IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION ONE

SOUTHERN CALIFORNIA GAS COMPANY, Petitioner, vs. PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, Respondent.	Case No. B310811 Commission Resolution ALJ-391 & Decision D.21-03-001

RESPONSE OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF REVIEW

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April 18, 2022

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TO THE HONORABLE PRESIDING JUSTICE AND ASSOCIATE JUSTICES OF THE CALIFORNIA COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION ONE:

Pursuant to this Court's Order of March 1, 2022, Respondent California Public Utilities Commission (Commission) respectfully submits its response in opposition to the petition for writ of review (writ petition or petition), filed by Southern California Gas Company (SoCalGas). The Commission expressly incorporates by reference its previously filed answer (filed June 1, 2021) and its answer to amicus briefs (filed September 3, 2021).

The Commission denies that any relief is warranted pursuant to the writ petition.

I. INTRODUCTION

Faced with policies across all levels of government to decarbonize energy services and consumption, Southern California Gas Company has embarked upon a public advocacy campaign to promote its traditional natural gas business model under the guise of presenting "balanced" energy solutions to utility consumers. The instant dispute between the Commission and SoCalGas involves the Commission's statutory obligation to ensure that such advocacy campaigns are not paid for by utility ratepayers.

Recognizing the potential for SoCalGas to leverage ratepayer resources to fund these advocacy campaigns, the Public Advocates Office of the California Public Utilities Commission (Cal Advocates) began to investigate where the money for the utility's pro-gas campaigns was coming from. Cal Advocates is an office of the Commission, comprised entirely of Commission staff, and designated by statute to advance the interests of utility ratepayers. (Public Utilities Code, § 309.5(a).)[1] Cal Advocates found that SoCalGas had allocated over $27 million to operations and maintenance in an "above-the-line"[2] ratepayer account to

[1] Unless otherwise noted, all statutory references are to the Public Utilities Code.

[2] Traditionally, costs recorded in "above-the-line" accounts are intended to be recovered from ratepayers. Costs recorded in "below-the-line" accounts are intended to be paid for by shareholders.

fund its advocacy organization, Californians for Balanced Energy Solutions (C4BES).[3] While SoCalGas has asserted that this was an accounting mistake that has since been corrected, there is a legitimate concern that this is not the case, and even in the absence of such a mistake, Cal Advocates has a statutory right and obligation to investigate.[4]

In response to Cal Advocates' data requests seeking information regarding the funding source of SoCalGas' pro-gas campaigns, SoCalGas refused to allow Cal Advocates to audit its accounts based in part on its claim that the requested discovery infringes upon its First Amendment right of association. What SoCalGas' arguments deliberately ignore is that SoCalGas is a regulated utility whose revenues are derived from captive ratepayers, and whose business is dedicated to the public interest pursuant to law.[5] In exchange for the right to sell gas to captive

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[3] See Petitioner's Appendix (PA) 1928, which is SoCalGas' Work Order Authorization allocating over $27 million to "Balanced Energy" for the Energy Policy and Strategy Team. The spending authorization was approved by a SoCalGas Vice President, with explicit direction stating that the costs should be recorded to an Operations and Maintenance account.

[4] Public Utilities Code section 309.5(e) provides that Cal Advocates "may compel the production or disclosure of any information it deems necessary to perform its duties from any entity regulated by the commission."

[5] *Munn v. Illinois* (1877) 94 U.S. 113, 125-132 (*Munn*) (public utility property "affected with a public interest," and "when private property is devoted to a public use, it is subject to public regulation); *Savage v. Pacific Gas & Electric Co.* (1993) 21 Cal.App.4th 434 (*Savage v. PG&E*) (non-discrimination

(*footnote continued on the next page*)

ratepayers, SoCalGas is legally obligated to make *all* of its accounts and records – including those of its unregulated subsidiaries and affiliates – available to its regulator at any time.[6] Indeed, this obligation extends to the utility's unregulated affiliates and subsidiaries because the law recognizes the ability of the utility to manipulate the finances of these various entities to cross-subsidize its activities improperly.[7]

In its writ petition, SoCalGas tries to carve out its allegedly 100% shareholder-funded accounts from review by asserting that Cal Advocates' request to access those accounts has no nexus or rational relationship to its investigation. However, for the same reasons the Commission and its staff have access to unregulated affiliate and subsidiary accounts, SoCalGas should understand that access to its shareholder-funded accounts is key to any such

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provisions of Pub. Util. Code section 453(a) draws upon the well-established common law doctrine that a monopoly is not free to exercise its power arbitrarily. This doctrine places numerous obligations, including an obligation to avoid discriminatory conduct, upon enterprises operating in the public interest).

[6] Pub. Util. Code, §§ 314(a) & (b); see also *Munn* and *Savage v. PG&E, supra,* regarding obligation to submit to regulation.

[7] Pub. Util. Code, § 314(b). Cal Advocates' need to access SoCalGas' "100% shareholder-funded" accounts is related to this statutory recognition of the ability of utilities to shift funds between ratepayer and shareholder accounts in an attempt to conceal those expenditures and the purpose of those expenditures. Among other things, a review of SoCalGas' below-the-line (shareholder-funded) accounts, combined with access to the invoices for its activities, may quickly establish whether or not SoCalGas is actually booking the costs of its pro-gas campaigns to the proper accounts.

audit. Among other things, a review of SoCalGas' below-the-line, shareholder-funded accounts, combined with access to the contracts and invoices for its activities, is one of the most effective ways for Cal Advocates to confirm the utility's claim that it is actually booking all of the costs of its pro-gas campaigns to those accounts.

SoCalGas' writ petition also proposes that Cal Advocates search for any improperly booked advocacy activities by solely examining its above-the-line ratepayer-funded accounts. SoCalGas fails to explain how this can be done without knowing which work orders and vendor invoices to look for, and what type of work was performed under the invoices – all items requested in Cal Advocates' discovery, which the utility incorrectly claims are protected by the First Amendment.

Contrary to SoCalGas' assertion that Resolution ALJ-391 (Resolution or Res. ALJ-391) fails to establish a compelling or important governmental interest in the data requested, the multiple statutes establishing the Commission's investigatory and discovery powers establish that interest by law.[8] Even SoCalGas does not contend that it has a right to fund political advocacy efforts from ratepayer-funded accounts, and for good reason: The state has a strong interest in preventing

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[8] See, e.g., Pub. Util. Code, §§ 309.5(e), 311(a), 314, 314.5(a), 581, 582, 584, 701 and 702; and *Federal Election Comm. v. Machinists Non-Partisan Political League* (D.C. Cir. 1981) 655 F. 2d 380, 387 (similar to the Federal Trade Commission and the Securities and Exchange Commission, the Commission and Cal Advocates have "broad duties to gather and compile information and to conduct periodic investigations concerning business practices").

ratepayers from being compelled to support SoCalGas' advocacy efforts through state-approved rates that consumers must pay to obtain necessary utility services.

The fundamental question here is not, as SoCalGas claims, whether a regulated utility has the same First Amendment rights to freedom of association as any other entity. Rather, the fundamental question is a simple one: Whether the Commission has the right to information necessary to determine whether a regulated utility is properly booking costs associated with activities that should not be funded by ratepayers. The answer to this question is clearly "yes." Indeed, the Commission and its staff have not only a statutory right, but a statutory *obligation*, to engage in such an inquiry. The only real issue is how much of that information must be retained as confidential pursuant to the Commission's rules and procedures regarding confidential documents, a matter that is still pending before the Commission.

For these reasons, and those addressed below, the Commission respectfully asks the Court to deny the relief sought in SoCalGas' writ petition.

II. BACKGROUND

In May 2019, the ratepayer advocacy staff for Cal Advocates initiated an inquiry into SoCalGas' funding of anti-decarbonization campaigns using "astroturfing" groups. "Astroturfing" refers to "a practice in which corporate sponsors of a message mask their identity by establishing separate organizations to state a position or make it appear as though the movement originates from and has grassroots support." (PA

1470, Resolution ALJ-391, p. 2, n. 1.) Cal Advocates' inquiry focused on the extent to which SoCalGas was using ratepayer funds to support organizations presenting themselves to the Commission as independent grassroots community organizations that also support anti-decarbonization positions held by SoCalGas, such as C4BES and other similar organizations.

Cal Advocates' inquiry was prompted by allegations initially raised in Rulemaking (R.) 19-01-011 (Certified Record (CR) CPUC0006-CPUC0035) when C4BES filed a motion for party status on March 13, 2019, and deliberately misled the Commission by describing itself as "a coalition of natural and renewable natural gas users." (CR CPUC0038.) C4BES had filed that motion under the purview of Rule 1.4 of the Commission's Rules of Practice and Procedure, which requires that entities seeking party status must "fully disclose the persons or entities in whose behalf the filing, appearance or motion is made, and the interest of such persons or entities in the proceeding." (See CR CPUC0038; see also Rules of Practice and Procedure, Rule 1.4(b)(1), Code of Regs, tit. 20, § 1.4 sub. (b)(1).)

Sierra Club challenged the motion on May 14, 2019, asserting that, unbeknownst to the Commission and the public, SoCalGas founded and funded C4BES. (See CR CPUC0041-CPUC0103, R.19-01-011.) Sierra Club asserted that:

> It is fundamentally inappropriate for the interests and bottom line of a regulated entity to be given duplicate representation in a Commission proceeding by an astroturf group it created and substantially controls. Information obtained by

> Sierra Club reveals that SoCalGas was responsible for C4BES' creation, for developing its organizational principles and talking points, and for member recruitment[.]
>
> (CR CPUC0046.)

Sierra Club further stated that:

> While the information Sierra Club has managed to obtain on the relationship between SoCalGas and C4BES is extremely troubling, it is also limited. Sierra Club issued targeted data requests to both SoCalGas and C4BES seeking basic information on the policy control that SoCalGas exercises over C4BES' filings in this proceeding, the extent to which SoCalGas underwrites the costs of C4BES activities, and the full extent of SoCalGas' role in recruiting members to the organization. Both SoCalGas and C4BES refused to respond and a meet and confer failed to resolve this discovery dispute.

(CR CPUC0045, internal citations omitted.)

C4BES disputed Sierra Club's assertions but admitted that SoCalGas was "involved." (CR CPUC0113-14.) SoCalGas offered that "C4BES's filings do not suggest it is represented in this proceeding by an attorney." (CR CPUC0165.) SoCalGas also confirmed that it had a board member on C4BES's board who could be found on C4BES's website (though not in the filed Rule 1.4 motion). (CR CPUC0164-65.) The party status issue was eventually rendered moot by C4BES taking the unusual step of withdrawing its request for party status. (CR CPUC0320-24.)

Cal Advocates responded to Sierra Club's motion to deny party status and stated that Cal Advocates would investigate the

allegations raised by Sierra Club. (See CR CPUC0183-CPUC0186.) The lengthy delays and obfuscation engaged in by SoCalGas have been described in detail to the Court in the Commission's answer at pages 12-22, and is expressly incorporated by reference.

For the reasons discussed herein, the Commission respectfully asserts that SoCalGas is not entitled to any relief pursuant to the writ petition.

III. ARGUMENT

A. Under the applicable "exacting scrutiny" standard of review, the Commission's disclosure requirements are substantially related to a sufficiently important government interest, and reasonably narrowly tailored to advance that interest.

As discussed extensively in the amicus brief filed on July 30, 2021 by Public Citizen and Consumer Watchdog, at pages 10-14, and in the Commission's response to amicus briefs filed September 3, 2021, the United States Supreme Court has recently clarified that exacting scrutiny, rather than strict scrutiny, is the applicable standard for evaluating the First Amendment claims asserted by SoCalGas.[9] (See *Americans for Prosperity Fdn. v. Bonta* (2021) 141 S. Ct. 2373, 2382 (*APF*) (holding that a requirement that charities disclose the identities of financial supporters implicates the freedom of association).) *APF* therefore establishes that, to the extent that the disclosure

[9] The Commission expressly incorporates these arguments by reference.

requirements here trigger First Amendment scrutiny, the appropriate standard is exacting scrutiny, which requires that the disclosure be substantially related to a sufficiently important government interest and that it be reasonably narrowly tailored to advance that interest.

1. The Commission has an important government interest in preventing SoCalGas from subsidizing its advocacy activities with ratepayer funds.

The importance of the state interest articulated by the Commission is clear. Even SoCalGas does not contend that it has a right to fund political advocacy efforts from ratepayer-funded accounts. Such a proposition would be untenable on its face.[10]

Both federal and state regulators have long recognized the importance of this state interest. At the federal level, where wholesale utilities are regulated under the Natural Gas Act and Federal Power Act, the Federal Energy Regulatory Commission and its predecessor agency, the Federal Power Commission, have recognized for decades that "political" expenditures by utilities subject to rate regulation -- including expenditures to influence public opinion on matters of policy as well as to influence the decisions of public officers -- "have a doubtful relationship to rendering utility service," and should not be lumped together in

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[10] The Commission also has an important and substantial state interest in the proper functioning of the regulatory process. (*Pacific Gas & Electric Co. v. Public Utilities Comm.* (2015) 237 Cal.App.4th 812, 845.) Violations of reporting or compliance requirements harm the integrity of this regulatory process. (*Id.*)

accounts with "operating expenses" that are routinely recoverable from ratepayers. (See *In re Alabama Power Co.* (1960) 24 F.P.C. 278, 287.) The agency's position reflects recognition that "on matters which are politically controversial, differences of opinion may and frequently do exist between the companies and their customers, between management and the rate payer," and that separating advocacy expenditures from other expenditures that "must in due course … be paid by rate payer" is necessary to "avoid[] any implication that the companies are entitled without a further showing to charge against the rate payer the cost of political programs favored by the companies but possibly opposed by those who must pay the costs of supporting these enterprises." (*Id.* at 286–87.)

A utility's public advocacy costs are thus not properly chargeable to ratepayers. At the federal level, this concept was codified when Congress enacted the Public Utility Regulatory Policies Act (PURPA) of 1978, Pub. L. No. 95-617, 92 Stat 3117. Statutory provisions in PURPA applicable to electric and gas utilities provide that "[n]o … 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." (See 15 U.S.C. § 3203(b)(5) (gas); 16 U.S.C. § 2623(b)(5) (electric).) The statute broadly defines "political advertising" to include attempts to influence public opinion on "any controversial issue of public importance." (See 15 U.S.C. § 3204(b)(1)(B); 16 U.S.C. § 2625(h)(1)(B).) PURPA also required state utility commissions to consider whether to adopt this

prohibition as a matter of state law and to do so if they determined that the prohibition "is appropriate to carry out the purposes of this chapter, is otherwise appropriate, and is consistent with otherwise applicable State law." (See 15 U.S.C. § 3203(a)(2); 16 U.S.C. § 2623(a)(1).) The Commission adopted this prohibition on the expenditure of ratepayer funds for political advertising and advocacy in 1980. (See *In re Pac. Gas & Elec. Co.* [D.93887] (1981) 7 Cal. P.U.C. 2d 349, at § IX(B)(1).)

The Commission's adoption of the prohibition on charging ratepayers for a utility's advocacy expenditures is consistent with longstanding principles of California regulatory ratemaking law. In *Pacific Telephone & Telegraph Co. v. Public Utilities Comm.* (1965) 62 Cal. 2d 634, the California Supreme Court stated that it "agree[s] with the general policy of the commission that the cost of legislative advocacy should not be passed on to the ratepayers." (*Id.* at 670.) The Supreme Court approvingly quoted the Commission's reasoning that "ratepayers … should not be required to pay for costs of such legislative advocacy without having the opportunity to make their own judgments on what legislative proposals they would or would not favor and to designate who, if anyone, should advocate their interests." (*Id.*)

The Commission has similarly recognized that "ratepayers should not fund" other expenditures that are "inherently political," such as payments to "political organizations," even if such expenditures may have "some attenuated potential rate

benefit." (*In re So. Cal. Edison* (2012) [D.12-11-051], at § 9.8.)[11] Similarly, in a ratemaking proceeding involving SoCalGas, the Commission stated that "ratepayers should not pay the costs associated with SoCalGas'[s] lobbying efforts, whether those efforts are at the federal, state or local level, and whether or not the effort is directed at legislation or administrative action." (*In re So. Cal. Gas* (1993) [D.93-12-043] (52 Cal. P.U.C. 2d 471, at § V(L)(1)(b).) The Commission applied this principle to deny the utility's request that its rates include the cost of its public relations efforts regarding environmental issues, which were "designed primarily to increase load by promoting natural gas use to business and government leaders." (*Id.*)

The California Legislature has also recognized the importance of ensuring that ratepayers do not fund expenditures for utility advocacy on matters of public importance and controversy. A decades-old California statute, for example, prohibits utilities from recovering expenses for advertising that seeks to promote consumption of energy. (See Pub. Util. Code, § 796.) More recently, the Legislature adopted a law in furtherance of the federal PURPA mandate discussed above. That law expressly acknowledges the Commission's obligation to "implement that portion of [PURPA] that establishes the federal standard that no electric utility may recover from any person

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[11] Unless otherwise noted, citations to Commission decisions issued since July 1, 2000 are to the official pdf versions, which are available on the Commission's website at: http://docs.cpuc.ca.gov/DecisionsSearchForm.aspx.

other than the shareholders or other owners of the utility, any direct or indirect expenditure by the electric utility for promotional or political advertising." (See Pub. Util. Code, § 707(a)(5).) Even more broadly, the statute recognizes the interest in "protect[ing] a ratepayer's right to be free from forced speech." (*Id.*)

As the statute's reference to "forced speech" suggests, there are constitutional ramifications to forcing ratepayers to subsidize utility advocacy campaigns. The prohibition against using ratepayer funds for utility advocacy efforts reflects more than just the perception that it could be unfair to allow a utility to use its government-regulated rates to subsidize its expression of views that may be at odds with the beliefs and interests of ratepayers. (See *Alabama Power*, *supra*, 24 F.P.C. at 286.) Protecting ratepayers against such required subsidies for utilities' speech on controversial matters also reflects that, as the U.S. Supreme Court has recognized, the First Amendment "may prevent the government … from compelling certain individuals to pay subsidies for speech to which they object." (*United States v. UnitedFoods, Inc.* (2001) 533 U.S. 405, 411.)

The U.S. Supreme Court has recently reiterated that "[c]ompelling a person to subsidize the speech of other private speakers raises … First Amendment concerns" similar to those present when the government directly compels individuals to engage in speech that they find objectionable. (*Janus v. AFSCME* (2018) 138 S. Ct. 2448, 2464.) Thus, "[b]ecause the compelled subsidization of private speech seriously impinges on

First Amendment rights, it cannot be casually allowed." (*Id.*) In *Janus*, the Court's majority held that such governmentally compelled subsidization is subject to scrutiny at least as stringent as that prescribed in *APF* for disclosure requirements that affect expressive association. (*Id.* at 2465.)

Although the First Amendment compelled-subsidization concerns presented by utility rates and public-employee union agency fees in *Janus* are not identical, protecting individuals from being forced to subsidize the speech of a corporation with which they disagree is, at a minimum, a substantial and even compelling interest, with clear constitutional ramifications. This compelling interest supports efforts by the Commission and Cal Advocates to ensure that SoCalGas does not use ratepayer funds for its political advocacy campaigns. SoCalGas' emphasis on its right to engage in such advocacy does not outweigh the Commission's interest in preventing SoCalGas from violating state law by paying for such expenditures with ratepayer funds.

2. The data requests issued by Cal Advocates are narrowly tailored to serve the government's interest.

In addition to being substantially related to an important government interest, the underlying discovery requests are narrowly tailored to advance that interest. Unlike *APF*, this case involves no "dragnet," across-the-board request for disclosures by organizations that are not even suspected of any wrongdoing. (See *APF*, *supra*, 141 S. Ct. at 2387.) Rather, the demand for an audit was based on the undisputed fact that SoCalGas has in the

past allocated advocacy expenditures to ratepayer accounts. (See SoCalGas Reply at p. 46.) Although SoCalGas characterizes its conduct as merely an accounting error, that characterization does not minimize their conduct's significance. Proper accounting is precisely the point of the Commission's and Cal Advocates' auditing of SoCalGas' compliance with the requirement that ratepayers not subsidize expenses not properly chargeable to them. (See *Alabama Power*, *supra*, 24 F.P.C. at 286–87.) Audit requests directed to entities suspected of improper accounting are precisely the kind of narrowly tailored actions that *APF* approvingly contrasted with the dragnet requests at issue in that case. (See *APF, supra,* 141 S. Ct. at 2386.) That SoCalGas admits it made "accounting" errors is not a reason for limiting the Commission's audit. It is part of the reason an audit is necessary.

Indeed, SoCalGas appears to acknowledge that the Commission and its staff are entitled to access to its books and records as reasonably needed to audit its compliance with its obligation not to allocate its advocacy expenditures to ratepayer accounts. And it claims to have *offered* to allow access to the great majority of the records sought, though not, evidently, to have actually *provided* such access in response to Cal Advocates' data requests and subpoena. Given the utility's admission that Cal Advocates is entitled to access to 96% of its vendor accounts, including "nearly every *shareholder* account," SoCalGas' request that the Commission's order be set aside in its entirety is, even on its own terms, grossly overbroad. (See SoCalGas Reply at p. 31.)

SoCalGas' contention that Cal Advocates requests for access to its records are not narrowly tailored because they are not limited to ratepayer accounts is utterly unfounded. SoCalGas' argument that advocacy expenditures it assigns (or, as in this case, reassigns after an "accounting mistake") to "below-the-line" accounts are off-limits to the Commission ignores the reason that federal regulators first ordered that such expenditures be isolated in separate accounts in the first place: To allow "the separate disclosure and classification of all such controversial items, so as [to] enable a clear understanding and realistic appraisal of the nature thereof." (See *Alabama Power*, *supra*, 24 F.P.C. at 286; see also *Expenditures for Political Purposes—Amendment of Account 426, Other Income Deductions, Uniform System of Accounts, and Report Forms Prescribed for Electric Utilities and Licensees and Natural Gas Companies – FPC Forms Nos. 1 and 2*, (1963) 30 F.P.C. 1539, 1540–42.) By contrast, throwing all such controversial expenditures into a broad category of operating expenses would obscure the nature of the expenses and make more difficult the proper analysis and disposition of such expenses. (*Alabama Power*, *supra*, 24 F.P.C. at 286.) Failure to properly segregate advocacy expenditures into appropriate accounts also interferes with regulators' ability to scrutinize closely any request during ratemaking proceedings that they be recovered from ratepayers and to ensure that the burden of subsidizing the company's political activities is not improperly imposed on ratepayers. SoCalGas' suggestion that examining only ratepayer accounts is sufficient to allow regulators to perform

their function overlooks the strong regulatory interest in ensuring that advocacy expenses have been assigned to the proper below-the-line account. An audit limited to above-the-line accounts cannot fulfill this purpose.

SoCalGas' argument also ignores the important role that examination of the below-the-line account to which advocacy expenditures are supposed to be assigned plays in carrying out the Commission's concededly valid interest in "verify[ing] that the cost[s] of its advocacy activities are not in ratepayer accounts." (SoCalGas Reply at p. 24.) Examination of the expenditures that SoCalGas has assigned to the proper below-the-line account, and identification of the vendors involved, will facilitate identification of similar expenditures that may still be improperly assigned to ratepayer accounts. In addition, analysis of the below-the-line account to determine whether items that regulators would expect to be there are missing will assist the regulators in focusing their efforts on whether those items are hidden in above-the-line accounts. Further, to the extent that payments to the same vendors may be allocated between advocacy work not chargeable to ratepayers and other work that may be properly recoverable from ratepayers, examination of both above-the-line and below-the-line accounts may be necessary to ensure that the allocation is correct. (See *Expenditures for Political Purposes*, 30 F.P.C. at 1541–42.) Finally, review of the relative magnitude of amounts reclassified as below-the-line only after Cal Advocates began its investigation with those that were properly allocated to begin with will provide the context necessary for evaluating SoCalGas'

argument that its improper allocation of expenditures was an inadvertent mistake involving no intentional misconduct.

SoCalGas' argument that the data requests are not narrowly tailored because they do not permit SoCalGas unilaterally to wall off one portion of its accounts and records from Commission scrutiny is unpersuasive. Under the circumstances, access to below-the-line as well as above-the-line accounts is reasonably necessary in order to fulfill the Commission's concededly important regulatory functions, and the data requests are narrowly tailored to serve those interests.

B. SoCalGas' contentions regarding "leaks" should not be relied upon in disposing of its First Amendment claims.

This Court should not accept SoCalGas' unsubstantiated insinuation that Cal Advocates is somehow "leaking" confidential information to the Sierra Club pursuant to "a Common Interest, Joint Prosecution, and Confidentiality Agreement." (Petition at p. 11.) Ignoring section 583, and in the absence of any plausible information demonstrating the existence of such leaks, SoCalGas falsely asserts that "[t]hrough this agreement, Sierra Club can obtain material from SoCalGas pursuant to authority delegated *solely* to CalPA." (Petition at p. 11.) As the Commission explained: "Whether or not Cal Advocates has a 'joint prosecution' agreement with the Sierra Club, it is not relieved of its confidentiality obligations under section 583. Assumed motives have no bearing on such requirements." (D.21-03-001, at p. 13.) The agreement itself provides: "Nothing contained herein, however, will obligate a Party to provide any confidential

information to any other Party." (PA 1304.) On this point, no intentional leaks to Sierra Club or the press have been established by SoCalGas.

SoCalGas also asserts that some disclosures have already occurred by pointing to an inadvertent posting of exhibits on Cal Advocates' website. However, the documents posted were asserted as confidential "[i]n an abundance of caution" because they included employee contact information which was "not relevant to the substance of SoCalGas's Petition." (SoCalGas Application for Leave to File Under Seal, at p. 2; SoCalGas Application for Leave to File Under Seal, Supporting Declaration of Michael H. Dore, at p. 9.) Therefore, that limited inadvertent disclosure has no relevance to the instant petition.

In any event, these temporary disclosures do not illustrate carelessness on the part of the Commission. In addition to the fact that when this issue was brought to the Commission's attention, the exhibits were promptly removed from the website, even SoCalGas disclosed some of the "private" contact information of its employees in its own public filings before this Court. (See, e.g., PA 0128, 0162, 0164, 0312, 0444, 0445, 0519, 0558, 0560.) This resolved situation is quite different from the *APF* case, cited by SoCalGas for the proposition that "[g]iven the State's failure to safeguard confidential information in the past, the Supreme Court concluded that 'the State's assurances of confidentiality are not worth much.'" (SoCalGas Reply at p. 37, citing *APF*, *supra*, 141 S. Ct. 2373, at p. 2388 fn. 2.) SoCalGas

has thus failed to establish that the Commission and its staff are not adhering to confidentiality requirements.

IV. CONCLUSION

Based on the foregoing, as well as the arguments raised in the Commission's answer and the amicus briefs filed in support of the Commission, the writ petition has no merit. For this reason, the Commission respectfully requests that the Court deny SoCalGas' request that it vacate the Commission's orders and deny its request to enjoin the Commission from seeking disclosure of the records at issue.

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April 18, 2022

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