. Therefore, SoCalGas requests that the Commission shorten time for any responses to this motion to December 28, 2020, and requests that the Commission rule on this motion expeditiously—by no later than December 31, 2020. If the Commission does not grant this partial stay by December 31, 2020, SoCalGas will seek emergency relief from the Court of Appeal through a petition for writ of review and request for stay on or about January 4, 2021.

opinion formed and the advice given by the lawyer in the course of that relationship” Evid. Code § 952. As the California Supreme Court has held, “[T]he privilege is absolute and disclosure may not be ordered, without regard to relevance, necessity or any particular circumstances peculiar to the case.” *Costco Wholesale Corp. v. Sup. Ct.* (2009) 47 Cal.4th 725, 732. The attorney work-product doctrine, meanwhile, is a discovery rule codified in the Code of Civil Procedure that protects any “writing that reflects an attorney’s impressions, conclusions, opinions, or legal research or theories.” Code Civ. Proc. §2018.030(a). Such work product is “not discoverable under any circumstances.” *Id.* This is referred to as “absolute” work product.

¹⁰ *Southern Cal. Gas Co. v. Public Util. Comm.* (1990) 50 Cal.3d 31, 38.

II. THE COMMISSION SHOULD STAY ENFORCEMENT OF THE RESOLUTION OR, IN THE ALTERNATIVE, PARTIALLY STAY THE PORTION THAT PERTAINS TO INFORMATION PROTECTED BY THE FIRST AMENDMENT AND REQUIREMENT THAT AN ATTORNEY PROVIDE A DECLARATION UNDER PENALTY OF PERJURY IN CONNECTION WITH A PRIVILEGE LOG.

Pub. Util. Code § 1735 governs requests for stay in connection with an application for rehearing. Section 1735 states:

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*.¹¹

“Under section 1735, the Commission’s authority to grant a stay is discretionary. In exercising this discretion, the Commission normally considers the following factors: (1) whether the moving party will suffer serious or irreparable harm if the stay is not granted; (2) whether the moving party is likely to prevail on the merits of the application for rehearing; (3) whether the public interest warrants a stay through balancing harm to the moving party if the stay is not granted and the decision is later reversed, versus the harm to other parties if the stay is granted and the decision is later affirmed; and (4) other factors relevant to the particular case.”¹² This standard is applied “flexibly.”¹³ As described below, each of these factors weighs in favor of granting a partial stay of the Resolution.

A. SoCalGas Will be Seriously or Irreparably Harmed if it is Required to Disclose its First Amendment-Protected Information and to Waive its Attorney-Client Privilege and Work Product.

SoCalGas will suffer serious or irreparable harm as it would be required to turn over vast amounts of information including its First Amendment-protected information, and forced to waive its attorney-client privilege and work product before the Commission can issue its final decision on the AFR and, if necessary, obtain a final resolution from the appellate court. Once this happens, Cal Advocates would be able to see SoCalGas’s First Amendment-protected information. Even if the Commission or the Court of Appeals later reverses the Resolution entirely or finds that the Resolution violates SoCalGas’s First Amendment rights, the harm

¹¹ Cal. Pub. Util. Code § 1735 (emphasis added).

¹² D.19-01-022 at 4.

¹³ D.04-08-056 at 3.

would already have occurred.¹⁴ Cal Advocates cannot unsee what it has already seen. In addition, SoCalGas would be forced to waive its attorney-client privilege and work product. Similarly, even if the Commission or the Court of Appeals later finds that the Resolution violates California law concerning forced waiver of the attorney-client and work product privileges, the waiver would have already occurred and cannot be undone.

As further detailed in the AFR, the information at issue here is SoCalGas's entire SAP database including information protected under SoCalGas's First Amendment rights to free association and free speech. The information would reveal the identities of organizations and individuals and the specific advice of political consultants who are advising SoCalGas as it exercises its right to petition the government and advocate for its position, publicly and privately, to decarbonize its gas system and molecules. These activities are 100% shareholder funded. The Resolution requires SoCalGas to turn over this information which is contained in: (1) SoCalGas's consultant contracts that are 100% shareholder funded (DR-05 Contracts); (2) the confidential consultant declarations that were submitted under seal in support of SoCalGas's Motion for Reconsideration/Appeal (Confidential Declarations); and (3) SoCalGas's SAP Database (SAP Database).

As explained in the AFR, the Resolution correctly concludes that "SoCalGas enjoys the same First Amendment rights as any other person or entity." However, this conclusion rings hollow in light of the Resolution's numerous legal errors. One of the Resolution's errors is that it incorrectly found that SoCalGas failed to establish a First Amendment harm. In doing so, the Resolution misinterpreted and applied an incorrect heightened standard that requires SoCalGas to show past harm.¹⁵ The United States Supreme Court and California Supreme Court have made clear that evidence of future "chilling" is sufficient for a *prima facie* case of First Amendment

¹⁴ *In re Search of Elec. Commc'ns in the Account of chakafattah@gmail.com at Internet Serv. Provider Google, Inc.*, 802 F.3d 516, 529 (3d Cir. 2015) [noting that "no remedy assuages disclosure" in the context of a "subpoena requesting attorney-client privileged documents . . . (because) you cannot 'unring the bell'"]; *Maldonado v. Super. Ct.* (2012) 53 Cal.4th 1112, 1137 [holding that if constitutionally-protected material is disclosed, "the disclosure itself breaches the privilege, the 'cat is out of the bag,' and the damage cannot be undone"]; *Fed. Trade Comm'n v. Qualcomm Inc.*, 935 F.3d 752, 756 (9th Cir. 2019) (finding that there is a probability of irreparable harm where the injunction requires a party to enter new contractual relationships and renegotiate existing ones on a large scale and imposes fundamental business changes that cannot be easily undone should party prevail on appeal).

¹⁵ Res., at pp. 12-13.

harm.¹⁶ As SoCalGas and its consultants have stated in sworn declarations, forcing SoCalGas to turn over information that discloses its political thinking and strategies would have (and would further worsen) a chilling effect on their associations and speech. The forced disclosure of SoCalGas’s political activities that are funded 100% below-the-line (i.e., accounts that generally are not recovered from ratepayers) “has altered how SoCalGas and its consultant, partner or vendor associates with each other, and it has had a chilling effect on these associations.”¹⁷ Further, “SoCalGas will be less willing to engage in contracts and communications knowing that its non-public association and communications with consultants, business partners and others on SoCalGas’s political interests may be subject to compulsory disclosure.” In addition to SoCalGas’s own statements as to how the forced disclosure will affect its willingness to associate and engage with its consultants, several consultants explain how forced disclosure will affect their willingness to associate with SoCalGas. One consultant states:

In the future, I will be less willing to engage in communications knowing my non-public association with SoCalGas and private discussions and views may be (and have been) disclosed simply because of my association with SoCalGas in connection with its efforts to petition the government on political matters related to, among other things, rulemaking. I am also seriously considering whether to associate with SoCalGas in [the] future regarding ballot initiatives, rulemaking, or any other political process due to the breach of privacy that comes with disclosure of my thoughts, processes, decisions, and strategies.¹⁸

As a result of the Resolution’s errors, it affords no actual First Amendment protection for a regulated utility. Assuming the Commission or the appellate court eventually finds that the Resolution violates SoCalGas’s First Amendment rights, SoCalGas will be seriously or irreparably harmed because SoCalGas would have been forced to turn over the protected information under threats of sanctions and fines. Once SoCalGas’s First Amendment information is turned over to Cal Advocates, that bell cannot be unrung.

¹⁶ See *Buckley v. Valeo* (1976) 424 U.S. 1; *Britt v. Sup. Ct.* (1978) 20 Cal.3d 844; *Perry v. Schwarzenegger* (9th Cir. 2010) 591 F.3d 1147.

¹⁷ Declaration of Andy Carrasco in support of Southern California Gas Company’s Motion to Quash Portion of the Subpoena to Produce Access to Certain Materials in Accounting Databases and to Stay Compliance Until the May 29th Completion of Software Solution to Exclude Those Protected Materials in the Databases (“Carrasco Decl.”) ¶ 6 (May 22, 2020).

¹⁸ Decl. No. 6 in support of Mot. for Reconsideration/Appeal, ¶ 5.

Moreover, SoCalGas alerted the Commission a year ago that Cal Advocates has used two Administrative Law Judge's (ALJ) Rulings, dated September 10, 2019 and November 1, 2019, as a sword to force SoCalGas and other utilities to turn over information protected under the First Amendment or face threats of contempt, sanctions, and fines.¹⁹ SoCalGas also warned that absent the full Commission's intervention (by granting SoCalGas's Emergency Motion to Stay or Motion for Reconsideration/Appeal), Cal Advocates' incursion on SoCalGas's constitutional rights will continue unabated.²⁰ Unfortunately, this has come to fruition, not only with the discovery at issue in the Resolution (i.e., SAP Database, and confidential consultant declarations), but also in discovery Cal Advocates has continued to serve outside of a proceeding.²¹ Furthermore, it is important to note that the two ALJ Rulings on September 10 and November 1 did not provide any reasoning to support its orders, yet Cal Advocates has interpreted and expanded those two ALJ Rulings to hold that SoCalGas is forbidden from asserting any further First Amendment rights.²² The Resolution's erroneous application of First Amendment precedent, unless stayed, will worsen and further embolden Cal Advocates by

¹⁹ Southern California Gas Company's Motion for Reconsideration/Appeal to the Full Commission Regarding Administrative Law Judge's Ruling in the Discovery Dispute Between Public Advocates Office and Southern California Gas Company, October 7, 2019 (Not in a Proceeding), ("Motion for Reconsideration") at 23-25 (December 2, 2019).

²⁰ *Id.* at 4.

²¹ Comment of Southern California Gas Company to Draft Resolution at 8 fn. 10. (November 19, 2020).

²² Below are samples of how Cal Advocates has interpreted and used the September 10 and November 1 ALJ to prevent SoCalGas from asserting its First Amendment Rights.

- Public Advocates Office's Response to Southern California Gas Company's 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) (December 17, 2019) at 7. ("The Public Advocates Office attempted to resolve the issue informally, noting to SoCalGas that ALJ DeAngelis's September 10, 2019 ruling implicitly rejected SoCalGas' grounds for refusing to answer Question 8. The Public Advocates Office sought to avoid the extreme waste of Commission resources in seeking judicial intervention on a legal issue that had already been decided.")
- 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 (July 9, 2020) at 4-5. ("It is also entitled to these documents consistent with the November 1, 2019 ALJ Ruling rejecting SoCalGas' First Amendment Association Claims.") and ("SoCalGas intentionally refuses to comply with Cal Advocates June 26, 2020 demand to provide the information on the basis of its First Amendment association claims which were rejected in the November 1, 2019 ALJ Ruling.")

arming it with the ability to force SoCalGas (and other utilities)²³ to turn over more information protected under its First Amendment or be subject to contempt, sanctions and/or fines further exacerbating the serious or irreparable harm to SoCalGas.

In addition, the Resolution's requirement that "[i]f 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" would result in a forced waiver of the attorney-client and work product privileges.

As noted earlier, this unprecedented requirement of compelled attorney testimony is illegal at heart because it puts at issue an attorney's determination of whether something is privileged or not, which violates the attorney-client privilege and the attorney work-product doctrines.²⁴ Again, by requiring an attorney to testify as to the substance of his or her own legal advice, process, research, and conclusions, it effectively causes the attorney to become a witness against his or her own client. Because the California Supreme Court has concluded that proceedings before the Commission, including in investigations, are "tempered by the attorney-client privilege,"²⁵ the Commission cannot require this declaration.

A detailed look at the requirement demonstrates the many ways it contravenes the law. Most importantly, it compels testimony of "a SoCalGas attorney" regarding the attorney's legal conclusions about the utility's privilege claims. Such compelled testimony effects a forced waiver of privilege, which can occur via implied waiver when "the client has put [an] otherwise privileged communication directly at issue" in an action.²⁶ Where "a client has placed in issue the *decisions, conclusions, and mental state of the attorney who will be called as a witness to*

²³ While it is possible that Cal Advocates can use the Resolution to force other utilities to turn over First Amendment protected material, based on the Common Interest Agreement between Cal Advocates and Sierra Club, it appears they are only targeting SoCalGas because its preferred pathway to decarbonization (one that includes decarbonizing the gas system) does not align with what appears to be Cal Advocates and Sierra Club's preferred all-electrification pathway. See Common Interest, Joint Prosecution, and Confidentiality Agreement between the Public Advocates Office and the Sierra Club, dated August 30, 2019.

²⁴ *Supra*, n.9

²⁵ *Southern Cal. Gas Co. v. Public Util. Comm.* (1990) 50 Cal.3d 31, 38.

²⁶ *Id.* at p. 40.

prove such matters,” a party impliedly waives its attorney-client privilege.²⁷ Similarly, waiver of work product protection “is generally found . . . by failing to assert the protection, by tendering certain issues, and by conduct inconsistent with claiming the protection.”²⁸ This is precisely what the Commission has ordered SoCalGas to do—have its attorney present testimony as a witness, via a declaration, regarding his or her conclusion that “such privilege claim has a good faith basis in the law, and the specific legal basis, with a citation, for withholding the document. client privilege and work product by requiring an attorney sign a declaration to accompany a privilege log.” This requirement puts SoCalGas in a catch-22 situation: either it must agree to force waiver of privileges or forego asserting privileges on its documents.

Cal Advocates’ demand for this illegal declaration appears to be a further attempt to create a means to punish SoCalGas for its viewpoints by forcing the waiver of its attorney-client and attorney work product privileges. Cal Advocates’ attempts to stifle SoCalGas’s viewpoint must be rejected.

B. SoCalGas is Likely to Prevail on the Merits for the Reasons Explained in the AFR.

SoCalGas is likely to prevail on the merits. SoCalGas’s AFR explains in detail the Resolution’s numerous factual and legal errors in concluding that Cal Advocates’ investigation into SoCalGas’s 100% shareholder funded First Amendment-protected political activities, contracts, and the identities of its consultants met the strict scrutiny applied by courts when a fundamental First Amendment or Article I right is at stake. As such, SoCalGas will not repeat the detailed arguments here but highlight the Resolution’s legal and factual errors.

The Resolution made numerous errors in its First Amendment analysis. For example, the Resolution runs afoul of the holding in *Britt v. Superior Court*, and erred in finding that SoCalGas did not make a *prima facie* showing of arguable First Amendment infringement by requiring SoCalGas to show past harm to meet the “chilling” test. Instead, future “chilling” is sufficient to present a *prima facie* case. Additionally, the Resolution failed to recognize that the

²⁷ *Id.* at pp. 42-43 [quoting *Mitchell v. Sup. Ct.*, (1984) 37 Cal.3d 591, at p. 605] [emphasis added by Court]. Relatedly, where an attorney verifies a discovery response as a corporate officer or agent, such verification constitutes a limited waiver of the attorney-client and work product privileges. *Melendrez v. Sup. Ct.* (2013) 215 Cal.App.4th 1343, 1351.

²⁸ *DeLuca v. State Fish Co.* (2013) 217 Cal.App.4th 671, 688.

harm presented in SoCalGas's declarations is identical to the harm presented in the declarations submitted by appellants in *Perry v. Schwarzenegger*, which the Ninth Circuit found to be a sufficient *prima facie* showing.²⁹

Moreover, the Resolution failed to establish how Cal Advocates' discovery into SoCalGas's *shareholder-funded* political activities is rationally related to Cal Advocates' investigation of whether SoCalGas misused *ratepayer funds* for improper political activities. There is no evidence to support the Resolution's finding that Cal Advocates' demand for the DR-05 Contracts "is narrowly tailored to seek specific contracts and information about SoCalGas' potential use of *ratepayer funds* for lobbying activities"³⁰ since the DR-05 Contracts are not ratepayer-funded. Further, there is no evidence to support the finding that access to SoCalGas's entire SAP Database (including both above-the-line and below-the-line accounts) is narrowly tailored for Cal Advocates to obtain information related to whether SoCalGas improperly charged political activities to above-the-line accounts. The Resolution did not even analyze how SoCalGas's proposed customer software solution to access its SAP Database is not an appropriate least restrictive means.

Finally, the Resolution's imposition of a declaration requirement for the privilege log imposes a forced waiver of the attorney-client and attorney-work product privilege. Moreover, it runs afoul of the legislative mandates for these privileges.

C. The "Balance of Harm" Weighs in Favor of Granting the Stay

The balance of harm is much greater to SoCalGas if the stay is not granted and the Resolution is later reversed, than the harm to Cal Advocates if the stay is granted and the Resolution is later affirmed. As discussed above, if the stay is not granted and the Resolution is later reversed, SoCalGas would be forced to turn over its First Amendment protected information

²⁹ *Perry v. Schwarzenegger* (9th Cir. 2010) 591 F.3d 1147.1163-1164.

³⁰ Res., pp. 20-21.

concerning the identity of SoCalGas's associations, the scope of the First Amendment-protected political activity, and the amounts spent on such activities. Once SoCalGas is forced to turn over the information, Cal Advocates will see SoCalGas's First Amendment-protected information and the harm is done. Cal Advocates cannot unsee what it has already seen and the "chilling" effect described by SoCalGas and its consultants above, and in more detail in the AFR, would have occurred. In addition, once SoCalGas's attorney is required to submit a declaration in support of the privilege log, the attorney-client privilege and work product would be waived as to the attorney's work in connection with the privilege log. This has the potential to open up to investigation and cross-examination not only the single attorney's legal conclusions, but also the facts upon which the attorney has based those conclusions, including attorney-client privileged communications with the client. Both of these harms are serious and irreparable and cannot be undone.

On the other hand, if the stay is granted and the Resolution is later affirmed, the harm to Cal Advocates is that it would have to wait for the Commission's decision on the AFR. Cal Advocates will not be prejudice since there is no procedural schedule that will be affected by a narrow stay of the Resolution. The Resolution stated that the Commission may conduct further investigation of SoCalGas' conduct through the appropriate enforcement division within the Commission and, based on any resulting recommendation 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..."³¹ This has yet to occur. Therefore, the balance of harm here overwhelmingly favors granting the stay of the Resolution until the unanswered question revolving around the potential impropriety of Cal Advocates investigation and the Joint Prosecution Agreement can be addressed.

To the extent the Commission grants the alternative partial stay requested by SoCalGas, the balance of harm further tilts towards SoCalGas. Cal Advocates will not be prejudiced by the partial stay of the Resolution since it will still be able to access 100% of SoCalGas's above-the-line accounts and below-the-line accounts except for SoCalGas's First Amendment-protected information that is in dispute in the AFR while the stay is in place.³² The information protected

³¹ Res., at p. 25.

³² Pursuant to the Resolution, Cal Advocates will not have access to information protected by SoCalGas's attorney-client privilege and work product.

by SoCalGas’s First Amendment rights concern less than 20 vendors out of approximately 2,300 vendors for which expenses are recorded below-the-line. This is all the information that Cal Advocates needs for its investigation into the alleged misuse by SoCalGas of ratepayer funds for political activities. Moreover, not having the attorney declaration in connection with the privilege log will have no bearing on Cal Advocates actual investigation into the alleged misuse of ratepayer funds by SoCalGas.

D. Other Relevant Factors Support the Stay

The Commission should consider as part of this motion and AFR the dangerous precedent that this Resolution could set in empowering Cal Advocates, an advocacy agency with no enforcement authority, to misuse its investigatory power to punish entities with contempt, fines and sanctions merely for the content of their political views. SoCalGas has increasing concerns that it is in fact Cal Advocates’ goal now to single out and punish SoCalGas for the viewpoint it holds regarding promoting natural gas, renewable gas, and other clean fuels as an integral part of the State’s decarbonization plans, and not to investigate the allocation of ratepayer funds.³³

As evidenced by the Joint Prosecution Agreement, Cal Advocates and Sierra Club are jointly investigating SoCalGas’s “anti-electrification activities.”³⁴ Sierra Club has made no secret of its position against natural gas and renewable natural gas and its position that 100% electrification is the only viable pathway to meet the State’s climate goals.³⁵ SoCalGas disagrees with Cal Advocates and Sierra Club’s characterization of its activities as “anti-electrification.” SoCalGas supports electrification measures in conjunction with other measures that will allow

³³ Indeed, a discrepancy between an articulated state interest and the effect of the law—or here, discovery request—can raise suspicion of content or viewpoint discrimination. *See First Nat. Bank of Bos. v. Bellotti* (1978) 435 U.S. 765, 785 [“The fact that a particular kind of ballot question has been singled out for special treatment undermines the likelihood of a genuine state interest in protecting shareholders.”].

³⁴ Joint Prosecution Agreement, *supra* note 2.

³⁵ *See, e.g.*, July 1, 2019 Sierra Club Press Release, We Can’t Get Beyond Carbon with Gas, available at <https://www.sierraclub.org/michael-brune/2019/07/beyond-carbon-no-fracked-shale-fossil-gas>; June 7, 2019 Sierra Club Press Release, Sierra Club and Bloomberg Philanthropies Partnership to Continue Under Beyond Carbon Initiative, available at <https://www.sierraclub.org/press-releases/2019/06/sierra-club-and-bloomberg-philanthropies-partnership-continue-under-beyond#:~:text=Oakland%2C%20CA%20--%20Today%2C%20Michael%20Bloomberg%20unveiled%20his,plants%20announcing%20retirement%20since%20Donald%20Trump%20was%20elected>; October 9, 2019 Sierra Club Press Release, Electrification for Climate Resiliency, available at <https://www.sierraclub.org/articles/2019/10/electrification-for-climate-resiliency>.

the State to succeed in meeting its ambitious climate goal.³⁶ SoCalGas’s mission is to build the cleanest, safest, and most innovative energy company in America. SoCalGas intends to be a leader in decarbonization. Working towards clean fuels alongside clean molecules as part of a diverse energy mix in the State is essential to meeting SoCalGas’s obligation to safely, reliably, and affordably serve its customers. For example, SoCalGas has established a voluntary goal of 5% core customer deliveries from renewable natural gas by 2022, and that goal ramps up to 20% by 2030.³⁷ To accomplish this, SoCalGas has proposed a voluntary Renewable Gas Tariff for its customers, which was approved yesterday³⁸ and was also supportive of SB 1440 (Hueso) which would create a “Renewable Gas Standard.”³⁹ SoCalGas (along with San Diego Gas and Electric Company) has also outlined several demonstration projects to ultimately move toward blending hydrogen into the pipeline system.⁴⁰ SoCalGas’s mission is not inconsistent with the Commission’s approach as the Commission itself has recognized, “decarbonization will take many paths, some of which are clearly defined and some of which are yet to be determined. Building electrification is one of those paths whose exact route is not yet clear and where we are at the early stages of our journey....”⁴¹ A recent Commission staff report recognizes SoCalGas’s

³⁶ Declaration of Jason H. Wilson, December 18, 2020, Exhibit 2- November 13, 2020 letter from SoCalGas to Senator Dianne Feinstein and Representative Nanette Barragán, p. 2.

³⁷ See R.19-01-011, March 11, 2019 Opening Comments of Southern California Gas Company on Order Instituting Rulemaking Regarding Building Decarbonization at 13. Pursuant to Rule 13.9 of the CPUC’s Rules of Practice and Procedure, SoCalGas requests that the Commission take judicial notice of this publicly available document.

³⁸ See A.19-02-015, October 27, 2020 Proposed Decision adopting Voluntary Pilot Renewable Natural Gas Tariff Program, approved December 17, 2020 (Decision number currently unavailable). Pursuant to Rule 13.9 of the CPUC’s Rules of Practice and Procedure, SoCalGas requests that the Commission take judicial notice of this publicly available document.

³⁹ See, e.g., R.13-02-008, May 2, 2019 Opening Comments of SoCalGas, SDG&E, PG&E, and Southwest Gas on Alternate Decision Regarding Biomethane Tasks in Senate Bill 840. Pursuant to Rule 13.9 of the CPUC’s Rules of Practice and Procedure, SoCalGas requests that the Commission take judicial notice of this publicly available document.

⁴⁰ See A.20-11-004, Application of Joint Application of Southern California Gas Company (U904G), San Diego Gas & Electric Company (U902G), Pacific Gas And Electric Company (U39G), and Southwest Gas Corporation (U905G) Regarding Hydrogen-Related Additions or Revisions To The Standard Renewable Gas Interconnection Tariff. Pursuant to Rule 13.9 of the CPUC’s Rules of Practice and Procedure, SoCalGas requests that the Commission take judicial notice of this publicly available document.

⁴¹ Declaration of Jason H. Wilson, December 18, 2020, Exhibit 1 - August 7, 2020 letter from CPUC President Marybel Batjer to Assemblymembers Patrick O’Donnell, Jim Cooper, and Blanca Rubio, p. 1.

gas system is a key component of the State’s decarbonization goals.⁴² Further, California State Legislators have also expressed concerns over the legitimacy of the Joint Prosecution Agreement and whether Cal Advocates “new focus” which appears to be “to aid the Sierra Club in their effort to seek the ban of natural gas usage in California even though it is proven to be favored by customers as a fuel source because of the affordable cost.”⁴³ The State Legislators also raise questions of who knew about the Joint Prosecution Agreement and when.⁴⁴ The Joint Prosecution Agreement was entered into on August 30, 2019. Cal Advocates did not disclose the Joint Prosecution Agreement in any of its filings in this non-proceeding matter,⁴⁵ or in any other filings in proceedings that it apparently pertains to.⁴⁶ It is unclear whether it disclosed the Joint Prosecution Agreement to the Executive Director before the Executive Director issued her subpoena (it was not disclosed in the declaration by Cal Advocates to support the issuance of the Subpoena).

SoCalGas is concerned that because it does not endorse the same pathway to decarbonization as Cal Advocates (and the Sierra Club), Cal Advocates (and the Sierra Club) have chosen to investigate SoCalGas’s political activities and threaten it with fines and sanctions. Such a scheme would be ripe for abuse and violate fundamental First Amendment rights. Governmental regulators are not allowed to misuse their investigatory power to punish entities with contempt, fines, and sanctions merely for expressing their political viewpoints. The Constitution does not permit such viewpoint discrimination. Moreover, if Sierra Club through the Joint Prosecution Agreement has coopted or inappropriately taken advantage of Cal Advocates’ statutory authority for its own benefit (authority that was specifically granted to Cal

⁴² R.20-01-007 Track 1A: Reliability Standards and Track 1B: Market Structure and Regulations – Workshop Report and Staff Recommendations, dated Oct. 2, 2020, available at <https://www.cpuc.ca.gov/gasplanningoir> (Workshop Report). For example, CPUC Staff’s recommendations expressly “call[] attention . . . to the two rotating power outages of August 2020” as a “cautionary tale” noting that “[t]he role of California’s natural gas infrastructure is especially important during times of low renewable generation.” Workshop Report at 8.

⁴³ Declaration of Jason H. Wilson, December 18, 2020, Exhibit 3 - November 30, 2020 letter from Assembly members Blanca Rubio and Jim Cooper to CPUC President Marybel Batjer, p. 2.

⁴⁴ *Id.* at 2.

⁴⁵ Cal Advocates had numerous opportunities to disclose the existence of the Joint Prosecution Agreement and did not do so. In the non-proceeding alone, Cal Advocates did not disclose the Joint Prosecution Agreement when it filed its October 7, 2019 Motion to Compel the DR-05 Contract, June 23, 2020 Motion for Contempt and Sanctions, July 9, 2020 Motion to Compel the Confidential Declarations and Fines, and November 19, 2020 Comments on Draft Resolution ALJ-391.

⁴⁶ The Joint Prosecution Agreement covers R.19-01-011, R.13-11-005, A.17-10-008.

Advocates as a division of the Commission and that no other intervenor is entitled to), it would be an abuse of Pub. Util. Code § 309.5 and a violation of SoCalGas's fundamental First Amendment rights. This is particularly concerning since Cal Advocates investigation is being conducted outside of a proceeding, where the Commission's Rules of Practice and Procedure do not apply. SoCalGas has been concerned about the lack of transparency around Cal Advocates' investigation and requested on July 17, 2020 that the Commission open an Order Instituting Investigation (OII) of SoCalGas and a statewide Order Instituting Rulemaking (OIR) to provide an open forum governed by established rules of practice and procedure.⁴⁷ Surprisingly, Cal Advocates opposed the OII and OIR and instead requested that the Commission simply sanction SoCalGas for asserting its Constitutional rights.⁴⁸ This further begs the question of whether Cal Advocates really is interested in investigating the alleged misuse of ratepayer monies by SoCalGas or to punish SoCalGas for its political viewpoints. The Commission should stay the entire Resolution until these important unanswered questions are addressed.

Finally, due to the important Constitutional rights at issue, if the Commission does not grant a stay of the entire Resolution or, in the alternative, a partial stay before December 28, 2020, SoCalGas has no choice but to seek preservation of its fundamental rights via the Court of Appeal. SoCalGas intends to seek emergency relief from the Court of Appeal through a petition for writ of review and request a stay on or about January 4, 2021. This will necessitate further expedited briefing by the parties and the Commission to the Court of Appeal potentially in a very compressed span of time. Granting this limited stay will conserve the parties,' the Commission's, and the Court of Appeal's resources in not having to address additional motions to stay on an expedited basis.

III. THE COMMISSION SHOULD GRANT SOCALGAS'S REQUEST TO SHORTEN TIME TO RESPOND TO THIS MOTION AND EXPEDITED RULING ON THIS MOTION.

Rule 11.1 of the Commission's Rules of Practice and Procedures states that responses to a motion must be filed within 15 days of the date that the motion was served. Rule 11.1 also provides that nothing in the rule prevents the Commission or the ALJ from ruling on a motion

⁴⁷ Declaration of Jason H. Wilson, December 18, 2020, Exhibit 4 - July 28, 2020 letter from Cal Advocates to President Batjer, Commissioners Randolph, Shiroma, Guzman-Aceves, and Rechtschaffen.

⁴⁸ *Id.* at p. 2.

before responses are filed. This motion requests the partial stay of Ordering Paragraph 9 of the Resolution which requires SoCalGas to comply within 30 days of the effective date of the Resolution, January 19, 2021.

If the Commission does not grant SoCalGas’s motion, to preserve its Constitutional rights, SoCalGas intends to seek emergency relief from the Court of Appeal. SoCalGas intends to file a petition for writ of review and request a stay on or about January 4, 2021 to allow the Court of Appeal sufficient time to rule on the emergency relief before SoCalGas is required to comply with the Resolution and risk being subject to sanctions. Therefore, SoCalGas cannot wait for the normal motion timeline to run its course and requires an expediting ruling on this motion.

As such, SoCalGas requests that the Commission shorten time for any responses to this motion to December 28, 2020, and requests that the Commission rule on this motion expeditiously—by no later than December 31, 2020.

IV. CONCLUSION

For the foregoing reasons, SoCalGas respectfully request that the Commission grant this motion to shorten time for responses to December 28, 2020, grant SoCalGas’s request for an expedited ruling on this motion, and grant a stay of the entire Resolution or, in the alternative, grant a partial stay as it pertains to information protected by SoCalGas’s First Amendment rights and to the requirement that an attorney provide a declaration under penalty of perjury “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” by no later than December 31, 2021.

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Respectfully submitted,



JASON WILSON
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Email: jwilson@willenken.com

Dated: December 21, 2020

Attorneys for:
SOUTHERN CALIFORNIA GAS
COMPANY

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

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

Application For Rehearing Of Resolution
ALJ-391

A.20-12-011
(Filed: December 21, 2020)

**DECLARATION OF JASON H. WILSON IN SUPPORT OF SOUTHERN CALIFORNIA
GAS COMPANY'S (U 904 G) MOTION TO STAY RESOLUTION
ALJ-391, TO SHORTEN TIME TO RESPOND TO MOTION, AND EXPEDITED
RULING ON THE MOTION**

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Attorneys for:
SOUTHERN CALIFORNIA GAS
COMPANY

Dated: December 21, 2020

**DECLARATION OF JASON H. WILSON IN SUPPORT OF SOUTHERN CALIFORNIA
GAS COMPANY’S (U 904 G) MOTION TO STAY RESOLUTION
ALJ-391, TO SHORTEN TIME TO RESPOND TO MOTION, AND EXPEDITED
RULING ON THE MOTION**

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. Attached as Exhibit 1 hereto is a true and correct copy of a letter from CPUC President Marybel Batjer to Assembly members Patrick O’Donnell, Jim Cooper and Blanca Rubio dated August 7, 2020.

3. Attached as Exhibit 2 hereto, is a true and correct copy of a Letter from Scott Drury to Senator Dianne Feinstein and Representative Nanette Barragán dated November 13, 2020.

4. Attached as Exhibit 3 hereto is a true and correct copy of a letter from Assembly members Blanca Rubio and Jim Cooper to CPUC President Marybel Batjer dated November 30, 2020.

5. Attached as Exhibit 4 hereto is a true and correct copy of a letter from Darwin E. Farrar, Chief Counsel of Public Advocates Office to President Batjer dated July 28, 2020.

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 December 21, 2020, at Los Angeles, California.



Jason H. Wilson

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EXHIBIT 1



PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA

MARYBEL BATJER
PRESIDENT

TEL: (916) 823-4840
WWW.CPUC.CA.GOV

August 7, 2020

Assemblymember Patrick O'Donnell, 70th District
Assemblymember Jim Cooper, 9th District
Assemblymember Blanca Rubio, 48th District

RE: July 20, 2020 Letter

Dear Assemblymembers:

Thank you for your July 20, 2020 letter regarding the role of electrification in meeting the state's 2045 carbon neutrality goals. I share in your concern for the well-being of your constituents as well as the belief that we must meet our climate goals in a way that serves all Californians, especially those in low-income and disadvantaged communities.

To that end, safety, reliability, and affordability considerations will continue to guide our decision making as we pursue our climate goals. Simply put, we cannot allow the cost of decarbonization to burden those who struggle the most to afford energy services, particularly in these economically challenging times.

I also share in the opinion that electrification must play a role under our statewide mandate to decarbonize the economy, but that it cannot be the only tool we use in achieving that end.

More broadly, we recognize that decarbonization will take many paths, some of which are clearly defined and some of which are yet to be determined. Building electrification is one of those paths whose exact route is not yet clear and where we are at the early stages of our journey. As we now chart a path based on legislative guidance, we will continue to explore the financial impact of building electrification on customers, particularly low-income customers and those residing in disadvantaged communities, and provide them with opportunities to share in the benefits of electrification.

For example, in the Building Initiative for Low-emissions Development (BUILD) program – mandated by Senate Bill (SB) 1477 (Stern, 2018) and approved by the CPUC in April 2020 – we approved incentives for new low-income residential construction that must

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not result in higher energy costs for residents. This program also directs a minimum of 75 percent of incentive funding to be deployed in low-income and disadvantaged communities.

We are also actively working on bringing down the overall costs of building electrification technologies for consumers. For example, the recently-approved Technology and Equipment for Clean Heating (TECH) initiative – also mandated by SB 1477 and approved by the CPUC in April 2020 – will offer incentives to manufacturers and suppliers to find innovations that will bring down the upfront cost of building electrification technologies for the customer by reducing retail prices and providing training to contractors so that there is greater availability of installers and thus greater competition in the marketplace.

With regard to the concern that electrification could result in higher gas prices, we are aware of recent reports from Gridworks, Environmental Defense Fund, and Energy and Environmental Economics showing that electrification initiatives could result in customers departing gas service entirely, leaving an ever-smaller number of ratepayers paying higher prices to maintain gas system infrastructure. To determine how to facilitate an equitable transition away from fossil natural gas dependence while maintaining reliability and affordability, we recently opened a long-term gas planning rulemaking, R.20-01-007. I invite you to provide input as the process unfolds so that the CPUC can ensure that it is meeting the diverse needs of your constituents and other customers.

Lastly, in parallel with R.20-01-007, we are exploring the decarbonization of the gas system through efforts to encourage renewable natural gas and hydrogen production and use. In addition to recently approving six new dairy biomethane pilot projects, we are considering a special tariff allowing customers to opt into purchasing renewable natural gas, and we are working to determine the best and safest way to facilitate the injection of "off specification" gas into the pipeline system.

Moving forward, we will continue to implement legislation and steer policymaking in a manner that balances the needs of all California families with our climate mandates. I welcome your continued engagement in this effort.

Should you have any further questions or concerns please contact our Office of Governmental Affairs Director, Hazel Miranda at Hazel.Miranda@cpuc.ca.gov or (916) 327-3277.

Sincerely,



Marybel Batjer, President
California Public Utilities Commission

EXHIBIT 2



A  Sempra Energy utility

Scott Drury
Chief Executive Officer

555 W. 5th Street, GT21C1
Los Angeles, CA 90013-1011

Tel: 213.244.3310
SDrury@SempraUtilities.com

November 13, 2020

Sent Via Email

The Honorable Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Nanette Barragán
1030 Longworth House Office Building
Washington, DC 20515

Dear Senator Feinstein and Representative Barragán,

Thank you for your letter dated October 29, 2020, inquiring about Southern California Gas Company's (SoCalGas) role in working with the State of California to meet its climate change goals to decarbonize the energy system and reduce greenhouse gas (GHG) emissions. SoCalGas shares and supports the State's goals. Responses to the specific questions posed in your letter are attached.

SoCalGas's mission is to build the cleanest, safest, and most innovative energy company in America. Following are some of the ways we are doing that. We have reached out to your offices for the opportunity to discuss our efforts further and hope to do so in the days ahead.

- We are on track to reduce methane emissions from our system by 20% from a 2015 baseline by year-end 2020 and meet California's 2025 emission requirements *five years ahead of schedule*. In addition, we will be the first gas utility to aerially map our methane emissions, enabling our ability to make our system even tighter.
- We were the first gas utility to install smart meters for the gas system, encouraging efficiency to help reduce GHGs and save on energy costs.
- We established a voluntary goal of 5% core customer deliveries from renewable natural gas (RNG) by 2022, and that goal ramps up to 20% by 2030.
- In response to massive wildfires ravaging the state and to help achieve state climate goals, we advocated for passage of AB 3163, signed into law by Governor Newsom this past October, which expands the definition of RNG to include gas sourced from dead trees, agricultural waste, and vegetation removed for wildfire mitigation.

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- We established the first renewable power-to-hydrogen gas demonstration project in the nation at the University of California Irvine, and we are proud to be a leader in the conversation around hydrogen today.
- Regarding safety and reliability, we are executing on the largest capital expenditure plan in our company’s history – 90% of which goes to enhance safety and reliability.

California’s success in achieving its climate change goals depends in large measure on SoCalGas’s success in achieving its mission. As recognized by a recent California Public Utilities Commission’s (CPUC) staff report, SoCalGas’s gas system (or “grid”) is a key component of the State’s decarbonization goals.¹ As renewable solar and wind resources have come online, our system has enabled decades of progress toward GHG emissions reductions, all while keeping the lights on. Gas-fired electrical generation currently plays and will continue to play a significant role in California. Gas infrastructure is an energy storage and delivery system that advances the transition to clean fuel solutions like RNG and hydrogen, which are recognized around the world by scientists and experts as crucial components of the clean energy future we all embrace.²

In any objective analysis, achieving 100% clean energy in California depends on the actions SoCalGas has taken, is taking, and will take to make renewable deployment and decarbonization achievable.

To affect the decarbonization needed to meet California’s climate goals, alongside energy efficiency improvements, we need both clean electrons and clean molecules.³ We are proactively taking steps to make this a reality and welcome ongoing dialogue and collaboration.

¹ R.20-01-007 Track 1A: Reliability Standards and Track 1B: Market Structure and Regulations – Workshop Report and Staff Recommendations, dated Oct. 2, 2020, available at <https://www.cpuc.ca.gov/gasplanningoir> (Workshop Report). For example, CPUC Staff’s recommendations expressly “call[] attention . . . to the two rotating power outages of August 2020” as a “cautionary tale” noting that “[t]he role of California’s natural gas infrastructure is especially important during times of low renewable generation.” Workshop Report at 8.

² See, e.g., Dr. Jane Long of California Council on Science and Technology (CCS&T) stating that “[i]n 2030 and beyond, California will need some type of low greenhouse gas fuel such as biomethane, synthetic natural gas, or hydrogen to address multiday or seasonal supply-demand imbalances.” Workshop Report at 25. “[E]liminating emissions, not necessarily fossil fuels, is most consistent with SB100.” *Id.* at 27. CCS&T is a non-partisan, not-for-profit entity established by the legislature to provide impartial scientific expertise.

³ See, e.g., Lawrence Livermore National Laboratory (LLNL), Getting to Neutral: Options for Negative Carbon Emissions in California, dated Jan. 2020 at 2, available at <https://livermorelabfoundation.org/2019/12/19/getting-to-neutral/> (“By increasing the uptake of carbon in its natural and working lands, converting waste biomass into fuels, and removing CO2 directly from the atmosphere with purpose-built machines, California can remove on the order of 125 million metric tons of CO2 per year from the atmosphere by 2045, and achieve economy-wide net-zero emissions.”). As this study commissioned by the U.S. Department of Energy shows, natural gas and the pipeline infrastructure can be harnessed to create negative carbon emissions necessary to meet mid-century goals.

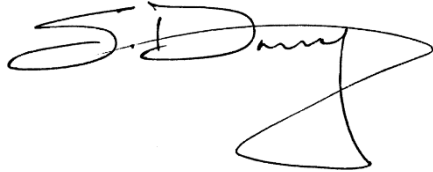
Senator Feinstein and Representative Barragán

Page 3

November 12, 2020

Thank you again for reaching out to SoCalGas. We look forward to a productive dialogue on SoCalGas's leading role in achieving California's clean energy future together.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Drury". The signature is stylized with a large, sweeping flourish at the end.

Scott Drury
Chief Executive Officer
Southern California Gas

Enclosure



07172020 - CPUC
letter requesting Lob

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Attachment A – Responses to Questions

- **What is the relationship between SoCalGas and Californians for Balanced Energy Solutions? Please provide a list of all donations SoCalGas has made, including the dates and amounts of each donation.**

Californians for Balanced Energy Solutions (C4BES) is a coalition of labor groups, energy consumers, and community organizations with a shared understanding and vision of how the gas system is and must continue to be a vital part of achieving the State’s clean energy goals. SoCalGas is a founding member of C4BES, has traditionally held a seat on the C4BES board of directors, and pays regular membership dues. To date, SoCalGas has donated to C4BES a total of \$222,000: \$100,000 on 11/22/19, \$22,000 on 10/4/19, and \$100,000 on 3/28/19. As shown in our annual reporting to the CPUC, these funds were charged to a shareholder-funded account.

We take seriously our responsibility in leading California to its clean energy future and, at the same time, using ratepayer funds appropriately. We disagree with the Public Advocates Office’s (Cal Advocates) characterizations of our actions as improper. For this reason, in July 2020, SoCalGas proactively asked the CPUC to open a formal investigation into these issues, including Cal Advocates’ expressed concerns, so there can be clarity on the rules for how SoCalGas and other utilities engage and educate consumers and other stakeholders on the importance of energy efficiency, renewable gases, and other components needed to build a clean energy future that includes reliable and affordable energy. A copy of that request is attached to this letter. We were surprised that Cal Advocates opposed SoCalGas’s request, saying it saw no need for formal proceedings.

In our July letter, we also committed to the CPUC that we would retain a third party to conduct an independent assessment of our advocacy cost allocation and share the results with the CPUC. We would be happy to discuss the results of the assessment with your offices once completed. SoCalGas is committed to enhancing its controls where needed, including updates to its policies, procedures, and training materials. This clarity on cost allocation is an additional reason why we requested a forum to achieve clarity with respect to the CPUC’s expectations for decarbonization-related advocacy.

- **To date, how much has SoCalGas invested to limit the release of greenhouse gases, including methane detection and prevention equipment?**

SoCalGas’ robust capital investment in and maintenance of its infrastructure is focused on enhancing safety, reliability and resiliency, while building on a long history of commitment to reducing greenhouse gases. Specific to this commitment, SoCalGas continually invests in leak detection, pipeline replacement, compressor station upgrades, transition to alternative fuels for its fleet, operational processes, and damage prevention funded through its general rate case (GRC).

Since the passing of the Global Warming Solutions Act of 2006, otherwise known as AB 32, we have invested over \$10 billion in our storage, transmission and distribution infrastructure, along with over \$1.4 billion in operations costs on specific programs, for the purpose of safely and reliably delivering energy to our customers. **Of this \$11.4 billion, nearly \$2.1 billion relates to infrastructure and activities supporting the reduction of greenhouse gasses.** Key components of these investments include:

- Implementation of our Compliance Plan of twenty-six best practices under the CPUC's Leak Abatement Program. Prior to SB 1371, in 1993, SoCalGas was a founding member of the Environmental Protection Agency's Natural Gas STAR program, implementing dozens of Best Management Practices that reduced GHG emissions over two decades. Recent emissions data show just 0.25% of natural gas delivered annually by SoCalGas is lost to leaks or otherwise released – and that number is shrinking. Still, we strive for continuous improvement, so we have set goal of a 42% reduction in our methane emissions baseline by 2025. Our goal surpasses the 20% compliance level set by the CPUC in implementing California law (SB 1371), which we anticipate meeting years ahead of schedule. In SoCalGas's 2020 Natural Gas Leak Abatement Compliance Plan, we propose investing an additional \$218 million in 2021 and 2022 and to be the first gas distribution utility to implement an aerial methane detection program.
- Our Distribution Integrity Management Program (DIMP). DIMP includes additional capital and operations integrity work outside of SB 1371 where SoCalGas has invested to replace vintage plastic and steel pipe with state-of-the-art pipe. We have also reduced damages by third parties digging into our pipelines by 33% over the past five years.
- Upgrades at compressor stations, including two large station upgrades at our Blythe and Ventura sites.
- Natural Gas Vehicle (NGV) refueling stations to convert a majority of our Fleet to Alternative Fuel Vehicles and fleet purchases to address the State's Airborne Toxic Control Measures
- Technologies in support of Biogas Rule 39 and Dairy pilots under SB1383. SoCalGas's infrastructure is enabling California dairies and landfills to capture methane, convert it to RNG, and deliver the RNG for productive use, thereby reducing the release of greenhouse gases. SoCalGas is focused on capturing methane from California landfills and agriculture because they are responsible for almost 80% of methane emissions in the State.

Finally, SoCalGas is a national leader in energy efficiency. Since 2000, SoCalGas has partnered with customers to invest over \$2 billion in energy efficiency, resulting in a reduction of over 2.8 million metric tons (CO2 equivalent). To our knowledge, this investment exceeds that of any other natural gas utility in America over this time period. As a result, our core customers are

some of the nation's most efficient in the country, meaning we buy much less natural gas on their behalf than we would without these efficiency gains.

- **Given that SoCalGas clearly states its support for meeting the goals of SB 100 (100% clean energy by 2045), please provide additional context for the utility's lawsuit against California over its Advanced Clean Trucks regulation?**

SoCalGas supports SB 100's goal of meeting 100% of the State's retail electricity supply with zero-carbon resources by 2045. The California Natural Gas Vehicle Coalition (CNGVC) filed suit against the California Air Resources Board (CARB) regarding the Advanced Clean Trucks (ACT) regulation based on the assertion that the regulation violates the California Environmental Quality Act (CEQA). While SoCalGas is a member of CNGVC, the company is not a party to the lawsuit.

- **What is your action plan towards achieving your goal of 100% clean energy by 2045 and what are your interim plans to reduce emissions?**

The SoCalGas system is indispensable in facilitating California's decarbonization. As concluded in numerous decarbonization models conducted by or on behalf of California energy regulators, policymakers, and the California Independent System Operator, gas-fired electric generation and gaseous fuels are cornerstone enablers of decarbonization. These models maintain nearly all of the gas-fired power fleet through 2045 and indeterminately as the only practically known method for providing long-duration storage and dispatchable backup generation for extended periods of diminished renewable output. The Clean Air Task Force's Armond Cohen testified to the U.S. House of Representatives Committee on Environment and Climate Change (July 24, 2019) quantifying seasonal energy production patterns in California:

The consequence of this seasonal variation is that, even when California procures enough wind and solar output to meet total electricity demand on an annual average basis, **roughly 27% of hours of the year cannot be served by wind and sun.** (bolded emphasis in original)

Dr. Long⁴ of the CCST recently presented, at a July 21 CPUC workshop, its evaluation of potential approaches to maintaining reliability during extended periods of seasonal variation, concluding that it requires molecules today and is likely to in the future:

The only currently available means to address multiday or seasonal supply demand imbalances without using fossil natural gas appears to be low-GHG chemical fuels.⁵ These solutions have the same storage challenges as natural gas and may introduce new

⁴ Dr. Long is chairman of the CCST's California Energy Future committee. She recently retired from Lawrence Livermore National Laboratory.

⁵ According to Dr. Long, low-GHG chemical fuels include biomethane, synthetic natural gas, or hydrogen.

constraints, such as the need for new, dedicated pipeline and storage infrastructure in the case of hydrogen or CO₂.

Within the last two weeks, Stanford University and the Energy Futures Initiative, working with academics and scientists, including those from the Environmental Defense Fund, released a study concluding that the most cost-effective pathway to decarbonization in California includes maintaining a substantial fleet of combined-cycle gas generation equipped with carbon capture and sequestration (CCS).⁶ SoCalGas reliably and affordably delivers the fuel, when and as needed with little to no notice, for decarbonization support services for the majority of California and electric generation capacity in the State.

SoCalGas has extensive plans to provide these services both in the present and future, including to decarbonize the gaseous feedstock delivered on our system upon which decarbonization in California depends.

In the present, it is SoCalGas's infrastructure that provides valuable balancing reliability and resiliency during extreme heat events. Over an eight-day period in August, which left over 400,000 homes and business without power, natural gas kept the electric grid from collapsing. Renewable electricity declined during peak evening hours and batteries provided no meaningful support.

SoCalGas's vision and action plan toward decarbonization will include implementing a clean fuels strategy through fuel cells, RNG, CCS, and hydrogen. SoCalGas is actively participating in several low-carbon energy sectors such as RNG, hydrogen, CCS, and distributed energy using fuel cells. This work entails research, development, and demonstration and broader market development efforts in collaboration with leading research centers and industrial companies worldwide.

To achieve our goal of delivering 20% RNG by 2030, early last year we applied to the CPUC for permission to offer customers a voluntary RNG tariff for residential and business customers to replace some or all their traditional natural gas use with RNG. We received a proposed decision approving the tariff on October 27 and look forward to a positive final decision before the year's end.

SoCalGas also supports the California Legislature's directive for the CPUC to consider developing an RNG procurement program for gas utilities (SB 1440, Hueso) similar to the Renewables Portfolio Standard (RPS) for electric utilities. Because incentives drive scale, SoCalGas seeks more support from the CPUC for RNG in the form of a renewable gas standard, as this would accelerate GHG reductions by displacing traditional natural gas delivered to homes and businesses with RNG.

In the transportation sector, SoCalGas has made considerable progress. As of October 2019, 100% of the gas delivered to company use and public access compressed natural gas (CNG) stations has been RNG. Since we started delivering RNG to CNG stations in April 2019, over

⁶ An Action Plan for Carbon Capture and Storage in California: Opportunities, Challenges, and Solutions, dated Oct. 2020 available at <https://sccs.stanford.edu/sites/g/files/sbiybj7741/f/efi-stanford-ca-ccs-full-rev1.vf-10.25.20.pdf>.

23,000 metric tons of CO₂e have been reduced as a result of switching to RNG from traditional natural gas.

In addition to RNG from organic sources, SoCalGas believes zero-carbon and renewable hydrogen will be essential to achieving the State's decarbonization goals. There is a proceeding at the CPUC to develop a standard for blending hydrogen into natural gas pipelines. In an application to be filed later this month, SoCalGas will show how it is leading the development of a hydrogen blending standard that will support pipeline decarbonization and can provide long-duration energy storage through the production of electrolytic hydrogen for times when renewable electricity cannot be used by the electric grid.

The totality of these efforts make clear that SoCalGas is and must remain a vital partner for California to achieve its climate goals.

EXHIBIT 3

STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0048
(916) 319-2048
FAX (916) 319-2148

DISTRICT OFFICE
100 NORTH BARRANCA STREET, SUITE 895
WEST COVINA, CA 91791
(626) 960-4457
FAX: (626) 960-1310



COMMITTEES
AGING AND LONG-TERM CARE
BUDGET
GOVERNMENTAL ORGANIZATION
WATER, PARKS, AND WILDLIFE
BUDGET SUBCOMMITTEE NO. 1 ON
HEALTH AND HUMAN SERVICES
JOINT LEGISLATIVE AUDIT

November 30th, 2020

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

RE: CPUC December 3, 2020 Agenda Item 10 – Resolution ALJ-391

Dear President Batjer,

The residents of California are struggling as the impacts of the global pandemic have impacted their working conditions, hours and in many instances, their household incomes and financial stability. There has never been a moment where the focus on the rising cost of living has been so important to the majority of the 40 million people who reside in the state. It is imperative the California Legislature and the state agencies who implement policies approved by the Legislature act, every day, with an inspirational focus intent on improving the quality of life for all Californian's while doing without exacerbating the cost of living experienced in households statewide.

During the past couple of years there has been an increasing tenor related to the use of natural gas by residential, and business customers throughout the state. The growing "ban natural gas" chorus from organizations such as the Sierra Club, the Environmental Defense Fund (EDF) and Union of Concerned Scientist to name a few has become more aggressive, and there has never been a mention by them about what the cost impacts would be on customers who are struggling with utility costs, and household expenses. More importantly, it appears their belief is cost increases should not be a determining factor with regard to approval of new energy policies because the need to address climate change trumps all concerns that might arise. Recently, we learned of a situation which causes great concern with regard to the voice for the California ratepayers and speaks about the importance of protecting them from exorbitant utility cost increases.

We have become aware of a "common interest" agreement signed between California Public Advocates Office (CalPA) and the Sierra Club. In the agreement it outlines their pact to essentially do everything in their collective power to fight Southern California Gas Company and it is clear this is about the battle over whether natural is allowed to be used by California residential and business customers. The shocking elements of the agreement create concern for a variety of reasons starting with the fact that the agreement seems to violate the stated mission of CalPA which states "The Public Advocates Office is an independent organization within the California Public Utilities Commission (CPUC) that advocates solely on behalf of utility customers". It further states "Our statutory mission is to obtain the lowest possible rate for

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

service consistent with reliable and safe service levels. As the State entity charged with this responsibility, we have a critical role in ensuring consumers are represented at the CPUC on matters affecting how much consumers pay for utility services and quality of those services”.

This stated mission is very clear with regard to what the focus of CalPA is supposed to be but it is in conflict with what appears to be a new focus by CalPA which is to aid the Sierra Club in their effort to seek the ban of natural gas usage in California even though it is proven to be favored by customers as a fuel source because of the affordable cost. This being said, you are scheduled to opine on a request by CalPA on your December 3 agenda relating to a motion that would compel Southern California Gas Company to reveal who they are paying from shareholder funding to advise (provide counsel) them on this discussion about future of natural gas usage in California.

Also of concern in this regards is the CalPA’s compliance with Public Utilities Code Section 583. Section 583 states:

No information furnished to the commission by a public utility, or any business which is a subsidiary or affiliate of a public utility, or a corporation which holds a controlling interest in a public utility, except those matters specifically required to be open to public inspection by this part, shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding. Any present or former officer or employee of the commission who divulges any such information is guilty of a misdemeanor.

Given this confidential agreement, we question whether CalPA staff are complying with Section 583.

With this letter we are formally requesting this item be held from discussion on December 3 and you provide responses to the following questions:

1. Provide us with copies of any other common interest agreements entered into by CalPA and Sierra Club or any other organization where common or conflicting interests exist including any that focus on natural gas usage in California.
2. A response as to whether you, your Commissioner colleagues or Executive Director Alice Stebbins were aware of the signed common interest agreement that exist between CalPA and the Sierra Club when the ordinal request for an investigation of Southern California Gas funding records was granted.
3. Response as to whether the CPUC has any signed common interest agreements with Sierra Cub or other parties as it relates to the discussion of natural gas usage in California?
4. Provide copies of all correspondence between CalPA, the Sierra Club and the CPUC staff related to this matter.
5. Any documents related to the pursuant of Intervenor Compensation by the Sierra Club in this proceeding or others where CalPA and the Sierra Club have coordinated in private to engage before the Commission.

6. Details on CalPA's compliance with Public Utilities Code Section 583 and how this confidential agreement does not lead to violations of those privacy protections.

Our primary focus and reason for making the request for a hold on this matter is so we can ensure the discussion about natural gas and Southern California Gas is appropriate, transparent, and considers all factors including ratepayer interests. Our responsibility as members of the Legislature is to ensure we are forthright and fair when it comes to the establishment of energy policies impacting the 40 million diverse residents who live in the state of California. We look forward to your response to these questions, and appreciate your consideration of our request for a hold on the matter until these questions can be answered and discussed.

Sincerely,



Blanca Rubio
Assemblywoman, 48th District



Jim Cooper
Assemblymember, 9th District

BER:df

EXHIBIT 4

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



Public Advocates Office
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102
Tel: 415-703-1584
www.publicadvocates.cpuc.ca.gov

July 28, 2020

VIA EMAIL

**To: President Batjer
Commissioners Randolph, Shiroma
Guzman-Aceves and Rechtschaffen**

**From: Darwin E. Farrar
Chief Counsel, Public Advocates Office**

Subject: Response to Dan Skopec letter for OII, dated July 17, 2020

Dear President Batjer and Commissioners Randolph, Shiroma, Guzman-Aceves, and Rechtschaffen:

This letter responds to the request you received from Dan Skopec, Vice President of Regulatory Affairs for Southern California Gas Company, dated July 17, 2020 (SoCalGas Letter). The SoCalGas Letter is prompted by the Public Advocates Office's investigation of SoCalGas' use of ratepayer monies to fund lobbying and other activities focused on undermining California's clean energy policies.

In its letter, SoCalGas recommends that the Commission investigate and clarify who should pay for SoCalGas' activities related to meeting "the State's climate goals" - goals that SoCalGas is actively thwarting as demonstrated by evidence the Public Advocates Office has uncovered. The SoCalGas Letter asserts that "there is a lack of clarity" regarding how it should account for such activities, and so a rulemaking is appropriate.¹ SoCalGas' request is unnecessary as the law makes clear that its customers should not pay for the utility's lobbying and other activities.

As California seeks to decrease reliance on polluting fossil fuels such as natural gas, SoCalGas is working to undermine state policy through lobbying and other efforts to misinform the public and encourage the continued use of natural gas – and, as our investigation suggests, have its customers pay for it.

It is a basic regulatory principle that rates may not include costs that are not necessary to provide utility service. In 1978, federal law codified specific principles regarding promotional and political advertising. These principles were officially adopted by this Commission in a 1980 filing with the Department of Energy. The federal law, codified at 15 U.S.C §§ 3203 and 3204, provides:

¹ Sempra Letter, p. 1.

No gas utility may recover from any person other than the shareholders (or other owners) of such utility any direct or indirect expenditure by such utility for promotional or political advertising as defined in section 304(b).

The same law defines promotional and political advertising broadly to encompass the types of activities that SoCalGas has undertaken in an effort to perpetuate the use of natural gas. Such expenditures at ratepayer expense – whether direct or indirect – are expressly prohibited under the law.

Because the law is already clear, there is no need for the investigation or rulemaking to “clarify” the rules SoCalGas requests. Rather than open such a proceeding, the Commission, SoCalGas’ customers, and the state’s policy goals would be better served by the Commission enforcing the Administrative Law Judge’s multiple discovery orders that SoCalGas has unlawfully disobeyed and granting the relief requested² in the Public Advocates Office’s pending motions.³

Sincerely,

Darwin E. Farrar
Chief Counsel, Public Advocates Office

Cc: Alice Stebbins
Arocles Aguilar
Ed Randolph

² Cal Advocates has been attempting to audit SoCalGas’ accounts and records since May 2019, as part of its investigation into SoCalGas’ use of ratepayer monies to fund anti-decarbonization campaigns through “astroturf” organizations, including efforts to both promote the use of natural and renewable gas, and to defeat state and local laws and ordinances proposed to limit the use of these fossil resources.

³ As a result of SoCalGas’ systematic failure to comply with Cal Advocates’ discovery requests, multiple orders to compel issued by the Commission’s Administrative Law Judge Division on President Batjer’s behalf, and a validly issued Commission subpoena, on June 23, and July 7, 2020 Cal Advocates filed motions seeking fines and penalties against SoCalGas. (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*; and *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*.) These requests are still pending.

From: DeAngelis, Regina <regina.deangelis@cpuc.ca.gov>
Sent: Tuesday, December 22, 2020 2:32 PM
To: Rbarker@EarthJustice.org; Batjer, Marybel <Marybel.Batjer@cpuc.ca.gov>; Bone, Traci <traci.bone@cpuc.ca.gov>; Buckley, Theresa <Theresa.Buckley@cpuc.ca.gov>; Campbell, Michael <Michael.Campbell@cpuc.ca.gov>; Carman, Teresa A <TCarman@socalgas.com>; Castello, Stephen <Stephen.Castello@cpuc.ca.gov>; Farrar, Darwin <darwin.farrar@cpuc.ca.gov>; Ghaffarian, Pouneh <pouneh.ghaffarian@cpuc.ca.gov>; Trujillo, Leslie A <LTrujillo@socalgas.com>; Tran, Johnny Q <JQTran@socalgas.com>; Henry, Elliott S <EHenry@socalgas.com>; Hovsepian, Melissa A <MHovsepian@socalgas.com>; Sleiman, Mariam (Intern) <Mariam.Sleiman@cpuc.ca.gov>; Iwilson@Willenken.com; Ward, Alec <Alec.Ward@cpuc.ca.gov>; ltom@Willenken.com; O'Rourke, Shannon <Shannon.O'Rourke@cpuc.ca.gov>; BPrusne@SoCalGas.com; Serizawa, Linda <linda.serizawa@cpuc.ca.gov>; Simon, Anne <anne.simon@cpuc.ca.gov>; SCSierzant@SoCalGas.com
Cc: ALJ Process <alj_process@cpuc.ca.gov>; ALJ Docket Office <ALJ_Docket_Office@cpuc.ca.gov>; ALJ_Support ID <alj_supportid@cpuc.ca.gov>
Subject: [EXTERNAL] A.20-12-011 (AFR of Res. ALJ-391) Email Ruling Extending Deadline for Responses to Application for Rehearing and

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

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

To Service List and Interested Parties:

Pursuant to Rules 9.1 and 11.1(g) of the Commission's Rules of Practice and Procedure, this email ruling serves to extend the deadline to on or before January 11, 2021 for filing responses to the December 21, 2020 Application for Rehearing of Commission Resolution ALJ-391 filed by Southern California Gas Company (SoCalGas). This email ruling also adopts a ban on ex parte communications in this proceeding.

This Application for Rehearing was accepted for filing by the Commission's docket office on December 21, 2020. Rule 16.1(d) of the Commission's Rules of Practice and Procedure provides for responses to Applications for Rehearing to be filed within 15 days of the filing date of the Application for Rehearing. On December 21, 2020, the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) requested via email (below) an extension until January 20, 2021 to file its response to this Application for Rehearing. On December 21, 2020, SoCalGas objected via email (below) to the request for extension by Cal Advocates.

The arguments presented by the parties have been reviewed. Rules 9.1 and 11.1(g) permit the extension of the filing deadline for responses to this Application for Rehearing. Accordingly, finding good cause, this ruling extends the deadline for filing responses to SoCalGas' Application for Rehearing to on or before January 11, 2021.

In addition, this email ruling adopts a ban on ex parte communications for Application (A.) 20-12-011 that should be interpreted consistent with Rule 8.2(b).

Please note: Service List for A.20-12-011 - With the initiation of this new proceeding, a new service list will be established. Parties who wish to be included on this new service list, must send the *Addition/Change Service List Form* (attached) to process_office@cpuc.ca.gov.

The docket office shall formally file this ruling.

IT IS SO RULED.

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

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

From: Jason Wilson <jwilson@willenken.com>
Sent: Monday, December 21, 2020 12:03 PM
To: Bone, Traci <traci.bone@cpuc.ca.gov>; DeAngelis, Regina <regina.deangelis@cpuc.ca.gov>; Ghaffarian, Pouneh <pouneh.ghaffarian@cpuc.ca.gov>; Campbell, Michael <Michael.Campbell@cpuc.ca.gov>; Farrar, Darwin <darwin.farrar@cpuc.ca.gov>; Serizawa, Linda <linda.serizawa@cpuc.ca.gov>; Simon, Anne <anne.simon@cpuc.ca.gov>; Castello, Stephen <Stephen.Castello@cpuc.ca.gov>; shannon.orourke@cpuc.ca.gov; Batjer, Marybel <Marybel.Batjer@cpuc.ca.gov>; Ward, Alec <Alec.Ward@cpuc.ca.gov>; jqtran@socalgas.com; Sleiman, Mariam (Intern) <Mariam.Sleiman@cpuc.ca.gov>; Buckley, Theresa <Theresa.Buckley@cpuc.ca.gov>; rbarker@earthjustice.org; ltrujillo@socalgas.com; itom@willenken.com; scsierzant@socalgas.com; Aguilar, Arocles <Arocles.Aguilar@cpuc.ca.gov>; tcarman@socalgas.com; mhovsepiyan@socalgas.com; ehenry@socalgas.com; bprusne@socalgas.com; Matthew Vespa <mvespa@earthjustice.org> <mvespa@earthjustice.org>; Chupkov, Maya <Maya.Chupkov@cpuc.ca.gov>; Gallegos, Rachel <Rachel.Gallegos@cpuc.ca.gov>
Subject: RE: Extension Request For Responses to SoCalGas' Rehearing Application of Resolution ALJ-391

President Batjer, General Counsel Aguilar, Chief ALJ Simon, and ALJ DeAngelis:

SoCalGas objects to Cal Advocates' Extension Request for its Response to SoCalGas's Rehearing Application of Resolution ALJ-391 because it will put SoCalGas past the compliance date of the Resolution (January 19, 2021) and cause serious and/or irreparable harm to SoCalGas as described in its Application for Rehearing (AFR) unless the Commission does one of the following: (1) Grant SoCalGas's Motion to Stay which it will file as soon as it receives a proceeding number from the docket office; or (2) Extend the Resolution's compliance date to February 15, 2021 via Rule 16.6 letter from the Executive Director to provide the Commission and the Court of Appeal sufficient time to decide on the issue before SoCalGas has to comply with the Resolution. Absent a stay or extension of the January 19 compliance date, SoCalGas is required to comply with the Resolution or risk sanctions and fines.

As will be further described in SoCalGas's Motion to Stay, good cause exists for such a stay. SoCalGas will suffer serious or irreparable harm if the Resolution is not stayed, as it would be required to turn over vast amounts of information including its First Amendment-protected information, and forced to waive its attorney-client privilege and work product before the Commission can issue its final decision on the AFR

and, if necessary, obtain a final resolution from the appellate court.

If the Commission is not inclined to grant either of SoCalGas's request above, SoCalGas requests that the Commission deny Cal Advocates' extension to avoid causing serious and/or irreparable harm to SoCalGas. The Commission is not required to wait for Cal Advocates response to rule on the AFR. Per Rule 16.1(d), responses to AFRs "are not necessary" and the "Commission is not obligated to withhold a decision on an application for rehearing to allow time for a response to be filed." The extra time here by Cal Advocates is particularly not warranted due to the impending Jan. 19 compliance deadline that cannot be excused absent a stay or extension of the date.

In addition, Cal Advocates' request is procedurally deficient in that it failed to comply with Rule 11.6 in requesting an extension of time by failing to "first make a good-faith effort to ask such parties [affected by the extension] to agree to the extension" and report out the results of that effort. Cal Advocates has not made a good-faith effort to ask SoCalGas to agree to the extension before submitting its request.

Jason Wilson
Counsel for SoCalGas



linkprotect.cudasvc.com

Jason H. Wilson

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

WILLENKEN LLP | 707 Wilshire Blvd. | Suite 3850 | Los Angeles, CA 90017 | willenken.com linkprotect.cudasvc.com

From: Bone, Traci <traci.bone@cpuc.ca.gov>

Sent: Monday, December 21, 2020 10:11 AM

To: DeAngelis, Regina <regina.deangelis@cpuc.ca.gov>; Ghaffarian, Pouneh <pouneh.ghaffarian@cpuc.ca.gov>; Campbell, Michael <Michael.Campbell@cpuc.ca.gov>; Farrar, Darwin <darwin.farrar@cpuc.ca.gov>; Serizawa, Linda <linda.serizawa@cpuc.ca.gov>; Simon, Anne <anne.simon@cpuc.ca.gov>; Castello, Stephen <Stephen.Castello@cpuc.ca.gov>; shannon.orourke@cpuc.ca.gov; Batjer, Marybel <Marybel.Batjer@cpuc.ca.gov>; Ward, Alec <Alec.Ward@cpuc.ca.gov>; jatran@socalgas.com; Sleiman, Mariam (Intern) <Mariam.Sleiman@cpuc.ca.gov>; Buckley, Theresa <Theresa.Buckley@cpuc.ca.gov>; Jason Wilson <jwilson@willenken.com>; rbarker@earthjustice.org; ltrujiillo@socalgas.com; itom@willenken.com; scsierzant@socalgas.com; Aguilar, Arocles <Arocles.Aguilar@cpuc.ca.gov>; tcarman@socalgas.com; mhovsepien@socalgas.com; ehenry@socalgas.com; bprusne@socalgas.com; Matthew Vespa <mvespa@earthjustice.org> <mvespa@earthjustice.org>; Chupkov, Maya <Maya.Chupkov@cpuc.ca.gov>; Gallegos, Rachel <Rachel.Gallegos@cpuc.ca.gov>

Cc: Bone, Traci <traci.bone@cpuc.ca.gov>

Subject: Extension Request For Responses to SoCalGas' Rehearing Application of Resolution ALJ-391

President Batjer, General Counsel Aguilar, Chief ALJ Simon, and ALJ DeAngelis:

The Public Advocates Office at the California Public Utilities Commission (Cal Advocates) respectfully requests an extension of time to file a Response to *Southern California Gas Company's Application For Rehearing of Resolution ALJ-391 and Request for Oral Argument* (Application). The 50 page Application was filed on Friday, December 18, 2020, the day after the Commission meeting approving Resolution ALJ-391. The Application is not due until 30 days after the effective date of Resolution ALJ-391, which is approximately January 20, 2021 – assuming the Resolution is issued today.

Cal Advocates' Response will promote prompt resolution of SoCalGas' Application because it will, among other things, provide supplemental legal analysis addressing SoCalGas' procedural due process and First Amendment rights.

Under Rule 16 of the Commission's Rules of Practice and Procedures (Rules), if no other rehearing requests are filed, Cal Advocates' Response would currently be due on January 4, 2021, requiring Cal Advocates staff to work through both the Christmas and New Year holidays. Cal Advocates proposes that its Response be due no later than January 20, 2020 so that staff may spend the remaining days of this difficult year with family.

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

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

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

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application For Rehearing of Resolution
ALJ-391.

Application 20-12-011

**PUBLIC ADVOCATES OFFICE OPPOSITION TO
SOUTHERN CALIFORNIA GAS COMPANY'S MOTION FOR STAY OF
COMPLIANCE WITH RESOLUTION ALJ-391**

Pursuant to Commission Rule of Practice and Procedure 11.1(e), the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) files this Response opposing the stay requested in *Southern California Gas Company's Motion to Stay Resolution ALJ-391, to Shorten Time to Respond to Motion, and Expedited Ruling on the Motion* (Stay Motion) filed December 21, 2020.

Resolution ALJ-391 (ALJ-391) requires Southern California Gas Company (SoCalGas) to comply with Cal Advocates' discovery requests pending for over seven months within the next thirty days. Compliance with ALJ-391 will require the utility to provide Cal Advocates, among other things:

- (1) Access to the utility's SAP system to conduct an audit of the utility's accounts;
- (2) Sufficient information to identify the accounts SoCalGas claims are "100% shareholder-funded" so that Cal Advocates can make that determination for itself;
- (3) A privilege log and attorney declaration supporting any claims of privileged information contained in its SAP system; and
- (4) Three confidential declarations SoCalGas provided to the Commission with its December 2, 2019 motion for reconsideration/appeal.

SoCalGas' claims of "irreparable harm" as a result of providing this information to Cal Advocates are pure fiction founded upon SoCalGas' argument – soundly rejected in

ALJ-391¹ – that Cal Advocates is not entitled to the same information as any other office or division of the Commission.

Contrary to the utility’s arguments, providing this information to Cal Advocates does not require the utility to disclose privileged information – the order requires a privilege log to protect such information.² Nor will it infringe on the utility’s First Amendment rights of association. As ALJ-391 explains, Public Utilities Code § 583 and General Order 66-D provide adequate protection for any confidentiality claims made by the utility.³

Five days ago this Commission found in ALJ-391 that SoCalGas had failed to establish a *prima facie* case of First Amendment infringement.⁴ ALJ-391, which is based on well-settled law, is clear that Cal Advocates is entitled to all of the discovery described above: Cal Advocates has a statutory right to conduct an audit of the utility's accounts,⁵ Cal Advocates is entitled to the privilege log and supporting declarations it has requested,⁶ and Cal Advocates is entitled to the declarations provided to support SoCalGas’ motion for reconsideration/appeal described above.⁷

Nothing has changed in the five days since ALJ-391 was adopted by this Commission. That resolution is legally sound so that it is highly unlikely SoCalGas’ will prevail on appeal. As such, SoCalGas' motion for stay to comply with the requirements

¹ ALJ-391, p. 24 and Findings 2, 6, & 7.

² ALJ-391 Ordering Paragraph 8.

³ ALJ-391 Finding 9.

⁴ ALJ-391 Finding 17.

⁵ ALJ-391, p. 11.

⁶ ALJ-391, p. 24 and Finding 2, 6, & 7. SoCalGas objects to the requirement that any privilege log be accompanied by an attorney 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.” The utility claims this is an “unprecedented requirement of compelled attorney testimony.” SoCalGas ignores the fact that this is precisely the same requirement imposed on the utility in its civil court proceedings regarding the Aliso Canyon leak. See the discussion at pages 14-17 of the Cal Advocates Comments on Draft ALJ-391, available at <https://www.publicadvocates.cpuc.ca.gov/general.aspx?id=4444>.

⁷ ALJ-391, Ordering Paragraph 2.

set forth in ALJ-391 has no merit; SoCalGas will not be irreparably harmed in any manner through compliance with ALJ-391. Indeed, the harm to the regulatory process in granting the stay is far greater. The California Court of Appeals has expressly endorsed the Commission’s own holdings that “[t]he withholding of relevant information causes substantial harm to the regulatory process, which cannot function effectively unless participants act with integrity at all times.”⁸

For all of these reasons, the utility's Motion for stay should be ruled on quickly, as requested by SoCalGas, and rejected.

Respectfully submitted,

/s/ TRACI BONE

Traci Bone
Attorney for the

Public Advocates Office
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102
Telephone: (415) 703-2048
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December 22, 2020

⁸ *Pacific Gas & Electric Co. v. Public Utilities Com.*, 237 Cal. App. 4th 812, 865 (2015), quoting D.13-09-028, 2013 Cal.P.U.C. Lexis 514 at pp. *51-*52.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application For Rehearing Of Resolution
ALJ-391.

Application 20-12-011

CERTIFICATE OF SERVICE

I hereby certify that I have on this date served a copy of **PUBLIC ADVOCATES OFFICE OPPOSITION TO SOUTHERN CALIFORNIA GAS COMPANY'S MOTION FOR STAY OF COMPLIANCE WITH RESOLUTION ALJ-391** to all known parties by either United States mail or electronic mail, to each party named on the official service list attached in **A.20-12-011**.

An electronic copy was sent to the assigned Administrative Law Judge.

Executed on **December 22, 2020** at San Francisco, California.

/s/ RACHEL GALLEGOS

Rachel Gallegos



CALIFORNIA PUBLIC UTILITIES COMMISSION
Service List

PROCEEDING: A2012011 - APPLICATION FOR REHE
FILER: SOUTHERN CALIFORNIA GAS COMPANY
LIST NAME: LIST
LAST CHANGED: DECEMBER 22, 2020

Parties

JASON WILSON
ATTORNEY
WILLENKEN LLP
707 WILSHIRE BLVD., STE. 3850
LOS ANGELES, CA 90017
FOR: SOUTHERN CALIFORNIA GAS COMPANY

Information Only

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Marybel Batjer	Marybel.Batjer@cpuc.ca.gov
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Michael Campbell	Michael.Campbell@cpuc.ca.gov

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

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December 30, 2020

Ms. Rachel Peterson
Executive Director
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Subject: Request of Southern California Gas Company for an Extension of Time to Comply with Resolution ALJ-391

Dear Ms. Peterson:

Pursuant to Rule 16.6 of the Rules of Practice and Procedure of the California Public Utilities Commission (CPUC or Commission), Southern California Gas Company (SoCalGas) respectfully requests an extension of time to comply with Resolution ALJ-391 (Resolution), as SoCalGas's Application for Rehearing (AFR) and motion to stay (Motion to Stay) are still pending before the Commission. The AFR and Motion to Stay were filed on December 21, 2020 (A.20-12-011).

Extension Timeframe and Justification

The Resolution requires SoCalGas to provide Cal Advocates with unprecedented "live" remote access to SoCalGas's SAP Database which contains vast amounts of information including its First Amendment-protected information by no later than January 19, 2021. It also potentially forces SoCalGas to waive its attorney-client privilege and work product.

SoCalGas requests an extension of time to comply with the Resolution (1) in its entirety until thirty (30) days after the Commission's final decision on the AFR; or, (2) in the alternative, as to the information protected by SoCalGas's First Amendment rights and the requirement that SoCalGas provide a declaration from its attorney under penalty of perjury in connection with a privilege log. As SoCalGas indicated in its AFR and Motion to Stay, due to the important First Amendment rights at stake, if the Commission does not grant SoCalGas's AFR and Motion to Stay, it intends to seek a writ of review of the Resolution at the Court of Appeal, and request an emergency stay of the Resolution.

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

Rachel Peterson
Executive Director
CPUC

- 2 -

December 30, 2020

This extension will allow the Commission time to consider the AFR and Motion to Stay in due course while avoiding serious or irreparable harm to SoCalGas if it is required to turn over its First Amendment-protected information and forced to waive its attorney-client privilege and work product. Once these harms have occurred, it cannot be undone. The extension will also allow the Commission time to issue a final decision on the AFR before SoCalGas is required to seek appellate review of the Resolution to protect its rights.

In conclusion, SoCalGas requests an extension to comply with the Resolution (1) in its entirety until thirty (30) days after the Commission's final decision on the AFR; or (2) in the alternative, as to the information protected by SoCalGas's First Amendment rights and the requirement that SoCalGas provide a declaration from its attorney under penalty of perjury in connection with a privilege log.

We would appreciate a response to this request by January 5, 2021.

Sincerely,

/s/ Joseph Mock

Joseph Mock

Business Manager – Regulatory Affairs

cc: Arocles Aguilar, Legal Division
aljextensionrequests@cpuc.ca.gov
Service List A.20-12-011

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

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application For Rehearing of Resolution
ALJ-391.

Application 20-12-011

CERTIFICATE OF SERVICE

I hereby certify that I have on this date served a copy of **PUBLIC ADVOCATES OFFICE MOTION FOR AN EXPEDITED RULING (1) ORDERING SOUTHERN CALIFORNIA GAS COMPANY TO PRODUCE CONFIDENTIAL DECLARATIONS NO LATER THAN JANUARY 6, 2021 AND FOR AN EXTENSION TO RESPOND TO THE UTILITY'S APPLICATION FOR REHEARING OR IN THE ALTERNATIVE TO GRANT AN ADVERSE PRESUMPTION AGAINST THE UTILITY OR FOR THE COMMISSION TO PROVIDE THE CONFIDENTIAL DECLARATIONS AND (2) TO SHORTEN TIME TO RESPOND TO MOTION** to all known parties by either United States mail or electronic mail, to each party named on the official service list attached in **A.20-12-011**.

An electronic copy was sent to the assigned Administrative Law Judge.

Executed on **December 30, 2020** at San Francisco, California.

/s/ RACHEL GALLEGOS

Rachel Gallegos



California
Public Utilities
Commission

CALIFORNIA PUBLIC UTILITIES COMMISSION Service List

PROCEEDING: A2012011 - APPLICATION FOR REHE
FILER: SOUTHERN CALIFORNIA GAS COMPANY
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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application For Rehearing Of Resolution
ALJ-391

A.20-12-011
(Filed: December 21, 2020)

**SOUTHERN CALIFORNIA GAS COMPANY'S OPPOSITION TO PUBLIC
ADVOCATES OFFICE MOTION FOR AN EXPEDITED RULING
(1) ORDERING SOUTHERN CALIFORNIA GAS COMPANY TO PRODUCE
CONFIDENTIAL DECLARATIONS NO LATER THAN JANUARY 6, 2021 AND FOR
AN EXTENSION TO RESPOND TO THE UTILITY'S APPLICATION FOR
REHEARING OR IN THE ALTERNATIVE TO GRANT AN ADVERSE
PRESUMPTION AGAINST THE UTILITY OR FOR THE COMMISSION TO
PROVIDE THE CONFIDENTIAL DECLARATIONS AND
(2) TO SHORTEN TIME TO RESPOND TO MOTION**

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Dated: January 4, 2021

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

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

Application For Rehearing Of Resolution
ALJ-391

A.20-12-011
(Filed: December 21, 2020)

**SOUTHERN CALIFORNIA GAS COMPANY’S OPPOSITION TO PUBLIC
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(2) TO SHORTEN TIME TO RESPOND TO MOTION**

I. INTRODUCTION

On December 21, 2020, the Public Advocates Office (“Cal Advocates”) requested an extension of their January 4, 2021 deadline to respond to SoCalGas’s Application for Rehearing of ALJ-391 (“AFR”), to avoid “requiring Cal Advocates staff to work through both the Christmas and New Year holidays” and “so that staff may spend the remaining days of this difficult year with family.”¹ On December 22, 2020, ALJ DeAngelis granted Cal Advocates’ request, extending their deadline to January 11, 2021. Under that pretext, however, Cal Advocates instead spent its time preparing a frivolous, procedurally improper motion, which it filed on December 30, 2020, seeking to alter the Commission’s Resolution outside of the appropriate practice, and seeking immediate action by this Commission and forcing SoCalGas’s attorneys and staff to work over the New Year holiday to prepare this response. The next day, Cal Advocates further served not one, but *two* data requests *on New Years’ Eve* to SoCalGas, one of which it served after hours while demanding a shortened response date of January 6, 2021—only three business days later.²

¹ Declaration of Jason H. Wilson, concurrently filed Jan. 4, 2021 [“Wilson Decl.”], Ex. D [Email of Traci Bone to Regina DeAngelis, et al. Subject “Extension Request for Responses to SoCalGas’ Rehearing Application of Resolution ALJ-391, Dec. 21, 2020].

² Wilson Decl., Exhs. B-C. Cal Advocates has in fact served *three* new data requests since the Resolution was voted out on December 17, 2020, which are attached as Exhibits A-C of the Wilson Decl.

Setting aside this discourtesy,³ Cal Advocates' motion, styled a "Motion for an Expedited Ruling (1) Ordering Southern California Gas Company To Produce Confidential Declarations No Later Than January 6, 2021 And For An Extension To Respond To The Utility's Application For Rehearing Or In The Alternative [sic] To Grant An Adverse Presumption Against The Utility Or For The Commission To Provide The Confidential Declarations And (2) To Shorten Time To Respond To Motion" (the "Motion"), should be rejected as both procedurally defective and substantively erroneous.

First, the Motion violates General Order 96-B, General Rule 8.2, and CPUC Rule 16.4, as it is actually a Petition for Modification of the Resolution, and not a CPUC Rule 11 motion.

Second, the Motion claims to introduce new evidence, but does not adhere to the requirements to do so under CPUC Rule 16.4(b).

Third, the Motion requests an extension—yet again—of Cal Advocates' response to the AFR—but this is the *second* extension request Cal Advocates has made without meeting and conferring as required under CPUC Rule 11.6.

Fourth, the Motion claims that the public disclosure of certain lobbyist names under California's Political Reform Act is dispositive to the First Amendment issue in this case. It does not cite a single case for this proposition—and indeed, it cannot, because it is substantively incorrect. The information SoCalGas seeks to protect under its First Amendment rights is broader than the identities of its consultants and includes the scopes of detailed activity contemplated by the contracts and shown in invoices, the duration of the agreements, and the amounts and specific nature of SoCalGas's expenditures on political activities. Even if a person or entity's identity were publicly disclosed in one context (such as public lobbying efforts), it does not waive SoCalGas's First Amendment associational privacy rights in its detailed strategy, messaging, and other efforts. Finally, the Confidential Declarations are testimony in support of broader categories of First Amendment-protected information, which has been previously described in the record as encompassing information for fewer than twenty vendors. The

³ See, e.g., The State Bar of California, California Attorney Guidelines of Civility and Professionalism (Jul. 20, 2007), Section 7(d): "An attorney should not serve papers to take advantage of an opponent's absence or to inconvenience the opponent, for instance by serving papers late on Friday afternoon or the day preceding a holiday.", https://www.calbar.ca.gov/Portals/0/documents/ethics/Civility/Atty-Civility-Guide-Revised_Sept-2014.pdf; see generally The State Bar of California, Attorney Civility and Professionalism, "Civility Toolbox," at <https://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Ethics/Attorney-Civility-and-Professionalism>.

Confidential Declarations are representative and only on behalf of three consultants. As previously described, SoCalGas has claimed First Amendment protection over fewer than twenty vendors.⁴ Therefore, Cal Advocates' claim that the disclosure of a single name or set of names would be dispositive of SoCalGas's entire First Amendment argument is incorrect.

Finally, the urgency of the Motion is itself a red herring: Cal Advocates has believed that the Confidential Declarations might have overlap with SoCalGas's reporting obligations regarding paid lobbyists since at least July 24, 2020, when it included the issue in its Reply to SoCalGas's Opposition to its Motion to Compel and for Fines related to the Utility's Intentional Withholding of Confidential Declarations.⁵ If these facts were so urgent, why did Cal Advocates not investigate whether the identities of the consultants were disclosed publicly sooner? In fact, the proper time for making those arguments would have been in opposition to SoCalGas's Motion for Reconsideration and Appeal or in the various motions that it filed prior to the Resolution, which Cal Advocates did not do. Cal Advocates may not now inappropriately introduce new information into the record at the AFR stage.⁶ Essentially, Cal Advocates' request is for the Commission to force SoCalGas to waive its First Amendment rights prematurely to cure Cal Advocates' procedural error, which is entirely improper. Moreover, if the Commission is going to re-open the record and allow new facts to be introduced, it should set a briefing schedule on the AFR and grant SoCalGas's extension to comply with the Resolution, to avoid serious and irreparable harm to SoCalGas's rights.

II. ARGUMENT

A. The Procedurally Defective Motion Should Be Rejected.

1. The Motion Must Be Filed As a Petition for Modification.

In the Motion, Cal Advocates claims to have suddenly discovered that it cannot respond to SoCalGas's AFR because it lacks access to the Confidential Declarations, and therefore cannot argue that the declarants may have been disclosed in other contexts as paid lobbyists for SoCalGas. It therefore seeks that the Commission revise the Resolution's Order that "SoCalGas

⁴ See AFR, p. 37 [describing "less than 20 vendors out of approximately 2,300 vendors for which expense[s] are recorded below-the-line and protected by SoCalGas's First Amendment rights"].

⁵ 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, July 24, 2020 [hereinafter "Reply"], at p. 4.

⁶ CPUC Rule 16.1(c).

is directed to produce the information and documents requested by Cal Advocates . . . including the confidential declarations submitted under seal in support of SoCalGas’ December 2, 2019 motion for reconsideration/appeal . . . within 30 days of the effective date of this Resolution[,]”⁷ and instead order SoCalGas to produce the unredacted Confidential Declarations to Cal Advocates on January 6, 2021.⁸ This is Cal Advocates’ *fourth* attempt, beyond the original DR-05, to seek information SoCalGas seeks to protect under the First Amendment, and its *second* motion seeking the Confidential Declarations after having failed to oppose the original Motion to Seal.⁹

As clearly stated in CPUC Rule 16.4(a): “A petition for modification asks the Commission to make changes to an issued decision.”¹⁰ General Order 96-B makes it clear that a petition for modification is the proper vehicle to seek modification of a resolution as well as a decision.¹¹ General Rule 8.2 provides that “[a]ny person may petition for modification of a resolution and respond to such petition to the same extent and under the same procedures as provided, with respect to Commission decisions, by Rule 16.4 of the Commission’s Rules of Practice and Procedure”¹² Such a petition is placed on the Daily Calendar and granted or rejected by the Commission.¹³

⁷ Resolution ALJ-391, at p. 1; *see also* Order No. 8, Resolution ALJ-391, at p. 33.

⁸ Mot. at p. 1.

⁹ On December 2, 2019—that is, over one year ago—SoCalGas filed a motion to seal four confidential declarations submitted to the Commission in support of SoCalGas’s Motion for Reconsideration/Appeal (the “Confidential Declarations”), which seeks reversal of an ALJ ruling erroneously compelling the production of First Amendment-protected documents. The Confidential Declarations contain the identities of consultants and vendors who have performed work in furtherance of SoCalGas’s 100% shareholder-funded political activities and the descriptions of those activities. As the declarations attest, the disclosure of the declarations containing the description of activities to Cal Advocates will have a chilling effect on the consultants and SoCalGas’s First Amendment rights. Instead of opposing the motion to seal at the time it was filed, Cal Advocates filed its response to SoCalGas’s Motion for Reconsideration/Appeal addressing the substance of the Confidential Declarations, then waited seven months before seeking to compel production of the Confidential Declarations and \$1 million in fines against SoCalGas for filing them conditionally under seal. Having now received a Resolution ruling on those motions, Cal Advocates seeks again to compel immediate turnover of the Confidential Declarations, in spite of the timeline set out by the Resolution and SoCalGas’s pending extension requests.

¹⁰ CPUC Rule 16.4(a).

¹¹ *See* GO 96-B, General Rule 1.1: “The General Rules [of GO 96-B] also govern applications for rehearing and petitions for modification of a resolution regardless of whether the resolution was initiated by advice letter.”

¹² GO 96-B, General Rule 8.2.

¹³ GO 96-B, General Rule 8.2: “The Industry Division should ensure notice of the petition for modification appears on the Daily Calendar,”; *see also* GO 96-B, General Rule 3.5: “‘Disposition’ refers

It is clear that Cal Advocates requests the Commission “make changes to an issued [Resolution].”¹⁴ Instead of bringing its request as a petition for modification, however, Cal Advocates has brought it as a simple Rule 11.1 motion.¹⁵ Such a motion, however, cannot be used to unilaterally modify a Resolution that has already been voted on by the Commission. Instead, it is clear under General Order 96-B, General Rule 8 that the only proper mechanisms to modify the substantive provisions of a resolution are an application for rehearing or a petition for modification.

The ALJ, to whom Cal Advocates has directed its motion, lacks the power to modify the Resolution via a Rule 11 motion. And, the procedure for a petition for modification contains more robust procedural due process requirements with which Cal Advocates must comply. Cal Advocates is seeking to shortcut the ordinary petition for modification procedure via an inappropriate motion. Therefore, the Motion should be rejected, and Cal Advocates should seek its relief via the appropriate procedure.

2. The Motion Fails To Submit A Declaration Of Alleged New or Changed Facts.

As a petition for modification, under CPUC Rule 16.4, “[a]ny factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed. Allegations of new or changed facts must be supported by an appropriate declaration or affidavit.”¹⁶ Cal Advocates alleges that “it is possible that the declarants’ or their employers’ identities may not, in fact, be confidential.”¹⁷ Whether or not this fact is dispositive (and as discussed below, it is not), Cal Advocates cannot inappropriately supplement the record by making bald, conclusory statements; nor can it simply append new documents to its filing. Cal Advocates must, instead, comply with Rule 16.4, which it has failed to do. Therefore, the Motion is improper.

to the grant or rejection (including modification) of the relief requested in an advice letter. The disposition of an advice letter will be by resolution adopted by the Commission”

¹⁴ CPUC Rule 16.4.

¹⁵ See CPUC Rule 11.1.

¹⁶ CPUC Rule 16.4(b).

¹⁷ Mot. at p. 2.

3. Cal Advocates Has Failed to Meet and Confer Twice on Its Extension Requests.

The Motion also includes Cal Advocates' second request for an extension of time to respond to SoCalGas's AFR. And much like Cal Advocates' first request, this second request violates Rule 11.6 because Cal Advocates has failed—yet again—to “make a good-faith effort to ask [SoCalGas] to agree to the extension” and to “report the results of this effort when it makes its request.”¹⁸ All that is required is a modicum of good faith meet-and-confer, which Cal Advocates refuses to do. Instead, Cal Advocates' repeated emails and motions run roughshod over this Commission's rules and procedures. And clearly, Cal Advocates' purported justification for its earlier extension was false, as it simply used the extra time to write the instant Motion and two data requests. The Commission should therefore deny any further extension of time on this basis.

B. The Motion Fails on the Merits Because the FPPC Reports Do Not Vitate SoCalGas's First Amendment Rights.

Even assuming *arguendo* that the Motion was proper, which it is not, the Motion starts from an erroneous premise: that the First Amendment does not protect any information but names, and if a name is made public for lobbying work done on behalf of SoCalGas in another context, all First Amendment protection of SoCalGas's private political association with that entity regarding its private activity, strategy, and messaging is waived. No such premise exists in the law.

The Motion's claim that a name being disclosed on a public FPPC report vitiates all SoCalGas's First Amendment protections is necessarily false—even if a name were disclosed,¹⁹ the associated scope of detailed activity, nature of the expenditures, and of course documents and communications that might disclose SoCalGas's “strategy and messages” are still protected. The fact that an organization is associating with another entity or person for political purposes is worthy of protection, including when there is a financial relationship between that organization

¹⁸ CPUC Rule 11.6; *see* Wilson Decl. Exhs. D-E [correspondence from Cal Advocates to ALJ requesting extension with no meet and confer verification].

¹⁹ The Motion focuses specifically on Marathon Communications and Imprenta Communications Group, Mot. at pp. 2-3, over whose contracts SoCalGas has not asserted a First Amendment right. Further, as the Commission can itself verify, neither of those groups are declarants of the Confidential Declarations.

and the entity or person promoting its policy message.²⁰ But beyond mere identities of *who* is associating with whom, courts have repeatedly held that organizations may not be forced to disclose “strategy and messages” that advance a political viewpoint, because those organizations have a right to associate and exchange such ideas in private.²¹ Cal Advocates has demanded, and SoCalGas has sought to protect, information far broader than simple names: The demanded materials include, among other things, the identities of consultants SoCalGas has contracted with, specifically tied to the scope of detailed activity contemplated by the contracts and shown in invoices, the duration of those agreements, and the amount and specific nature of SoCalGas’s expenditures on political activities. By contrast, the FPPC reports contain comparatively little information. They do not reveal the contracts, the scope of work, or the political goals and strategy for achieving those goals, which is protected by the First Amendment. In fact, they do not even distinguish which particularized activities or legislative assembly bills the various disclosed lobbyists were responsible for. Thus, the disclosure of certain high-level information about lobbying activities does not waive any First Amendment protection of information beyond what is contained on those reports.

Furthermore, Cal Advocates’ argument that the FPPC reports of public lobbying activity would cause or force waiver of *all* SoCalGas’s First Amendment rights in its *internal* political strategy would arguably render the FPPC reports facially unconstitutional, because they would not be “narrowly tailored” to meet a compelling state interest in regulating *public* speech.²²

²⁰ *Buckley v. American Constitutional Law Foundation, Inc.* (1999) 525 U.S. 182, 199-200, 204 [shielding the names of persons paid to disseminate political messages and collect petition signatures, as well as the specific amounts paid to each of them].

²¹ *Perry v. Schwarzenegger* (9th Cir. 2010) 591 F.3d 1147, 1162–1163 [“Implicit in the right to associate with others to advance one’s shared political beliefs is the right to exchange ideas and formulate strategy and messages, and to do so in private.”]; *see also id.* at p. 1152 [“The freedom to associate with others for the common advancement of political beliefs and ideas lies at the heart of the First Amendment.”]; *AFL-CIO v. FEC* (D.C. Cir. 2003) 333 F.3d 168, 170, 177–178 [compelling public disclosure of internal materials obtained through FEC investigation “intrudes on the privacy of association and belief guaranteed by the First Amendment”].

²² In *Griset v. Fair Political Practices Com.* (1994) 8 Cal.4th 851, 860, the California Supreme Court affirmed that FPPC disclosure requirements “implicate[] First Amendment rights because [they] prohibit[] anonymous political speech.” It upheld disclosure requirements of sender information on mailers because they were “public speech—speech designed to influence the outcome of an election.” *Id.* at p. 862. But the Court’s reasoning strongly suggests that regulations on *private* speech—such as internal political consulting and strategy—would not be a compelling state interest. *Id.* Cal Advocates’ suggestion that the FPPC disclosure requirements force waiver of SoCalGas’s private political speech, strategy, and messaging would render them unconstitutional.

Under Cal Advocates’ reading, SoCalGas’s compliance with the FPPC reporting requirements waives all its First Amendment rights as to its associations and activities with those reported entities, including in its private political associations, private political speech, and internal strategy and messaging. This reading would impermissibly infringe on the First Amendment rights the Supreme Court has held SoCalGas enjoys,²³ because it is not narrowly tailored to a compelling state interest.²⁴

In addition, it does not logically follow that disclosure of an association in one context— as a paid lobbyist required to be reported to the FPPC—necessarily discloses *all* SoCalGas’s associations with that individual or entity, in the context of, for example, the political consultant’s non-public internal advice concerning political strategy and messaging to SoCalGas. As the California Court of Appeal has held in an analogous context involving Article 1 rights of associational privacy, even if certain information is “disclosed in other contexts,” a constitutional right can still shield that information from “the specific audience that seeks to compel such disclosure”—that is, merely because some information is made public does not dispositively waive a constitutional privilege.²⁵

Finally, the Confidential Declarations themselves are just testimony in support of protecting the broader categories of information Cal Advocates has sought—and only from three consultants, not every consultant SoCalGas works with or has worked with in the past in order to exercise its First Amendment political rights. As previously described in the record, SoCalGas has claimed First Amendment protection over fewer than twenty vendors²⁶—which is of course broader than the three representative vendors who submitted Confidential Declarations. The idea that possible disclosure of a name or subset of names on an FPPC report would “be dispositive to any SoCalGas First Amendment claim,”²⁷ even if unrelated to lobbying or even unrelated to those Confidential Declarations, makes no sense.

²³ See *Pacific Gas & Elec. Co. v. Public Utilities Com.* (1986) 475 U.S. 1, 17 n. 14; *Consolidated Edison Co. of New York, Inc. v. Public Service Com. Of New York* (1980) 447 US. 530, 534, n. 1.

²⁴ See *Griset*, *supra*, 8 Cal.4th at p. 860.

²⁵ *Planned Parenthood Golden Gate v. Superior Court* (2000) 83 Cal.App.4th 347, 366-67, *disapproved on other grounds by Williams v. Superior Court* (2017) 3 Cal. 5th 531, 557.

²⁶ See AFR, *supra* note 4.

²⁷ Mot. at p. 2.

C. The Commission Should Deny this Artificial Emergency of Cal Advocates' Own Making.

It bears asking why Cal Advocates waited until now to raise this issue. Cal Advocates has known that SoCalGas's consultants might also be paid lobbyists engaged in public-facing political activity on behalf of SoCalGas since it raised the issue itself in its Reply in support of its second Motion to Compel.²⁸ Cal Advocates failed to pursue this inquiry to get it into the record before the AFR stage, and the record is now closed.²⁹

Instead, with its Motion, Cal Advocates is attempting to circumvent SoCalGas's ability to obtain meaningful rehearing of the Resolution and, if necessary, review at the Court of Appeal. SoCalGas has sought a stay of the Resolution through its December 21, 2020 Motion to Stay and December 30, 2020 Rule 16.6 letter. Not because SoCalGas is flouting or disrespecting the Commission's order or Cal Advocates, as Cal Advocates clearly believes, but because SoCalGas is simply attempting to exercise its procedural due process rights fully under the law, to have its claimed First Amendment rights adjudicated *before* being forced to disclose them. By contrast, Cal Advocates is trying to speed up the clock, and to goad the Commission into inflicting serious and irreparable harm on SoCalGas before it has the chance to litigate its rights. The Commission should decline to do so. In the alternative, if the Commission is going to re-open the record and allow new facts to be introduced, it should set a briefing schedule on the AFR and grant SoCalGas's extension to comply with the Resolution, to avoid serious and irreparable harm to SoCalGas's rights.

III. CONCLUSION

Based on the foregoing, Cal Advocates' Motion should be denied.

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²⁸ Reply, *supra* note 5, at p. 4.

²⁹ CPUC Rule 16.1(c).

Respectfully submitted,



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Dated: January 4, 2021

Attorneys for:
SOUTHERN CALIFORNIA GAS
COMPANY

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

Application For Rehearing Of Resolution
ALJ-391

A.20-12-011
(Filed: December 21, 2020)

**DECLARATION OF JASON H. WILSON IN SUPPORT OF SOUTHERN
CALIFORNIA GAS COMPANY'S OPPOSITION TO PUBLIC ADVOCATES
OFFICE MOTION FOR AN EXPEDITED RULING
(1) ORDERING SOUTHERN CALIFORNIA GAS COMPANY TO PRODUCE
CONFIDENTIAL DECLARATIONS NO LATER THAN JANUARY 6, 2021 AND FOR
AN EXTENSION TO RESPOND TO THE UTILITY'S APPLICATION FOR
REHEARING OR IN THE ALTERNATIVE TO GRANT AN ADVERSE
PRESUMPTION AGAINST THE UTILITY OR FOR THE COMMISSION TO
PROVIDE THE CONFIDENTIAL DECLARATIONS AND
(2) TO SHORTEN TIME TO RESPOND TO MOTION**

JASON WILSON
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Attorneys for:
SOUTHERN CALIFORNIA GAS
COMPANY

Dated: January 4, 2021

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

DECLARATION OF JASON H. WILSON IN SUPPORT OF SOUTHERN CALIFORNIA GAS COMPANY'S OPPOSITION TO PUBLIC ADVOCATES OFFICE MOTION FOR AN EXPEDITED RULING
(1) ORDERING SOUTHERN CALIFORNIA GAS COMPANY TO PRODUCE CONFIDENTIAL DECLARATIONS NO LATER THAN JANUARY 6, 2021 AND FOR AN EXTENSION TO RESPOND TO THE UTILITY'S APPLICATION FOR REHEARING OR IN THE ALTERNATIVE TO GRANT AN ADVERSE PRESUMPTION AGAINST THE UTILITY OR FOR THE COMMISSION TO PROVIDE THE CONFIDENTIAL DECLARATIONS AND
(2) TO SHORTEN TIME TO RESPOND TO MOTION

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") in the non-proceeding involving Cal Advocates' investigation of SoCalGas's lobbying activities. 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. Attached as Exhibit A hereto is a true and correct copy of Cal Advocates' Data Request No. CalAdvocates-SC-SCG-2020-03 sent on December 18, 2020 with a due date of December 28, 2020.

3. Attached as Exhibit B hereto is a true and correct copy of Cal Advocates' Data Request No. CalAdvocates-AW0SCG-2020-08 sent on December 31, 2020 with a due date of January 15, 2021.

4. Attached as Exhibit C hereto is a true and correct copy of Cal Advocates' Data Request No. CalAdvocates-AW0SCG-2020-08 sent on December 31, 2020 at 6:00 pm with a due date of January 6, 2021, as well as the transmittal for this data request sent by Ms. Traci Bone.

5. Attached as Exhibit D hereto is a true and correct copy of Cal Advocates' December 21, 2020 email asking for extension of time to respond to SoCalGas Application for Rehearing. There is no mention in the email of Cal Advocates attempting to meet and confer on its extension request. Cal Advocates never contacted me to meet and confer on their requested extension.

6. Attached as Exhibit E hereto is a true and correct copy of Cal Advocates' December 30, 2020 email which includes a motion that asks for extension of time to response to SoCalGas's Application for Rehearing. Cal Advocates never contacted me to meet and confer on their requested extension.

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 January 4, 2021, at Los Angeles, California.



Jason H. Wilson

EXHIBIT A

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



Public Advocates Office
California Public Utilities Commission

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PUBLIC ADVOCATES OFFICE DATA REQUEST
No. CalAdvocates-SC-SCG-2020-03
Not In A Proceeding

Date Issued: December 18, 2020

Date Due: December 28, 2021

To:	Corinne Sierzant Regulatory Affairs for SoCalGas	Phone: (213) 244-5354 Email: CSierzant@socalgas.com
	Elliott S. Henry Attorney for SoCalGas	Phone: (213) 244-8234 Email: EHenry@socalgas.com
	Stacy Van Goor Sempra Energy	Email: SVanGoor@sempra.com
	Jason H. Wilson Outside Counsel for SoCalGas	Email: jwilson@willenken.com Phone: 213.955.8020
From:	Stephen Castello Analyst for the Public Advocates Office	Phone: (415) 703-1063 Email: Stephen.Castello@cpuc.ca.gov
	Traci Bone Attorney for the Public Advocates Office	Phone: (415) 713-3599 Email: Traci.Bone@cpuc.ca.gov
	Alec Ward Analyst for the Public Advocates Office	Phone: (415) 703-2325 Email: Alec.Ward@cpuc.ca.gov

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

INSTRUCTIONS¹

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.

¹ 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 1st of January and the 31st of January. Likewise, phrases such as “since January 1” and “from January 1 to the present” should be understood to include January 1st, and phrases such as “until January 31,” “through January 31,” and “up to January 31” should also be understood to include the 31st.
- D. The singular form of a word shall be interpreted as plural, and the plural form of a word shall be interpreted as singular whenever appropriate in order to bring within the scope of these Data Requests any information or documents which might otherwise be considered to be beyond their scope.
- E. The term “communications” includes all verbal and written communications of every kind, including but not limited to telephone calls, conferences, notes, correspondence, and all memoranda concerning the requested communications. Where communications are not in writing, provide copies of all memoranda and documents made relating to the requested communication and describe in full the substance of the communication to the extent that the substance is not reflected in the memoranda and documents provided.
- F. The term “document” shall include, without limitation, all writings and records of every type in your possession, control, or custody, whether printed or reproduced by any process, including documents sent and received by electronic mail, or written or produced by hand.
- G. “Relate to,” “concern,” and similar terms and phrases shall mean consist of, refer to, reflect, comprise, discuss, underlie, comment upon, form the basis for, analyze, mention, or be connected with, in any way, the subject of these Data Requests.

- H. When requested to “state the basis” for any analysis (including studies and workpapers), proposal, assertion, assumption, description, quantification, or conclusion, please describe every fact, statistic, inference, supposition, estimate, consideration, conclusion, study, and analysis known to you which you believe to support the analysis, proposal, assertion, assumption, description, quantification, or conclusion, or which you contend to be evidence of the truth or accuracy thereof.
- I. Terms related in any way to “lobbying,” lobbyist,” “lobbying firm” and “lobbyist employer” shall, without limitation, be construed broadly and, without limitation, to be inclusive of how those terms are described in the Sempra Energy Political Activities Policy (Policy) and the training materials related to the Policy.²

² 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. On page 3 of the December 18, 2020 application for rehearing of Resolution ALJ-391 SoCalGas states: Further, if Sierra Club through the Joint Prosecution Agreement has coopted or inappropriately taken advantage of Cal Advocates' statutory authority for its own benefit, it would be an abuse of Cal. Pub. Util. Code § 309.5.

Please provide any and all evidence in SoCalGas' possession or control of Cal Advocates' statutory authority being "inappropriately taken advantage of" by Sierra Club, as referenced above.

2. On page 19 of the December 18, 2020 application for rehearing of Resolution ALJ-391 SoCalGas states: Cal Advocates (and the Sierra Club, with whom Cal Advocates is apparently sharing information and investigational strategy under a Joint Prosecution Agreement)

Please provide any and all evidence in SoCalGas's possession or control showing that Cal Advocates' "sharing information and investigational strategy" with the Sierra Club.

3. On page 20 of the December 18, 2020 application for rehearing of Resolution ALJ-391 SoCalGas states: Cal Advocates has also apparently shared its investigatory power with Sierra Club under a Joint Prosecution Agreement specifically to investigate SoCalGas's "use of consumer funds for anti-electrification activities.

Please provide any and all evidence in SoCalGas's possession or control showing that Cal Advocates "shared its investigatory power with Sierra Club."

4. Please provide any and all evidence in SoCalGas' possession or control showing that Cal Advocates shared SoCalGas' confidential information with Sierra Club.

5. Please provide any and all evidence in SoCalGas' possession or control showing that Cal Advocates shared SoCalGas' confidential information related to the subject of the Application for Rehearing with any entity or party, other than SoCalGas.

EXHIBIT B



Public Advocates Office
California Public Utilities Commission

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San Francisco, CA 94102
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PUBLIC ADVOCATES OFFICE DATA REQUEST
No. CalAdvocates-AW-SCG-2020-08

Not In A Proceeding

Date Issued: December 31, 2020

Date Due: January 15, 2021

To: **Brooke Holland**
Regulatory Affairs for SoCalGas

Phone: (615) 557-6172
Email: Aholland@socalgas.com

Jason H. Wilson
Outside Counsel for SoCalGas

Phone: (213) 955-8020
Email: Jwilson@willenken.com

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

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Alec Ward
Analyst for the
Public Advocates Office

Phone: (415) 703-2325
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Stephen Castello
Analyst for the
Public Advocates Office

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Email: Stephen.Castello@cpuc.ca.gov

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

INSTRUCTIONS¹

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.

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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

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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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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 1st of January and the 31st of January. Likewise, phrases such as “since January 1” and “from January 1 to the present” should be understood to include January 1st, and phrases such as “until January 31,” “through January 31,” and “up to January 31” should also be understood to include the 31st.
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- 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,” and activities intended to influence legislative or administrative actions at the state or local government level, 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), the training materials related to the Policy, and the California Political Reform Act .²

² 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.” The California Political Reform Act has a similarly broad definition. See, e.g., Gov’t Code § 82032.

DATA REQUEST

1. Please identify in tabular format all 501(c)4 entities that SoCalGas has contributed to from 2015 to today. Please include columns identifying the name of the entity, the amounts contributed in each year to the entity, and the Federal Energy Regulatory Commission (FERC) account number where the contributions to the entity were booked.
2. Provide all bylaws for Californians for Balanced Energy Solutions (C4BES).
3. Provide documents identifying the officers of C4BES at the time of its formation, and documentary evidence establishing the date on which each such officer agreed to be an officer of C4BES.
4. Identify the total amount of all donations to C4BES in 2019.
 - a. How much was donated by SoCalGas and how much was donated by other investor-owned utilities (IOUs) or entities representing IOUs during this period?
5. Identify the total amount of all donations to C4BES in 2020.
 - a. How much was donated by SoCalGas, and how much was donated by other IOUs or entities representing IOUs during this period?
6. Has John Switalski been paid to act as the C4BES Executive Director?
 - a. If so, how much has he been paid for each year from 2018 to the present?
7. Please provide a screen shot of a SoCalGas employee's time entries that is consistent with SoCalGas' representations in response to Question 6 of CALADVOCATES-TB-SCG-2020-02 that "SoCalGas employees charge their bi-weekly expenses based upon the appropriate accounting information for the specific activity or activities being supported."
8. Please explain how this description of employee timekeeping is consistent with SoCalGas' representations in response to Question 24 of CALADVOCATES-AW-SCG-2020-01 that "Regional Public Affairs employees do not track their time by project or proceedings."
9. Please provide a screen shot of a Regional Public Affairs employee's time entries for the month of June 2019 that reflects the "specific activity or activities being supported."

10. In its June 28, 2020 response to Question 7 of DATA REQUEST CALADVOCATES-TB-SCG-2020-02, SoCalGas explained how costs are excluded from general rate cases. Among other things, it stated:

SoCalGas classifies some employee labor as “shareholder” or “ratepayer” prior to developing its GRC forecasts; however, most employee labor is classified as “shareholder” or “ratepayer” during the GRC process. The accounting system utilizes internal orders to aggregate and classify costs to the appropriate FERC accounts as established by the Code of Federal Regulations. Costs for activities that are deemed “shareholder” are excluded from cost recovery proceedings such as the GRC. There are various methods for excluding “shareholder” costs from a GRC. The first method is to exclude internal orders that settle to FERC accounts that capture shareholder activities, such as account 426.4. Additionally, specific internal orders for activities that will be excluded from the GRC are established and flagged for removal. Still further, other costs such as the Sacramento office that supports SoCalGas and SDG&E operations, charges its labor activities to a cost center unique to that organization and that entire cost center is excluded from the GRC. During the financial analysis phase of the GRC, the business unit and the GRC team remove these costs from the GRC request based upon the cost center number used to record these costs.

- a. Please identify all employees whose “labor” was classified as “shareholder” for purposes of SoCalGas’ last GRC and all employees whose “labor” is currently classified as “shareholder” for purposes of SoCalGas’ next GRC.
 - i. To the extent that labor is allocated to both shareholders and ratepayers, please identify the percentage of allocation for each employee.
- b. General Order (GO) 77-M requires Sempra and its affiliates to identify “the proportion of compensation” for employees earning over \$125,000 “that is paid, directly or indirectly, by the utility’s ratepayers (e.g. 100% or some lesser percentage).” To the extent subsection (a) can be answered by reference to GO 77-M filings, please provide those filings and identify where this information is provided.
- c. Please identify with specificity where in SoCalGas’ 2019 GO 77-M filing the proportion of compensation allocated to ratepayers is identified.
- d. Are all employee benefits, such as pension and insurance, included in SoCalGas’ calculation of an employee’s “cost” for purposes of allocating employee costs to shareholders?
 - i. If so, please provide documentary evidence.

- ii. If not, please explain why these costs are not paid for with shareholder funds where employee work has not been to the benefit of ratepayers.
 - e. Please identify all internal orders – as that term is used in SoCalGas’ response quoted above - that were excluded from SoCalGas’ last GRC and those that SoCalGas has already identified for exclusion from its next GRC. If none exist, please state that.
 - f. Please identify all internal orders for activities that were “established and flagged for removal” from SoCalGas’ last GRC, and those anticipated to be flagged for removal from SoCalGas’ next GRC.
 - g. Please identify all cost centers, by number, that were excluded from SoCalGas’ last GRC and that will be excluded from its next GRC and the total costs booked to those cost centers on an annual basis from 2015 to the present.
11. SoCalGas spokesperson Chris Gilbride was quoted in a Politico article issued September 24, 2020, that SoCalGas has “established protocols to make sure lobbying costs are not paid by ratepayers.”³
- a. Please provide the most current version of the SoCalGas protocols Mr. Gilbride was referring to.
 - b. Please provide evidence that demonstrates that SoCalGas is complying with those protocols.
 - c. Please provide all prior versions of those protocols from 2015 to the present.
12. Question 1 of Data Request CALADVOCATES SC-SCG-2019-08 asks for costs associated with SoCalGas’s outreach to municipalities regarding passing balanced-energy resolutions. SoCalGas responded that “SoCalGas did not track the costs associated with communications between Regional Public Affairs employees and municipalities.”
- a. Why is SoCalGas unable to estimate the resources spent on these efforts – outreach to municipalities regarding passing balanced-energy resolutions - when it has been able to provide cost estimates associated with other outreach campaigns?
 - b. Please identify the roles of Steve Pangarliotas and Andy Carrasco in these efforts.
 - c. Please estimate the percentage of daily staff time Steve Pangarliotas and Andy Carrasco spent on the efforts.
 - d. Please provide all contracts or invoices associated with these efforts.

³ See: <https://www.politico.com/states/california/story/2020/09/24/how-socalgas-leveraged-mayors-and-minority-groups-to-score-a-fossil-fuel-win-1304131>.

13. Please identify each account to which any portion of the costs identified in response to question 12 were charged.
 - a. State the account name and cost center number.
 - b. State whether the account is ratepayer funded.
 - c. State how much was charged to the account.

14. Please see the Forms 635 and 640 submitted to the Fair Political Practices Commission (FPPC) by Sempra Energy on behalf of SoCalGas between 2018 and the third quarter of 2020 which are available on the FPPC's website. Please:
 - a. Provide the accounting that identifies each expense that was included in the lump sum overhead expense disclosed on Line 1 of Form 640 for each quarter.
 - b. Explain why payments made in support of C4BES have never been identified on any of the forms submitted to the FPPC.
 - c. Explain whether Sempra or its affiliates have identified in FPPC filings any payments to Lobbying Coalitions as that term is defined in the Political Reform Act at Gov't Code § 82038.3 from 2015 to the present.
 - i. If so, please identify where, including confirming evidence.
 - ii. If not, please explain why not.
 - d. Identify the specific activities William Blattner engaged in that justified over \$16,000 in payments to him in 2020 to influence legislative or administrative action.
 - i. Was this compensation in addition to his salary?
 - ii. Why was it separately identified on Form 640 instead of being included in overhead expenses on Line 1?
 - e. Identify the specific activities Kent Kauss engaged in that justified the payments made to him in 2017 and 2018 to influence legislative or administrative action.
 - i. Was this compensation in addition to his salary?
 - ii. Why was it separately identified on Form 640 instead of being included in overhead expenses on Line 1, and where were these payments identified on Sempra Energy's 2019 GO 77-M form?
 - f. Why are the reported payments to Marathon Communications in 2019 less than the actual amounts paid to the company?
 - i. Why were payments to the company not reported on FPPC Form 645?
 - g. What activities did Marathon Communications perform in 2019 to earn the additional unreported monies paid to it?
 - h. Why are the reported payments to Imprenta Communications Group in 2018 less than the actual amounts paid to the company?
 - i. Why were payments to the company not reported on Form 645?

- i. What activities did Imprenta Communications Group perform in 2018 to earn the additional unreported monies paid to it?

END OF REQUEST

EXHIBIT C

Jason Wilson

From: Bone, Traci <traci.bone@cpuc.ca.gov>
Sent: Thursday, December 31, 2020 6:01 PM
To: Holland, Brooke; Ward, Alec
Cc: Castello, Stephen; Jason Wilson
Subject: RE: Data Request - CalAdvocates-AW-SCG-2020-09 - Due January 6, 2021
Attachments: Data Request - CalAdvocates-AW-SCG-2020-09.docx

Brooke:

Attached please find data request CalAdvocates-AW-SCG-2020-09 which does have a tight turn around date of January 6, 2021. However, given SoCalGas' close association with C4BES, we anticipate that the questions can be easily answered.

Happy New Year!

Traci Bone
Attorney for the Public Advocates Office at the
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: Holland, Brooke <AHolland@socalgas.com>
Sent: Thursday, December 31, 2020 3:47 PM
To: Ward, Alec <Alec.Ward@cpuc.ca.gov>
Cc: Bone, Traci <traci.bone@cpuc.ca.gov>; Castello, Stephen <Stephen.Castello@cpuc.ca.gov>; Jason Wilson <jwilson@willenken.com>
Subject: Re: Data Request - CalAdvocates-AW-SCG-2020-08 - DUE 1/15

Received and thank you, Alec! Hope you are enjoying the holiday as well.

From: Ward, Alec <Alec.Ward@cpuc.ca.gov>
Sent: Thursday, December 31, 2020 1:16:33 PM
To: Holland, Brooke <AHolland@socalgas.com>
Cc: Bone, Traci <traci.bone@cpuc.ca.gov>; Castello, Stephen <Stephen.Castello@cpuc.ca.gov>; Jason Wilson <jwilson@willenken.com>
Subject: [EXTERNAL] Data Request - CalAdvocates-AW-SCG-2020-08 - DUE 1/15

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

Hi Brooke,

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

Please find the attached data request CalAdvocates-AW-SCG-2020-08. As we do not expect you all to work New Year's Day, responses are requested by **January 15, 2020**. Please reach out by phone or email if you have any questions and enjoy the holiday.

Thank you,
Alec

Alec Ward | Senior Analyst | Electricity Pricing and Customer Programs | Public Advocates Office | California Public Utilities Commission | 415-703-2325

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

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



Public Advocates Office
California Public Utilities Commission

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

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

**PUBLIC ADVOCATES OFFICE DATA REQUEST No. CalAdvocates-AW-SCG-
2020-08**

Not In A Proceeding

Date Issued: December 31, 2020

Date Due: January 6, 2021

To: **Brooke Holland** Phone: (615) 557-6172
Regulatory Affairs for SoCalGas Email: Aholland@socalgas.com

Jason H. Wilson Phone: (213) 955-8020
Outside Counsel for SoCalGas Email: Jwilson@willenken.com

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

Ratepayer Advocates in the Gas, Electric, Telecommunications and Water Industries

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

INSTRUCTIONS¹

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

¹ 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.

computer programs, with data and formulas intact and functioning. Documents produced in response to the data requests should be Bates-numbered, and indexed if voluminous.

Requests for Clarification:

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

Objections:

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

Assertions of Privilege:

If you assert any privilege for documents responsive to this data request, please 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 1st of January and the 31st of January. Likewise, phrases such as “since January 1” and “from January 1 to the present” should be understood to include January 1st, and phrases such as “until January 31,” “through January 31,” and “up to January 31” should also be understood to include the 31st.
- D. The singular form of a word shall be interpreted as plural, and the plural form of a word shall be interpreted as singular whenever appropriate in order to bring within the scope of these Data Requests any information or documents which might otherwise be considered to be beyond their scope.
- E. The term “communications” includes all verbal and written communications of every kind, including but not limited to telephone calls, conferences, notes, correspondence, and all memoranda concerning the requested communications. Where communications are not in writing, provide copies of all memoranda and documents made relating to the requested communication and describe in full the substance of the communication to the extent that the substance is not reflected in the memoranda and documents provided.
- F. The term “document” shall include, without limitation, all writings and records of every type in your possession, control, or custody, whether printed or reproduced by any process, including documents sent and received by electronic mail, or written or produced by hand.
- G. “Relate to,” “concern,” and similar terms and phrases shall mean consist of, refer to, reflect, comprise, discuss, underlie, comment upon, form the basis for, analyze, mention, or be connected with, in any way, the subject of these Data Requests.

- H. When requested to “state the basis” for any analysis (including studies and workpapers), proposal, assertion, assumption, description, quantification, or conclusion, please describe every fact, statistic, inference, supposition, estimate, consideration, conclusion, study, and analysis known to you which you believe to support the analysis, proposal, assertion, assumption, description, quantification, or conclusion, or which you contend to be evidence of the truth or accuracy thereof.
- I. Terms related in any way to “lobbying,” lobbyist,” “lobbying firm” and “lobbyist employer,” and activities intended to influence legislative or administrative actions at the state or local government level, 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), the training materials related to the Policy, and the California Political Reform Act .²

DATA REQUEST

The following questions are prompted by the article issued today and available at <https://www.independent.com/2020/12/31/its-time-for-santa-barbara-to-ditch-fossil-gas/>

1. Please provide a copy of the text message sent by Californians for Balanced Energy Solutions (C4BES) to Santa Barbara residents.
2. Please explain how Santa Barbara residents’ phone numbers were obtained to send the C4BES text message.
3. Please identify when the message or messages were sent and how many people they were sent to.
4. Please identify all other cities where similar text messages have been sent to residents of those communities.
5. Did Sempra Energy, SoCalGas, or SDG&E facilitate the delivery of the text messages in any manner, whether direct or indirect?

Pursuant to the instructions above, and consistent with Public Utilities Code § 581, please provide 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.

² 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.” The California Political Reform Act has a similarly broad definition. See, e.g., Gov’t Code § 82032.

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.

END OF REQUEST

EXHIBIT D

Jason Wilson

From: Bone, Traci <traci.bone@cpuc.ca.gov>
Sent: Monday, December 21, 2020 10:11 AM
To: DeAngelis, Regina; Ghaffarian, Pouneh; Campbell, Michael; Farrar, Darwin; Serizawa, Linda; Simon, Anne; Castello, Stephen; shannon.orourke@cpuc.ca.gov; Batjer, Marybel; Ward, Alec; jqtran@socalgas.com; Sleiman, Mariam (Intern); Buckley, Theresa; Jason Wilson; rbarker@earthjustice.org; ltrujillo@socalgas.com; itom@willenken.com; scsierzant@socalgas.com; Aguilar, Arocles; tcarman@socalgas.com; mhovsepien@socalgas.com; ehenry@socalgas.com; bprusne@socalgas.com; Matthew Vespa (mvespa@earthjustice.org); Chupkov, Maya; Gallegos, Rachel
Cc: Bone, Traci
Subject: Extension Request For Responses to SoCalGas' Rehearing Application of Resolution ALJ-391

President Batjer, General Counsel Aguilar, Chief ALJ Simon, and ALJ DeAngelis:

The Public Advocates Office at the California Public Utilities Commission (Cal Advocates) respectfully requests an extension of time to file a Response to *Southern California Gas Company's Application For Rehearing of Resolution ALJ-391 and Request for Oral Argument* (Application). The 50 page Application was filed on Friday, December 18, 2020, the day after the Commission meeting approving Resolution ALJ-391. The Application is not due until 30 days after the effective date of Resolution ALJ-391, which is approximately January 20, 2021 – assuming the Resolution is issued today.

Cal Advocates' Response will promote prompt resolution of SoCalGas' Application because it will, among other things, provide supplemental legal analysis addressing SoCalGas' procedural due process and First Amendment rights.

Under Rule 16 of the Commission's Rules of Practice and Procedures (Rules), if no other rehearing requests are filed, Cal Advocates' Response would currently be due on January 4, 2021, requiring Cal Advocates staff to work through both the Christmas and New Year holidays. Cal Advocates proposes that its Response be due no later than January 20, 2020 so that staff may spend the remaining days of this difficult year with family.

Traci Bone
Attorney for the Public Advocates Office at the
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
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Cell: (415) 713-3599
tbo@cpuc.ca.gov

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

EXHIBIT E

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

Jason Wilson

From: Bone, Traci <traci.bone@cpuc.ca.gov>
Sent: Wednesday, December 30, 2020 1:30 PM
To: Tariffs; Peterson, Rachel A.
Cc: Aguilar, Arocles; ALJ Extension Requests; Holland, Brooke; AppRhg; Tran, Johnny Q; Jason Wilson; Trujillo, Leslie A; Carman, Teresa A; Tom@willenken.com; abb@eslawfirm.com; Ward, Alec; Korpics, Brian; Farrar, Darwin; Lisa Gibbons; Serizawa, Linda; Hovsepian, Melissa A; Campbell, Michael; Chupkov, Maya; Ghaffarian, Pouneh; DeAngelis, Regina; Castello, Stephen; Lyser, Shelly; O'Rourke, Shannon; Sidhar, Shivani N; Sherin Varghese; Buckley, Theresa
Subject: RE: Request of Southern California Gas Company for an Extension of Time to Comply with Resolution ALJ-391
Attachments: A2012011 Public Advocates Office Motion for Commission to Produce Confidential Declarations - 12-30-20.pdf

As mentioned below, Cal Advocates just filed and served the attached short motion and attachments, which is relevant to SoCalGas' requested extension of time made earlier today.

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

From: Bone, Traci
Sent: Wednesday, December 30, 2020 12:08 PM
To: Tariffs <Tariffs@Socalgas.com>; Peterson, Rachel A. <rachel.peterson@cpuc.ca.gov>
Cc: Aguilar, Arocles <Arocles.Aguilar@cpuc.ca.gov>; ALJ Extension Requests <aljextensionrequests@cpuc.ca.gov>; Holland, Brooke <AHolland@socalgas.com>; AppRhg <AppRhg@cpuc.ca.gov>; Tran, Johnny Q <JQTran@socalgas.com>; JWilson@Willenken.com; Trujillo, Leslie A <LTrujillo@socalgas.com>; Carman, Teresa A <TCarman@socalgas.com>; Tom@willenken.com; abb@eslawfirm.com; Ward, Alec <Alec.Ward@cpuc.ca.gov>; Korpics, Brian <Brian.Korpics@cpuc.ca.gov>; Farrar, Darwin <darwin.farrar@cpuc.ca.gov>; Lisa Gibbons <lgibbons@willenken.com>; Serizawa, Linda <linda.serizawa@cpuc.ca.gov>; Hovsepian, Melissa A <MHovsepian@socalgas.com>; Campbell, Michael <Michael.Campbell@cpuc.ca.gov>; Chupkov, Maya <Maya.Chupkov@cpuc.ca.gov>; Ghaffarian, Pouneh <pouneh.ghaffarian@cpuc.ca.gov>; DeAngelis, Regina <regina.deangelis@cpuc.ca.gov>; Castello, Stephen <Stephen.Castello@cpuc.ca.gov>; Lyser, Shelly <Shelly.Lyser@cpuc.ca.gov>; O'Rourke, Shannon <Shannon.O'Rourke@cpuc.ca.gov>; Sidhar, Shivani N <SSidhar1@semprautilities.com>; Sherin Varghese <svarghese@willenken.com>; Buckley, Theresa <Theresa.Buckley@cpuc.ca.gov>
Subject: RE: Request of Southern California Gas Company for an Extension of Time to Comply with Resolution ALJ-391

The Public Advocates Office at the California Public Utilities Commission objects to the requested extension, as set forth in the attached Response to SoCalGas' December 22, 2020 stay request.

In addition, it has become evident that certain information SoCalGas has refused to provide to Cal Advocates is necessary to the Commission's review of the utility's Rehearing Application in this matter. These issues will be addressed by Cal Advocates in a motion filed later today.

Traci Bone
Attorney for the Public Advocates Office at the
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: Tariffs <Tariffs@Socalgas.com>
Sent: Wednesday, December 30, 2020 10:57 AM
To: Peterson, Rachel A. <rachel.peterson@cpuc.ca.gov>
Cc: Aguilar, Arocles <Arocles.Aguilar@cpuc.ca.gov>; ALJ Extension Requests <aljextensionrequests@cpuc.ca.gov>; Holland, Brooke <AHolland@socalgas.com>; AppRhg <AppRhg@cpuc.ca.gov>; Tran, Johnny Q <JQTran@socalgas.com>; JWilson@Willenken.com; Trujillo, Leslie A <LTrujillo@socalgas.com>; Carman, Teresa A <TCarman@socalgas.com>; Tom@willenken.com; abb@eslawfirm.com; Ward, Alec <Alec.Ward@cpuc.ca.gov>; Korpics, Brian <Brian.Korpics@cpuc.ca.gov>; Farrar, Darwin <darwin.farrar@cpuc.ca.gov>; Lisa Gibbons <lgibbons@willenken.com>; Serizawa, Linda <linda.serizawa@cpuc.ca.gov>; Hovsepian, Melissa A <MHovsepian@socalgas.com>; Campbell, Michael <Michael.Campbell@cpuc.ca.gov>; Chupkov, Maya <Maya.Chupkov@cpuc.ca.gov>; Ghaffarian, Pouneh <pouneh.ghaffarian@cpuc.ca.gov>; DeAngelis, Regina <regina.deangelis@cpuc.ca.gov>; Castello, Stephen <Stephen.Castello@cpuc.ca.gov>; Lyser, Shelly <Shelly.Lyser@cpuc.ca.gov>; O'Rourke, Shannon <Shannon.O'Rourke@cpuc.ca.gov>; Sidhar, Shivani N <SSidhar1@semprautilities.com>; Sherin Varghese <svarghese@willenken.com>; Bone, Traci <traci.bone@cpuc.ca.gov>; Buckley, Theresa <Theresa.Buckley@cpuc.ca.gov>
Subject: Request of Southern California Gas Company for an Extension of Time to Comply with Resolution ALJ-391

Southern California Gas Company requests an Extension of Time to Comply with Resolution ALJ-391. Pursuant to Rule 16.6 of the Rules of Practice and Procedure of the California Public Utilities Commission, a Certificate of Service is also included.

Respectfully,

Southern California Gas Co.
Regulatory Affairs – Tariffs
Tariffs@SoCalGas.com

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

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application For Rehearing of Resolution
ALJ-391.

Application 20-12-011

**PUBLIC ADVOCATES OFFICE MOTION FOR AN EXPEDITED RULING
(1) ORDERING SOUTHERN CALIFORNIA GAS COMPANY TO PRODUCE
CONFIDENTIAL DECLARATIONS NO LATER THAN JANUARY 6, 2021 AND FOR
AN EXTENSION TO RESPOND TO THE UTILITY'S APPLICATION FOR
REHEARING OR IN THE ALTERNATIVE TO GRANT AN ADVERSE
PRESUMPTION AGAINST THE UTILITY OR FOR THE COMMISSION TO
PROVIDE THE CONFIDENTIAL DECLARATIONS AND
(2) TO SHORTEN TIME TO RESPOND TO MOTION**

I. REQUEST

Pursuant to Rule 11.1 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) submits this motion requesting an order requiring Southern California Gas Company (SoCalGas) to produce to Cal Advocates by no later than January 6, 2020, the confidential versions of Declarations 4, 5, and 6 (confidential declarations) that were attached to the utility's December 2, 2019 Motion for Reconsideration/Appeal of the November 1, 2019 Administrative Law Judge ruling.¹ Cal Advocates also requests an additional two business days' extension to file its Response to SoCalGas' Rehearing Application in this docket (Response), from January 11, 2021 to January 13, 2021 so that it may incorporate any findings from the confidential declarations into its Response. To the extent production of the confidential declarations is delayed beyond January 6, 2021, Cal Advocates requests an extension to file its Response five business days after production of the confidential declarations.

Alternatively, in lieu of ordering SoCalGas to provide the confidential declarations to Cal Advocates, Cal Advocates requests that the Commission either impose an adverse inference on

¹ Those declarations are part of SoCalGas' showing that it would be damaged by disclosure of certain discovery to Cal Advocates. The declarants claim that making their identities public would dissuade them from communicating or contracting with SoCalGas.

SoCalGas' claims that the confidential declarations are actually confidential, or provide the confidential declarations in the Commission's possession to Cal Advocates.

Lastly, Cal Advocates requests that this motion be treated in an expedited manner and that the Commission shorten parties' response time to January 4, 2021.

II. DISCUSSION

It has recently come to Cal Advocates' attention that it cannot prepare its Response to SoCalGas' Rehearing Application in this docket (Response) without access to the confidential declarations that SoCalGas has offered in support of its First Amendment association claims. This is because it is possible that the declarants' or their employers' identities may not, in fact, be confidential.

This fact is relevant because a showing that the declarants' or their employers' identities are already public would be dispositive to any SoCalGas First Amendment claim. This is because SoCalGas' First Amendment rights cannot be infringed by requiring it to disclose information that is already publicly available. Such a dispositive resolution of SoCalGas' First Amendment claims would significantly limit the Commission's need to address SoCalGas' rehearing arguments, and reduce the likelihood of any SoCalGas appeal to the courts.

This week, Cal Advocates learned that the identities of certain consultants that SoCalGas has variously claimed are confidential – including, without limitation, Marathon Communications (Marathon) and Imprenta Communications Group (Imprenta) – have been publicly available since before the declarations were signed. Indeed, the identities of these consultants, and many others, were provided in forms filed with the Fair Political Practices Commission (FPPC) in 2018 and 2019, and are publicly available on the FPPC's website.² Notwithstanding these public disclosures, SoCalGas claimed the Marathon and Imprenta consultants' identities were confidential long after the FPPC filings were made, and it is possible that the declarant's identities – which SoCalGas also claims are confidential – are similarly publicly available. However, this cannot be established without access to the confidential versions of the declarations.

² See Attachment A - Sempra Energy and Affiliates Period 4/1/2019-6/30/2019 Forms 635 and 640 listing Marathon Communications at 8-9, and Attachment B - Sempra Energy and Affiliates Period 1/1/2018-3/31/2018 Forms 635 and 640 listing Imprenta Communications Group at 9.

Only by reviewing the confidential declarations – or at least knowing the names of the declarants and the entities they work for – can Cal Advocates determine whether those declarant’s identities have also been made public – like those of Marathon and Imprint³ - thereby rendering moot SoCalGas’ reliance on those declarations to assert a First Amendment right of association.

It would be more than appropriate for the Commission to order SoCalGas to provide the confidential declarations to Cal Advocates within even twenty four hours. They are readily available to the utility and are over a year late. SoCalGas should have provided them to Cal Advocates when the utility served its December 2, 2019 Motion for Reconsideration/Appeal. SoCalGas provided the confidential declarations to the Commission and assigned Administrative Law Judge at that time, but intentionally and improperly withheld them from Cal Advocates based on claims that the consultant’s names were protected by the First Amendment right to association and unsubstantiated fears that Cal Advocates would publicly disclose the names of the consultants. The utility has refused to provide the confidential declarations to Cal Advocates for the past year, despite Cal Advocates’ repeated efforts to obtain them, including a July 9, 2020 Motion to Compel, which was finally acted on this month by Resolution ALJ-391.

Resolution ALJ-391 agreed that Cal Advocates is entitled to the confidential declarations,⁴ and requires SoCalGas to provide them to Cal Advocates no later than 30 days after the effective date of that Resolution – which would be January 20.⁵ However, for the reasons described above, it is now evident that the confidential declarations should be provided to Cal Advocates as soon as possible so that it may address their impact in its Response.

III. CONCLUSION

In order to facilitate review of SoCalGas’ Rehearing Application, the Commission should order SoCalGas to provide the confidential declarations to Cal Advocates as soon as practicable

³ Note that it is even possible that that some of the declarants may actually be employees of Marathon or Imprinta.

⁴ Resolution ALJ-391 finds: “[T]his 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. See also Ordering Paragraph 2.

⁵ SoCalGas filed a motion on December 22, 2020 to indefinitely stay its obligation to provide the declarations and other information to Cal Advocates.

and in no event later than January 6, 2021. Because the January 6, 2021 time frame proposed here provides Cal Advocates only three business days to incorporate any findings into its Response – which is currently due Monday, January 11, 2021 - Cal Advocates also requests a two-business day extension to file its Response on January 13, 2021.

As an alternative to providing the confidential declarations to Cal Advocates, the Commission should find that SoCalGas’ refusal to provide the information to Cal Advocates for over a year is grounds for a finding of adverse inference under the law. In such a situation, a court finds that if the information were produced, it would be adverse to the defendant. Applied here, the adverse inference would be that the confidential declarations are not, in fact confidential, because the identity of the declarants or their employers is, or is required to be,⁶ publicly available.

To the extent neither of these proposals are acceptable, Cal Advocates notes that the Commission and its staff are in possession of the confidential declarations, and could make them available to Cal Advocates at their discretion.

Finally, given Cal Advocates need for the information as soon as practicable, it requests expedited treatment of this motion and a shortened response date of January 4, 2021.

Respectfully submitted,

/s/ TRACI BONE

Traci Bone
Attorney for

The Public Advocates Office
California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Telephone: (415) 703-2048
Email: Traci.Bone@cpuc.ca.gov

December 30, 2020

⁶ It is possible that SoCalGas is withholding information it is obligated to disclose in FPPC filings by mischaracterizing its consultants’ activities so that information that is required to be made public, has not, in fact, been made public.

ATTACHMENT A
Sempra Energy and Affiliates Period 4/1/2019-6/30/2019
FPPC Forms 635 and 640

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

REPORT OF LOBBYIST EMPLOYER

(Government Code Section 86116)

1/10

or

REPORT OF LOBBYING COALITION

(2 Cal. Code of Regs. Section 18616.4)

FORM 635
1993

IMPORTANT: Lobbying Coalitions must attach a completed Form 635-C to this Report.

REPORT COVERS PERIOD FROM 04/01/2019 THROUGH 06/30/2019

CUMULATIVE PERIOD BEGINNING 01/01/2019

FOR OFFICIAL USE ONLY

A

B

TYPE OR PRINT IN INK

For information required to be provided to you pursuant to the Information Practices Act of 1977, see Information Manual on Lobbying Disclosure Provisions of the Political Reform Act.

NAME OF FILER:

Sempra Energy and its Affiliates San Diego Gas & Electric and So. Cal. Gas Co.

BUSINESS ADDRESS: (Number and Street)

(City)

(State)

(Zip Code)

TELEPHONE NUMBER:

San Diego

CA

92101

PART I - LEGISLATIVE OR STATE AGENCY ADMINISTRATIVE ACTIONS ACTIVELY LOBBIED DURING THE PERIOD

(See instructions on reverse.)

See attached TEXT

If more space is needed, check box and attach continuation sheets.

SUMMARY OF PAYMENTS THIS PERIOD

A. Total Payments to In-House Employee Lobbyists (Part III, Section A, Column 1)	\$	<u>100414.23</u>
B. Total Payments to Lobbying Firms (Part III, Section B, Column 4)	\$	<u>267875.00</u>
C. Total Activity Expenses (Part III, Section C)	\$	<u>6946.66</u>
D. Total Other Payments to Influence (Part III, Section D)	\$	<u>163290.33</u>

GRAND TOTAL (A + B + C + D above) \$ 538526.22

E. Total Payments in Connection with PUC Activities (Part III, Section E) \$ 23430.06

F. Campaign Contributions: Part IV completed and attached No campaign contributions made this period

VERIFICATION

I have used all reasonable diligence in preparing this Report. I have reviewed the Report and to the best of my knowledge the information contained herein and in the attached schedules is true and complete.

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

Executed on (Date)
07/31/2019

At (City and State)
San Diego, CA

By (Signature of Employer or Responsible Officer)
Mr. Dennis Arriola

Name of Employer or Responsible Officer (Type or Print)
Mr. Dennis Arriola

Title
EVP and Group President

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

PERIOD COVERED: 04/01/2019 06/30/2019

NAME OF FILER: Sempra Energy and its Affiliates San Diego Gas & Electric and So. Cal. Gas Co.

PART II - PARTNERS, OWNERS, AND EMPLOYEES WHOSE "LOBBYIST REPORTS" (FORM 615) ARE ATTACHED TO THIS REPORT (See instructions on reverse.)

Name and Title	Name and Title
Employee Israel Salas Government Affairs Manager	Employee Ms. Nicolina Hernandez Government Affairs Manager
Employee Ms. Lourdes Jimenez Government Affairs Manager	

If more space is needed, check box and attach continuation sheets.

PART III - PAYMENTS MADE IN CONNECTION WITH LOBBYING ACTIVITIES

A. PAYMENTS TO IN-HOUSE EMPLOYEE LOBBYISTS (See instructions on reverse. Also enter the Amount This Period (Column 1) on Line A of the Summary of Payments section on page 1.)	(1) Amount This Period	(2) Cumulative Total To Date
		\$ 100414.23

B. PAYMENTS TO LOBBYING FIRMS (Including Individual Contract Lobbyists)					
Name and Address of Lobbying Firm/Independent Contractor	(1) Fees & Retainers	(2) Reimbursements of Expenses	(3) Advances or Other Payments (attach explanation)	(4) Total This Period	(5) Cumulative Total to Date
AJW, Inc. Arlington VA 22201	0.00	0.00	0.00	0.00	10000.00
California Strategies & Advocacy LLC Sacramento CA 95814	30000.00	0.00	0.00	30000.00	30000.00
Campbell Strategy & Advocacy, LLC Sacramento CA 95814	18000.00	0.00	0.00	18000.00	47000.00
CAPITOL STRATEGIES GROUP, INC. Sacramento CA 95814	69000.00	0.00	0.00	69000.00	81000.00
CRUZ STRATEGIES SACRAMENTO CA 95814	44000.00	0.00	0.00	44000.00	69453.44

If more space is needed, check box and attach continuation sheets

TOTAL THIS PERIOD (Column 4)
Also enter the total of Column 4 on Line B of the Summary of Payments section on page 1.

\$ 267875.00

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

PERIOD COVERED: 04/01/2019 06/30/2019

NAME OF FILER: Sempra Energy and its Affiliates San Diego Gas & Electric and So. Cal. Gas Co.

C. ACTIVITY EXPENSES (See instructions on reverse.)					
Date	Name and Address of Payee	Name and Official Position of Reportable Persons and Amount Benefiting Each	Description of Consideration	Total Amount of Activity	
05/06/2019	Amourath Sacramento CA 98514	Patsy Ayala Field Rep - Senator Wilk	VISA 11.20 Meal	\$ 34.80	
04/30/2019	Eurest Dining San Diego CA 92123	Janea Scott CEC Commissioner	MASTER - CARD 10.00 Meal	106.30	
05/09/2019	Eurest Dining San Diego CA 92123	Tony Mecham CAL Fire Unit Chief	Other 14.95 Meal	1495.00	
05/22/2019	Eurest Dining Los Angeles CA 90013	Lana Wong CEC Senior Analyst	Other 25.09 Meal	1500.66	
	Eurest Dining Los Angeles CA 90013	Rod Walker CEC Consultant	Other 25.09 Meal		
<input checked="" type="checkbox"/> If more space is needed, check box and attach continuation sheets.				TOTAL SECTION C (Activity Expenses) Also enter the total of Section C on Line C of the Summary of Payments section on page 1.	\$ 6946.66
D. OTHER PAYMENTS TO INFLUENCE LEGISLATIVE OR ADMINISTRATIVE ACTION					
<input checked="" type="checkbox"/> NOTE: State and local government agencies do not complete this section. Check box and complete Attachment Form 640 instead.					
1. PAYMENTS TO LOBBYING COALITIONS (NOTE: You must attach a completed Form 630 to this Report.)			\$ 0.00		
2. OTHER PAYMENTS			\$ 163290.33		
				TOTAL SECTION D (1 + 2) Also enter the total of Section D on Line D of the Summary of Payments section on page 1.	\$ 163290.33
E. PAYMENTS IN CONNECTION WITH ADMINISTRATIVE TESTIMONY IN RATEMAKING PROCEEDINGS BEFORE THE CALIFORNIA PUBLIC UTILITIES COMMISSION					
Also, enter the total of Section E on Line E of the Summary of Payments section on page 1. (See instructions on reverse.)				\$ 234300.66	

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

PERIOD COVERED: 04/01/2019 06/30/2019

NAME OF FILER: Sempra Energy and its Affiliates San Diego Gas & Electric and So. Cal. Gas Co.

PART IV -- CAMPAIGN CONTRIBUTIONS MADE (Monetary and non-monetary campaign contributions of \$100 or more made to or on behalf of state candidates, elected state officers and any of their controlled committees, or committees supporting such candidates or officers must be reported in A or B below.)

A. If the contributions made by you during the period covered by this report, or by a committee you sponsor, are contained in a campaign disclosure statement which is on file with the Secretary of State, report the name of the committee and its identification number, if any, below.

Name of Major Donor or Recipient Committee Which Has Filed A Campaign Disclosure Statement: Sempra Energy Identification Number if Recipient Committee: 488235

B. Contributions of \$100 or more which have not been reported on a campaign disclosure statement, including contributions made by an organization's sponsored committee, must be itemized below.

Date	Name of Recipient	I.D. Number if Committee	Amount
			\$
			\$
			\$
			\$
			\$
			\$
			\$
			\$
			\$
			\$
			\$

If more space is needed, check box and attach continuation sheets.

NOTE: Disclosure in this report does not relieve a filer of any obligation to file the campaign disclosure statements required by Gov. Code Section 84200, et seq.

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

PERIOD COVERED: 04/01/2019 06/30/2019

NAME OF FILER: Sempra Energy and its Affiliates San Diego Gas & Electric and So. Cal. Gas Co.

PART III - PAYMENTS MADE IN CONNECTION WITH LOBBYING ACTIVITIES

B. PAYMENTS TO LOBBYING FIRMS (Including Individual Contract Lobbyists)

Name and Address of Lobbying Firm/Independent Contractor	(1) Fees & Retainers	(2) Reimbursements of Expenses	(3) Advances or Other Payments (attach explanation)	(4) Total This Period	(5) Cumulative Total to Date
Mercury Public Affairs Sacramento CA 95814	46875.00	0.00	0.00	46875.00	67875.00
Kester/Pahos Sacramento CA 95814	60000.00	0.00	0.00	60000.00	60000.00

TOTAL THIS PERIOD (Column 4)
Also enter the total of Column 4 on Line B of the Summary of Payments section on page 1.

\$ 267875.00

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

PERIOD COVERED: 04/01/2019 06/30/2019NAME OF FILER: Sempra Energy and its Affiliates San Diego Gas & Electric and So. Cal. Gas Co.

C. ACTIVITY EXPENSES (See instructions on reverse.)					
Date	Name and Address of Payee	Name and Official Position of Reportable Persons and Amount Benefiting Each	Description of Consideration	Total Amount of Activity	
	Eurest Dining Los Angeles CA 90013 Reference No:	Elexeious Prigett CEC Oil & Gas Advisor	\$ 25.09 Other	Meal	\$
06/25/2019	Sutter Club Sacramento CA 95814 Reference No:	Miranda Flores Legislative Director - Assemb - lymember Quirk	\$ 67.01 MASTER - CARD	Meal	\$ 5160.00
	Sutter Club Sacramento CA 95814 Reference No:	Tim Olson Senior Policy Advisor - CEC	\$ 67.01 MASTER - CARD	Meal	\$
	Sutter Club Sacramento CA 95814 Reference No:	Kielan Rathjan Executive Fellow - Governor's office of Business	\$ 67.01 MASTER - CARD	Meal	\$
	Sutter Club Sacramento CA 95814 Reference No:	Prab Sethi Grant Manager - CEC	\$ 67.01 MASTER - CARD	Meal	\$
	Sutter Club Sacramento CA 95814 Reference No:	Dan Sperling Board Member - CARB	\$ 67.01 MASTER - CARD	Meal	\$
	Sutter Club Sacramento CA 95814 Reference No:	Bill Quirk Assemblymember	\$ 67.01 MASTER - CARD	Meal	\$
	Sutter Club Sacramento CA 95814 Reference No:	Tyson Eckerle Deputy Director - Governor's office of Business	\$ 67.01 MASTER - CARD	Meal	\$
TOTAL SECTION C (Activity Expenses) Also enter the total of Section C on Line C of the Summary of Payments section on page 1.					\$

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

PERIOD COVERED: 04/01/2019 06/30/2019

NAME OF FILER: Sempra Energy and its Affiliates San Diego Gas & Electric and So. Cal. Gas Co.

C. ACTIVITY EXPENSES (See instructions on reverse.)

Date	Name and Address of Payee	Name and Official Position of Reportable Persons and Amount Benefiting Each		Description of Consideration	Total Amount of Activity
	Sutter Club Sacramento CA 95814 Reference No:	Hassan Mohammed Contract Manager - CEC	\$ 67.01 MASTER - CARD	Meal	\$

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TOTAL SECTION C (Activity Expenses) Also enter the total of Section C on Line C of the Summary of Payments section on page 1.	\$ 6946.66
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Document received by the CA 2nd District Court of Appeal.

Attachment Form 640

(Attachment to Form 635 or Form 645)

CALIFORNIA
1993 FORM

640

8/10

PERIOD COVERED: 04/01/2019--06/30/2019

NAME OF FILER: Sempra Energy and its Affiliates San Diego Gas & Electric and So. Cal. Gas Co.

For Use By: A state or local government agency that qualifies as a lobbyist employer or a \$5,000 filer. Refer to the instructions on the cover page before completing this attachment.

Other Payments to Influence Legislative or Administrative Action:

1. Total payments for overhead expenses related to lobbying activity. <u>Report as a lump sum.</u>	\$ 7937.99
2. Total payments to Lobbying Coalitions. <u>Report as a lump sum.</u>	\$ 0.00
(Form 630 must be attached)	
3. Total payments of less than \$250 during the calendar quarter for lobbying activity (excluding overhead). <u>Report as a lump sum.</u>	\$ 2053.10
4. Total payments of more than \$250 during the calendar quarter for lobbying activity (excluding overhead). Such payments must be itemized below.	\$ 153299.24
5. Grand total of "Other Payments to Influence Legislative or Administrative Action." Also enter this total on the appropriate line of the Summary of Payments section on Page 1 of Form 635 or Form 645.	<u>\$ 163290.33</u>

Itemize below payments of \$250 or more made during the quarter for lobbying activity. Provide the name and address of the payee, the amount paid during the quarter, and the cumulative amount paid to the payee since January 1 of the biennial legislative session covered by the report.

Also itemize dues or similar payments of \$250 or more made to an organization that makes expenditures equal to 10% of its total expenditures or \$15,000 or more in a calendar quarter to influence legislative or administrative action. Provide the organization's name and address, the amount paid to the organization during the quarter, and the cumulative amount paid to the organization since January 1 of the biennial legislative session covered by the report.

Name & Address of Payee	Amount This Quarter	Cumulative Amount Since January 1
[E] - Sempra Expenses Related to Lobbying Activities San Diego CA 92101	\$ 32597.00	\$ 77593.00
[S] - Loren Logan San Diego CA 92123	\$ 5736.36	\$ 9833.76
[S] - Rhiannon Davis San Diego CA 92123	\$ 6286.57	\$ 10434.41
Subtotal of all payments itemized above	<u>\$ 44619.93</u>	

If more space is needed, check box and attach continuation sheets.

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

Attachment Form 640

(Continuation Sheet)

CALIFORNIA 1993 FORM	640
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9/10

PERIOD COVERED: 04/01/2019--06/30/2019

NAME OF FILER: Sempra Energy and its Affiliates San Diego Gas & Electric and So. Cal. Gas Co.

Name & Address of Payee	Amount This Quarter	Cumulative Amount Since January 1 Biennial Legislative Session
[S] - Christopher Gilbride Los Angeles CA 90013	10825.32	21650.64
[P] - Bicker Castillo & Fairbanks Sacramento CA 95814	41343.59	41343.59
[S] - Kent Kauss Sacramento CA 95814	4709.73	7764.69
[P] - Storefront Political Media San Francisco CA 94111	28000.00	28000.00
[P] - Marathon Communications Los Angeles CA 90036	15266.75	15266.75
[S] - Scott Drury San Diego 92123	8533.92	8533.92
Subtotal of all payments itemized above	\$ 108679.31	

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

TEXT ANNOTATION

PAGE 1

Schedule F635

Reference No:

Assembly Bills: 25,38,56,74,111,126,157,161,178,235,281,291,491,560,660,684,745,753,784,868,900,915,961,983,1026,1039,1054,1057 - 1083,1100,1124,1143,1144,1156,1166,1195,1232,1293,1323,1328,1347,1362,1363,1371,1406,1424,1463,1516,1584,1690,1693,1751,1 - 789,1799. Senate Bills: 44,49,70,85,130,155,167,169,182,190,199,209,210,216,247,255,290,350,457,463,515,520,524,535,548,549,550, - 551,561,584,597,632,660,662,676,682,766,772,774. Offices Lobbied: Governor's office, California Legislature, CARB, California Department of Forestry & Fire Protection, CalEPA, CEC, CISO, CPUC, California Resources Agency, California State Water Board.

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

Attachment B
Sempra Energy and Affiliates Period 1/1/208-3/31/2018
FPPC Forms 635 and 640

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

REPORT OF LOBBYIST EMPLOYER

(Government Code Section 86116)

1/10

or

REPORT OF LOBBYING COALITION

(2 Cal. Code of Regs. Section 18616.4)

**FORM 635
1993**

IMPORTANT: Lobbying Coalitions must attach a completed Form 635-C to this Report.

REPORT COVERS PERIOD FROM 01/01/2018 THROUGH 03/31/2018

CUMULATIVE PERIOD BEGINNING 01/01/2017

FOR OFFICIAL USE ONLY

A

B

TYPE OR PRINT IN INK

For information required to be provided to you pursuant to the Information Practices Act of 1977, see Information Manual on Lobbying Disclosure Provisions of the Political Reform Act.

NAME OF FILER:

Sempra Energy and its Affiliates San Diego Gas & Electric and So. Cal. Gas Co.

BUSINESS ADDRESS: (Number and Street)

(City)

(State)

(Zip Code)

TELEPHONE NUMBER:

San Diego

CA

92101

PART I - LEGISLATIVE OR STATE AGENCY ADMINISTRATIVE ACTIONS ACTIVELY LOBBIED DURING THE PERIOD

(See instructions on reverse.)

See attached TEXT

If more space is needed, check box and attach continuation sheets.

SUMMARY OF PAYMENTS THIS PERIOD

A. Total Payments to In-House Employee Lobbyists (Part III, Section A, Column 1)	\$	<u>82913.89</u>
B. Total Payments to Lobbying Firms (Part III, Section B, Column 4)	\$	<u>103000.00</u>
C. Total Activity Expenses (Part III, Section C)	\$	<u>978.80</u>
D. Total Other Payments to Influence (Part III, Section D)	\$	<u>104743.80</u>

GRAND TOTAL (A + B + C + D above) \$ 291636.49

E. Total Payments in Connection with PUC Activities (Part III, Section E) \$ 4882.68

F. Campaign Contributions: Part IV completed and attached No campaign contributions made this period

VERIFICATION

I have used all reasonable diligence in preparing this Report. I have reviewed the Report and to the best of my knowledge the information contained herein and in the attached schedules is true and complete.

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

Executed on (Date)
04/30/2018

At (City and State)
San Diego, CA

By (Signature of Employer or Responsible Officer)
Mr. Dennis Arriola

Name of Employer or Responsible Officer (Type or Print)
Mr. Dennis Arriola

Title
EVP - External Affairs & South America

PERIOD COVERED: 01/01/2018 03/31/2018

NAME OF FILER: Sempra Energy and its Affiliates San Diego Gas & Electric and So. Cal. Gas Co.

PART II - PARTNERS, OWNERS, AND EMPLOYEES WHOSE "LOBBYIST REPORTS" (FORM 615) ARE ATTACHED TO THIS REPORT (See instructions on reverse.)

Name and Title	Name and Title
Employee Israel Salas Government Affairs Manager	Employee Nicolina Hernandez Government Affairs Manager

If more space is needed, check box and attach continuation sheets.

PART III - PAYMENTS MADE IN CONNECTION WITH LOBBYING ACTIVITIES

A. PAYMENTS TO IN-HOUSE EMPLOYEE LOBBYISTS (See instructions on reverse. Also enter the Amount This Period (Column 1) on Line A of the Summary of Payments section on page 1.)	(1) Amount This Period	(2) Cumulative Total To Date
	\$ 82913.89	\$ 605227.00

B. PAYMENTS TO LOBBYING FIRMS (Including Individual Contract Lobbyists)					
Name and Address of Lobbying Firm/Independent Contractor	(1) Fees & Retainers	(2) Reimbursements of Expenses	(3) Advances or Other Payments (attach explanation)	(4) Total This Period	(5) Cumulative Total to Date
Campbell Strategy & Advocacy,LLC Sacramento CA 95814	34000.00	0.00	0.00	34000.00	138000.00
CAPITOL STRATEGIES GROUP,INC. Sacramento CA 95814	36000.00	0.00	0.00	36000.00	150000.00
FERNANDEZ GOVERNMENT SOLUTIONS,LLC SACRAMENTO CA 95814	0.00	0.00	0.00	0.00	103500.00
Kester/Pahos Sacramento CA 95814	0.00	0.00	0.00	0.00	80000.00
Mercury Public Affairs Sacramento CA 95814	33000.00	0.00	0.00	33000.00	159000.00

If more space is needed, check box and attach continuation sheets

TOTAL THIS PERIOD (Column 4)
Also enter the total of Column 4 on Line B of the Summary of Payments section on page 1.

\$ 103000.00

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

PERIOD COVERED: 01/01/2018 03/31/2018

NAME OF FILER: Sempra Energy and its Affiliates San Diego Gas & Electric and So. Cal. Gas Co.

C. ACTIVITY EXPENSES (See instructions on reverse.)				
Date	Name and Address of Payee	Name and Official Position of Reportable Persons and Amount Benefiting Each	Description of Consideration	Total Amount of Activity
03/13/2018	Eurest Dining San Diego CA 92117	Mark Ferron California ISO Boardmember	Other 42.56 Meal	\$ 978.80
	Eurest Dining San Diego CA 92117	Carla Peterman CPUC Commissioner	Other 42.56 Meal	
	Eurest Dining San Diego CA 92117	David Hochschild CEC Commissioner	Other 42.56 Meal	
	Eurest Dining San Diego CA 92117	Mary Nichols CARB Chair	Other 42.56 Meal	
	Eurest Dining San Diego CA 92117	Janea Scott CEC Commissioner	Other 42.56 Meal	
<input type="checkbox"/> If more space is needed, check box and attach continuation sheets.			TOTAL SECTION C (Activity Expenses) Also enter the total of Section C on Line C of the Summary of Payments section on page 1.	\$ 978.80
D. OTHER PAYMENTS TO INFLUENCE LEGISLATIVE OR ADMINISTRATIVE ACTION <input checked="" type="checkbox"/> NOTE: State and local government agencies do not complete this section. Check box and complete Attachment Form 640 instead.				Document received by the CA 2nd District Court of Appeal.
1. PAYMENTS TO LOBBYING COALITIONS (NOTE: You must attach a completed Form 630 to this Report.)		\$ 0.00		
2. OTHER PAYMENTS		\$ 0.00		
			TOTAL SECTION D (1 + 2) Also enter the total of Section D on Line D of the Summary of Payments section on page 1.	\$ 0.00
E. PAYMENTS IN CONNECTION WITH ADMINISTRATIVE TESTIMONY IN RATEMAKING PROCEEDINGS BEFORE THE CALIFORNIA PUBLIC UTILITIES COMMISSION Also, enter the total of Section E on Line E of the Summary of Payments section on page 1. (See instructions on reverse.)				\$ 4882.88

PERIOD COVERED: 01/01/2018 03/31/2018

NAME OF FILER: Sempra Energy and its Affiliates San Diego Gas & Electric and So. Cal. Gas Co.

PART IV -- CAMPAIGN CONTRIBUTIONS MADE (Monetary and non-monetary campaign contributions of \$100 or more made to or on behalf of state candidates, elected state officers and any of their controlled committees, or committees supporting such candidates or officers must be reported in A or B below.)

A. If the contributions made by you during the period covered by this report, or by a committee you sponsor, are contained in a campaign disclosure statement which is on file with the Secretary of State, report the name of the committee and its identification number, if any, below.

Name of Major Donor or Recipient Committee Which Identification Number if
 Has Filed A Campaign Disclosure Statement: Recipient Committee: 488235
SEMPRA ENERGY AND ITS AFFILIATES: SOUTHERN CALIFORNIA GAS CO. & SAN DIEGO GAS & ELECTRIC

B. Contributions of \$100 or more which have not been reported on a campaign disclosure statement, including contributions made by an organization's sponsored committee, must be itemized below.

Date	Name of Recipient	I.D. Number if Committee	Amount
02/28/2018	Cecilia Aguilar-Curry for Assembly 2018	1392362	\$ 2600.00
03/01/2018	Dr. Richard Pan for Senate 2018	1374058	\$ 1300.00
03/01/2018	Jay Obernolte for Assembly	1392884	\$ 1000.00
03/01/2018	Friends of Frank Bigelow 2018	1392565	\$ 1400.00
03/01/2018	Friends of Frank Bigelow 2018	1392565	\$ 4400.00
03/01/2018	O'Donnell for Assembly 2018	1393597	\$ 1500.00
03/01/2018	Phillip Chen for Assembly 2018	1392379	\$ 1500.00
03/02/2018	Evan Low for Assembly 2018	1392357	\$ 200.00
03/02/2018	Patterson for Assembly 2018	1393990	\$ 2000.00
03/02/2018	Marc Steinorth for Assembly 2018	1392851	\$ 3300.00

If more space is needed, check box and attach continuation sheets.

NOTE: Disclosure in this report does not relieve a filer of any obligation to file the campaign disclosure statements required by Gov. Code Section 84200, et seq.

PERIOD COVERED: 01/01/2018 - 03/31/2018NAME OF FILER: Sempra Energy and its Affiliates San Diego Gas & Electric and So. Cal. Gas Co.

PART IV -- CAMPAIGN CONTRIBUTIONS MADE (Monetary and non-monetary campaign contributions of \$100 or more made to or on behalf of state candidates, elected state officers and any of their controlled committees, or committees supporting such candidates or officers must be reported in A or B below.)

B. Contributions of \$100 or more which have not been reported on a campaign disclosure statement, including contributions made by an organization's sponsored committee, must be itemized below.

Date	Name of Recipient	I.D. Number if Committee	Amount
03/02/2018	Evan Low for Assembly 2018	1392357	\$ 1800.00
03/02/2018	Voepel for Assembly 2018	1393777	\$ 2400.00
03/02/2018	Jordan Cunningham for Assembly 2018	1393016	\$ 1900.00
03/02/2018	Rodriguez for Assembly 2018	1392709	\$ 1400.00
03/02/2018	Autumn Burke for Assembly 2018	1393348	\$ 4400.00
03/02/2018	Jim Cooper for Assembly 2018	1392388	\$ 4400.00
03/02/2018	Melissa Melendez for Assembly 2018	1392806	\$ 1400.00
03/26/2018	Blanca Rubio for Assembly 2018	1393364	\$ 2000.00
03/28/2018	Piquado for Assembly 2018	1401391	\$ 2500.00
01/05/2018	Lorena Gonzalez for Assembly 2018	1392494	\$ 3100.00
01/05/2018	Dr. Richard Pan for Senate 2018	1374058	\$ 2200.00
01/05/2018	Jim Wood for Assembly 2018	1392333	\$ 2500.00
01/05/2018	Marc Berman for Assembly 2018	1392758	\$ 1500.00
02/22/2018	Tim Grayson for Assembly 2018	1392593	\$ 1100.00

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

PERIOD COVERED: 01/01/2018 - 03/31/2018NAME OF FILER: Sempra Energy and its Affiliates San Diego Gas & Electric and So. Cal. Gas Co.

PART IV -- CAMPAIGN CONTRIBUTIONS MADE (Monetary and non-monetary campaign contributions of \$100 or more made to or on behalf of state candidates, elected state officers and any of their controlled committees, or committees supporting such candidates or officers must be reported in A or B below.)

B. Contributions of \$100 or more which have not been reported on a campaign disclosure statement, including contributions made by an organization's sponsored committee, must be itemized below.

Date	Name of Recipient	I.D. Number if Committee	Amount
02/22/2018	Marc Berman for Assembly 2018	1392758	\$ 2000.00
02/26/2018	Sabrina Cervantes for Assembly 2018	1392561	\$ 1000.00
02/26/2018	Rudy Salas for Assembly 2018	1393439	\$ 4400.00
02/26/2018	Ian Calderon for Assembly 2018	1392684	\$ 1300.00
02/26/2018	Tom Daly for Assembly 2018	1393412	\$ 2900.00
02/26/2018	Anthony Rendon for Assembly 2018	1393414	\$ 4400.00
02/26/2018	Lorena Gonzalez for Assembly 2018	1392494	\$ 1300.00
02/26/2018	Andy Vidak for Senate 2018	1373825	\$ 4400.00
02/26/2018	Chris Holden for Assembly 2018	1393404	\$ 2200.00
02/26/2018	Adam Gray for Assembly 2018	1392612	\$ 4400.00
02/28/2018	Robert Hertzberg for Senate 2018	1373423	\$ 1000.00
02/28/2018	Bill Brough for State Assembly 2018	1392528	\$ 4400.00
02/28/2018	Janet Nguyen for Senate 2018	1373835	\$ 2800.00
02/28/2018	Robert Hertzberg for Senate 2018	1373423	\$ 400.00

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

PERIOD COVERED: 01/01/2018 - 03/31/2018NAME OF FILER: Sempra Energy and its Affiliates San Diego Gas & Electric and So. Cal. Gas Co.

PART IV -- CAMPAIGN CONTRIBUTIONS MADE (Monetary and non-monetary campaign contributions of \$100 or more made to or on behalf of state candidates, elected state officers and any of their controlled committees, or committees supporting such candidates or officers must be reported in A or B below.)

B. Contributions of \$100 or more which have not been reported on a campaign disclosure statement, including contributions made by an organization's sponsored committee, must be itemized below.

Date	Name of Recipient	I.D. Number if Committee	Amount
02/28/2018	Bill Brough for State Assembly 2018	1392528	\$ 150.00
02/28/2018	Al Muratsuchi for Assembly 2018	1392662	\$ 1000.00
02/28/2018	Brian Dahle for Assembly 2018	1393369	\$ 4400.00
02/28/2018	Andreas Borgeas for Senate 2018	1394470	\$ 2500.00
02/28/2018	Lackey for Assembly 2018	1393205	\$ 1400.00

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

Attachment Form 640

(Attachment to Form 635 or Form 645)

CALIFORNIA
1993 FORM

640

8/10

PERIOD COVERED: 01/01/2018--03/31/2018

NAME OF FILER: Sempra Energy and its Affiliates San Diego Gas & Electric and So. Cal. Gas Co.

For Use By: A state or local government agency that qualifies as a lobbyist employer or a \$5,000 filer. Refer to the instructions on the cover page before completing this attachment.

Other Payments to Influence Legislative or Administrative Action:

1. Total payments for overhead expenses related to lobbying activity. <u>Report as a lump sum.</u>	\$ 13626.27
2. Total payments to Lobbying Coalitions. <u>Report as a lump sum.</u>	\$ 0.00
(Form 630 must be attached)	
3. Total payments of less than \$250 during the calendar quarter for lobbying activity (excluding overhead). <u>Report as a lump sum.</u>	\$ 2257.27
4. Total payments of more than \$250 during the calendar quarter for lobbying activity (excluding overhead). Such payments must be itemized below.	\$ 88860.26
5. Grand total of "Other Payments to Influence Legislative or Administrative Action." Also enter this total on the appropriate line of the Summary of Payments section on Page 1 of Form 635 or Form 645.	\$ 104743.80

Itemize below payments of \$250 or more made during the quarter for lobbying activity. Provide the name and address of the payee, the amount paid during the quarter, and the cumulative amount paid to the payee since January 1 of the biennial legislative session covered by the report.

Also itemize dues or similar payments of \$250 or more made to an organization that makes expenditures equal to 10% of its total expenditures or \$15,000 or more in a calendar quarter to influence legislative or administrative action. Provide the organization's name and address, the amount paid to the organization during the quarter, and the cumulative amount paid to the organization since January 1 of the biennial legislative session covered by the report.

Name & Address of Payee	Amount This Quarter	Cumulative Amount Since January 1
[E] - Sempra Expenses Related to Lobbying Activities San Diego CA 92101	\$ 53565.00	\$ 125933.00
[S] - Christopher Gilbride Los Angeles CA 90013	\$ 10086.12	\$ 36148.20
[P] - Bicker Castillo & Fairbanks Sacramento CA 95814	\$ 14762.31	\$ 136637.66
Subtotal of all payments itemized above	\$ 78413.43	

If more space is needed, check box and attach continuation sheets.

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

Attachment Form 640

(Continuation Sheet)

CALIFORNIA 1993 FORM	640
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PERIOD COVERED: 01/01/2018--03/31/2018

NAME OF FILER: Sempra Energy and its Affiliates San Diego Gas & Electric and So. Cal. Gas Co.

Name & Address of Payee	Amount This Quarter	Cumulative Amount Since January 1 Biennial Legislative Session
[P] - Imprenta Communications Group San Marino CA 91108	3800.00	9633.32
[C] - Pete Conaty & Associates Sacramento CA 95814	4000.20	6666.88
[S] - Kent Kauss Sacramento CA 95814	2646.63	2646.63

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Subtotal of all payments itemized above	\$ 10446.83
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TEXT ANNOTATION

PAGE 1

Schedule F635

Reference No:

Assembly Bills: 813,1184,1292,1552,1745,1796,1879,1945,1954,1956,1970,2057,2061,2068,2077,2091,2092,2120,2127,2145,2195,2208 - 2267,2278,2346,2380,2407,2431,2506,2515,2551,2569,2585,2645,2672,2693,2695,2726,2832,2885,2911,3001,3073,3102,3146,3187,3 - 201,3232. Senate Bills: 100,700,819,821,901,1000,1014,1015,1016,1028,1076,1088,1135,1151,1169,1181,1205,1256,1260,1338,1339,1 - 347,1369,1370,1399,1410,1434,1440,1463,1477,1478. Offices Lobbied: Governor's office,California Legislature,CARB,CEC,CISO,CPUC - ,California Resources Agency,California State Water Board.

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

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

Application For Rehearing Of Resolution
ALJ-391

A.20-12-011
(Filed: December 21, 2020)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing **SOUTHERN CALIFORNIA GAS COMPANY'S OPPOSITION TO PUBLIC ADVOCATES OFFICE MOTION FOR AN EXPEDITED RULING (1) ORDERING SOUTHERN CALIFORNIA GAS COMPANY TO PRODUCE CONFIDENTIAL DECLARATIONS NO LATER THAN JANUARY 6, 2021 AND FOR AN EXTENSION TO RESPOND TO THE UTILITY'S APPLICATION FOR REHEARING OR IN THE ALTERNATIVE TO GRANT AN ADVERSE PRESUMPTION AGAINST THE UTILITY OR FOR THE COMMISSION TO PROVIDE THE CONFIDENTIAL DECLARATIONS AND (2) TO SHORTEN TIME TO RESPOND TO MOTION; DECLARATION OF JASON H. WILSON IN SUPPORT OF SOUTHERN CALIFORNIA GAS COMPANY'S OPPOSITION TO PUBLIC ADVOCATES OFFICE MOTION FOR AN EXPEDITED RULING (1) ORDERING SOUTHERN CALIFORNIA GAS COMPANY TO PRODUCE CONFIDENTIAL DECLARATIONS NO LATER THAN JANUARY 6, 2021 AND FOR AN EXTENSION TO RESPOND TO THE UTILITY'S APPLICATION FOR REHEARING OR IN THE ALTERNATIVE TO GRANT AN ADVERSE PRESUMPTION AGAINST THE UTILITY OR FOR THE COMMISSION TO PROVIDE THE CONFIDENTIAL DECLARATIONS AND (2) TO SHORTEN TIME TO RESPOND TO MOTION** on all parties of record in A.20-12-011 by electronic mail, including Administrative Law Judge, Regina M. DeAngelis.

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

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.

Dated at Los Angeles, California, this 4th day of January 2021.

 /s/ Lisa S. Gibbons
Lisa S. Gibbons

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



California
Public Utilities
Commission



[CPUC Home](#)

CALIFORNIA PUBLIC UTILITIES COMMISSION Service Lists

PROCEEDING: A2012011 - APPLICATION FOR REHE
FILER: SOUTHERN CALIFORNIA GAS COMPANY
LIST NAME: LIST
LAST CHANGED: JANUARY 4, 2021

[Download the Comma-delimited File](#)
[About Comma-delimited Files](#)

[Back to Service Lists Index](#)

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Information Only

LEGAL DIVISION
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BACK TO INDEX OF SERVICE LISTS

PROOF OF SERVICE

I, Ashley Moser, declare as follows:

I am employed in the County of San Francisco, State of California, I am over the age of eighteen years and am not a party to this action; my business address is 555 Mission Street, Suite 3000, San Francisco, CA 94105-0921, in said County and State. On March 8, 2021, I served the following document(s):

PETITION FOR WRIT OF REVIEW, MANDATE, AND/OR OTHER APPROPRIATE RELIEF, MOTION FOR EMERGENCY STAY OR OTHER INJUNCTIVE RELIEF, DECLARATION OF JULIAN W. POON, AND PROPOSED ORDER, AND MEMORANDUM OF POINTS AND AUTHORITIES; IMMEDIATE RELIEF REQUESTED BY TUESDAY, MARCH 16, 2021 OF ORDER BY CALIFORNIA PUBLIC UTILITIES COMMISSION TO PRODUCE CONSTITUTIONALLY PROTECTED MATERIAL

EXHIBITS TO THE PETITION FOR WRIT OF REVIEW, MANDATE, AND/OR OTHER APPROPRIATE RELIEF (VOLUMES 1-10)*

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

<p>California Public Utilities Commission</p> <p>Rachel Peterson Executive Director 505 Van Ness Avenue, San Francisco, CA 94102 415-703-3808 Rachel.Peterson@cpuc.ca.gov</p> <p>Arocles Aguilar General Counsel 505 Van Ness Avenue, San Francisco, CA 94102 415-703-2015 Arocles.Aguilar@cpuc.ca.gov</p>	<p>California Advocates</p> <p>Elizabeth Echols Director 505 Van Ness Avenue, San Francisco, CA 94102 415-703-2588 elizabeth.echols@cpuc.ca.gov</p> <p>Darwin Farrar General Counsel 505 Van Ness Avenue, San Francisco, CA 94102 415-703-1599 darwin.farrar@cpuc.ca.gov</p> <p>Traci Bone Counsel 505 Van Ness Avenue, San Francisco, CA 94102 415-703-2048 traci.bone@cpuc.ca.gov</p>
---	--

*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