

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

**SOUTHERN CALIFORNIA GAS COMPANY'S (U 904 G) MOTION TO SUPPLEMENT  
THE RECORD AND REQUEST FOR EXPEDITED DECISION BY THE FULL  
COMMISSION ON MOTION FOR RECONSIDERATION/APPEAL REGARDING  
ADMINISTRATIVE LAW JUDGE'S RULING IN THE DISCOVERY DISPUTE  
BETWEEN THE PUBLIC ADVOCATES OFFICE AND SOUTHERN CALIFORNIA  
GAS COMPANY, OCTOBER 7, 2019 (NOT IN A PROCEEDING) IF THE MOTION IS  
NOT GRANTED TO QUASH PORTION OF THE SUBPOENA TO PRODUCE ACCESS  
TO CERTAIN MATERIALS IN ACCOUNTING DATABASES AND TO STAY  
COMPLIANCE UNTIL THE MAY 29<sup>TH</sup> COMPLETION OF SOFTWARE SOLUTION  
TO EXCLUDE THOSE PROTECTED MATERIALS IN THE DATABASES  
(NOT IN A PROCEEDING)**

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**TABLE OF CONTENTS**

- I. INTRODUCTION ..... 1
- II. SUMMARY OF ARGUMENT ..... 4
  - A. By Seeking Information Protected Under the First Amendment In SoCalGas’s SAP System, Cal Advocates Has Opened Up a New Threat to SoCalGas’s Constitutional Rights ..... 4
  - B. The Record on SoCalGas’s December 2, 2019 Motion for Reconsideration/Appeal Should be Supplemented to Include a Full Record of Cal Advocates’ Latest Effort to Infringe SoCalGas’s First Amendment Rights..... 4
  - C. This Latest Controversy Demonstrates The Importance of Resolving the December 2, 2019 Motion for Reconsideration/Appeal on An Expedited Basis, If SoCalGas’s Motion to Quash Is Not Granted..... 5
- III. FACTUAL BACKGROUND..... 6
  - A. The Motion for Reconsideration/Appeal ..... 6
  - B. Cal Advocates’ Data Request and Subpoena Seeking Access to SoCalGas’s Accounting Databases..... 7
  - C. SoCalGas’s SAP System..... 8
  - D. Cal Advocates Leverages the Subpoena to Demand Access To Information Protected By the First Amendment..... 9
- IV. ARGUMENT ..... 13
  - A. The Commission Should Permit SoCalGas to Supplement the Record on Appeal with the Factual Information Related to the Accounting Database Dispute..... 13
  - B. SoCalGas Respectfully Requests That the Commission Expedite Its Decision On the December 2, 2019 Motion for Reconsideration/Appeal If the Motion to Quash is not Granted..... 15
- V. CONCLUSION..... 19

**TABLE OF AUTHORITIES**

**CASES**

*AFL-CIO v. FEC* (D.C. Cir. 2003)  
333 F.3d 168 ..... 15

*Application of PG&E (U 39 E) for Commission Approval Under PUC Section 851 of an Irrevocable License for Use of Utility Support Structures and Equipment Sites to ExteNet Systems (Cal.) LLC* (Cal.P.U.C. Oct. 27, 2016) 2016 WL 6649336 ..... 19

*Britt v. Super. Ct.* (1978)  
20 Cal.3d 844 ..... 4, 15

*Consol. Edison Co. of N.Y., Inc. v. Pub. Serv. Comm’n of N.Y.* (1980)  
447 U.S. 530 ..... 14

*In re Pacific Gas & Elec. Co.*,  
199 P.U.R. 4th 177..... 13

*Pac. Gas & Elec. Co. v. Pub. Utils. Comm’n* (2000)  
85 Cal. App. 4th 86..... 14

*Pac. Gas & Elec. Co. v. Pub. Utils. Comm’n of Cal.* (1986)  
475 U.S. 1 ..... 14

*Perry v. Schwarzenegger* (9<sup>th</sup> Cir. 2010)  
591 F.3d at pp. 1162 ..... 15

*Re Alternative Regulatory Frameworks for Local Exchange Carriers* (1994)  
55 Cal.P.U.C.2d 672 ..... 19

**CONSTITUTIONAL PROVISIONS**

U.S. Const. amend. I ..... 14

U.S. Const. amend. XIV ..... 14

Cal. Const., art. I ..... 14

**STATUTES**

**CAL. PUB. UTILS. CODE § 309.5**..... 6

**CAL. PUB. UTILS. CODE § 314**..... 6

**CAL PUB. UTILS. CODE § 2107**..... 7, 16

**CAL. PUB. UTILS. CODE § 2108..... 16**

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(NOT IN A PROCEEDING)**

Southern California Gas Company (“SoCalGas”) files this motion to supplement the record and request expedited decision by the full California Public Utilities Commission (“CPUC” or “Commission”) on its Motion for Reconsideration/Appeal Regarding Administrative Law Judge’s Ruling (“ALJ Ruling”) in the Discovery Dispute Between The Public Advocates Office and Southern California Gas Company, October 7, 2019 (Not in a Proceeding) (“Motion for Reconsideration/Appeal” or “Appeal”), if SoCalGas’s Motion to Quash Portion of the Subpoena to Produce Access to Privileged Materials in Accounting Databases and to Stay Compliance Until the May 29th Completion of Software Solution to Exclude Those Protected Materials in the Databases (“Motion to Quash”) is not granted.<sup>1</sup>

**I. INTRODUCTION**

The November 1, 2020 ALJ Ruling ordered SoCalGas to produce contracts from a 100% shareholder-funded account, the BALANCED ENERGY IO. Those contracts are associated with SoCalGas’s 100% shareholder-funded activities, including political association and free

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<sup>1</sup> Pursuant to the email approval from ALJ DeAngelis on May 22, 2020, this is a substitute filing for the May 20, 2020, filing of substantially the same motion.

expression related to advocating for natural gas, renewable natural gas, and green gas as a part of the solution to achieving the State's decarbonization goals in rulemakings and petitioning other governmental bodies. In its December 2, 2019 Motion for Reconsideration/Appeal to the full Commission, SoCalGas expressed grave concern that intrusion into its constitutional rights would continue if the ALJ Ruling was not reversed. (Motion for Reconsideration/Appeal, at p. 17 ["If the Commission . . . does not reverse the ALJ Ruling, it would set a dangerous precedent that could empower Cal Advocates to subjectively and arbitrarily investigate and dictate what investor-owned utilities may and may not say and who they may and may not associate with, regardless of any nexus to ratepayer funding."].)

Regrettably, SoCalGas's fears have come true. At the request of the Public Advocates Office ("Cal Advocates"), the Commission's Executive Director issued a Subpoena seeking real-time access to all information contained in SoCalGas's SAP accounting system, and Cal Advocates is using that Subpoena to demand access to information associated with SoCalGas's 100% shareholder-funded accounts. SoCalGas takes seriously its obligations as a regulated entity to make its books and records available to the Commission and Cal Advocates on request, and it is working as quickly as practicable to grant Cal Advocates access promptly. But the SAP accounting system includes (among other protected materials) information protected from disclosure under the First Amendment of the U.S. Constitution, as well as its California Constitution counterparts. This includes not only information pertaining to the vendors whose contracts are the subject of the Motion for Reconsideration/Appeal, but also information that identifies consultants with whom SoCalGas works to petition the government and regulators, and invoices that in some instances identify the scope of work that the consultants have performed and reflect the strategic deliberations underlying their work.

Cal Advocates' latest incursion into SoCalGas's First Amendment rights is squarely relevant to the issue raised in the Motion for Reconsideration/Appeal. Accordingly, by this Motion SoCalGas makes two specific requests of the Commission: (1) to supplement the record with its briefing (including with declarations) on its recently submitted Motion to Quash related to the accounting database (SAP system) dispute; and (2) to expedite its decision on the Appeal if SoCalGas's Motion to Quash (served May 19, 2020) is not granted—which seeks to stay compliance with the Subpoena on protected materials and until May 29 for the rest of the SAP system, when SoCalGas's technical solution to prevent Cal Advocates from accessing the First Amendment-protected material (and privileged material) in the SAP system will be complete and SoCalGas can provide Cal Advocates with access to the remainder of its SAP system. If the stay is granted, SoCalGas can provide remote access to the SAP database in a manner that prevents Cal Advocates from accessing its First Amendment-protected material, and to protect that material until the protected status of such information is finally resolved by the full Commission. If the stay is not granted, this second request in this instant motion is important for the Commission to take quick action, as it is clear from Cal Advocates' latest email responding to SoCalGas's submission of the Motion to Quash that absent "full read-only remote access to its accounts and records – including access to all attachments in its accounting system – no later than this Friday, May 22, 2020, . . . Cal Advocates will, among other things, move for sanctions against SoCalGas for violation of the subpoena." (Declaration of Elliott S. Henry ("Henry Decl. ISO Motion to Supplement"), Exh. A.)

## II. SUMMARY OF ARGUMENT

### A. **By Seeking Information Protected Under the First Amendment In SoCalGas's SAP System, Cal Advocates Has Opened Up a New Threat to SoCalGas's Constitutional Rights**

Cal Advocates has opened up another front on its efforts to obtain production of sensitive, strategic material relating to SoCalGas's 100% shareholder-funded activities, including political association and free expression related to advocating for natural gas, renewable gas, and green gas solutions in rulemakings and petitioning other governmental bodies. As detailed below, Cal Advocates now seeks to obtain information protected by the First Amendment that is stored in SoCalGas's accounting database—its SAP accounting system. Both the United States and California constitutions significantly limit the disclosure of such materials. The ALJ Ruling at issue in the Appeal has emboldened Cal Advocates to continue to assert unlimited authority to investigate SoCalGas's political associations and free expression, even when ratepayer funds are not at issue. That, in turn, has had a substantial chilling effect on SoCalGas's and others' exercise of their constitutional rights to associate with each other, petition the government, and engage in free speech. As SoCalGas noted in its December 2, 2019 Motion for Reconsideration/Appeal, this activity demonstrably runs afoul of the "exacting" scrutiny mandated by the U.S. Supreme Court and the "particularly heavy" burden imposed on the government by the California Supreme Court. (*Britt v. Super. Ct.* (1978) 20 Cal.3d 844, 855.)

### B. **The Record on SoCalGas's December 2, 2019 Motion for Reconsideration/Appeal Should be Supplemented to Include a Full Record of Cal Advocates' Latest Effort to Infringe SoCalGas's First Amendment Rights**

As detailed in the May 19, 2020 Motion to Quash, attached hereto in its entirety as Attachment A, Cal Advocates secured a subpoena seeking access to all information and materials accessible in SoCalGas's accounting system. In meet and confers concerning the Subpoena, Cal



Advocates has made it clear that it insists on gaining access to information associated with SoCalGas's 100% shareholder-funded accounts, despite its knowledge that the Motion for Reconsideration/Appeal—which concerns whether Cal Advocates can lawfully obtain information on such accounts—is pending before the full Commission. In fact, Cal Advocates has specifically identified such material as a category of information in which it is particularly interested. (Attachment A [Declaration of Elliott S. Henry in Support of Motion to Quash [“Henry Decl. ISO MTQ”], Exh. F, p. 1 [E-mail from T. Bone to E. Henry dated May 8, 2020]). These continued and increasingly invasive efforts by Cal Advocates to pry into SoCalGas's protected materials are material to the Commission's review of this issue in the Appeal because they show this is a live issue, that Cal Advocates is increasingly emboldened to target the exact material protected by the First Amendment, and that SoCalGas is being denied adequate procedural protections to vindicate its rights as Cal Advocates leverages the threat of huge daily fines to force SoCalGas to acquiesce to Cal Advocates' improper demands.

**C. This Latest Controversy Demonstrates The Importance of Resolving the December 2, 2019 Motion for Reconsideration/Appeal on An Expedited Basis, If SoCalGas's Motion to Quash Is Not Granted**

Until SoCalGas's Motion to Quash is granted or the Commission grants SoCalGas's December 2, 2019 Motion for Reconsideration/Appeal, whichever is sooner, SoCalGas will continue to suffer harm by being forced to unfairly choose between compliance with Cal Advocates' ever-expanding demands or preserving its fundamental rights. Cal Advocates should not be given free rein to use discovery tools as blunt instruments to force waiver of such rights. To be clear, SoCalGas takes very seriously its compliance with such tools, including the Subpoena at issue, which is why it promptly brought this issue to the Commission's attention once it was clear that efforts at informal resolution were at an impasse over a small scope of materials in this SAP dispute. As exemplified by Cal Advocates' investigations into SoCalGas's

SAP accounting system, SoCalGas will continue to face attempts by Cal Advocates to force disclosure of – and chill – its First Amendment activities. While SoCalGas recognizes that Cal Advocates has broad powers, those powers are not unlimited. If the Motion to Quash is not granted, an expedited ruling on SoCalGas’s Appeal is needed so that a definitive determination can be made – ultimately by the California Court of Appeal or higher courts, if necessary – as to whether SoCalGas should continue to endure Cal Advocates’ ongoing assault on its constitutional rights and to avoid compounding a significant compliance and monetary risk that SoCalGas has every reason to want to avoid.

### **III. FACTUAL BACKGROUND**

#### **A. The Motion for Reconsideration/Appeal**

Because the SAP database contains information protected under the First Amendment, the Subpoena raises the same constitutional issues and some of the same content present in the Appeal filed by SoCalGas pending before the full Commission. The Appeal also involves Cal Advocates’ efforts to obtain information on SoCalGas’s 100% shareholder-funded activities.

On August 13, 2019, CalPA served SoCalGas with a data request seeking “all contracts (and contract amendments) covered by the WOA which created the BALANCED ENERGY IO.” (Motion for Reconsideration/Appeal, at p. 5.) In response, SoCalGas produced contracts funded by both SoCalGas ratepayers and shareholders, but it objected to producing its 100% shareholder-funded contracts on the grounds that it exceeded the scope of Cal Advocates’ duties under Public Utilities Code §§ 309.5 and 314. (*Id.*) On October 7, 2019, Cal Advocates moved to compel production of the 100% shareholder-funded contracts. (*Id.* at 6.) In opposition, SoCalGas argued that this request could have a chilling effect on SoCalGas’s First Amendment rights. The ALJ nevertheless granted Cal Advocates motion to compel on November 1, 2019, ordering SoCalGas to produce the documents at issue within *two* business days. On November 4, 2019,

SoCalGas filed an Emergency Motion to Stay the ALJ Ruling. (*Id.* at 8.) But with no ruling on that motion and facing significant potential fines of up to \$100,000 a day (see Pub. Util. Code § 2107), SoCalGas produced the 100% shareholder-funded contracts at issue on November 5, 2019, under protest, and reserved its right to appeal the decision. (*Id.*)

Consistent with Commission precedent establishing the proper procedure to alert the full Commission of an appeal for its consideration where a ruling from an ALJ “may present possible ramifications in other proceedings and/or the issue concerns constitutional rights,” on December 2, 2019, SoCalGas submitted its Motion for Reconsideration/Appeal. (*Id.*) There, SoCalGas explained why the 100% shareholder-funded contracts are entitled to First Amendment protection, and how Cal Advocates failed to meet its evidentiary burden of demonstrating both that it had a compelling government interest in requesting the contracts and that its request was narrowly tailored to achieve that interest. (*Id.* at 10-25.)

**B. Cal Advocates’ Data Request and Subpoena Seeking Access to SoCalGas’s Accounting Databases**

On May 1, 2020, Cal Advocates served SoCalGas with a data request seeking “[r]emote access to the SoCalGas SAP system to a Cal Advocates auditor no later than May 8, and sooner if possible” and “[i]f remote access is not possible, identify a time and place where the auditor may access the SoCalGas SAP system no later than May 11, 2020.” (Attachment A, [Henry Decl. ISO MTQ, Exh. C [Data Request No. CalAdvocates-TB-SCG-2020-03]].) The Request also sought “[t]raining and assistance for the auditor” to, among other things, “access all SoCalGas accounts” and “to access information regarding all contracts, invoices, and payments made to third parties.” (*Id.*) The data request further demanded a meet-and-confer conference call on May 6, 2020, only three business days after the request was served. (*Id.*)

On May 5, 2020—just two business days after Cal Advocates served its request, and before SoCalGas even had a chance to respond to the data request, much less meet and confer about it—counsel for Cal Advocates sent the Subpoena to SoCalGas via email. (*Id.* at Exh. A .) The Subpoena ordered SoCalGas to provide Cal Advocates (as well as “staff and consultants working on its behalf”) “access to all databases associated in any manner with the company’s accounting systems,” including “both on-site and remote access; on-site access [to] be provided at the times and locations requested by CalPA” “no later than three business days after service of this Subpoena,” that is, by May 8, 2020. (*Id.* at p. 1.) The Subpoena contained no substantive limit to the material Cal Advocates could access in SoCalGas’s accounting systems. The Subpoena was apparently issued based on a one-page declaration, in which the entirety of the good cause justifying the Subpoena was one sentence long. (*Id.* at pp. 2-3.)<sup>2</sup>

### **C. SoCalGas’s SAP System**

SoCalGas’s SAP accounting system is a vast financial database which includes nearly all financial transactions made by the company, including but not limited to accounting and invoice information on approximately 2,000 vendors. (Attachment A ,[Declaration of Dennis Enrique [“Enrique Decl.”] ¶ 4].) It captures a wide variety of transactions, from invoices with vendors, payments made to third parties, worker’s compensation payments, and individual employee reimbursements. (*Id.* at ¶ 5) Because the system covers all these transactions, it includes a great deal of sensitive information. (*Id.*) The system allows for different levels of access, but those levels of access are generally very broad, and currently cannot be restricted to just certain vendors or discrete categories of information. (Attachment A, Declaration of Kelly Contratto

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<sup>2</sup> The entirety of the purported “good cause” was that “SoCalGas’ responses to data requests in the investigation have been incomplete and untimely.” SoCalGas disputes this substantially oversimplified representation of events.

[“Contratto Decl.”] ¶ 7].)<sup>3</sup> There is no current “out-of-the-box” means of excluding a user from accessing only information and entries for specific vendors, such as law firms or shareholder-funded consultants. (*Id.*) Information protected under the First Amendment affects approximately 20 of the thousands of vendors used by SoCalGas in SAP for any given year. (Attachment A, [Henry Decl. ISO MTQ ¶ 10].)]

**D. Cal Advocates Leverages the Subpoena to Demand Access To Information Protected By the First Amendment<sup>4</sup>**

On May 6, 2020, the parties held a meet-and-confer conference call to discuss the May 1 data request and the Subpoena. During that call, SoCalGas explained that, as a result of the ongoing COVID-19 pandemic, the various legal, accounting, and IT professional personnel required to provide onsite access are primarily working from home, and requiring them to travel to SoCalGas’s offices to facilitate such access would pose significant risk to those employees. (Attachment A [Henry Decl. ISO MTQ, Exh. E [Ltr. from J. Wilson to T. Bone dated May 7, 2020]].) SoCalGas also informed Cal Advocates that if it identified specific organizations and cost centers it sought to investigate, SoCalGas could likely provide remote access to those portions of the database in a couple of days, but that in light of the impacts of the COVID-19 pandemic, providing full remote access would take additional time. (*Id.*) Undeterred, Cal Advocates insisted that SoCalGas should make its full SAP database available online as quickly as possible, and even requested whether onsite access could be provided in San Francisco, which

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<sup>3</sup> Historically, Cal Advocates has requested and received a fixed copy of information pulled from SAP at a certain access level and without attachments. Those productions therefore do not raise the issues presented by the Subpoena and the level of access Cal Advocates is demanding. (Henry Decl. ISO MTQ ¶ 11.)

<sup>4</sup> SoCalGas’s Motion to Quash, submitted on May 19, 2020, contains a full discussion of the meet-and-confer history concerning the Subpoena. (A true and correct copy of the Motion to Quash is attached as Attachment A to this motion.) This section summarizes the key aspects of that history relevant to the First Amendment issues presented in the Appeal.

is subject to its own safer-at-home ordinance generally requiring non-essential employees to work from home. (Henry Decl. ISO Motion to Supplement, ¶ 3.)<sup>5</sup>

Two days later, in an email dated May 8, counsel for Cal Advocates identified eleven accounts for SoCalGas to produce “fixed databases”—that is, copies of the data contained in the SAP database for those accounts. (Attachment A [Henry Decl. ISO MTQ, Exh. F, at p. 1 [Email from T. Bone to E. Henry dated May 8, 2020]].) In that same email, though, counsel for CalPA also asked SoCalGas to produce fixed databases for “all accounts that are 100% shareholder funded,” and “all accounts housing costs for activities related to influencing public opinion on decarbonization policies,” and for SoCalGas to identify “all accounts housing costs for lobbying activities related to decarbonization policies.” (*Id.* at 1-2.) This email first put SoCalGas on notice that Cal Advocates sought to obtain information on 100% shareholder-funded accounts and on accounts related to SoCalGas’s advocacy for natural gas and renewable natural gas as a part of the solution to achieving the State’s decarbonization goals, despite its knowledge that such content protected under the First Amendment is the subject of the Motion for Reconsideration/Appeal. SoCalGas timely asserted its First Amendment objections (as well as objection on other grounds) orally during the meet and confer, and further in its objections to Cal Advocates May 1 companion data request also seeking access to the SAP database. (Henry Decl. ISO MTQ at Exh. G; Henry Decl. ISO Motion to Supplement at Exh. B.)

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<sup>5</sup> Cal Advocates’ demand for onsite access is consistent with its unsupported belief, based only on its “own experience” dealing with the COVID-19 crisis, that SoCalGas’s assertions that the crisis is impairing its ability to respond promptly to Cal Advocates’ discovery requests are “not credible.” (Attachment B, March 24, 2020 Declaration of Johnny Tran in Support of Emergency Protective Order, Exh. C [Email from T. Bone to J. Tran dated March 24, 2020]). It appears Cal Advocates’ belief has not changed, in light of its repeated requests to obtain *onsite* access to SoCalGas’s SAP system, despite the fact that the employees necessary for facilitating such access are working from consistent with the State of California, and the County & City of Los Angeles’s safer-at-home orders.

Three days later, in a letter dated May 11, 2020, SoCalGas informed Cal Advocates that, given Cal Advocates' request for real-time access, it was investigating how to provide Cal Advocates with such access "without waiving issues it has on appeal related to First Amendment protections conferred on its fully shareholder-funded contracts." (Attachment A [Henry Decl. ISO MTQ, Exh. G, at p. 1 [Ltr. from J. Wilson to T. Bone dated May 11, 2020]].)

On May 13, 2020, the parties conducted a third meet and confer concerning the Subpoena. (*Id.* at Exh. J [Ltr. from J. Wilson to T. Bone dated May 18, 2020].) SoCalGas informed Cal Advocates that it had identified a potential solution to provide Cal Advocates with real-time access to its SAP database while also preventing Cal Advocates from accessing information protected by the First Amendment. (*Id.*) Specifically, SoCalGas proposed that "access to attachments and invoices [in the SAP system] could be shut off [by default] but could be requested by CalPA's auditor," and then "[a]n attorney would then be able to quickly review requested invoices and provide . . . non-appeal-related ones to the auditor." (*Id.*) CalPA rejected that offer out of hand, stating that it was "not a workable solution"—even though it would have facilitated Cal Advocates' access to the database more quickly—and that its auditor "needed instantaneous access to all attachments and invoices," despite Cal Advocates' knowledge that the database contained material protected by the First Amendment. (*Id.*) Further, despite rejecting SoCalGas's proposal, which would have facilitated Cal Advocates' getting access sooner, counsel for Cal Advocates insisted on getting some level of access "pronto," that the need to prevent Cal Advocates from accessing protected material was the company's "problem," and that the company needed to "fix" the issue "permanently and quickly." (Henry Decl. ISO Motion to Supplement ¶ 4.)

In a letter dated May 18, 2020, counsel for SoCalGas proposed yet another solution to protect SoCalGas's privileged information from disclosure to Cal Advocates. (Attachment A [Henry Decl. ISO MTQ. at Exh. J, p. 2].) Specifically, SoCalGas stated that it was (and is) writing a special computer program which will prevent Cal Advocates from accessing its material protected by attorney-client privilege and the First Amendment, and that after implementing that program it can provide remote access by May 29, 2020. (*Id.*)

On May 18, 2020, the parties held a fourth meet and confer concerning the Subpoena. (Attachment A [Henry Decl. ISO MTQ ¶ 13].) During that meet and confer, counsel for Cal Advocates did not agree to SoCalGas's request to extend the compliance deadline to May 29. (*Id.*) Instead, it proposed that SoCalGas provide its staff real-time access to the database by the following day, with an agreement that Cal Advocates staff would not look at invoices of law firm accounts. (*Id.*) Cal Advocates further stated that they were not inclined to wait until May 29 for this data, that in their view failure to provide remote access by Tuesday, May 19 would put SoCalGas in violation of the subpoena,<sup>6</sup> and would recommend "some sort of motion" to obtain access sooner. (*Id.*) Although they requested that SoCalGas continue with their planned software solution, Cal Advocates also stated that the parties were at an impasse with respect to the disclosure of the fully shareholder-funded information and that would only be resolved via motion practice. (*Id.*) Cal Advocates also refused to await resolution of the Appeal before moving forward with seeking access to such information. (*Id.*)

On May 19, 2020, SoCalGas submitted its Motion to Quash. (Attachment A.)

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<sup>6</sup> Cal Advocates had granted extensions to respond, a few additional days at a time, up to and including May 19. (Attachment A [Henry Decl ISO MTQ., Exh. E, [Ltr. from J. Wilson to T. Bone dated May 18, 2020].)



#### IV. ARGUMENT

##### A. The Commission Should Permit SoCalGas to Supplement the Record on Appeal with the Factual Information Related to the Accounting Database Dispute.

One of the issues presented in SoCalGas’s Motion for Reconsideration/Appeal (filed on December 2, 2019) is identical to that raised in the current dispute related to SoCalGas’s accounting databases—namely, whether Cal Advocates can lawfully compel the production of information related to SoCalGas’s 100% shareholder-funded activities, including political association and free expression related to advocating for natural gas solutions in rulemakings and petitioning other government bodies. (Appeal, at p.2; Attachment A.)

SoCalGas acknowledges that Cal Advocates has “broad authority and rights with respect to access to utility information, including the utility’s books and records.” (*In re Pacific Gas & Elec. Co.*, 199 P.U.R. 4th 177, 2000 WL 289723 (Cal. P.U.C. 2000).) However, Cal Advocates’ authority to access SoCalGas’s information is not unbounded. SoCalGas, even as a regulated corporation, has First Amendment rights to freedom of speech, association, and the right to petition the government for redress of its grievances.<sup>7</sup> Through the Subpoena, Cal Advocates has requested access to databases that contain sensitive information and documents about SoCalGas’s 100% shareholder-funded activities advocating for natural gas, renewable natural

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<sup>7</sup> It is “well established that corporations such as PG&E [and SoCalGas] have the right to freedom of speech,” as the “inherent worth of the speech in terms of its capacity for informing the public does not depend on the identity of its source.” (*Pac. Gas & Elec. Co. v. Pub. Utils. Comm’n* (2000) 85 Cal. App. 4th 86, 93). Indeed, the United States Supreme Court has long rejected the notion that a corporation’s status as a regulated entity “lessens its right to be free from state regulation that burdens its speech.” (*See Pac. Gas & Elec. Co. v. Pub. Utils. Comm’n of Cal.* (1986) 475 U.S. 1, 17 fn. 14, plurality opinion; see also *Consol. Edison Co. of N.Y., Inc. v. Pub. Serv. Comm’n of N.Y.* (1980) 447 U.S. 530, 534 fn. 1 [plaintiff’s status as a regulated utility “does not decrease the informative value of its opinions on critical public matters”].) The First Amendment therefore secures to SoCalGas (like other persons) the freedom of speech, association, and the right to petition the government for redress of its grievances, as does its California constitutional counterpart. (U.S. Const. amends. I, XIV; Cal. Const., art. I, §§ 2(a), 3(a).)

gas, and green gas solutions in rulemakings and petitioning other government bodies—that is, material reflecting core First Amendment activity. (Attachment A [Henry Decl. ISO MTQ, Exh. A, ¶¶ 9, 11, 13].)

Materials accessible through SoCalGas’s SAP database include, among other things, the identities of the contracting parties and vendors without contracts, invoices, line-item descriptions of activities, the scope of activity contemplated by the agreements related to free expression in support of natural gas solutions, the duration of their agreements, and SoCalGas expenditures. (Attachment A [Enrique Decl. ¶ 6].). Those materials concern not only the two contracts that were the subject of the Motion for Reconsideration/Appeal, but also for other vendors performing 100% shareholder-funded activities related to SoCalGas’s advocacy for natural gas and other solutions reflecting its political views on the State’s energy policy. (*See id.*) The information in the database would further reveal to Cal Advocates other entities and persons with which it associated in furtherance of that expression. (*Id.* ¶¶6-7) They therefore strike at the very heart of SoCalGas’s freedoms under the First Amendment and are entitled to its protections from compelled disclosure to the government. (See, e.g., *Britt, supra*, 20 Cal.3d at p. 861; *Perry, supra*, 591 F.3d at pp. 1162-1163; *AFL-CIO, supra*, 333 F.3d at pp. 168, 170, 177-178).

Because the issues present in the accounting database dispute mirror the issues already before the Commission, the Commission should grant SoCalGas’s request to supplement the record in the Motion for Reconsideration/Appeal. Cal Advocates’ increasingly invasive efforts by Cal Advocates to pry into SoCalGas’s protected information are material to the Commission’s review of this issue in the Appeal because they show this is a live issue, that Cal Advocates is increasingly emboldened to target the exact material protected by the First Amendment, and that SoCalGas is being denied adequate procedural protections to vindicate its rights as Cal

Advocates leverages the threat of fines to force SoCalGas to acquiesce to Cal Advocates' demands. SoCalGas therefore specifically asks all records attached hereto (including the Henry Decl., and Attachments A-D), be added to the record on the December 2, 2019 Motion for Reconsideration/Appeal.

**B. SoCalGas Respectfully Requests That the Commission Expedite Its Decision on the December 2, 2019 Motion for Reconsideration/Appeal If the Motion to Quash is not Granted**

The new dispute regarding First Amendment materials in SoCalGas's accounting database demonstrates the need for an expedited resolution of its December 2, 2019 Motion for Reconsideration/Appeal. While the Motion for Reconsideration/Appeal concerned contracts associated with the BALANCED ENERGY IO, the Subpoena would permit Cal Advocates to access additional SAP information related to those same BALANCED ENERGY IO contracts, as well as learn the names and scope of work information for additional vendors involved in SoCalGas's advocacy for natural gas and renewable natural gas as a part of the solution to achieving the State's decarbonization goals. (Attachment A, [Enrique Decl. ¶ 6].) As explained in the Motion for Reconsideration/Appeal and the May 19, 2020 Motion to Quash, these materials are protected under the First Amendment. Yet because the Commission has not rendered a ruling on that issue, SoCalGas faces a dilemma: It could comply with the Subpoena as issued and disclose materials to Cal Advocates, resulting in a severe chilling effect on its First Amendment associational rights, or it can potentially risk fines of up to \$100,000 a day for refusing to comply. (*See* Cal. Pub. Utils. Code §§ 2107, 2018.) Prompt relief via either granting the Motion to Quash or resolution of the Motion for Reconsideration/Appeal, whichever is sooner, would resolve this dilemma.

The "chilling effect" associated with public disclosure of SoCalGas's 100% shareholder-funded political activities has already been occurring. As Andy Carrasco, Vice President,

Strategy and Engagement and Chief Environmental Officer for SoCalGas attests in his recently submitted declaration:

The sensitive nature of [SoCalGas's] discussions goes beyond the substance of the communications or strategy. It encompasses the identity of the consultant, partner or vendor with whom SoCalGas contracts or engages with. In the political arena, alliances are strategic, and, depending on the circumstance, the disclosure of the identity of the organization or individual with whom SoCalGas associates could negatively impact how SoCalGas – or how the consultant, partner or vendor – is perceived or treated by public officials and other public policy stakeholders. As a result of even the December disclosures of several 100% non-ratepayer funded Balanced Energy IO contracts, the information regarding these associations disclosed to Cal Advocates has altered how SoCalGas and its consultant, partner or vendor associates interact with each other, and it has had a chilling effect on these associations. Such a result has (and would further) unduly impinge upon SoCalGas's constitutional right to free association, and to associate with organizations and individuals of its choosing in exercise of its right to petition the government and advocate its position relating to natural gas, renewable natural gas, and green gas solutions.

(Attachment A, Declaration of Andy Carrasco [“Carrasco Decl.”], ¶ 6.)

Proof of this “chilling effect” also comes from SoCalGas's vendors. For example, one vendor that has contracted with SoCalGas to, among other things, create public and internal communications and develop messaging for the use of natural gas technologies and the advancement of natural gas and renewable gas solutions in the State of California, and has indicated that if the nature of the public affairs work it is doing is disclosed to Cal Advocates, it would drastically alter how it communicates with SoCalGas going forward. (*Id.* at ¶8.) That contractor further states they would be less willing to contract with SoCalGas knowing that its non-public association with SoCalGas may be disclosed. (*Id.*) That vendor notes that disclosure to Cal Advocates will cause it to suffer negative consequences, the breach of confidentiality its clients require for its services, the cost of responding to inquiries, and the breach of privacy which would hinder the work it does with SoCalGas. (*Id.*) That vendor would be reluctant to

continue associating with SoCalGas if its information was shared, and would seriously considering limiting its association with SoCalGas in the future. (*Id.*).

Another vendor/contactor that works with government entities has serious concerns about their business being affected. (*Id.*) They have even indicated that they would not have done business with SoCalGas if they had known their information and contact details would have been disclosed. (*Id.*) Indeed, they stated that due to the compelled contract disclosures that SoCalGas previously made, and the specter of additional compelled disclosures from the company's accounting database concerning 100% non-ratepayer-funded activities, SoCalGas is being forced to reconsider its decisions relating to political activities and associations. (*Id.* at ¶ 9.) Going forward, SoCalGas will be less willing to engage in contracts and communications knowing that its non-public association and communications with consultants, business partners and others on SoCalGas's political interests if they would be subject to compulsory disclosure. (*Id.*)

That Cal Advocates has already obtained materials on 100% shareholder-funded activities through prior objected-to data requests heightens the perceived risk in associating with SoCalGas. This conduct further chills SoCalGas's political expression, making people and companies less willing to associate with SoCalGas. (*Id.*) Compelling SoCalGas to provide unfettered access to such materials violates SoCalGas's freedoms of speech and association, as well as its right to petition the government.

Absent prompt intervention, as demonstrated by the database dispute, Cal Advocates' increasing incursion on SoCalGas's First Amendment rights will continue unabated. Prompt intervention by the Commission is necessary and appropriate to rectify this forced disclosure which "may present possible ramifications in other proceedings and/or the issue concerns constitutional rights." (*Application of PG&E (U 39 E) for Commission Approval Under PUC*

*Section 851 of an Irrevocable License for Use of Utility Support Structure and Equipment Sites to ExteNet Systems (Cal.) LLC* (Cal. P.U.C. Oct. 27, 2016) 2016 WL 6649336, at p. \*11, citing *Re Alternative Regulatory Frameworks for Local Exchange Carriers* (1994) 55 Cal.P.U.C.2d 672, 680.) It is likewise needed to halt Cal Advocates' continuing demands in reliance on the ALJ Ruling, which are already resulting in widening, unchecked harm to SoCalGas's (and others') constitutional rights.

Further, the ongoing COVID-19 pandemic underscores the need for a prompt decision from the Commission on the December 2, 2019 Motion for Reconsideration/Appeal if the Motion to Quash is not granted. With the significant First Amendment issues unresolved, SoCalGas has had to press its personnel to try to prioritize responding to Cal Advocates' subpoena, notwithstanding the challenges that the pandemic and the Safer-at-Home Orders requiring all residents of the State of California to stay at home as much as possible and to avoid all non-essential travel. (Attachment A [Carrasco Decl. ¶ 10]; *Id.* [Enrique Decl.¶ 8].)<sup>8</sup> Of note, Andy Carrasco, who serves as Vice President, Strategy and Engagement and Chief Environmental Officer for SoCalGas, has been assigned during the COVID-19 pandemic to also serve as the Public Information Officer (PIO) for SoCalGas's Incident Command Structure (ICS). (Attachment A [Carrasco Decl. ¶ 10]; see also Attachment C). Mr. Carrasco's attention, his organization's resources, and other support staff resources have been diverted from these critical COVID-19 efforts to support SoCalGas's ever-increasing discovery demands. (*Id.*; see also Attachment C). SoCalGas has previously explained these challenges to Cal Advocates and in briefing earlier this year. See Attachments B, C, and D.

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<sup>8</sup> These orders arose from Governor Gavin Newsom's proclamation of a State of Emergency in the State of California, in which the incident response level to COVID-19 has been raised to Level 1, the highest level.



**[PROPOSED] ORDER**

On May \_\_, 2020, Southern California Gas Company (“SoCalGas”) Filed A Motion To Supplement The Record And Request For Expedited Decision By The Full Commission On Motion For Reconsideration/Appeal Regarding Administrative Law Judge’s Ruling In The Discovery Dispute Between The Public Advocates Office And Southern California Gas Company, October 7, 2019 (Not In A Proceeding) If The Motion Is Not Granted To Quash Portion Of The Subpoena To Produce Access To Privileged Materials In Accounting Databases And To Stay Compliance Until The May 29th Completion Of Software Solution To Exclude Those Protected Materials In The Databases’ (Not In A Proceeding) (“Motion To Supplement”). The Motion to Supplement requests an order (1) permitting SoCalGas to supplement the record before the Commission on Motion for Reconsideration/Appeal to the Full Commission Regarding Administrative Law Judge’s Ruling in the Discovery Dispute Between Public Advocates Office and Southern California Gas Company, October 7, 2019 (Not in a Proceeding) (the “Motion for Reconsideration/Appeal”); and (2) expeditiously deciding the Appeal if SoCalGas’s Motion to Quash (served May 19, 2020) is not granted. Upon due consideration, SoCalGas’ Motion to Supplement is granted.

**ORDER**

The Motion to Supplement is granted. It, and the exhibits attached thereto, are considered part of the record associated with the Motion for Reconsideration/Appeal. SoCalGas’s December 2, 2019 Motion for Reconsideration/Appeal is granted.

**SO ORDERED**

Dated: \_\_\_\_\_, 2020