

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

Application for Rehearing of Resolution  
ALJ-391.

Application 20-12-011

**PUBLIC ADVOCATES OFFICE RESPONSE  
TO SOUTHERN CALIFORNIA GAS COMPANY'S OCTOBER 2, 2023  
PETITION FOR MODIFICATION OF RESOLUTION ALJ-391  
AND DECISION 21-03-001**

**DARWIN E. FARRAR**

**TRACI BONE**

Attorneys for the

Public Advocates Office  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102  
Cell: (415) 713-3599  
Email: [traci.bone@cpuc.ca.gov](mailto:traci.bone@cpuc.ca.gov)

November 1, 2023

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
I. INTRODUCTION.....	1
II. BACKGROUND OF THE RESOLUTION AND APPEAL.....	2
III. OVERVIEW OF CURRENT DISPUTE .....	4
IV. DISCUSSION.....	6
A. The Resolution should be revised, but not as requested by SoCalGas.....	6
B. SoCalGas’ proposed modifications to the Resolution are unnecessary. ....	6
C. The Commission has an obligation to protect ratepayers’ First Amendment rights to be free from compelled speech. ....	8
D. SoCalGas’ requests regarding sanctions should be denied.....	9
V. CONCLUSION .....	9
ATTACHMENTS	

## I. INTRODUCTION

Pursuant to Rule 16.4(f) of the California Public Utilities Commission’s (Commission) Rules of Practice and Procedure (Rules) and General Order (GO) 96-B,<sup>1</sup> the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) responds to Southern California Gas Company’s (SoCalGas) October 2, 2023 petition to modify Resolution ALJ-391 issued December 17, 2020 and modified January 6, 2021 by Decision (D.) 21-03-001 (together “Resolution”).<sup>2</sup>

SoCalGas insists that the Commission and Cal Advocates must return or destroy the documents colloquially referred to as the “Balanced Energy Contracts,”<sup>3</sup> which the utility produced to Cal Advocates pursuant to a November 1, 2019 Administrative Law Judge (ALJ) Ruling,<sup>4</sup> documents associated with another contract produced under protest

---

<sup>1</sup> Section 1.1 of GO 96-B provides: “The General Rules also govern applications for rehearing and petitions for modification of a resolution regardless of whether the resolution was initiated by advice letter.” *See also id.* Section 8.2.

<sup>2</sup> *Resolution ALJ-391*, Administrative Law Judge Division, December 17, 2020, as modified by Decision (D.) 21-03-001, *Order Modifying Resolution ALJ-391 and, as Modified, Denying Rehearing of Resolution ALJ-391*, March 1, 2021.

<sup>3</sup> The documents referred to as the Balanced Energy Contracts were produced in response to Cal Advocates’ data request SCG-2019-05 issued on August 13, 2019. Those documents comprise contracts between SoCalGas and five vendors. Two of those vendors have been identified based on publicly available information as working with SoCalGas to engage in political activities. *See, e.g.*, May 14, 2019 *Sierra Club Motion to Deny Party Status to C4BES* at <https://www.publicadvocates.cpuc.ca.gov/-/media/cal-advocates-website/files/legacy3/1---sierra-club-motion-to-deny-party-status-to-c4bes---5-14-19--1.pdf> identifying Marathon Communications as the vendor likely responsible for the creation of C4BES. *See also Sacramento Bee*, “SoCalGas fought a key California climate solution for years. It cost customers millions,” by Joe Rubin and Ari Plachta, August 17, 2023 identifying a vendor that sent speakers to advocate on SoCalGas’ behalf at Commission business meetings.

<sup>4</sup> In Question 8 of Data Request SC-SCG-2019-05, issued on August 13, 2019, Cal Advocates asked for “all contracts (and contract amendments) covered by the WOA which created the BALANCED ENERGY IO.” SoCalGas refused to respond to this data request. *See* SoCalGas Aug. 27, 2019 Response to SC-SCG-2019-05 Q.8 at [https://www.publicadvocates.cpuc.ca.gov/-/media/cal-advocates-website/files/legacy3/socalgas-response\\_caladvocates-sc-scg-2019-05.pdf](https://www.publicadvocates.cpuc.ca.gov/-/media/cal-advocates-website/files/legacy3/socalgas-response_caladvocates-sc-scg-2019-05.pdf). In response, Cal Advocates submitted a motion to compel on October 7, 2019. Cal Advocates request to compel was granted in a November 1, 2019 ALJ Ruling issued in Cal Advocates’ not-in-a-proceeding accounting inquiry. That Ruling is available at <https://www.publicadvocates.cpuc.ca.gov/-/media/cal-advocates-website/files/legacy3/4---alj-ruling-11-1-19.pdf>.

on December 4, 2019,<sup>5</sup> and “any summaries, paraphrases, or notes reflecting the contents of [those] materials.”<sup>6</sup> The utility also asks the Commission to require Cal Advocates to “submit a sworn affidavit to the Commission’s Executive Director attesting that Cal Advocates has returned and/or destroyed these materials within 15 days of the effective date of this modified Resolution” and to remove “the mooted suggestion that SoCalGas might be subject to contempt, sanctions, or fines in connection with these events.”<sup>7</sup>

SoCalGas’ requests are unreasonable, unduly burdensome, and unnecessary because the utility argues for a flawed and overly expansive interpretation of *SoCalGas v. CPUC*.<sup>8</sup> Most significantly, if the Commission grants SoCalGas’ proposed changes to the Resolution, the Commission will perpetuate SoCalGas’ misrepresentations regarding the recording of costs incurred for political activities to ratepayer accounts, which will allow such activities to continue, thereby undermining both the Commission’s statutory obligations as well as its ratepayers’ Constitutional right to be free from compelled speech.<sup>9</sup>

## II. BACKGROUND OF THE RESOLUTION AND APPEAL

On October 29, 2020, the ALJ assigned to resolve discovery disputes related to Cal Advocates’ not-in-a-proceeding review of SoCalGas’ accounting activities issued Draft Resolution ALJ-391.<sup>10</sup> The Draft Resolution denied both SoCalGas’ December 2,

---

<sup>5</sup> SoCalGas requests the return or destruction of all “all materials that SoCalGas produced under protest in response to ... DR No. PubAdv-SCG-001-SCS” issued August 26, 2019. SoCalGas Petition for Modification (PFM), p. 6. SoCalGas has confirmed that this request is for the three documents related to Contract Number 5660052533. These documents were provided in response to a Cal Advocates’ data request issued in SoCalGas’ 2019 General Rate Case.

<sup>6</sup> SoCalGas October 2, 2023 PFM, p. 6.

<sup>7</sup> SoCalGas October 2, 2023 PFM, p. 6.

<sup>8</sup> *Southern California Gas. Co. v. Pub. Util. Comm’n*, 87 Cal.App.5th 324 (2023) (*SoCalGas v. CPUC*).

<sup>9</sup> Requiring Cal Advocates to identify and return or destroy “any summaries, paraphrases, or notes reflecting the contents of [the] materials” would be an onerously time consuming and unnecessary task.

<sup>10</sup> On September 5, 2019, the President of the Commission referred this dispute to the Chief ALJ for resolution. See *Administrative Law Judge’s Ruling in the Discovery Dispute Between Public Advocates Office and Southern California Gas Company, August 2019 (Not In A Proceeding)*, issued on September 10, 2019. Available at: <https://www.publicadvocates.cpuc.ca.gov/>

2019 motion for reconsideration/appeal related to the Balanced Energy Contracts the assigned ALJ had ordered the utility to produce to Cal Advocates in the November 1, 2019 Ruling,<sup>11</sup> and SoCalGas' May 22, 2020 motion to quash a Commission subpoena ordering the utility to make its SAP system available to Cal Advocates.<sup>12</sup> Among other things, the Draft Resolution explained that the statutory discovery provisions of the Public Utilities Code "represent a clear legislative determination that the exercise of the power to review material by the Commission staff, including Cal Advocates, is an integral part of California's scheme to regulate investor-owned public utilities."<sup>13</sup>

The Draft Resolution was circulated for public review and comment and subsequently the document was revised to address some of those comments. The Draft Resolution's treatment of the First Amendment issues and its denial of SoCalGas' request for reconsideration regarding the Balanced Energy Contracts and the subpoena's reach, remained essentially the same. The revised Draft Resolution was unanimously voted out

---

[/media/cal-advocates-website/files/legacy3/4---alj-ruling-resolving-discovery-dispute---9-10-2019-1.pdf](https://www.publicadvocates.cpuc.ca.gov/-/media/cal-advocates-website/files/legacy3/4---alj-ruling-resolving-discovery-dispute---9-10-2019-1.pdf).

<sup>11</sup> *Administrative Law Judge's Ruling in the Discovery Dispute Between Public Advocates Office and Southern California Gas Company, October 7, 2019 (Not in a Proceeding)* issued on November 1, 2019 available at <https://www.publicadvocates.cpuc.ca.gov/-/media/cal-advocates-website/files/legacy3/4---alj-ruling-11-1-19.pdf>.

<sup>12</sup> See *Draft Resolution of Administrative Law Judge (ALJ) Regina DeAngelis regarding Denial of Southern California Gas Company's December 2, 2019 Motion for Reconsideration/Appeal of the November 1, 2019 Administrative Law Judge's Ruling and Addresses Other Related Motions* (Draft Resolution), available at <https://www.publicadvocates.cpuc.ca.gov/-/media/cal-advocates-website/files/legacy3/1--draft-resolution-alj391-issued-102920docx.pdf> and *Commission Resolution of Administrative Law Judge (ALJ) Regina DeAngelis regarding Denial of Southern California Gas Company's December 2, 2019 Motion for Reconsideration/Appeal of the November 1, 2019 Administrative Law Judge's Ruling and Addresses Other Related Motions* issued October 29, 2020; Subpoena issued May 5, 2019, available at <https://www.publicadvocates.cpuc.ca.gov/-/media/cal-advocates-website/files/legacy/subpoena-to-socalgas-for-accounting-database-access---service-copy.pdf>.

<sup>13</sup> Draft Resolution, p. 13. The effectiveness of the Resolution was eventually stayed in response to SoCalGas' petition for writ to the California Court of Appeal.

at the Commission’s December 17, 2020 voting meeting, issued on December 21, 2020, and effective 30 days later.<sup>14</sup>

Both Cal Advocates and SoCalGas sought rehearing of the Resolution. In response to the applications for rehearing, the Commission eliminated the requirement that SoCalGas submit attorney declarations attesting to the accuracy of its responses to Cal Advocates’ data requests.<sup>15</sup> The Commission also clarified the rationale for its determination that SoCalGas had not demonstrated that responding to the data requests violated its First Amendment rights, but the Resolution was otherwise unchanged.<sup>16</sup>

SoCalGas sought Appellate Court review of the Resolution, alleging that Cal Advocates’ efforts to review shareholder accounts and contracts in the not-in-a-proceeding accounting review violated the utility’s First Amendment rights, including its rights of free speech and association.<sup>17</sup> The court concluded that the data request for the Balanced Energy Contracts was “not carefully tailored to avoid unnecessary interference with [SoCalGas’] protected activities.”<sup>18</sup>

### III. OVERVIEW OF CURRENT DISPUTE

In emails and letters sent variously to the Commission’s Executive Director, the Commission’s General Counsel, and Cal Advocates’ Chief Counsel dated April 20, 2023, April 25, 2023, and July 5, 2023,<sup>19</sup> SoCalGas asserts that *SoCalGas v. CPUC* requires the

---

<sup>14</sup> Resolution p. 1.

<sup>15</sup> Denial of Rehearing, D.21-03-001 p. 27.

<sup>16</sup> Denial of Rehearing, D.21-03-001 pp. 25-27.

<sup>17</sup> SoCalGas Writ Petition pp. 34-35 (“The Commission’s rulings imperil SoCalGas’ rights under the First and Fourteenth Amendments to the United States Constitution and Article I of the California Constitution, and its due-process and other rights.” SoCalGas’ Writ Petition further noted that its First Amendment and Article I rights include “freedoms of speech and association, along with the right to petition the government for redress of grievances.” Available at <https://www.publicadvocates.cpuc.ca.gov/-/media/cal-advocates-website/files/legacy3/1---socialgas-writ-of-review-et-seq.pdf>.

<sup>18</sup> *SoCalGas v. CPUC*, 87 Cal App. 5th p. 345.

<sup>19</sup> SoCalGas’ April 20, 2023 letter is appended as Attachment A.2. SoCalGas’ April 25, 2023 email is part of an email chain appended at A.3. SoCalGas’ July 5, 2023 letter is appended at A.4.

return or destruction of the Balanced Energy Contracts it provided to Cal Advocates pursuant to the November 1, 2019 ALJ Ruling and the contract documents produced in response to a data request in its 2019 GRC.<sup>20</sup> SoCalGas contends that “the continued use, possession, and dissemination of these documents (or materials derived from the documents) by or on behalf of Cal Advocates or any other Commission staff causes irreparable harm to SoCalGas by violating its established rights and chilling its legitimate free speech and associational rights protected under the First Amendment.”<sup>21</sup>

The Commission’s General Counsel responded via email to SoCalGas’ April 20, 2023 letter the following day, informing SoCalGas that since the documents in question relate to an open CPUC proceeding, the appropriate procedure for resolving the matter was “through the normal discovery process and with the oversight of the ALJ.”<sup>22</sup> SoCalGas then replied that it was seeking the return of documents that had not been produced in an open proceeding,<sup>23</sup> to which a Commission attorney responded:

The documents in question were produced to the Public Advocates Office as part of a discovery process that is currently overseen by ALJ DeAngelis. To the extent that your client seeks relief regarding the Public Advocates Office and the documents disclosed as part of that discovery process, you must do so before the assigned ALJ.<sup>24</sup>

On October 2, 2023 SoCalGas filed its petition to modify Resolution ALJ-391 that is the subject of this response.

---

<sup>20</sup> See FNs 3 and 5 above.

<sup>21</sup> See Attachment A.4, July 5, 2023 letter from SoCalGas attorney Julian Poon to Rachel Petersen, Executive Director of the Commission, and Christine Hammond, the Commission’s General Counsel pp. 1-2.

<sup>22</sup> See Attachment A.3, April 21, 2023, email from Christine Hammond, the Commission’s General Counsel to SoCalGas attorney Julian Poon. Darwin Farrar, Cal Advocates Chief Counsel, reiterated Ms. Hammond’s point in a subsequent email that is available as part of Attachment A.3.

<sup>23</sup> See Attachment A.3, April 25, 2023 email from SoCalGas attorney Julian Poon to Cal Advocates Chief Counsel Darwin Farrar.

<sup>24</sup> See Attachment A.3, April 26, 2023 email from Edward Moldavsky of the Commission’s Legal Division to SoCalGas attorney Julian Poon.

#### IV. DISCUSSION

##### A. The Resolution should be revised, but not as requested by SoCalGas.

As implied by SoCalGas' Petition, and established by Commission practice,<sup>25</sup> the Commission has the authority to revise the Resolution to address the Appellate Court's decision in *SoCalGas v. CPUC*. Consequently, the Resolution should be revised, but not as SoCalGas proposes.

As an initial matter, the utility's reading of *SoCalGas v. CPUC* is overly broad, and ultimately wrong. Indeed, SoCalGas identifies nothing in *SoCalGas v. CPUC* that requires the Commission or Cal Advocates to return or destroy the Balanced Energy Contracts. This is because there is no such requirement. Indeed, nothing in *SoCalGas v. CPUC* directs the Commission to do anything.

*SoCalGas v. CPUC* merely and appropriately sets forth the legal infirmities the court found with the Resolution. How to address those infirmities is properly left to the Commission.

While the parties agree that, given *SoCalGas v. CPUC*, some modification of the Resolution is in order, where the parties differ markedly is with regard to *how* the Resolution should be revised.<sup>26</sup> As set forth in detail below, Cal Advocates opposes the unsupported and unsustainable modifications proposed by SoCalGas as being unnecessary, unduly burdensome, and contrary to the Commission's statutory obligations.

##### B. SoCalGas' proposed modifications to the Resolution are unnecessary.

As *SoCalGas v. CPUC* makes clear, the SoCalGas writ petition rested on claims of two aspects of First Amendment infringement. First, SoCalGas expressed the concern

---

<sup>25</sup> See, e.g., D.12-06-003, Sec. 4.1 (Commission would consider both existing evidence as well as "additional evidence" to fully implement the Court ruling); D.20-19-041 (opening an Order to Show Cause for the utilities' violations of Rule 1.1).

<sup>26</sup> In deference to Rule 16.4 of the Commission's Rules of Practice and Procedure, Cal Advocates will file a separate Petition for Modification rather than list here the modifications it believes are appropriate.



“that if SCG’s non-public contracts and communications were disclosed to the Commission there would be a ‘chilling effect on [SCG] and [its] ability to engage in activities which are lawful,’ which ‘could limit [SCG’s] future associations’ ... .<sup>27</sup> The Court of Appeal correctly dismissed this claim as “nothing more than a circular argument about a subjective fear.”<sup>28</sup>

SoCalGas’ second claim of infringement rested on concerns about membership discouragement or withdrawal. The Court of Appeal specifically identified declarations by SoCalGas contractors “who stated they would be less likely to associate with [SoCalGas] if information about *their* political efforts were disclosed to the Commission” as presenting a First Amendment claim.<sup>29</sup> The Court of Appeal identified these declarations as presenting the type of objective and articulable facts “suggesting that enforcement of the data requests insofar as they pertained to shareholder expenditures would incite ‘consequences that objectively could dissuade persons from affiliating with the organization.’”<sup>30</sup>

Rather than the unsupported and unsustainable modifications proposed by SoCalGas, the Commission can modify the Resolution to address the issue actually identified by the Appellate Court. Specifically, the Resolution need only be modified to direct that the names, addresses, and identifying information of the entities referenced in the documents be redacted.<sup>31</sup> Modifying the Resolution to ensure such anonymity effectively addresses the foundational issue identified in *SoCalGas v. CPUC*, while allowing the Commission to obtain the information it needs to fulfil its statutory obligations.

---

<sup>27</sup> *SoCalGas v. CPUC*, p. 343.

<sup>28</sup> *SoCalGas v. CPUC*, pp. 343-344.

<sup>29</sup> *SoCalGas v. CPUC*, p. 344 (emphasis added).

<sup>30</sup> *SoCalGas v. CPUC*, p. 344 (emphasis added), citing *Dole, supra*, 921 F.2d pp. 973, 974.

<sup>31</sup> Any revisions to the Resolution should be clear that such redactions are limited to 100% shareholder-funded contracts, and would not apply where the utility books a contract to ratepayers and moves the contract to a shareholder account after a request for the contract is made. SoCalGas’ contracts with ratepayer-funded vendors could include any necessary disclaimers regarding this disclosure obligation in its contract solicitation documents.

**C. The Commission has an obligation to protect ratepayers’  
First Amendment rights to be free from compelled speech.**

The *SoCalGas v. CPUC* court readily acknowledges that: “A regulated utility may not use ratepayer funds for advocacy-related activities that are political or do not otherwise benefit ratepayers,”<sup>32</sup> and that “ratepayers should not have to bear the costs of public relations efforts in this area, which according to [SoCalGas], are designed primarily to increase load by promoting natural gas use to business and government leaders.”<sup>33</sup> This is consistent with the well-established principle that:

Dues, donations and contributions, if included as an expense for rate-making purposes, become an involuntary levy on ratepayers, who, because of the monopolistic nature of utility service, are unable to obtain service from another source and thereby avoid such a levy.<sup>34</sup>

In deference to the above, the Commission has long since established that ratepayers have a First Amendment right to be free from compelled speech as occurs when their funds are used to support advocacy for shareholder interests.<sup>35</sup>

Because booking political activity costs to above-the-line accounts infringes on ratepayers’ rights to be free from compelled speech,<sup>36</sup> the Commission has an obligation to ensure such infringement does not occur.<sup>37</sup> SoCalGas ignores this obligation and

---

<sup>32</sup> *SoCalGas v. CPUC*, p. 344, citing *Southern California Edison Co.* (2012) Cal.P.U.C. (Nov. No. 12-11-051) [Lexis 555, \*765].

<sup>33</sup> *SoCalGas v. CPUC*, p. 345.

<sup>34</sup> *Pacific Telephone and Telegraph Co. v. CPUC*, 62 Cal. 2d 634 (1965) p. 668. California Supreme Court *quoting with approval* from CPUC Decision No. 67369; U.S. Const., 1st Amend.; Cal. Const. art. I, § 3.

<sup>35</sup> See discussion of the right to be free from compelled speech in Cal Advocates Opening Brief in SoCalGas’ 2024 General Rate Case (GRC), filed August 14, 2023 in A. 22-05-015, pp. 366-370 and 387-388.

<sup>36</sup> *Id.*

<sup>37</sup> This is not a matter of mere speculation. As evidenced in the GRC, SoCalGas has engaged in a pattern of booking costs to ratepayers, and claiming “error” or “mistake” when caught since 2015. See *id.*, pp. 364-402; California Environmental Justice Alliance Opening Brief, pp. 96-105; and Cal Advocates Reply Brief in the GRC, pp. 7-11 (summarizing SoCalGas’ use of ratepayer funds for codes and standards advocacy beginning in 2015).

requests modifications that would undermine Commission authority and compromise its ability to fulfill its statutory obligations to ratepayers.

Rather than adopt SoCalGas' proposed modifications, the Commission can modify the Resolution to make clear that ratepayers have a competing First Amendment right to be free from compelled speech that is no less important than the utility's First Amendment right related to its political activities. As part of such a modification, the Commission can affirm its right – and the rights of its staff – to examine *all* of SoCalGas' books and records at any time.

**D. SoCalGas' requests regarding sanctions should be denied.**

SoCalGas urges that the question of sanctions related to its untimely production of the Balanced Energy Contracts be taken off the table. Specifically, SoCalGas urges that the Resolution be modified to remove “the mooted suggestion that SoCalGas might be subject to contempt, sanctions, or fines in connection with these events.”<sup>38</sup> SoCalGas overstates its case. SoCalGas is at risk of “contempt, sanctions, or fines” for a variety of actions it has taken related to not only the Resolution, but other actions in both Cal Advocates' not-in-a-proceeding review.<sup>39</sup> Consequently, it would be wholly inappropriate to grant the relief requested.

**V. CONCLUSION**

For the reasons set forth above, the Commission should deny SoCalGas' October 2, 2023 petition to modify the Resolution.

---

<sup>38</sup> SoCalGas Petition to Modify, p. 1.

<sup>39</sup> See, e.g., *Public Advocates Office Motion To Compel Southern California Gas Company To Provide Remote Access To SAP Database To Audit Ratepayer Accounts*, October 1, 2021 at <https://www.publicadvocates.cpuc.ca.gov/-/media/cal-advocates-website/files/legacy3/1---10-21-21-caladvocates-motion-to-compel-access-to-socalgas-ratepayer-accts.pdf>.

Respectfully submitted,

/s/ *TRACI BONE*

---

TRACI BONE  
Attorney

Public Advocates Office  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102  
Cell Phone: (415) 713-3599  
Email: [Traci.Bone@cpuc.ca.gov](mailto:Traci.Bone@cpuc.ca.gov)

November 1, 2023

# **ATTACHMENTS**

## **Attachment A.2**

**SoCalGas Ltr to GC and CalPA Re Use of  
1st A Information 4-20-23**

April 20, 2023

VIA E-MAIL & U.S. MAIL

Christine Jun Hammond  
Darwin Farrar  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

Re: *Southern California Gas Company v. Public Utilities Commission*, No. B310811

Dear Ms. Hammond and Mr. Farrar:

It has come to the attention of our client, Southern California Gas Company (“SoCalGas”), that the Public Advocates Office (“Cal Advocates”) has inappropriately used and disclosed a contract (Agreement No. 5660056525) in contravention of the California Court of Appeal’s judgment in *Southern California Gas Company v. Public Utilities Commission* (2023) 87 Cal.App.5th 324, review den. Apr. 19, 2023. SoCalGas hereby requests that Cal Advocates and/or the California Public Utilities Commission (the “Commission”) immediately remedy this.

On October 7, 2019, in relation to Data Request CalAdvocates-SC-SCG-2019-05 (“August 2019 Data Request”) but outside of a formal Commission proceeding, Cal Advocates filed a motion to compel production of certain constitutionally protected contracts and contract amendments of SoCalGas. On November 1, ALJ DeAngelis granted that motion. In compliance with the ALJ’s ruling, on November 5, 2019, SoCalGas produced the contracts at issue “under protest” in order “to stay in compliance with the ALJ Ruling” even though it did “not believe that it should be required to produce the documents until its appeal is heard and resolved.”<sup>1</sup> SoCalGas also informed Cal Advocates that the “documents are confidential and should not be shared with anyone until SoCalGas’ appeal is heard and resolved.”

The Commission denied SoCalGas’s administrative appeal in Resolution ALJ-391, as modified by Decision 21-03-001 (hereinafter, “Resolution ALJ-391”), denying SoCalGas’s application for rehearing as well. SoCalGas then filed a petition for review of Resolution ALJ-391 in the California Court of Appeal on March 8, 2021. The California Court of Appeal granted that petition, and on January 6, 2023, it issued a published decision. After holding that the August 2019 Data Request (among other discovery demands) impermissibly violated SoCalGas’s rights under the First Amendment, the Court vacated Resolution ALJ-391 “with respect to shareholder data sought by the Commission for which [SoCalGas]

---

<sup>1</sup> Corinne M. Sierzant email to Stephan Castello, Nov. 5, 2019.

April 20, 2023

Page 2

asserts its First Amendment right of association.” (*Southern California Gas Company, supra*, 87 Cal.App.5th at p. 346.) On April 19, the California Supreme Court denied the Commission’s petition for review and its request for depublication, thereby confirming the Court of Appeal’s decision as binding law. Therefore, as it applies to the constitutionally protected information demanded in the August 2019 Data Request, Resolution ALJ-391 is now null and void.

In the ongoing General Rate Case (“GRC”) for SoCalGas and San Diego Gas & Electric (“SDG&E”),<sup>2</sup> Cal Advocates submitted testimony<sup>3</sup> and workpapers<sup>4</sup> discussing and attaching Agreement No. 5660056525 that SoCalGas produced under protest, on November 5, 2019, in response to the August 2019 Data Request. Such use contravenes the judgment of the California Court of Appeal.

SoCalGas therefore demands that Cal Advocates comply with the terms of the Court of Appeal’s judgment and published opinion forthwith by: (1) withdrawing the aforementioned testimony and workpapers (public and confidential versions), as well as anything derived therefrom or incorporating any information therefrom,<sup>5</sup> from the GRC; (2) removing the contracts, all references to the contracts, and any other references to SoCalGas’s constitutionally protected information from its testimony and workpapers (public and confidential versions); (3) confirm that Cal Advocates has not disclosed or shared information with third parties or anyone outside the Commission concerning the contracts and other materials that were produced under protest in response to Cal Advocates’ data requests (August 2019 Data Request or PubAdv-SCG-001-SCS); and (4) return all copies of the contracts and other materials that were produced under protest in response to Cal Advocates’ data requests (August 2019 Data Request and PubAdv-SCG-001-SCS). For the same reasons, we hereby demand, on behalf of our client San Diego Gas & Electric Company (“SDG&E”), that Cal Advocates take the same actions with respect to any documents produced under protest by SDG&E in response to PubAdv-SDG&E-001-SCS.

---

<sup>2</sup> A.22-05-015; A.22-05-016 (Consolidated).

<sup>3</sup> Report on the Results of Operations for San Diego Gas & Electric Company Southern California Gas Company Test Year 2024 General Rate Case – Political Activities Booked to Ratepayer Accounts [Exhibit CA-23C-WP], pp. 23–24.

<sup>4</sup> Workpapers to Report on the Results of Operations for San Diego Gas and Electric Company Southern California Gas Company Test Year 2024 General Rate Case – Political Activities Booked to Ratepayer Accounts [Exhibit CA-23-WP], WP 61, pp. 141–153.

<sup>5</sup> See Section II.A.5 (pages 23–24) from the confidential and public versions of the testimony, in which Cal Advocates’ witness not only quoted the scope of work but also described the scope of work.

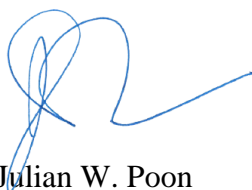


April 20, 2023

Page 3

Please confirm receipt of this letter and advise, by Monday, April 24, 2023, whether Cal Advocates will comply in full with the foregoing demands; if so, please also promptly confirm once Cal Advocates has finished complying in full. We reserve all of SoCalGas's and SDG&E's rights with respect to the foregoing, including but not limited to seeking any appropriate relief from the Commission and the courts.

Sincerely,

A handwritten signature in blue ink, appearing to read "Julian W. Poon". The signature is stylized with a large loop at the beginning and a long horizontal stroke extending to the right.

Julian W. Poon

Cc: Carrie G. Pratt  
Edward Moldavsky  
Dale Holzschuh

## **Attachment A.3**

**Emails re SoCalGas 4-20-23 Ltr**

**From:** Moldavsky, Edward <[Edward.Moldavsky@cpuc.ca.gov](mailto:Edward.Moldavsky@cpuc.ca.gov)>  
**Sent:** Wednesday, April 26, 2023 12:25 PM  
**To:** Poon, Julian W. <[JPoon@gibsondunn.com](mailto:JPoon@gibsondunn.com)>  
**Cc:** Hammond, Christine J. <[christine.hammond@cpuc.ca.gov](mailto:christine.hammond@cpuc.ca.gov)>; Farrar, Darwin <[darwin.farrar@cpuc.ca.gov](mailto:darwin.farrar@cpuc.ca.gov)>; Pratt, Carrie G. <[carrie.pratt@cpuc.ca.gov](mailto:carrie.pratt@cpuc.ca.gov)>; Holzschuh, Dale A. <[dale.holzschuh@cpuc.ca.gov](mailto:dale.holzschuh@cpuc.ca.gov)>; Ball, Matthew <[MNBall@gibsondunn.com](mailto:MNBall@gibsondunn.com)>  
**Subject:** RE: [EXTERNAL] Southern California Gas Company v. Public Utilities Commission, No. B310811

Mr. Poon,

While you have sent your recent inquiries to both the CPUC General Counsel and the Public Advocates Office Chief Counsel, this email only responds on behalf of the Commission. The documents in question were produced to the Public Advocates Office as part of a discovery process that is currently overseen by ALJ DeAngelis. To the extent that your client seeks relief regarding the Public Advocates Office and the documents disclosed as part of that discovery process, you must do so before the assigned ALJ. As an example, filing a motion before that Decisionmaker is an administrative remedy that is available to your client. That motion process would allow for the specific identification of the documents in question, developing a record on the manner that the documents were provided to the Public Advocates Office and its treatment of those documents, and determining whether the Court order requires any further steps to be taken with those documents.

It goes without saying the Commission will comply with the Court order.

Thank you,

Ed Moldavsky  
CPUC Staff Counsel

**From:** Poon, Julian W. <[JPoon@gibsondunn.com](mailto:JPoon@gibsondunn.com)>  
**Sent:** Tuesday, April 25, 2023 2:07 PM  
**To:** Farrar, Darwin <[darwin.farrar@cpuc.ca.gov](mailto:darwin.farrar@cpuc.ca.gov)>; Hammond, Christine J. <[christine.hammond@cpuc.ca.gov](mailto:christine.hammond@cpuc.ca.gov)>  
**Cc:** Pratt, Carrie G. <[carrie.pratt@cpuc.ca.gov](mailto:carrie.pratt@cpuc.ca.gov)>; Moldavsky, Edward <[Edward.Moldavsky@cpuc.ca.gov](mailto:Edward.Moldavsky@cpuc.ca.gov)>; Holzschuh, Dale A. <[dale.holzschuh@cpuc.ca.gov](mailto:dale.holzschuh@cpuc.ca.gov)>; Ball, Matthew <[MNBall@gibsondunn.com](mailto:MNBall@gibsondunn.com)>  
**Subject:** RE: [EXTERNAL] Southern California Gas Company v. Public Utilities Commission, No. B310811

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Mr. Farrar: As you should be aware, Agreement No. 5660056525 was not the only document SoCalGas produced under protest in response to the August 2019 Data Request. On November 5, 2019, SoCalGas also produced under protest a total of 8 documents consisting of a number of contracts and contract amendments. In addition, SoCalGas produced one more contract and amendments thereto under protest on December 4, 2019, in response to PubAdv-

SCG-001-SCS. To SoCalGas's knowledge, these documents have not been introduced in any open Commission proceeding. Consequently, as to those documents, there is no basis for your contention that they are "documents submitted in an open Commission proceeding to which SoCalGas is a party." Rather, compliance is due now that the California Supreme Court has denied the Commission's petition for review and request for depublication and the Court of Appeal has issued its remittitur.

For the reasons explained in my April 20, 2023 letter, the continued possession and use of the documents produced under protest by the Commission, Cal Advocates, or any of its staff or related entities, individuals, or parties is a violation of the Court of Appeal's binding judgment in *Southern California Gas Company v. Public Utilities Commission* (2023) 87 Cal.App.5th 324, review den. Apr 19, 2023. As to those documents, SoCalGas therefore reiterates its demand that the Commission and Cal Advocates comply with the terms of the Court of Appeal's judgment and published opinion forthwith by: (1) confirming that Cal Advocates has not disclosed or shared information with third parties or anyone outside the Commission concerning the documents in question; and (2) return all copies of the documents in question to SoCalGas. For the same reasons, we make the same demand on behalf of SDG&E with respect to any documents produced under protest in response to PubAdv-SDG&E-001-SCS.

Please advise, by close of business this Wednesday, April 26, whether the Commission and Cal Advocates will comply in full with their obligations under the law, including under binding judgments of the courts. We reserve all of SoCalGas's and SDG&E's rights with respect to the foregoing, including but not limited to seeking any and all appropriate relief from the courts. Thank you.

Regards,

**Julian W. Poon**

**GIBSON DUNN**

Gibson, Dunn & Crutcher LLP  
333 South Grand Avenue, Los Angeles, CA 90071-3197  
Tel +1 213.229.7758 • Cell +1 626.399.4171 • Fax +1 213.229.6758  
[JPoon@gibsondunn.com](mailto:JPoon@gibsondunn.com) • [www.gibsondunn.com](http://www.gibsondunn.com) • [bio](#)

**From:** Farrar, Darwin <[darwin.farrar@cpuc.ca.gov](mailto:darwin.farrar@cpuc.ca.gov)>

**Sent:** Monday, April 24, 2023 2:11 PM

**To:** Hammond, Christine J. <[christine.hammond@cpuc.ca.gov](mailto:christine.hammond@cpuc.ca.gov)>; Poon, Julian W. <[JPoon@gibsondunn.com](mailto:JPoon@gibsondunn.com)>

**Cc:** Pratt, Carrie G. <[carrie.pratt@cpuc.ca.gov](mailto:carrie.pratt@cpuc.ca.gov)>; Moldavsky, Edward <[Edward.Moldavsky@cpuc.ca.gov](mailto:Edward.Moldavsky@cpuc.ca.gov)>; Holzschuh, Dale A. <[dale.holzschuh@cpuc.ca.gov](mailto:dale.holzschuh@cpuc.ca.gov)>; Ball, Matthew <[MNBall@gibsondunn.com](mailto:MNBall@gibsondunn.com)>

**Subject:** RE: [EXTERNAL] Southern California Gas Company v. Public Utilities Commission, No. B310811

**[WARNING: External Email]**

Mr. Poon,

As you well know, the California Public Utilities Commission and not the independent Public Advocates Office was a party to the Court of Appeals litigation. This makes it incumbent upon the Commission to direct the Public Advocates Office compliance with the requirements of the recent Court of Appeals decision. The fact that the demands you make go to documents submitted in an open Commission proceeding to which SoCalGas is a party, shows that you are or should be aware that a proper venue for your request already exists. Accordingly, I join Ms. Hammond in urging SoCalGas to look to the proceedings and procedures it is already engaged in at the Commission if it genuinely seeks the relief requested.

Yours,

Darwin E. Farrar  
Chief Counsel,  
the Public Advocates Office

**From:** Hammond, Christine J. <[christine.hammond@cpuc.ca.gov](mailto:christine.hammond@cpuc.ca.gov)>  
**Sent:** Friday, April 21, 2023 6:36 PM  
**To:** Poon, Julian W. <[JPoon@gibsondunn.com](mailto:JPoon@gibsondunn.com)>; Farrar, Darwin <[darwin.farrar@cpuc.ca.gov](mailto:darwin.farrar@cpuc.ca.gov)>  
**Cc:** Pratt, Carrie G. <[carrie.pratt@cpuc.ca.gov](mailto:carrie.pratt@cpuc.ca.gov)>; Moldavsky, Edward <[Edward.Moldavsky@cpuc.ca.gov](mailto:Edward.Moldavsky@cpuc.ca.gov)>; Holzschuh, Dale A. <[dale.holzschuh@cpuc.ca.gov](mailto:dale.holzschuh@cpuc.ca.gov)>; Ball, Matthew <[MNBall@gibsondunn.com](mailto:MNBall@gibsondunn.com)>  
**Subject:** RE: [EXTERNAL] Southern California Gas Company v. Public Utilities Commission, No. B310811

Mr. Poon,

As this concerns a matter in an open CPUC proceeding, it is appropriate for you bring your discovery dispute before the assigned ALJ and pursue your options through the normal discovery process and with the oversight of the ALJ.

Best,  
Christine Hammond

**Christine Jun Hammond (she/her)**  
**General Counsel**  
**California Public Utilities Commission**  
505 Van Ness Avenue  
San Francisco, California 94102  
O: (415) 703-2682  
[Christine.Hammond@cpuc.ca.gov](mailto:Christine.Hammond@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:** Goh, Jing <[JGoh@gibsondunn.com](mailto:JGoh@gibsondunn.com)> **On Behalf Of** Poon, Julian W.  
**Sent:** Thursday, April 20, 2023 2:16 PM  
**To:** Hammond, Christine J. <[christine.hammond@cpuc.ca.gov](mailto:christine.hammond@cpuc.ca.gov)>; Farrar, Darwin <[darwin.farrar@cpuc.ca.gov](mailto:darwin.farrar@cpuc.ca.gov)>  
**Cc:** Pratt, Carrie G. <[carrie.pratt@cpuc.ca.gov](mailto:carrie.pratt@cpuc.ca.gov)>; Moldavsky, Edward <[Edward.Moldavsky@cpuc.ca.gov](mailto:Edward.Moldavsky@cpuc.ca.gov)>; Holzschuh, Dale A. <[dale.holzschuh@cpuc.ca.gov](mailto:dale.holzschuh@cpuc.ca.gov)>; Poon, Julian W. <[JPoon@gibsondunn.com](mailto:JPoon@gibsondunn.com)>; Ball, Matthew <[MNBall@gibsondunn.com](mailto:MNBall@gibsondunn.com)>  
**Subject:** [EXTERNAL] Southern California Gas Company v. Public Utilities Commission, No. B310811

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Ms. Hammond & Mr. Farrar:

Please see the attached letter of today's date, which we are requesting a response to by close of business, Monday, April 24, 2023. Thank you.

Regards,

**Julian W. Poon**

## GIBSON DUNN

Gibson, Dunn & Crutcher LLP  
333 South Grand Avenue, Los Angeles, CA 90071-3197  
Tel +1 213.229.7758 • Cell +1 626.399.4171 • Fax +1 213.229.6758  
[JPoon@gibsondunn.com](mailto:JPoon@gibsondunn.com) • [www.gibsondunn.com](http://www.gibsondunn.com) • [bio](#)

---

This message may contain confidential and privileged information for the sole use of the intended recipient. Any review, disclosure, distribution by others or forwarding without express permission is strictly prohibited. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.

Please see our website at <https://www.gibsondunn.com/> for information regarding the firm and/or our privacy policy.

---

This message may contain confidential and privileged information for the sole use of the intended recipient. Any review, disclosure, distribution by others or forwarding without express permission is strictly prohibited. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.

Please see our website at <https://www.gibsondunn.com/> for information regarding the firm and/or our privacy policy.

# **Attachment A.4**

**SoCalGas Ltr to CPUC Executive Dir  
7-5-23**

July 5, 2023

VIA E-MAIL & U.S. MAIL

Rachel Peterson  
Christine Jun Hammond  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

Re: *Southern California Gas Company v. Public Utilities Commission*, No. B310811

Ms. Peterson and Ms. Hammond:

Following the issuance of the Second Appellate District's unanimous, published decision in *Southern California Gas Company v. Public Utilities Commission* and the Court of Appeal's issuance of its remittitur to the Commission,<sup>1</sup> I am writing to ask that the Commission direct its Public Advocates Office ("Cal Advocates") and any other applicable staff to take immediate steps to return or destroy all documents in their possession that have been confirmed to be protected by Southern California Gas Company's ("SoCalGas") First Amendment constitutional rights.

Regrettably, despite multiple requests by SoCalGas, Cal Advocates has taken the position that it does not have to return the documents because the "Appellate Court Decision does not order the return of any materials."<sup>2</sup> Cal Advocates has not only continued to maintain possession of the documents but has used the documents and their contents in the ongoing General Rate Case ("GRC") proceedings for SoCalGas and San Diego Gas & Electric ("SDG&E").<sup>3</sup> Cal Advocates' Chief Counsel has indicated it is "incumbent upon the Commission to direct the Public Advocates Office[']s compliance with the requirements of the recent Court of Appeals decision," and this letter is directed to the Commission's attention so you may order Cal Advocates (and any other staff who may have the documents in their possession) to return or destroy the documents in compliance with the Court's judgment. As described below, the continued use, possession, and dissemination of these documents (or materials derived from the documents) by or on behalf of Cal Advocates or any other Commission staff causes irreparable harm to SoCalGas by violating its established

---

<sup>1</sup> *S. Cal. Gas Co. v. P.U.C.* (2023) 87 Cal.App.5th 324, review den. (Apr. 19, 2023); *see also S. Cal. Gas Co. v. P.U.C.* (Apr. 25, 2023) B310811, Remittitur.

<sup>2</sup> *Public Advocates Office Response to Southern California Gas Company's Motion to Strike Portions of Testimony and Workpapers Based on First Amendment Claims*, filed in A.22-05-015 on May 18, 2023.

<sup>3</sup> A.22-05-015; A.22-05-016 (Consolidated).



July 5, 2023

Page 2

rights and chilling its legitimate free speech and associational rights protected under the First Amendment.

The undeniable injuries from Cal Advocates' improper retention of these materials are further highlighted by recent events. As SoCalGas pointed out in correspondence to the Commission's General Counsel on April 20, 2023, Cal Advocates and possibly also other Commission staff remain in possession of documents that SoCalGas produced under protest and that have now been confirmed as protected under the First Amendment. As noted above, rather than promptly returning or destroying these materials, Cal Advocates has introduced or attempted to introduce the documents multiple times in the ongoing GRC proceedings despite SoCalGas's repeated objections based on the Court of Appeal's published decision. The first instance of Cal Advocates' violation of the Court of Appeal's decision was when Cal Advocates introduced one of the documents, Agreement No. 5660056525, as part of its witness testimony and supporting workpapers in the GRC. In addition to violating SoCalGas's constitutional rights, this improper disclosure likely violates Cal Advocates' duties to maintain the confidentiality of information under Public Utilities Code Section 583.<sup>4</sup> SoCalGas sought to strike the improper use and disclosure of this protected material through a Motion to Strike, filed on May 3, 2023, in the GRC.<sup>5</sup> The ALJ granted, in part, the Motion on June 12, 2023 and ordered Cal Advocates to revise and resubmit its GRC submission in order to protect information properly shielded by the First Amendment within five days. In violation of the ALJ's order, Cal Advocates still has not revised its testimony and workpapers to remove SoCalGas's First Amendment protected material. In addition, because the ALJ did not require the return or destruction of the at-issue material, Cal Advocates has been emboldened to take further extra-constitutional action.

During evidentiary hearings in the GRC, Cal Advocates, on numerous occasions and in at least three separate exhibits, sought to admit into evidence all of SoCalGas's First Amendment protected contracts and the contents of the contracts that were produced under protest, even though, pursuant to the Court of Appeal's decision, Cal Advocates should no longer have access to those contracts. Cal Advocates' counsel's continued misrepresentations in the GRC that the contracts she is trying to admit into the record were not covered by the Court of Appeal's decision is baseless. These contracts were the exact

---

<sup>4</sup> Pub. Util. Code, § 583: "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."

<sup>5</sup> SoCalGas reserves the right to pursue further relief or remedies, as it deems appropriate, to address Cal Advocates' improper use and disclosure of protected materials.

July 5, 2023  
Page 3

contracts that were produced under protest in response to the August 2019 Data Request (CalAdvocates-SC-SCG-2019-05) that was cited in the Court of Appeal's decision six times. These attempts to use SoCalGas's First Amendment protected materials and side-step the Court of Appeal's decision reflect Cal Advocates' continuing disregard for both SoCalGas's constitutional rights and the Court of Appeal's decision and underscore the need for *full compliance* with the Court of Appeal's judgment. Had SoCalGas not detected these First Amendment protected materials in the thousands of pages of Cal Advocates' exhibits that were submitted right before their use in public evidentiary hearings, SoCalGas's First Amendment rights, which were upheld by the Court of Appeal, would have been further compromised. Clearly, the ALJ's ruling on the motion to strike does not obviate the need for the Commission to require Cal Advocates to comply with the Court of Appeal's binding judgment by returning or destroying all protected documents—and any materials derived therefrom reflecting the content of those documents.

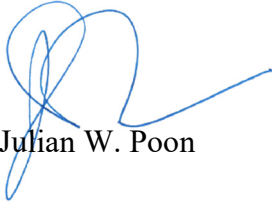
As the Court of Appeal recognized early on, before issuing its decision earlier this year, the “force[d] disclosure of material . . . protected by the United States and California Constitutions” results in “imminent and irreparable injury.” *S. Cal. Gas Co. v. P.U.C.* (Mar. 16, 2021) B310811, Temporary Stay Order. For SoCalGas, the injury is concrete and growing over time. To avoid further irreparable harm to SoCalGas from the continued retention and use of these protected materials, and to bring this matter to a close, we again ask that the Commission direct Cal Advocates and other staff, if any, to promptly destroy and/or return each of the contracts and other materials that were produced under protest in response to Cal Advocates' data requests (August 2019 Data Request or PubAdv-SCG-001-SCS), along with any copies thereof or materials derived therefrom. While the Commission's appellate counsel indicated in earlier correspondence that SoCalGas should file a motion to seek the return or destruction of the protected material, no further action on SoCalGas's part is necessary or appropriate. Cal Advocates has an affirmative duty, as do all Commission staff, to comply promptly with the Court of Appeal's binding judgment and remittitur by returning and destroying the protected material. For the same reasons, I also request, on behalf of SoCalGas's affiliate and my client, SDG&E, that the Commission take the same actions with respect to any documents produced under protest by SDG&E in response to PubAdv-SDG&E-001-SCS, along with any copies thereof or materials derived therefrom.

Please confirm by the close of business Monday, July 10, 2023, that the Commission will ensure compliance with the Court of Appeal's judgment and remittitur by causing the return or destruction of the protected materials produced under protest by SoCalGas and SDG&E, along with any copies thereof or materials derived therefrom.

# GIBSON DUNN

July 5, 2023  
Page 4

Sincerely,

A handwritten signature in blue ink, consisting of a large, stylized initial 'J' followed by a series of loops and a long horizontal stroke extending to the right.

Julian W. Poon

Cc: Matt Baker  
Darwin Farrar  
Carrie G. Pratt  
Edward Moldavsky  
Dale Holzschuh