

**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)

**REPLY TO RESPONSES TO PETITION OF SOUTHERN CALIFORNIA GAS
COMPANY (U 904 G) FOR MODIFICATION OF RESOLUTION
ALJ-391 AND D.21-03-001**

Johnny Q. Tran
SOUTHERN CALIFORNIA GAS COMPANY
555 West Fifth Street, Suite 1400, GT14E7
Los Angeles, California 90013
Telephone: (213) 244-2981
Facsimile: (213) 629-9620
Email: JQTran@SoCalGas.com

Patrick M. Rosvall
BRB LAW LLP
436 14th Street, Suite 1205
Oakland, California 94612
Telephone: (510) 955-1081
Email: patrick@brblawgroup.com

Counsel for Southern California Gas Company

Counsel for Southern California Gas Company

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I. INTRODUCTION

Pursuant to Rule 16.4(g) of the California Public Utilities Commission’s (“Commission’s”) Rules of Practice and Procedure (“Rules”) and in accordance with the Chief Administrative Law Judge’s November 6, 2023 email authorizing Southern California Gas Company (“SoCalGas”) to file a reply, SoCalGas respectfully submits its Reply to Responses to Petition for Modification (“PFM”) of Resolution ALJ-391 and Decision (“D.”) 21-03-001.

The Public Advocates Office’s (“Cal Advocates”) response misrepresents the relief sought through the PFM. SoCalGas’s requested modifications are specific and narrow: the PFM asks for changes to Resolution ALJ-391 and D.21-03-001 to “conform the Commission’s orders to the Court’s holding by requiring the return or destruction of the First Amendment-protected materials, and removing the mooted suggestion that SoCalGas might be subject to contempt, sanctions, or fines in connection with these events.”¹ It does not address—let alone undermine—the Commission’s ability to examine the costs that are included in SoCalGas’s forecast of revenue requirement which are currently being evaluated in SoCalGas’s General Rate Case (“GRC”) Application (“A.”) 22-05-015. The Commission’s evaluation of this matter should be limited to the scope of the PFM and the need to apply the binding law of the case to the specific documents at issue. The Commission should evaluate the PFM on its own terms and ignore Cal Advocates’ inferences about other documents and ratemaking issues governed by different proceedings or irrelevant hypotheticals not before the Commission.

¹ PFM at 1.

Cal Advocates' response is also procedurally improper because it requests additional modifications that are outside the scope of SoCalGas's PFM and fail to comply with Rule 16.4.² As such, Cal Advocates' modification should not be considered as part of SoCalGas's PFM.

II. DISCUSSION

A. Cal Advocates' Response Seeks to Obfuscate the Narrow Relief Sought in the PFM, Which is the Return or Destruction of Specific Documents that Were Submitted Subject to Objections that Were Sustained by the Court of Appeal.

Cal Advocates' response addresses a series of tangential issues but fails to refute the need for the straightforward relief actually requested in the PFM. As explained in the PFM, SoCalGas seeks only the return or destruction of nine (9) documents produced in response to two specific Data Requests: "CalAdvocates-SC-SCG-2019-5," Question 8, and "PubAdv-SCG-001-SCS," Question 1, and any summaries, paraphrases, or notes reflecting the contents of the documents. This is a fixed universe of documents, which were submitted under objection, and which are subject to the determinations reached in *Southern California Gas Co. v. Pub. Util. Comm'n.*³ The Court of Appeal found that these documents are subject to valid First Amendment protections and that "disclosure to the [Public Advocates Office] itself would chill third parties from associating with the utility."⁴ The same is true of Cal Advocates' retention of the same documents. There is no reason for the Commission to address any policy issues, ratemaking issues, or additional legal issues to apply the Court's straightforward determinations to the relief requested. Cal Advocates' attempts to distract from this relief are unavailing and need not be addressed to grant the Petition.

B. Ordering the Return or Destruction of Documents in Accordance with the Court of Appeal's Opinion Does Not Impede the Commission's Ability to Verify that Rates Do Not Fund Political Activities.

While the PFM does not raise any ratemaking issues, Cal Advocates nevertheless argues that by ordering the return or destruction of documents in accordance with the Court of Appeal's Opinion, the Commission would somehow be prevented from verifying that political activities

² Cal Advocates admits the insufficiency of its suggested modifications in its Footnote 26 stating "[i]n 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." Cal Advocates Response at 6, n.26.

³ *Southern California Gas Co. v. Pub. Util. Comm'n.*, 87 Cal.App.5th 324, 346 (2023).

⁴ *Id.* at 344.

costs are not included in rates and violate “ratepayers’ Constitutional right to be free from compelled speech.”⁵ There is no basis for this inference. The costs associated with the documents at issue were charged to below-the-line accounts and were not included in SoCalGas’s revenue request in any GRC, past or present.⁶ Therefore, none of the costs were or are being requested to be funded by ratepayers and ratepayers’ rights against compelled speech are not implicated.

Further, the costs that SoCalGas did include in its revenue request are currently being evaluated and considered in SoCalGas’s pending GRC before the Commission in A.22-05-015. In that proceeding, the Commission has the ability to review any and all political activities that are included in SoCalGas’s GRC forecast, to the extent Cal Advocates claims any are included. Again, the costs of the contracts at issue in this PFM are not included in SoCalGas’s GRC request. As to those costs that are not included in SoCalGas’s GRC forecast, the assigned GRC ALJ has already excluded the details of those costs from the GRC. In fact, the assigned GRC ALJ ordered Cal Advocates to redact from its testimony information about one of the contracts that SoCalGas is requesting to be returned or destroyed.⁷

C. Cal Advocates’ Alternative Recommendation that the Documents be Redacted Instead of Returned or Destroyed Is Not Appropriate.

Cal Advocates suggests that in lieu of returning or destroying the documents at issue, it be directed to redact “the names, addresses, and identifying information of the entities referenced in the documents.”^{8,9} Cal Advocates goes further to argue that “such anonymity effectively

⁵ Cal Advocates’ Response at 2.

⁶ See A.22-05-015, Reply of Southern California Gas Company in Support of May 3, 2023 Motion to Strike Portions of Testimony and Workpapers Containing First Amendment Protected Materials (May 26, 2023) at 3-4.

⁷ See A.22-05-015, Administrative Law Judge’s Ruling Granting in Part Public Advocates’ Motion to Enter Testimony, Workpapers, and Other Evidence Regarding Southern California Gas Company’s Pattern of Booking Political Activities to Ratepayer Accounts (October 19, 2023) at 7-8; *see also* A.22-05-015, Administrative Law Judge’s Ruling Granting in Part Southern California Gas Company’s Motion to Strike Portions of Public Advocates’ Testimony and Workpapers and Clarifying the Process to Identify Accounting Errors in this Proceeding (June 12, 2023) at 5.

⁸ Cal Advocates’ Response at 7.

⁹ Notably missing from this list of redactions is whether information related to the actual First Amendment protected activities should be redacted. The issue of what information should be redacted, what information from the documents can Cal Advocates still use, and can Cal Advocates summarize the First Amendment protected activities in their own words, was litigated for months in the GRC. After several rulings and clarifications from the assigned GRC ALJ, an ordered in-person

addresses the foundational issue identified in *SoCalGas v. CPUC*, while allowing the Commission to obtain the information it needs to fulfil its statutory obligations.”¹⁰ Cal Advocates’ argument misses the point and would only perpetuate the improper disclosure of the protected associational materials in a different format.

In compliance with ALJ DeAngelis November 1, 2019 Ruling, SoCalGas produced the documents *under protest*, subject to further adjudication of the constitutional objections attendant to the documents. After producing the documents, SoCalGas filed a motion for reconsideration with the Commission re-asserting its objections and sought “the return or destruction of constitutionally protected materials.”¹¹ In Resolution ALJ-391 and D.21-03-001, the Commission rejected SoCalGas’s objections and request for the return or destruction of the materials. SoCalGas then challenged the Resolution and D.21-03-001 to the Court of Appeal. The Court ruled in favor of SoCalGas on its First Amendment objections, which includes the issue of whether Cal Advocates must “return or destroy” the materials. The Court’s holding necessarily means that SoCalGas’s constitutional objections are sustained and Cal Advocates does not have a right to the materials *at all*. As such, it makes no sense that Cal Advocates may retain the materials, whether redacted or not. If, alternatively, SoCalGas had opted not to produce the documents to Cal Advocates, the Court’s holding means that SoCalGas would not have to produce the documents to Cal Advocates.

Cal Advocates arguments that it needs this information to “fulfil its statutory obligations” was expressly rejected by the Court of Appeal. The Court held that:

PAO’s [Cal Advocates] statutory mandate is to “obtain the lowest possible rate for service,” primarily for residential and small commercial customers. (§ 309.5, subd. (a).) In service of this mandate, the PAO may compel regulated entities to produce or disclose information ‘necessary to perform its duties’—i.e., information relating to “rate[s] of service.”¹²

all-day meet and confer in San Francisco, extensive back and forth between SoCalGas and Cal Advocates’ attorneys, Cal Advocates finally redacted the information in compliance with these prior rulings as confirmed by the ALJ’s October 30, 2023 Ruling.

¹⁰ Cal Advocates’ Response at 7.

¹¹ PFM at 2-3.

¹² *Southern California Gas Co. v. Pub. Util. Comm’n*, 87 Cal.App.5th 324, 345 (2023) (citations omitted).

The Court concluded that “[i]f ratepayers do not pay for advocacy-related activities, the PAO’s mandate is satisfied.”¹³ As confirmed above, none of the costs associated with the contracts at issue have been included in SoCalGas’s GRC forecast and therefore none have been or will be charged to ratepayers.¹⁴

Cal Advocates not only refuses to return or destroy the materials, it further recommends that the “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.”¹⁵ This argument was specifically raised and rejected by the Court of Appeal. The Court stated: “But this just shows that a less invasive discovery process is working, and the PAO can confirm that no funds have been misclassified to ratepayer accounts by reviewing above-the-line accounts.”¹⁶

D. Cal Advocates’ Proposed Modification that the Commission Affirm Its Rights and the Rights of its Staff to Examine All of SoCalGas’s Books and Records at Any Time Ignores the Court of Appeal’s Decision and Other Applicable Legal Constraints.

Cal Advocates requests that the Commission modify the Resolution to “affirm its right – and the right of its staff – to examine *all* of SoCalGas’ books and records at any time.”¹⁷ This proposal not only exceeds the scope of SoCalGas’s PFM and violates Rule 16.4, but is also overbroad and blatantly ignores the constitutional limitations expressly affirmed by the Court of Appeal’s Opinion as well as other applicable laws, such as the attorney-client privilege and work product.

SoCalGas recognizes that the Commission and Cal Advocates have broad discovery authority. However, as the Court of Appeal recognized, Cal Advocates’ discovery rights are not “coextensive with the Commission’s own rights”¹⁸ and Cal Advocates’ discovery powers are not

¹³ *Id.*

¹⁴ Cal Advocates continues to obfuscate accounting versus ratemaking treatment (*see, e.g.*, Cal Advocates’ Response at 8 and n.37), which are fundamentally not the same. SoCalGas’s accounting categorizations (*e.g.*, above-the-line and below-the-line) do not dictate or impact rates. Expenses only impact ratepayers if they are included in SoCalGas’s adjusted-recorded historical years used as the basis of individual workpapers in SoCalGas’s GRC forecast and that forecast amount is approved by the Commission. *See* A.22-05-015, Reply Brief of Southern California Gas Company and San Diego Gas & Electric Company in the Test Year 2024 General Rate Case (Sept. 7, 2023) at 660.

¹⁵ Cal Advocates’ Response at 7, n.31.

¹⁶ *Southern California Gas Co. v. Pub. Util. Comm’n*, 87 Cal.App.5th 324, 346 (2023).

¹⁷ Cal Advocates’ Response at 9.

¹⁸ *Southern California Gas Co. v. Pub. Util. Comm’n*, 87 Cal.App.5th 324, 345 (2023).

