

No. _____

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

SECOND APPELLATE DISTRICT, DIVISION ____

SOUTHERN CALIFORNIA GAS COMPANY,

Petitioner,

v.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA,

Respondent.

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

VOLUME 4 OF 10 (PAGES 735 TO 1022 OF 2015)

IMMEDIATE RELIEF REQUESTED BY MARCH 16, 2021

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

GIBSON, DUNN & CRUTCHER LLP

*JULIAN W. POON, SBN 219843, JPOON@GIBSONDUNN.COM
MICHAEL H. DORE, SBN 227442, MDORE@GIBSONDUNN.COM
ANDREW T. BROWN, SBN 311734, ATBROWN@GIBSONDUNN.COM
DANIEL M. RUBIN, SBN 319962, DRUBIN@GIBSONDUNN.COM
MATTHEW N. BALL, SBN 327028, MNBALL@GIBSONDUNN.COM

333 SOUTH GRAND AVENUE
LOS ANGELES, CALIFORNIA 90071-3197
TELEPHONE: 213.229.7000
FACSIMILE: 213.229.7520

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EXHIBIT 4
Data Request CalAdvocates-SCG-051719

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Public Advocates Office
California Public Utilities Commission

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

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

PUBLIC ADVOCATES OFFICE DATA REQUEST

Public Advocates Office-SCG051719

Date: May 23, 2019

To: **Avisha A. Patel**
Attorney for SoCalGas

Phone (213) 244-2954
Email: APatel@semprautilities.com

From: **Stephen Castello**
Analyst

Phone: (415) 703-1063
Email: stephen.castello@cpuc.ca.gov

William Maguire
Attorney for Public Advocates Office

Phone: (415) 703-2642
Email: william.maguire@cpuc.ca.gov

Re: **Data Request No. Public Advocates Office-SCG051719**
Responses Due: June 6, 2019

INSTRUCTIONS

You are instructed to answer the following Data Requests in the above-captioned proceeding, with written, verified responses per Public Utilities Code §§ 309.5 and 314, and Rules 1.1 and 10.1 of the California Public Utilities Commission's Rules of Practice and Procedure. Restate the text of each request prior to providing the response. For any questions, email the Public Advocates Office contact(s) above with a copy to the Public Advocates Office attorney.

Each Data Request is continuing in nature. Provide your response as it becomes available, but no later than the due date noted above. If you are unable to provide a response by this date, notify the Public Advocates Office as soon as possible, with a written explanation as to why the response date cannot be met and a best estimate of when the information can be provided. If you acquire additional information after providing an answer to any request, you must supplement your response following the receipt of such additional information.

Identify the person providing the answer to each data request and his/her contact information. Responses should be provided both in the original electronic format, if available, and in hard copy. (If available in Word format, send the Word document and do not send the information as a PDF file.) All electronic documents submitted in response to this data request should be in readable, downloadable, printable, and searchable formats, unless use of such formats is infeasible. Each page should be numbered. If any of your answers refer to or reflect calculations, provide a copy of the supporting electronic files that were used to derive such calculations, such as

Excel-compatible spreadsheets or computer programs, with data and formulas intact and functioning. Documents produced in response to the data requests should be Bates-numbered, and indexed if voluminous. Responses to data requests that refer to or incorporate documents should identify the particular documents referenced by Bates-numbers or Bates-range.

If a request, definition, or an instruction, is unclear, notify the Public Advocates Office as soon as possible. In any event, answer the request to the fullest extent possible, specifying the reason for your inability to answer the remaining portion of the Data Request.

DATA REQUESTS

1. Did SoCalGas use any ratepayer funding to support the founding and launch of Californians for Balanced Energy Solutions (C4BES)? If yes,
 - a. Please give a full accounting of all ratepayer funding sources.
 - b. Please give a full accounting of how any ratepayer funds were used.
2. Does SoCalGas continue to use any ratepayer funding to support C4BES? If yes,
 - a. Please give a full accounting of all ratepayer funding sources.
 - b. Please give a full accounting of how any ratepayer funds were used.
3. Please provide accounting of all SoCalGas staff who spent work hours on the founding, launch, and continued activities of C4BES.
 - a. List all names of SoCalGas staff who spent work hours on C4BES activities.
 - b. Provide an estimate of the number of hours spent on C4BES activities by each staff member listed in Question 3b.
 - c. Provide the funding source(s) for all staff time, including specification of ratepayer or shareholder funding and the account the time was booked to (balancing account, shareholder account, GRC line item, etc.).
4. Please provide all invoices and contracts to which SoCal Gas is a party for work which relates to the creation or support of C4BES. These include, but are not limited to contracts and invoices related to:
 - a. Retention of Imprenta Communications in developing C4BES objectives and talking points.
 - b. Compensation provided to C4BES board member Matt Rahn.
5. For each invoice and contract provided in response to Question 5, identify:
 - a. Whether ratepayer or shareholder funded (and proportions if necessary)
 - b. The funding source used (e.g. GRC funds, specific balancing accounts, etc.).

END OF REQUEST

EXHIBIT 5

Data Request CALADVOCATES-AW-SCG-2020-01

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Public Advocates Office
California Public Utilities Commission

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

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

PUBLIC ADVOCATES OFFICE DATA REQUEST
No. CalAdvocates-AW-SCG-2020-01

Date: February 14, 2020

Response Requested: **Monday, March 2, 2020**

To: **Corinne Sierzant** Phone: (213) 244-5354
Regulatory Affairs for SoCalGas Email: CSierzant@semprautilities.com

Johnny Q. Tran Phone: (213) 244-2981
Attorney for SoCalGas Email: JQTran@semprautilities.com

From: **Alec Ward** Phone: (415) 703-2325
Analyst for the Email: Alec.Ward@cpuc.ca.gov
Public Advocates Office

Stephen Castello Phone: (415) 703-1063
Analyst for the Email: Stephen.Castello@cpuc.ca.gov
Public Advocates Office

Traci Bone Phone: (415) 703-2048
Attorney for the Email: Traci.Bone@cpuc.ca.gov
Public Advocates Office

INSTRUCTIONS

You are instructed to answer the following Data Requests in the above-captioned proceeding, with written, verified responses per Public Utilities Code §§ 309.5 and 314, and Rules 1.1 and 10.1 of the California Public Utilities Commission’s Rules of Practice and Procedure within ten (10) business days.

Each Data Request is continuing in nature. Provide your response as it becomes available, but no later than the due date noted above. If you are unable to provide a response by the due date, notify the Public Advocates Office within five (5) business days, with a written explanation as to why the response date cannot be met and a best estimate of when the

information can be provided. If you acquire additional information after providing an answer to any request, you must supplement your response following the receipt of such additional information.

This data request does not diminish or excuse any pending written or oral data requests to you.

The Public Advocates Offices expects you to respond to this data request in a timely manner and with the highest level of candor.

Responses:

Restate the text of each request prior to providing the response. Identify the person providing the answer to each data request and his/her contact information. Responses should be provided both in the original electronic format, if available, and in hard copy. (If available in Word format, send the Word document and do not send the information as a PDF file.) All electronic documents submitted in response to this data request should be in readable, downloadable, printable, and searchable formats, unless use of such formats is infeasible. Each page should be numbered. If any of your answers refer to or reflect calculations, provide a copy of the supporting electronic files that were used to derive such calculations, such as Excel-compatible spreadsheets or computer programs, with data and formulas intact and functioning. Documents produced in response to the data requests should be Bates-numbered, and indexed if voluminous. Responses to data requests that refer to or incorporate documents should identify the particular documents referenced by Bates-numbers or Bates-range.

Requests for Clarification:

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

Objections:

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

Assertions of Privilege:

If you assert any privilege for documents responsive to this data request, please provide within five (5) business days to the people list above a privilege log identifying each withheld document, and: (a) a summary description of the document; (b) the date of the document; (c) the name of each author or preparer; (d) the name of each person who received the document; and (e) the legal basis for withholding the document.

Assertions of Confidentiality:

If you assert confidentiality for any of the information provided, please identify the information that is confidential and provide a specific explanation of the basis for each such

assertion. Assertions of confidentiality will be carefully scrutinized and may not be upheld absent a strong showing of the need for confidentiality.

DEFINITIONS

- A. As used herein, the terms “you,” “your(s),” “Company,” “SCG,” and “SoCalGas” mean Southern California Gas Company and any and all of its respective present and former employees, agents, consultants, attorneys, officials, and any and all other persons acting on its behalf.
- B. The terms “and” and “or” shall be construed either disjunctively or conjunctively whenever appropriate in order to bring within the scope of these Data Requests any information or documents which might otherwise be considered to be beyond their scope.
- C. Date ranges shall be construed to include the beginning and end dates named. For example, the phrases “from January 1 to January 31,” “January 1-31,” “January 1 to 31,” and “January 1 through January 31” should be understood to include both the 1st of January and the 31st of January. Likewise, phrases such as “since January 1” and “from January 1 to the present” should be understood to include January 1st, and phrases such as “until January 31,” “through January 31,” and “up to January 31” should also be understood to include the 31st.
- D. The singular form of a word shall be interpreted as plural, and the plural form of a word shall be interpreted as singular whenever appropriate in order to bring within the scope of these Data Requests any information or documents which might otherwise be considered to be beyond their scope.
- E. The term “communications” includes all verbal and written communications of every kind, including but not limited to telephone calls, conferences, notes, correspondence, and all memoranda concerning the requested communications. Where communications are not in writing, provide copies of all memoranda and documents made relating to the requested communication and describe in full the substance of the communication to the extent that the substance is not reflected in the memoranda and documents provided.
- F. The term “document” shall include, without limitation, all writings and records of every type in your possession, control, or custody, whether printed or reproduced by any process, including documents sent and received by electronic mail, or written or produced by hand.
- G. “Relate to,” “concern,” and similar terms and phrases shall mean consist of, refer to, reflect, comprise, discuss, underlie, comment upon, form the basis for, analyze, mention, or be connected with, in any way, the subject of these Data Requests.
- H. When requested to “state the basis” for any analysis (including studies and workpapers), proposal, assertion, assumption, description, quantification, or conclusion, please describe every fact, statistic, inference, supposition, estimate, consideration, conclusion, study, and analysis known to you which you believe to support the analysis, proposal, assertion,

assumption, description, quantification, or conclusion, or which you contend to be evidence of the truth or accuracy thereof.

- I. The term “lobbying” shall be as defined on pages 3 and 4 of the Sempra Political Activities Policy.

DATA REQUEST

1. In 2017, Los Angeles World Airports updated its Alternative Fuel Vehicle Requirement Program.¹ At any time, has SoCalGas lobbied the Los Angeles Board of Airport Commissioners regarding its Alternative Fuel Vehicle Requirement Program?²
2. If the answer to question 1 is yes, please identify:
 - a. Each date that such lobbying occurred;
 - b. The specific issues that the lobbying addressed;
 - c. All of the individuals who authorized the lobbying;
 - d. The name and title of each SoCalGas employee involved in the lobbying;
 - e. Any agent, consultant or firm engaged to support or participate in any manner with the lobbying; and
 - f. The total costs that SoCalGas has incurred in association with this lobbying.
3. With regard to the lobbying described in response to question 2, please provide:
 - a. Any contracts or other business agreements related to the lobbying;
 - b. Any invoices related to the lobbying, regardless of the status of such invoice; and
 - c. Any materials used to prepare for or presented during the lobbying.
4. Please disaggregate the costs identified in response to question 2 into the following categories:
 - a. Labor
 - b. Travel, lodging, meals, and incidental travel expenses
 - c. Consultant costs
 - d. Other
5. Please identify each account to which any portion of the costs identified in response to question 2 were charged.
 - a. State the account name and cost center number.
 - b. State whether the account is ratepayer funded.
 - c. State how much was charged to the account.
6. On October 18, 2017, a press conference was held in South Gate regarding the Advanced Clean Trucks Now Plan.³
 - a. Please describe SoCalGas’s role in this event;
 - b. Please describe the role of SoCalGas’s consultants in this event; and
 - c. Was this press conference intending to influence the type of vehicles the Port of Long Beach should procure? If so, please explain.

¹ “Los Angeles Board of Airport Commissioners Approve Updates to LAX Alternative Fuel Vehicle Requirement Program to Further Improve Airport Air Quality,” Los Angeles World Airports, October 5, 2017.

² The term “lobbying” and its derivatives shall be as defined on pages 3 and 4 of the Sempra Political Activities Policy.

³ “Elected Officials, Health Organizations, Residents Unite in South Gate to Urge Cleaner Trucks Sooner in the Clean Air Action Plan,” Advanced Clean Trucks NOW, October 18, 2017.

7. In SoCalGas's response to Question 1 in Data Request CalAdvocates-SC-SCG-2019-10, SoCalGas stated it lobbied the Port of Long Beach officials regarding the proposed zero emissions transition. Since 2017, has SoCalGas engaged in any other lobbying of the Port of Long Beach officials regarding the proposed emissions transition outside of the disclosed meeting?
8. Since 2017, has SoCalGas lobbied mayors or councilmembers in Long Beach, Los Angeles, or other surrounding cities in an attempt to influence the type of vehicles the San Pedro Bay Ports procure regarding the proposed zero emissions transition?
9. If the answer to either questions 7 or 8 is yes, please identify:
 - a. Each date that such lobbying occurred;
 - b. The specific issues that the lobbying addressed;
 - c. All of the individuals who authorized the lobbying;
 - d. The name and title of each SoCalGas employee involved in the lobbying;
 - e. Any agent, consultant or firm engaged by SoCalGas to support or participate in any manner with the lobbying; and
 - f. The total costs that SoCalGas has incurred in association with this lobbying.
10. With regard to the lobbying described in response to question 9, please provide:
 - a. Any contracts or other business agreements related to the lobbying;
 - b. Any invoices related to the lobbying, regardless of the status of such invoice; and
 - c. Any materials used to prepare for or presented during the lobbying.
11. Please disaggregate the costs identified in response to question 9 into the following categories:
 - a. Labor
 - b. Travel, lodging, meals, and incidental travel expenses
 - c. Consultant costs
 - d. Other
12. Please identify each account to which any portion of the costs identified in response to question 9 were charged.
 - a. State the account name and cost center number.
 - b. State whether the account is ratepayer funded.
 - c. State how much was charged to the account.
13. In SoCalGas's response to Question 1 in Data Request CalAdvocates-SC-SCG-2019-11, SoCalGas stated it lobbied the Los Angeles County Metropolitan Transportation Authority regarding its metro bus fleet. Please describe in narrative form the types of lobbying SoCalGas undertook in this effort.
14. For any lobbying efforts SoCalGas undertook in an attempt to influence the Los Angeles County Metropolitan Transportation Authority regarding the metro bus fleet, please identify:
 - a. Each date that such lobbying occurred;
 - b. The specific issues that the lobbying addressed;
 - c. All of the individuals who authorized the lobbying;
 - d. The name and title of each SoCalGas employee involved in the lobbying;
 - e. Any agent, consultant or firm engaged by SoCalGas to support or participate in any manner with the lobbying; and
 - f. The total costs that SoCalGas has incurred in association with this lobbying.
15. With regard to the lobbying described in response to question 14, please provide:

- a. Any contracts or other business agreements related to the lobbying;
 - b. Any invoices related to the lobbying, regardless of the status of such invoice; and
 - c. Any materials used to prepare for or presented during the lobbying.
16. Please disaggregate the costs identified in response to question 14 into the following categories:
- a. Labor
 - b. Travel, lodging, meals, and incidental travel expenses
 - c. Consultant costs
 - d. Other
17. Please identify each account to which any portion of the costs identified in response to question 14 were charged.
- a. State the account name and cost center number.
 - b. State whether the account is ratepayer funded.
 - c. State how much was charged to the account.
18. Provide all contracts since 2017 between SoCalGas and Imprenta Communications Group, Inc., Marathon Communications, Inc. (excluding Agreement: 5660052135), and Ek, Sunkin & Bai, LLC.
- a. Include any amendments and requisition requests.
 - b. For any contract that refers in any manner to lobbying efforts, including those regarding the Port of Long Beach’s proposed zero emissions transition and the Los Angeles County Metropolitan Transportation Authority’s metro bus fleet procurement, please identify all lobbying events and activities that have occurred or that are anticipated, including the date that they occurred or will occur in the future.
19. Please identify each account to which any portion of the costs identified in response to question 18 were charged.
- a. State the account name and cost center number.
 - b. State whether the account is ratepayer funded.
 - c. State how much was charged to the account.
20. In SoCalGas’s January 17, 2020 cover letter to Elizabeth Echols, Director of the Public Advocates Office, SoCalGas wrote it discovered “communications of an employee that are contrary to SoCalGas’s value.” Please explain the nature of these violations in detail and SoCal Gas’s response to those violations, including, without limitation, steps taken to address any systemic issues revealed by these violations.
21. Has SoCalGas contracted with or begun the process to establish a contract with George Minter or an organization that represents George Minter? If yes, please provide the following:
- a. The contract(s) and any amendment(s)
 - b. The requisition request(s)
 - c. Any invoices received to date
22. In response to Data Request CalAdvocates-SK-SCG-2020-01 Question 4, SoCalGas stated, “an incorrect settlement rule was set up for this IO to FERC 920.0 A&G Salaries, consequently, the costs initially settled to the incorrect FERC account. On September 21, 2019, the SoCalGas Accounting Controller and Accounting Director met with the Strategy, Engagement & Chief Environmental Officer, and confirmed that the Balanced

Energy activities should be classified as FERC 426.4 - Expenditures-Civic & Related Activities/Lobbying Costs.” Please:

- a. Describe how SoCalGas came to be aware that an incorrect settlement rule was set up for IO 300796601.
 - b. Provide all accounting instructions/forms that lead to the incorrect settlement of the costs.
 - c. Provide all accounting instructions/forms that lead to the change described above being effectuated.
 - d. Provide documentation showing that the change described above has been effectuated.
23. Please provide any two distinct Work Order Authorizations signed by Sharon Tomkins between June 2, 2018 and March 20, 2019.
24. Please explain how and to what level of specify SoCalGas’ salaried employees track their time and provide an actual example of a monthly timesheet of a salaried Regional Public Affairs employee with all confidential personnel information redacted.

END OF REQUEST

EXHIBIT 6

Data Request CalAdvocates-TB-2020-03.

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



Public Advocates Office
California Public Utilities Commission

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

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

PUBLIC ADVOCATES OFFICE DATA REQUEST
No. CalAdvocates-TB-SCG-2020-02

Date: March 20, 2020

Response Requested: Within 15 business days but no later than April 13, 2020

To: **Corinne Sierzant** Phone: (213) 244-5354
Regulatory Affairs for SoCalGas Email: CSierzant@semprautilities.com

Johnny Q. Tran Phone: (213) 244-2981
Attorney for SoCalGas Email: JQTran@semprautilities.com

Shawane Lee Phone: (213) 244-8499
Attorney for SoCalGas Email: SLee5@socalgas.com

Stacy Van Goor Email: SVanGoor@sempra.com
Sempra Energy

From: **Traci Bone** Phone: (415) 713-3599
Attorney for the Email: Traci.Bone@cpuc.ca.gov
Public Advocates Office

Alec Ward Phone: (415) 703-2325
Analyst for the Email: Alec.Ward@cpuc.ca.gov
Public Advocates Office

INSTRUCTIONS

General:

You are instructed to answer the following Data Requests in the above-captioned proceeding, with written, verified responses pursuant to Public Utilities Code §§ 309.5 and 314, and Rules 1.1 and 10.1 of the California Public Utilities Commission’s Rules of Practice and Procedure within ten (10) business days.

Each Data Request is continuing in nature. Provide your response as it becomes available, but no later than the due date noted above. If you are unable to provide a response by the due date, notify the Public Advocates Office within five (5) business days, with a written

explanation as to why the response date cannot be met and a best estimate of when the information can be provided. If you acquire additional information after providing an answer to any request, you must supplement your response following the receipt of such additional information.

This data request does not diminish or excuse any pending written or oral data requests to you.

The Public Advocates Offices expects you to respond to this data request in a timely manner and with the highest level of candor

Responses:

Responses shall restate the text of each question prior to providing the response, identify the person providing the answer to each question and his/her contact information, identify all documents provided in response to the question, and clearly mark such documents with the data request and question number they are responsive to.

Responses should be provided both in the original electronic format, if available, and in hard copy. (If available in Word format, send the Word document and do not send the information as a PDF file.) All electronic documents submitted in response to this data request should be in readable, downloadable, printable, and searchable formats, unless use of such formats is infeasible. Each page should be numbered. If any of your answers refer to or reflect calculations, provide a copy of the supporting electronic files that were used to derive such calculations, such as Excel-compatible spreadsheets or computer programs, with data and formulas intact and functioning. Documents produced in response to the data requests should be Bates-numbered, and indexed if voluminous.

Requests for Clarification:

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

Objections:

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

Assertions of Privilege:

If you assert any privilege for documents responsive to this data request, please provide within five (5) business days to the people listed above a privilege log identifying each withheld document, and: (a) a summary description of the document; (b) the date of the document; (c) the

name of each author or preparer; (d) the name of each person who received the document; and (e) the legal basis for withholding the document.

Assertions of Confidentiality:

If you assert confidentiality for any of the information provided, please identify the information that is confidential with highlights and provide a specific explanation of the basis for each such assertion. Assertions of confidentiality will be carefully scrutinized and are likely to be challenged absent a strong showing of the need for confidentiality, with the exception of the confidentiality for sensitive personal identifying information as described below.

Sensitive Personal Identifying Information:

Any sensitive personal identifying information other than an employee's name shall be fully redacted unless otherwise directed. Sensitive personal identifying information includes, without limitation:

- Social security numbers.
- Bank account numbers.
- Passport information.
- Healthcare related information.
- Medical insurance information.
- Student information.
- Credit and debit card numbers.
- Drivers license and State ID information.

Signed Declaration:

The data response shall include a signed declaration from a responsible officer or an attorney under penalty of perjury that you have used all reasonable diligence in preparation of the data response, and that to the best of their knowledge, it is true and complete.

In addition, any claim of confidentiality or privilege shall be supported by a declaration from your attorney stating that your attorney is familiar with the relevant case law and statutes pertaining to claims of confidentiality and privilege such that there is a good faith basis for the claim.

DEFINITIONS

A. As used herein, the terms “you,” “your(s),” “Company,” “SCG,” and “SoCalGas” mean Southern California Gas Company and any and all of its respective present and former employees, agents, consultants, attorneys, officials, and any and all other persons acting on its behalf.

- B. The terms “and” and “or” shall be construed either disjunctively or conjunctively whenever appropriate in order to bring within the scope of these Data Requests any information or documents which might otherwise be considered to be beyond their scope.
- C. Date ranges shall be construed to include the beginning and end dates named. For example, the phrases “from January 1 to January 31,” “January 1-31,” “January 1 to 31,” and “January 1 through January 31” should be understood to include both the 1st of January and the 31st of January. Likewise, phrases such as “since January 1” and “from January 1 to the present” should be understood to include January 1st, and phrases such as “until January 31,” “through January 31,” and “up to January 31” should also be understood to include the 31st.
- D. The singular form of a word shall be interpreted as plural, and the plural form of a word shall be interpreted as singular whenever appropriate in order to bring within the scope of these Data Requests any information or documents which might otherwise be considered to be beyond their scope.
- E. The term “communications” includes all verbal and written communications of every kind, including but not limited to telephone calls, conferences, notes, correspondence, and all memoranda concerning the requested communications. Where communications are not in writing, provide copies of all memoranda and documents made relating to the requested communication and describe in full the substance of the communication to the extent that the substance is not reflected in the memoranda and documents provided.
- F. The term “document” shall include, without limitation, all writings and records of every type in your possession, control, or custody, whether printed or reproduced by any process, including documents sent and received by electronic mail, or written or produced by hand.
- G. “Relate to,” “concern,” and similar terms and phrases shall mean consist of, refer to, reflect, comprise, discuss, underlie, comment upon, form the basis for, analyze, mention, or be connected with, in any way, the subject of these Data Requests.
- H. When requested to “state the basis” for any analysis (including studies and workpapers), proposal, assertion, assumption, description, quantification, or conclusion, please describe every fact, statistic, inference, supposition, estimate, consideration, conclusion, study, and analysis known to you which you believe to support the analysis, proposal, assertion, assumption, description, quantification, or conclusion, or which you contend to be evidence of the truth or accuracy thereof.
- I. Terms related in any way to “lobbying,” lobbyist,” “lobbying firm” and “lobbyist employer” shall, without limitation, be construed broadly and, without limitation, to be inclusive of how those terms are used in the Sempra Energy Political Activities Policy (Policy) and the

California Political Reform Act (Act). For purposes of this data request, the Act's definitions shall understood to include all manner of state, regional, and local government or agencies.¹

DATA REQUEST

1. Please provide all documents related to SoCalGas and Sempra training and reporting programs that are used to ensure compliance with the Sempra Energy Political Activities Policy (Policy). See Policy at Section 1, p. 1 (“the company has a robust training and reporting program in place to ensure compliance”).
2. Regarding the Policy’s requirement at page 3 under “Lobbying” that all employees who engage in lobbying activities are required to report their activity in LATS, please explain what “LATS” is and all of the data fields it contains.
3. Please identify all SoCalGas and Sempra Energy employees who have LATS entries for activity between January 1, 2015 and today, and provide copies of all such LATS entries.
4. Please identify all SoCalGas and Sempra Energy employees who have engaged in lobbying activities at any time between January 1, 2015 and today who do not have LATS entries, and explain why they do not have LATS entries.
5. Please identify all SoCalGas and Sempra Energy employees who have lobbied at any time between January 1, 2015 and today regarding issues related to decarbonization.
6. Please explain how SoCalGas and Sempra decide whether an employee’s work should be allocated to shareholders or ratepayers and who makes such a determination. If this determination varies by business unit, please explain the process for each business unit.
7. Please explain how SoCalGas and Sempra record the cost of employee work that is shareholder-funded, and the accounts where such time is recorded.
8. Please explain how SoCalGas and Sempra record the cost of employee work that is ratepayer-funded, and the accounts where such time is recorded.
9. For all SoCalGas and Sempra Employees who have lobbied at any time between January 1, 2015 and today on behalf of either organization, please identify by each employee and for each year the portion of their time allocated to ratepayer-funded lobbying, and quantify the monetary value of that work for each employee by year.

¹ The Sempra Energy Political Activities Policy defines lobbying broadly on page 3 as: “any action intended to influence legislative or administrative action, including activities to influence government officials, political parties, or ballot measures. Lobbyists can be individual employees or the company that employees them, referred to as a Lobbyist-Employer.”

10. For all SoCalGas and Sempra Employees who have lobbied at any time between January 1, 2015 and today on behalf of either organization, please identify by each employee and for each year the portion of their time allocated to shareholder-funded lobbying, and quantify the monetary value of that work for each employee by year.
11. Please provide a fully executed copy of the entire contractual agreement between SoCalGas and Marathon Communications Inc. including the confidentiality provision which prevents SoCalGas from releasing the prices that Marathon charges for their services without being in breach of contract.² Please also provide supporting documentation to demonstrate that this contract is binding on SoCalGas and has not been superseded by any other contract.
12. For the period between January 1, 2015 and today, please provide all documents submitted to the to the California Public Utilities Commission pursuant to General Order 77 by SoCalGas and Sempra Energy, including both the public and confidential versions of such submissions. To the extent such submissions are available on the company's website, you may provide a link to that information.³

END OF REQUEST

² SoCalGas attorneys asserted during a Meet and Confer discussion on March 19, 2020 that such a term exists in its agreement with Marathon Communications, Inc.

³ We note that a public version of SoCalGas' 2017 GO-77M statement is available on its website, but that no other versions are available.

EXHIBIT 8

**Administrative Law Judge's Ruling In The Discovery
Dispute Between Public Advocates Office And
Southern California Gas Company, August 2019**

(Not In A Proceeding)

September 10, 2019

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

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**ADMINISTRATIVE LAW JUDGE'S RULING IN THE DISCOVERY DISPUTE
BETWEEN PUBLIC ADVOCATES OFFICE AND SOUTHERN CALIFORNIA
GAS COMPANY, AUGUST 2019 (NOT IN A PROCEEDING)**

This ruling resolves the discovery dispute between Southern California Gas Company (SoCalGas) and Public Advocates Office of the California Public Utilities Commission (Cal Advocates) by granting Cal Advocates' August 14, 2019 *Motion to Compel Further Responses from Southern California Gas Company to Data Request- CalAdvocates-SC-SCG-2019-04 (DR SC-SCG-2019-04)*. SoCalGas shall, within two businesses days, provide the unredacted information sought in response to Data Request - CalAdvocates-SC-SCG-2019-04 (DR SC-SCG-2019-04).

1. Background

SoCalGas is regulated by the Commission. On August 14, 2019, Cal Advocates sent via letter to the Commission's President a *Motion to Compel Further Responses from Southern California Gas Company to Data Request - CalAdvocates-SC-SCG-2019-04 (DR SC-SCG-2019-04)*. The data requests referred to in this Motion to Compel were not issued pursuant to any open Commission proceeding. Therefore, no assigned Commissioner exists for this discovery dispute. In this situation, Pub. Util. Code § 309.5(e) provides that the President of the Commission must decide any discovery objections. On September 5, 2019, the President of the Commission referred this dispute to the Chief Administrative Law Judge (ALJ) for resolution. On September 5, 2019, the Chief ALJ designated an ALJ to review and dispose of the dispute.

2. Discussion

The August 14, 2019 Motion to Compel states that SoCalGas responded to Data Request - CalAdvocates-SC-SCG-2019-04 (DR SC-SCG-2019-04) but, regarding Item 1 and 5, redacted information and failed to provide any explanations, declaration, or privilege logs explaining why this information cannot be disclosed to Cal Advocates in unredacted format.¹

On August 26, 2019, SoCalGas sent to the President of the Commission the *Response of SoCalGas to the August 14, 2019 Motion to Compel Further Responses from Southern California Gas Company to Data Request*. In this Response, SoCalGas objects to the Motion to Compel.

On September 5, 2019, the Chief Administrative Law Judge granted Cal Advocates request to file a Reply. On September 9, 2019, Cal Advocates submitted a Reply to SoCalGas' Responses, *Reply of the Public Advocates Office to Response of SoCalGas to August 14, 2019 Motion to Compel Further Responses From Southern California Gas Company to Data Request-CalAdvocates-SC-SCG-2019-04 (DR SC-SCG-2019-04)*. Cal Advocates states that SoCalGas has provided information in response to Item 5. Therefore, it only seeks to compel a discovery response to Item 1.

After reviewing the Cal Advocates' Motion, SoCalGas' Response, and Cal Advocates' Reply, Cal Advocates' Motion to Compel submitted pursuant to Pub. Util. Code § 309.5(e), § 314, and Rule 11.3 of the Commission's Rules of Practice and Procedure is granted.

IT IS SO RULED that the August 14, 2019 Motion to Compel submitted by Cal Advocates pursuant to Pub. Util. Code § 309.5(e), § 314, and Rule 11.3 of the

¹ Prior to filing the Motion to Compel, Cal Advocates and SoCalGas held a meet-and-confer on June 4, 2019. A meet-and-confer was only held on August 12, 2019.

Commission's Rules of Practice and Procedure is granted. SoCalGas shall, within two businesses days, provide the unredacted information sought in response to Item 1 of Data Request – CalAdvocates-SC-SCG-2019-04 (DR SC-SCG-2019-04).

Dated September 10, 2019, at San Francisco, California.

/s/ REGINA M. DEANGELIS

Regina M. DeAngelis
Administrative Law Judge

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INFORMATION REGARDING SERVICE

I have electronically served all persons on the attached.

Administrative Law Judge's Ruling in the Discovery Dispute between
Public Advocates Office and Southern California Gas Company, August 2019
(Not in a Proceeding).

Regina DeAngelis, Regina.deangelis@cpuc.ca.gov

Rebecca Vorpe, Rebecca.Vorpe@cpuc.ca.gov

Avisha Patel, APatel@socalgas.com

The list I use is current as of today's date.

Dated September 10, 2019, at San Francisco, California.

/s/ REGINA M. DEANGELIS

Regina DeAngelis

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EXHIBIT 11
SoCalGas Emergency Motion to Stay
Served March 19, 2020

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

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

**SOUTHERN CALIFORNIA GAS COMPANY’S (U 904 G) EMERGENCY MOTION
FOR A PROTECTIVE ORDER STAYING ALL PENDING AND FUTURE DATA
REQUESTS FROM THE CALIFORNIA PUBLIC ADVOCATES OFFICE SERVED
OUTSIDE OF ANY PROCEEDING (RELATING TO THE BUILDING
DECARBONIZATION MATTER), AND ANY MOTIONS AND MEET AND CONFERS
RELATED THERETO, DURING CALIFORNIA GOVERNMENT COVID-19
EMERGENCY “SAFER AT HOME” ORDERS**

**PUBLIC VERSION
(DECLARATION NUMBERS 4 & 5 CONFIDENTIAL)**

JOHNNY Q. TRAN
SHAWANE L. LEE

Attorneys for:
SOUTHERN CALIFORNIA GAS COMPANY
555 West Fifth Street, Suite 1400
Los Angeles, California 90013
Telephone: (213) 244-2981
Facsimile: (213) 629-9620
Email: JQTran@socalgas.com

March 25, 2020

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

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

**SOUTHERN CALIFORNIA GAS COMPANY’S (U 904 G) EMERGENCY MOTION
FOR A PROTECTIVE ORDER STAYING ALL PENDING AND FUTURE DATA
REQUESTS FROM CALIFORNIA PUBLIC OFFICE ADVOCATES OFFICE SERVED
OUTSIDE OF ANY PROCEEDING (RELATING TO THE BUILDING
DECARBONIZATION MATTER), AND ANY MOTIONS AND MEET AND CONFERS
RELATED THERETO, DURING CALIFORNIA GOVERNMENT COVID-19
EMERGENCY “SAFER AT HOME” ORDERS**

**PUBLIC VERSION
(DECLARATION NUMBERS 4 & 5 CONFIDENTIAL)**

Pursuant to California Public Utilities Code Section 309.5(e),¹ Southern California Gas Company (SoCalGas) respectfully submits this Emergency Motion for a Protective Order Staying All Pending and Future Data Requests From the California Public Advocates Office (Cal Advocates) Served Outside of any Proceeding (Relating to the Building Decarbonization Matter), and Any Motions and Meet and Confers Related Thereto, During California Government COVID-19 Emergency “Safer at Home” Orders.²

¹ Public Utilities Code Section 309.5(e) provides: (e) The office may compel the production or disclosure of any information it deems necessary to perform its duties from any entity regulated by the commission, **provided that any objections to any request for information shall be decided in writing by the assigned commissioner or by the president of the commission, if there is no assigned commissioner.** Cal. Pub. Util. Code § 309.5 (emphasis added). “The Legislature’s chosen language is the most reliable indicator of its intent because it is the language of the statute itself that has successfully braved the legislative gauntlet. We give the words of the statute ‘a plain and commonsense meaning’ unless the statute specifically defines the words to give them a special meaning.” *MacIsaac v. Waste Mgmt. Collection & Recycling, Inc.*, 134 Cal. App. 4th 1076, 1082–83 (2005) (citations and quotations omitted).

A plain meaning reading of the Section 309.5(e) is that an objection, such as this emergency motion for protective order, shall be decided in writing by the assigned commissioner or by the president of the Commission if there is no assigned commissioner. There is no assigned commissioner to this matter. SoCalGas is therefore presenting its objection to the President of the Commission, under Section 309.5(e).

² SoCalGas understands that Cal Advocates has also propounded discovery on and about Sempra Energy. To the extent the requested protective order is granted, SoCalGas believes it should apply to Sempra Energy as well. Nothing here should be interpreted to waive any further objections Sempra Energy might have

I. INTRODUCTION

Since March 19, 2020, SoCalGas and its employees (like all Californians) have been subject to mandatory government orders stemming from the COVID-19 pandemic requiring residents of California to stay at home, avoid non-essential travel, and practice strict social distancing when in the vicinity of others. SoCalGas, as a natural gas utility, is designated as part of an “essential critical infrastructure” sector to maintain continuity of operations deemed critical to protect health and well-being of all Californians. As such, SoCalGas is focused on the safety of its customers, employees, and the public, while providing essential repair and maintenance services during the COVID-19 pandemic.

Notwithstanding this crisis, the California Public Advocates Office (Cal Advocates) continues to seek burdensome discovery from SoCalGas (outside any open proceeding), even though the key employees involved in SoCalGas’s response to Cal Advocates’ discovery requests are busy leading significant parts of SoCalGas’s relief efforts critical to the public, or are juggling work responsibilities while providing childcare without assistance due to school and day care closures. SoCalGas simply cannot respond at present to Cal Advocates’ continuous discovery demands—in light of the COVID-19 emergency.

Accordingly, SoCalGas is seeking a stay of all discovery from Cal Advocates served outside of any proceeding (originally related to the Building Decarbonization matter) until two weeks after the State of California, Los Angeles County, and Los Angeles City “Safer at Home” Orders are no longer effective. If left unable to defend itself in response to Cal Advocates’ demands, SoCalGas will suffer irreparable harm. On the other side, Cal Advocates has not identified any urgent need for the discovery it seeks. Cal Advocates will suffer no harm from the requested short-term stay (presently expected to extend until early-to-mid-May); because these requests are served outside of any active proceeding, a stay will not delay any active proceeding. This duration is not unreasonable when viewed against Cal Advocates’ ongoing 10-month informal investigation outside of any proceeding, as no formal action has been taken despite already serving 12 sets of data request responses with nearly 100 individual questions. The requested stay not only will further the efficient resolution of this matter with minimal involvement from the Commission, it will allow SoCalGas to focus its resources on the important task of providing critical services to the public during the COVID-19 pandemic. This motion should therefore be granted.

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

A. Cal Advocates' Discovery Stems from the Building Decarbonization Matter

This discovery dispute stems from the California Public Utilities Commission's (CPUC) Building Decarbonization Rulemaking (R.) 19-01-011. However, Cal Advocates discovery is not served as part of the proceeding. In R.19-01-011, an entity called Californians For Balanced Energy Solutions (C4BES) filed a motion to become a party to the proceeding. Mot. for Party Status of Californians for Balanced Energy Solutions, *Order Instituting Rulemaking Regarding Building Decarbonization*, Rulemaking 19-01-011 (filed Mar. 13, 2019). Sierra Club later filed a motion to deny C4BES's party status in the Building Decarbonization matter, contending that C4BES has an allegedly improper relationship with SoCalGas. Sierra Club's Mot. to Deny Party Status to Californians for Balanced Energy Solutions or, in the Alternative, to Grant Motion to Compel Discovery, *Order Instituting Rulemaking Regarding Building Decarbonization*, Rulemaking 19-01-011 (filed May 14, 2019), at 1–2. C4BES withdrew its motion and is no longer a party to the proceeding. C4BES Mot. to Withdraw Party Status, *Order Instituting Rulemaking Regarding Building Decarbonization*, Rulemaking 19-01-011 (filed Aug. 16, 2019).

In May 2019, Cal Advocates began serving data requests on SoCalGas regarding C4BES and Sierra Club's allegations outside of the proceeding. Declaration 5, ¶ 3. SoCalGas has diligently responded to each of those requests and has met and conferred in good faith with Cal Advocates on disputes arising out of those requests. *Id.*, ¶ 6. Cal Advocates' data requests have been voluminous; to date, it has propounded 13 rounds of data requests, consisting of more than 100 individual requests. *Id.*, ¶ 4.

B. The Safer at Home Orders and Their Impact on SoCalGas Employees

On March 19, 2020, Governor Gavin Newsom and Los Angeles Mayor Eric Garcetti each issued orders requiring all residents of the state of California to stay at home as much as possible and to avoid all non-essential travel. *See* Executive Order N-33-20, *available at* <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf> (last visited March 22, 2020) (ordering “all individuals living in the state of California to stay home or at their place of residence” (subject to limited exceptions)) (State Order); Public Order Under City of Los Angeles Emergency Authority dated March 19, 2020, *available at*

https://www.lamayor.org/sites/g/files/wph446/f/article/files/SAFER_AT_HOME_ORDER2020.03.19.pdf (last visited March 25, 2020) (subject only to certain exceptions, “all persons living within the City of Los Angeles are hereby ordered to remain in their homes”) (LA City Order). The same day, the County of Los Angeles Department of Public Health issued an order prohibiting all indoor and private gatherings and all outdoor public and private events within a confined space, where at least 10 people are expected to attend. *See* Safer at Home Order for Control of COVID-19, available at http://file.lacounty.gov/SDSInter/lac/1070029_COVID-19_SaferAtHome_HealthOfficerOrder_20200319_Signed.pdf (last visited March 25, 2020) (LA County Order), and collectively with the State Order and the LA City Order, (Safer at Home Orders) or (Orders)).

Because SoCalGas is a gas utility providing essential services to the community at large, it is continuing to operate under the Orders. *See, e.g.*, LA City Order, at ¶ 5(vii)(o). Nevertheless, SoCalGas is required to provide that its employees maintain “strict social distancing.” *Id.* Accordingly, SoCalGas is taking precautionary measures to mitigate employees’ exposure to the Coronavirus and limit the possibility of infecting employees and customers. *See* <https://www.socalgas.com/coronavirus> (last visited March 22, 2020).

Dealing with the COVID-19 emergency has forced many SoCalGas employees—including at least two key employees to SoCalGas’s response to Cal Advocates’ data requests—to prioritize emergency-related responsibilities:

- Andy Carrasco, Director of Regional Public Affairs in the Strategy and Engagement, and Environmental group for SoCalGas, is responsible for overseeing SoCalGas’s Regional Public Affairs across the entirety of SoCalGas’s service territory with 30 employees. Declaration of Andy Carrasco (“Carrasco Decl.”), ¶ 1. He is the senior management employee responsible for reviewing and responding to data requests from Cal Advocates stemming from the Building Decarbonization matter. *Id.*, ¶ 3. His responsibilities include reviewing incoming data requests, coordinating with additional employees from various organizations within SoCalGas to locate requested documents or information, and approving SoCalGas’s response for submission to Cal Advocates. *Id.*

Effective March 20, 2020, Mr. Carrasco has been appointed as the Public Information Officer for the Incident Command System (ICS) activated by SoCalGas in the interest of its customers and employees. *Id.*, ¶ 4. His responsibilities there include using information from other members of the ICS and general staff to develop accurate, accessible, and complete information on the incident, and other matters of general interest for both internal and external audiences; monitoring public information for accuracy; acting as a liaison with elected and appointed officials; and interfacing with the public, media, other agencies, and stakeholders to provide information and updates based on changes in incident status. *Id.*, ¶ 5. Mr. Carrasco now devotes his full time and effort to SoCalGas's COVID-19 response, committing his entire workday, after hours, and weekends to these matters; accordingly, he will not be able to assist with responding to Cal Advocates' data requests for the foreseeable future. *Id.*, ¶¶ 6–8, 10.

- Shawane Lee, a Senior Counsel in the Regulatory Group for SoCalGas, is the lead attorney handling Cal Advocates' data requests related to Building Decarbonization served outside of a proceeding. Declaration of Shawane Lee ("Lee Decl."), ¶¶ 1, 3. Among other matters, she is also responsible for leading SoCalGas's regulatory work for its Emergency Disaster Relief and Low Income Application. *Id.* ¶ 3. Since March 4, 2020, when Governor Gavin Newsom declared a state emergency arising from the COVID-19 pandemic, a large majority of Ms. Lee's work hours have been devoted to Emergency Disaster Relief and Low-Income Assistance, including SoCalGas's COVID-19 response for Energy Savings Assistance. *Id.* ¶¶ 4–7. Because of her increased regulatory duties related to COVID-19, as well as new child- and elder-care responsibilities at home caused by the Safer at Home Orders, it will be a significant hardship for her to provide legal support on Cal Advocates' discovery requests. *Id.* ¶¶ 10–12.

Key employees to the response that have not been assigned emergency-related responsibilities are nonetheless impacted by SoCalGas's COVID-19 response. For example, a Public Policy Advisor in the Strategy and Engagement, and Environmental group at SoCalGas,

plays a lead role responding to Cal Advocates' discovery demands, including managing and providing oversight to SoCalGas's business units in responding to the requests. Declaration 4, ¶¶ 1, 3. Many of her colleagues, including her direct supervisor, have been assigned to SoCalGas's Incident Command System for COVID-19. *Id.*, ¶ 5. As a result, it has become difficult for her to schedule and conduct interviews and obtain information from SoCalGas business unit employees, necessary for SoCalGas's responses to Cal Advocates' data requests. *Id.*, ¶¶ 6–7.

The Safer at Home Orders have also forced SoCalGas employees involved in responding to Cal Advocates' discovery requests to juggle their work obligations with caring for their children and/or elderly relatives without any assistance. For example, Ms. Lee is primarily responsible for caring for her elderly mother and supervising and teaching her 13-year-old twin daughters who cannot attend school due to the Safer at Home Orders. Lee Decl., ¶¶ 10–11. Other key employees to SoCalGas's response to Cal Advocates' discovery demands face similar challenges with childcare. *See* Declaration 5, ¶¶ 1, 8 (the lead regulatory case manager working on Cal Advocates' inspection demands; she has a 16-month-old daughter who is currently unable to attend day care); Tran Decl., ¶¶ 3–4 (wife is a healthcare professional whose job duties require her to be physically at the hospital during work hours; because daycare centers are closed by the Orders, he is the sole parent available to provide child care for their two young children when his wife is at work, which severely limits his availability for work at those times).

SoCalGas's COVID-19 response will also impact SoCalGas's ability to respond to Cal Advocates' discovery requests. Carrasco Decl., ¶ 8. All levels of SoCalGas employees, including executive and senior management personnel, are participating in emergency planning and response functions related to the COVID-19 crisis, or are members of SoCalGas's ICS. *Id.* ¶ 9. Securing the time for input, review, and approvals for responses to Cal Advocates' discovery and confidentiality declarations during this emergency is very difficult. *Id.* ¶ 11; *see also* Declaration 4, ¶¶ 5, 7. Also, many SoCalGas employees are also working from home, which makes getting physical signatures on confidentiality declarations much more difficult. Declaration 4, ¶ 8.

C. Cal Advocates Continues to Seek Burdensome Discovery, Notwithstanding the Safer at Home Orders and Their Impact on SoCalGas

Notwithstanding the COVID-19 emergency, Cal Advocates is demanding burdensome discovery outside of any open proceeding. On March 20, 2020—the day after the Safer at Home

Orders went into effect—Cal Advocates served their thirteenth set of data requests (DR-13) on SoCalGas. DR-13 is burdensome, seeking a very broad set of documents and information to be responded to within 15 business days. Declaration 5, ¶ 5; *id.*, Ex. A. As just a few examples of DR-13’s overbroad scope, it demands “*all* documents related to SoCalGas and Sempra training and reporting programs that are used to ensure compliance with the Sempra Energy Political Activities Policy;” an identification of “*all* SoCalGas and Sempra Energy employees who have lobbied at any time between January 1, 2015 and today regarding issues related to decarbonization”; and “[f]or all SoCalGas and Sempra Employees who have lobbied at any time between January 1, 2015 and today on behalf of either organization, please identify by each employee and for each year the portion of their time allocated to ratepayer-funding lobbying, and quantify the monetary value of that work for each employee by year.” *Id.* (Request Nos. 1, 5, 9).

Cal Advocates has also indicated it will file a motion to compel regarding a dispute on another data request. On March 12, 2020, Ms. Lee told counsel for Cal Advocates that SoCalGas employees were dealing with several issues related to the COVID-19 emergency. Lee Decl., ¶ 13. On March 19, 2020, the parties met and conferred about SoCalGas’s confidentiality designation for 209 pages produced in response to one of Cal Advocates’ data requests. Lee Decl., ¶ 14. On March 20, 2020, counsel for Cal Advocates sent an email making additional demands for information related to the confidentiality designations, including one to be completed within one week. *Id.* ¶ 16–17.³ The email also indicated that Cal Advocates is planning to file a motion seeking sanctions against Ms. Lee personally for purportedly meeting and conferring in bad faith. *Id.*, Ex. A.

D. Cal Advocates Rejected SoCalGas’s Request for the Stay

On March 23, 2020, counsel for SoCalGas sent an email to counsel for Cal Advocates requesting its agreement to the stay sought by this Emergency Motion. Tran Decl., ¶ 5; *id.* Ex. A. In that email, SoCalGas explained that the Safer at Home Orders have impacted SoCalGas’s

³ The email demanded that SoCalGas (1) “carefully review the 209 pages” of documents containing confidentiality redactions to “ensure that those redactions that remain are consistent with well-established claims of confidentiality” and “[f]or each page that [the company] continue[s] to claim contains confidential information” “provide citations to the relevant supporting law”; (2) “provide [a] list of redactions that will be removed” from the pages,” and “specific supporting authorities for continued claims of confidentiality no later than” within a week; and (3) “identify the Energy Division staff Ms. Lee has been working with regarding the COVID 19 issues, including the leader of the call she was required to attend on March 19”. Lee Decl., ¶¶ 16-17.

“legal staff and business unit employees who have been key in responding to Cal[] Advocates’ data requests” who are “now working from home” and “[m]any are affected by the closure of schools and day cares,” and that “some of the key people in responding to Cal Advocate’s data requests and other demands have been tasked with work directly related to the emergency.” *Id.* The email also explained that because “SoCalGas is focusing its energies on maintaining continuity of operations and focusing on the safety of its customers, employees, and the public, while providing essential repair and maintenance services during the COVID-19 pandemic,” “SoCalGas cannot at this time continue to devote significant resources in responding to Cal Advocates’ data requests.” *Id.* Counsel for Cal Advocates sent an email later the same day asking, among other things, why SoCalGas “cannot respond to discovery requests remotely” and “cannot participate in a meet and confer conference call remotely.” Tran Decl., ¶ 6; *id.*, Ex. B. Counsel for SoCalGas responded the same day, reiterating the points stated in his earlier email and provided additional information to Cal Advocates questions. *Id.*, Ex. B.

On March 24, 2020, Cal Advocates responded to SoCalGas’s March 23 email. Although Cal Advocates stated that it “appreciate[s] the challenges that the COVID-19 crisis has placed” on SoCalGas and is “more than willing to work with SoCalGas to ensure it has adequate time to respond to the Cal Advocate’s data requests,” it rejected SoCalGas’s request for a stay. Tran Decl., ¶ 7; *id.* Ex. C. Cal Advocates continued to demand that SoCalGas respond to discovery during the COVID-19 crisis and proposed yet another meet and confer the same week. *Id.*, Ex. C; Ex. C. On March 25, 2020, prior to the filing of this Motion, counsel for SoCalGas sent an email informing Cal Advocates that because it was clear that Cal Advocates would continue to require SoCalGas to respond to data requests and participate in meet and confers, despite the reasons explained to Cal Advocates in counsel’s email correspondence, SoCalGas would file this Emergency Motion.

III. DISCUSSION

A. LEGAL STANDARD

The Commission has broad authority to stay discovery in matters under its jurisdiction. *See Karrison v. A&P Moving, Inc.*, 69 CPUC 2d 667 (1996) (staying all discovery requests in a matter before the Commission).

Here, the Commission should exercise its discretion and grant a protective order staying all discovery from Cal Advocates in this matter—including, without limitation, all pending and future discovery demands, and any motions to the Commission on discovery—for two reasons: (1) SoCalGas will suffer serious and irreparable harm in this matter absent a stay; and (2) Cal Advocates will not be harmed by a stay.

1. SoCalGas Will Suffer Irreparable Harm Absent A Stay.

Cal Advocates is unreasonably burdening SoCalGas with its continuous discovery demands despite the COVID-19 emergency and the Safer at Home Orders. Not only did Cal Advocates serve a broad set of data requests the day after the Safer at Home Orders went into effect, it has also stated it will file a motion to compel further responses to another data request. Absent a stay, SoCalGas will suffer irreparable harm in this matter.

SoCalGas simply cannot respond at this time to Cal Advocates' discovery requests. As mentioned above, each of the key SoCalGas employees involved in SoCalGas's response to the discovery requests are currently tasked with leading several critical responsibilities responding to the COVID-19 crisis or are juggling their work responsibilities with caring for their children at home. *See* Section II.b., *supra*. Furthermore, SoCalGas faces significant challenges in working with its business units to respond to Cal Advocates' discovery demands in this matter, and there are other logistical impacts hampering SoCalGas's ability to respond to Cal Advocates' discovery demands. *See id.* These impacts of the COVID-19 emergency will persist for the foreseeable future while the Safer at Home Orders are effective, rendering it infeasible to coordinate and handle responding to Cal Advocates' discovery demands in the interim. *Id.* Absent a stay, SoCalGas will not be able to provide adequate responses to Cal Advocates' discovery demands, leaving it vulnerable to motions to compel or for sanctions to which, if the present state continues, it will not be able to adequately respond. This would certainly constitute irreparable harm to SoCalGas in this matter.

These are very challenging times for our community, and SoCalGas is tasked with maintaining essential functions necessary to protect the well-being of, among others, families, healthcare institutions and first responders on the frontlines of the battle against Coronavirus. Under these circumstances, Cal Advocates' continuous discovery demands are distracting and diverting SoCalGas's resources away from supporting SoCalGas' response to the COVID-19 pandemic.

2. Cal Advocates Will Not Suffer Any Harm from A Stay.

A stay of discovery in this matter will cause no harm to Cal Advocates. Cal Advocates has not explained why immediate resolution of the present discovery disputes is necessary, and SoCalGas is not aware of any such need. These discovery requests are served outside of any active proceeding, as such, a stay will not delay any active proceeding. Cal Advocates apparently prefers to obtain information from SoCalGas as quickly as possible, but that preference cannot supersede the truly urgent matters SoCalGas is dealing with stemming from the COVID-19 pandemic that have critical implications for society at large, and it certainly does not constitute harm.

3. A Stay Until Two Weeks After the Safer at Home Orders Are Lifted Is Warranted Under the Circumstances

SoCalGas respectfully requests a stay of all discovery in this matter until two weeks after the Safer at Home Orders are no longer effective. SoCalGas expects that the key employees involved in this dispute will remain primarily tasked with emergency-related matters for the duration of the time the Safer at Home Orders are effective and/or will face continued challenges juggling in-home childcare with work responsibilities during this time. SoCalGas expects that a two-week period after the Safer at Home Orders are lifted will allow enough time for the key employees impacted by the Orders to get reacquainted with the discovery and resume their work in response to Cal Advocates' discovery demands. Presently, the LA City Order is scheduled to lapse on April 19, 2020; if the other Orders lapse at or around that time, the stay would last until early-to-mid-May.

IV. CONCLUSION

For the foregoing reasons, SoCalGas respectfully requests that the Commission issue a protective order staying all discovery from Cal Advocates served outside of a proceeding originally related to Building Decarbonization (including, without limitation, all pending and future discovery demands, and any meet and confers or motions to the Commission on discovery related thereto) until two weeks after the Safer at Home Orders are no longer effective.

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[PROPOSED] ORDER

On March 25, 2020, Southern California Gas Company (“SoCalGas”) filed an Emergency Motion for a Protective Order Staying All Pending and Future Data Requests From the California Public Advocates Office (“Cal Advocates”) Served Outside of any Proceeding (Relating to the Building Decarbonization Matter), and Any Motions and Meet and Confers Related Thereto, During California Government COVID-19 Emergency “Safer at Home” Orders (“Emergency Motion to Stay”). The Emergency Motion to Stay requests an order staying all discovery (including, without limitation, all pending and future discovery demands, meet and confers, and any motions to the Commission on discovery) from Cal Advocates served outside of any proceeding related to the Building Decarbonization Matter until two weeks after Executive Order N-33-20, *available at* <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf> (last visited March 25, 2020), Public Order Under City of Los Angeles Emergency Authority dated March 19, 2020, *available at* https://www.lamayor.org/sites/g/files/wph446/f/article/files/SAFER_AT_HOME_ORDER2020.03.19.pdf (last visited March 25, 2020), and Safer at Home Order for Control of COVID-19, *available at* http://file.lacounty.gov/SDSInter/lac/1070029_COVID-19_SaferAtHome_HealthOfficerOrder_20200319_Signed.pdf (last visited March 25, 2020) (collectively, the “Safer at Home Orders”) are no longer effective. Having considered SoCalGas’s Emergency Motion to Stay and given the urgency of this request, SoCalGas’s Emergency Motion to Stay is granted.

ORDER

All discovery from Cal Advocates served outside of any proceeding (related to the Building Decarbonization matter) is hereby stayed until two weeks after the Safer at Home Orders are no longer effective.

SO ORDERED.

Dated: _____, 2020 at San Francisco, California.

President of the Commission, Marybel Batjer

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

**DECLARATION
NO. 1**

**Declaration of
Shawane L. Lee**

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

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

**DECLARATION OF SHAWANE L. LEE IN SUPPORT OF SOUTHERN CALIFORNIA
GAS COMPANY’S (U 904 G) EMERGENCY MOTION FOR A PROTECTIVE ORDER
STAYING ALL PENDING AND FUTURE DATA REQUESTS FROM CALIFORNIA
PUBLIC OFFICE ADVOCATES OFFICE SERVED OUTSIDE OF ANY PROCEEDING
(RELATING TO THE BUILDING DECARBONIZATION MATTER), AND ANY
MOTIONS AND MEET AND CONFERS RELATED THERETO, DURING
CALIFORNIA GOVERNMENT COVID-19 EMERGENCY “SAFER AT HOME”
ORDERS**

I, Shawane L. Lee, hereby declare as follows:

1. I am a Senior Counsel in the Regulatory Group for the Southern California Gas Company (SoCalGas). My responsibilities in this position include leading and providing legal support for SoCalGas business units for proceedings filed with the California Public Utilities Commission. I have been employed at SoCalGas for approximately 6 months. Prior to SoCalGas, I was employed as an Assistant General Counsel in the Regulatory Law Group for Exelon Corporation, PECO Energy Company for approximately 8 years.

2. I have personal knowledge of the facts set forth in this declaration, except as to those matters that are stated on belief or understanding, and as to matters, I believe them to be true. If called as a witness, I could and would testify competently as to the following:

3. From September 30, 2019, up to the present time, my responsibilities include leading the regulatory legal work for SoCalGas’s Emergency Disaster Relief, Low Income Application, Climate Change Adaptation and Microgrid proceedings. I also have a lead role handling data requests served outside of any proceeding by California Public Advocates Office (Cal Advocates) related to the Building Decarbonization matter.

4. On March 4, 2020, Governor Gavin Newsom declared a state of emergency arising from the COVID-19 (coronavirus) pandemic. On March 13, 2020, the President of the United States declared a national emergency for the same. As a result of the declarations of emergency, I have committed a large majority of my workday to Emergency Disaster Relief, including planning, preparing, drafting, editing and reviewing SoCalGas’s Advice Letter for consumer protections, which was filed on March 19. I continue to commit a substantial portion

of my workday providing legal advice and review for matters related to SoCalGas's COVID-19 response.

5. I am also the SoCalGas legal lead for the Low-Income Application proceeding and all matters related to Low Income. As a result of the national and state declaration of emergency for the COVID-19 pandemic, I support the CARE and Energy Savings Assistance (ESA) business units with the COVID-19 regulatory response, which includes, amongst other things, issues and motions related to pausing ESA contractor work and external communications to customers.

6. For instance, on March 19, 2020 at 1:30 PM, I joined a conference call scheduled by Energy Division, including Ed Randolph and Pete Skala, with regulatory and legal representatives from the Investor Owned Utilities (IOUs) to discuss our respective plans to modify Energy Efficiency and ESA program operations in response to COVID-19. I participated in the call as the legal lead for Low Income on behalf of SoCalGas. I have significant follow up work related to this call, including but not limited to responding to a motion filed by The East Los Angeles Community Union (TELACU) regarding paying ESA contractors during the pandemic, working with SoCalGas's business units on financial solutions for ESA contractors, and preparing and drafting the appropriate regulatory response.

7. As a result of the state and national declarations of emergency, my primary legal time, effort and focus is committed to SoCalGas's COVID-19 regulatory response.

8. As of March 13, 2020, at the direction of my management, I am telecommuting 100 percent from my home.

9. On March 19, 2020, Governor Newsom issued an order to California residents to stay at home indefinitely. On March 19, 2020, Los Angeles Mayor Eric Garcetti issued a Safer at Home emergency order, requiring residents of the City of Los Angeles to stay in their residences as much as possible and avoid all non-essential travel. I am a resident of Los Angeles County. I will continue to telecommute consistent with Governor Newsom and Mayor Garcetti's orders.

10. Because of the Safer at Home Orders, I am the sole person responsible for the care of my elderly mother who has an underlying illness and is shut in as a result of the COVID-19 virus, including making sure she has groceries, medication, cooked meals and companionship.

11. Because of the Safer at Home Orders, I am primarily responsible for monitoring the virtual education of my 13-year old twin daughters who no longer attend school in person as a result of Los Angeles County school closures.

12. With my increased regulatory legal duties related to COVID-19 and the care of my elderly mother and twin daughters, it is a significant and overwhelming hardship for me to effectively provide legal support for the multitude of aggressive data requests, motions, and combative meet and confers¹ propounded by Cal Advocates related to Building Decarbonization (outside of a proceeding).

13. For instance, on March 12, 2020, I had a telephone conversation with counsel for Cal Advocates, Traci Bone, and advised her that SoCalGas employees were dealing with issues related to the COVID-19 emergency.

14. On March 19, 2020 at 1:00 PM, SoCalGas Senior Counsel, Johnny Tran and I had a Meet and Confer with Attorney Traci Bone of Cal Advocates regarding the Confidentiality Markings for 209 documents produced in response to CalAdvocates-SC-SCG-2019-06.

15. Before the Meet and Confer began, I advised Attorney Bone that I had to leave the Meet and Confer for 30 minutes to join the Energy Division call scheduled from 1:30–2:00 PM. I reconvened the Meet and Confer at 2:00 PM.

16. On Friday, March 20, 2020, I received email correspondence from Attorney Bone demanding that I “Please identify the Energy Division staff Ms. Lee has been working with regarding the COVID 19 issues, including the leader of the call she was required to attend on March 19.” (A true and correct copy of this email correspondence excluding the attachment is attached as Exhibit A.)

17. In Attorney Bone’s March 20, 2020 email correspondence she additionally demanded that SoCalGas (1) “carefully review the 209 pages” of documents containing confidentiality redactions to “ensure that those redactions that remain are consistent with well-established claims of confidentiality” and “[f]or each page that [the company] continue[s] to claim contains confidential information” “provide citations to the relevant supporting law”; and

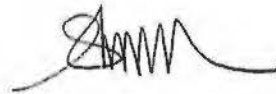
¹ On March 19, 2020, during a Meet and Confer, Attorney Traci Bone said she is filing a Motion for Sanctions against me personally for bad faith because she claims I did not adequately advise the SoCalGas business unit there is (allegedly) no basis for certain confidentiality markings. This is an example of the aggression and combative tactics I must endure during this challenging time.

(2) “provide [a] list of redactions that will be removed” from the pages,” and “specific supporting authorities for continued claims of confidentiality no later than” “within a week.”

18. The parties had a meet and confer scheduled on March 24, 2020 regarding Data Request 12. SoCalGas cancelled the meet and confer, in part because I was not available to participate in the meet and confer due to my duties related to the COVID-19 Low Income response. For instance, the evening of March 23, 2020, I received correspondence from the Energy Division directing SoCalGas to send a letter, in 24 hours, to the company’s ESA contractors regarding advance payments during the COVID-19 work pause. I worked the evening of March 23, 2020 and March 24 from 7:30 AM until 5:00 PM to complete the company’s response. It was not possible for me to participate in a meet and confer on March 24 and also produce a timely response to the Energy Division’s letter by 5:00 PM.

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

Executed this 24th day of March, 2020, at Los Angeles, California.



By: _____

SHAWANE L. LEE
Senior Counsel, SoCalGas

EXHIBIT A

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

From: Bone, Traci <traci.bone@cpuc.ca.gov>
Sent: Friday, March 20, 2020 4:54 PM
To: Lee, Shawane L; Tran, Johnny Q
Cc: Campbell, Michael; Castello, Stephen; Ward, Alec; Lyser, Shelly
Subject: [EXTERNAL] Summary of 3/19/2020 Meet and Confer re: Confidential Designations in 209 pages of materials
Attachments: RE: Confidentiality of Information in SoCalGas DRs provided to the Public Advocates Office

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

Ms. Lee and Mr. Tran:

The following summarizes our Meet and Confer on March 19, 2020, to discuss SoCalGas' claims of confidentiality for 209 pages of documents which SoCalGas has redacted. The conference call was attended by both of you as attorneys for SoCalGas, me, as an attorney for the Public Advocates Offices, and Stephen Castello, also with the Public Advocates Office.

I provides the 209 pages of confidential materials to you both via a secure web server on March 11, 2020, with each page numbered for ease of reference.

We had originally agreed to have this Meet and Confer on March 13, 2020, but on March 12, 2020, Ms. Lee proposed that we defer the Meet and Confer so that she could work with your clients to identify which redactions could be removed prior to our Meet and Confer so that we could have a speedier and more productive meeting. Ms. Lee implied during our conversation that this would result in a meaningful number of redactions being lifted. On this basis, I agreed with her proposal to extend the date of the Meet and Confer. I communicated this agreement in an email to you both, making clear that "given this significant extension, I expect that during our meet and confer on March 19, SoCalGas will limit itself to only good faith assertions of confidentiality and will be prepared to support such claims with relevant legal citations." See attached email chain dated March 12.

In Ms. Lee's confirming email, she retracted her representations on the call and suggested that "compromise" from the Office of Ratepayer Advocates was necessary: "I cannot confirm which documents or the number of documents that can be downgraded; therefore, I cannot agree there will be a "significant number" at this time. Hopefully, we will be able to come to a compromise regarding this matter." See attached email chain dated March 12.

The Meet and Confer regarding these issues occurred on Thursday, March 19, 2020. However, notwithstanding that the purpose of the extension had been so that Ms. Lee could identify those documents where the redactions could be removed, it quickly became evident during the Meet and Confer that Ms. Lee had not seriously considered which of the redactions were inappropriate and should be removed. For example, Ms. Lee insisted that the names of SoCalGas employees at pages 1-2 were entitled to confidentiality to, among other things, prevent them from receiving robocalls, even though no other personal identifying information regarding those employees was included in the relevant documents. She also insisted that the names of executives for various associations and

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businesses at pages 1-2 were confidential, even though this information could be readily obtained on the internet.

Regarding page 3, Ms. Lee claimed that the names of public figure, such as former California governors, were confidential. Mr. Tran suggested that the name of an attorney on pages 3-4 was also potentially confidential as an attorney client communication. Ms. Lee also claimed that SoCalGas has a confidentiality provision in its contract with Marathon which prevents SoCalGas from releasing the prices that Marathon charges SoCalGas for their services without being in breach of contract.

For pages 5-19, which appear to be a single document, you claimed the entire document was confidential because it disclosed internal business strategy. Neither one of you had considered the likelihood that this document has been shared with other parties outside of SoCalGas so that it would not be confidential. You committed to look into the possibility that these documents have been shared with parties outside of SoCalGas.

Both of you repeatedly requested that I explain to you why a document should not be kept confidential. Neither of you acknowledged the basic law at issue here - that SoCalGas does not have a right to simply mark anything that its wants as confidential and that SoCalGas, not the Public Advocates Office, has the burden of showing why something is confidential consistent with the law. Rather, you treated this as a "negotiation" in which Public Advocates Office representatives had to make their case to you why the claim of confidentiality could not be sustained.

I was clear that it appears that none of the documents are confidential under the law and that all of the redactions should be lifted.

You did provide citations to two cases which you claim allow you to keep employee names and business strategies confidential.

As a result of extensive questioning by me during the Meet and Confer, you conceded that the names of C4BES Board members are not confidential, and that information readily available on the internet may not be confidential. You also affirmed that pages 1-2 were a SoCalGas document, but that you did not know if it had been shared with any party outside of SoCalGas.

You were unable to explain why an email on page 26 from a SoCalGas employee that included the Chair of the C4BES was confidential. You agreed to look into this.

Given these begrudging concessions which should have been provided without significant questioning by me, I expressed my concern that you were not acting in good faith when you requested the extension, that you were not familiar with the documents, and that you were continuing to make baseless claims of confidentiality. I explained that as an officer of the court you have a responsibility to ensure that the claims of confidentiality that your client has made are supported, and that I would not hesitate to seek sanctions against you for your failure to act in good faith to ensure that your client was not making baseless claims of confidentiality. I pointed out that I was familiar with SoCalGas' tactics in both this investigation, and the recent determinations of the court in the *Gandsy v. SoCalGas* case.

You both expressed that you were offended by my remarks because you could not be responsible for all of the redactions made in roughly 8,000 documents produced to the Public Advocates Offices. Ms. Lee also explained that she was working on Covid-19 issues with Energy Division and had many other competing priorities. I pointed out that the 8,000 documents were not at issue, just

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

the 209 pages that had been provided to you a week ago, and that I did not believe that Ms. Lee was acting consistent with her representations to me on Wednesday, March 12, 2020, that SoCalGas was seriously considering which redactions could be lifted.

Mr. Tran wanted to understand the reasons for making the information in the 209 pages public, and I explained that SoCalGas' use of ratepayer funds to develop business plans that undermine California's climate change goals were an issue of public importance that the public has a right to know about. Mr. Tran asserted that SoCalGas' advocacy in favor of natural gas and renewable gas was consistent with California policies. I replied that that was an open debate that requires an open forum.

At some point, we discussed the Public Affairs Managers (PAMs) identified on pages 1-2 and whether their salaries are paid by ratepayers, shareholders, or a combination, and whether and how SoCalGas allocates their time for those purposes. Both of you claimed to know nothing about those issues.

We concluded with the understanding that you would provide a list to us identifying where SoCalGas would agree to lift the confidentiality redactions and that the rest of the issues will be addressed in a Motion to the Commission's President.

In conclusion:

1. We encourage you to carefully review the 209 pages we have provided to you and that you ensure that those redactions that remain are consistent with well-established claims of confidentiality. For each page that you continue to claim contains confidential information, please provide citations to the relevant supporting law;
2. Please provide your list of redactions that will be removed, and specific supporting authorities for continued claims of confidentiality no later than a week from today, March 27, 2020. As an alternative to listing the redactions, you may choose instead to identify the lifting of the yellow highlights by coloring them green to indicate that SoCalGas is no longer claiming that the information is confidential;
3. Please identify the Energy Division staff Ms. Lee has been working with regarding the COVID 19 issues, including the leader of the call she was required to attend on March 19; and
4. Please confirm receipt of this email no later than Monday, March 23, 2020.

If you have any questions or concerns regarding the foregoing, please do not hesitate to contact me. The Public Advocates Office looks forward to your prompt resolution of these issues.

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

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

**DECLARATION
NO. 2**

**Declaration of
Johnny Q. Tran**

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

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

**DECLARATION OF JOHNNY Q. TRAN IN SUPPORT OF SOUTHERN CALIFORNIA
GAS COMPANY’S (U 904 G) EMERGENCY MOTION FOR A PROTECTIVE ORDER
STAYING ALL PENDING AND FUTURE DATA REQUESTS FROM CALIFORNIA
PUBLIC OFFICE ADVOCATES OFFICE SERVED OUTSIDE OF ANY PROCEEDING
(RELATING TO THE BUILDING DECARBONIZATION MATTER), AND ANY
MOTIONS AND MEET AND CONFERS RELATED THERETO, DURING
CALIFORNIA GOVERNMENT COVID-19 EMERGENCY “SAFER AT HOME”
ORDERS**

I, Johnny Q. Tran, hereby declare as follows:

1. I am a resident of California over 18 years of age. I have personal knowledge of the facts set forth in this declaration, except as to those matters that are stated on belief or understanding, and as to those matters, I believe them to be true.

2. I am employed by Southern California Gas Company (“SoCalGas”) as Senior Counsel - Regulatory. I am the lead attorney for SoCalGas on the Building Decarbonization Proceeding, Rulemaking (R.) 19-01-011.

3. Due to the recent Coronavirus emergency, SoCalGas is allowing me to work from home full-time. My wife is a healthcare professional. Her job duties require her to be physically at the hospital. My wife and I have two young children (ages 2 and 4).

4. The daycare that my children attend is closed due to the Coronavirus emergency. As a result, on the days that my wife is at work, I am the sole caretaker of my children. My availability for work is severely limited on those days.

5. On March 23, 2020, I sent an email correspondence to Attorney Traci Bone, counsel for the California Public Advocates Office (“Cal Advocates”), requesting in light of the COVID-19 pandemic that Cal Advocates temporarily stay “all activities with respect to the data requests served [by Cal Advocates] outside of any proceeding . . . until two weeks after the expiration of the Statewide and City of Los Angeles stay-at-home order[s].” (A true and correct copy of this email is attached to this declaration as Exhibit A.)

6. On March 23, 2020, Ms. Bone replied to my March 23 email, asking me several questions including why I “cannot respond to discovery requests remotely,” and “cannot

participate in a meet and confer conference call remotely.” I responded to Ms. Bone’s questions in an email sent the same day. (A true and correct copy of this email exchange is attached to this declaration as Exhibit B.)

7. On March 24, 2020, Ms. Bone sent me an email responding directly to my March 23 email (rather than responding to my most recent email to her.) In that email, Ms. Bone stated that while Cal Advocates “appreciate[s] the challenge that the COVID-19 crisis has placed” on SoCalGas and is “more than willing to work with SoCalGas to ensure it has adequate time to respond to the Cal Advocate’s data requests,” it rejected SoCalGas’s request for a temporary stay, instead continued to demand that SoCalGas respond to its discovery demands during the COVID-19 crisis and proposed a meet and confer for March 26 or March 27, 2020. (A true and correct copy of this email is attached to this declaration as Exhibit C.) Moreover, SoCalGas strongly disagrees with Ms. Bone’s portrayal of its efforts to respond to Cal Advocates’ data requests. Other than the most recent set of data requests (Set 13 which is due April 13), SoCalGas responded to all of Cal Advocates’ data requests, a total of 12 sets. Further, SoCalGas has already complied with both of ALJ DeAngelis’ orders by producing the documents at issue.

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

Executed this 25 day of March, 2020, at Fullerton, California.

By: _____



JOHNNY Q. TRAN
Senior Counsel, SoCalGas

EXHIBIT A

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

Tran, Johnny Q

From: Tran, Johnny Q
Sent: Monday, March 23, 2020 6:02 PM
To: Bone, Traci
Cc: Lee, Shawane L
Subject: Meet and Confer Regarding SoCalGas' Emergency Motion for Protective Order

Ms. Bone:

As you know, on Thursday, March 19, 2020, Governor Newsom issued a stay-at-home order. The City of Los Angeles issued a similar order that same day. These orders have impacted SoCalGas's business operations and its personnel. The legal staff and business unit employees who have been key in responding to California Advocates' data requests are now working from home. Many are affected by the closure of schools and daycares. Moreover, some of the key people to responding to Cal Advocates' data requests and other demands have been tasked with work directly related to the emergency. As I am sure you can understand, SoCalGas' business operations are stretched at this time.

As a natural gas utility, SoCalGas is required to operate. However, SoCalGas is focusing its energies on maintaining continuity of operations and focusing on the safety of its customers, employees and the public, while providing essential repairs and maintenance services during the COVID-19 pandemic. In light of the COVID-19 pandemic, SoCalGas cannot at this time continue to devote significant resources to responding to Cal Advocate's data requests.

We recognize that Cal Advocates has an important statutory role. Accordingly, SoCalGas is reluctant to ask for a stay. Unfortunately, the COVID-19 crisis is growing day by day and SoCalGas' main focus is the health and safety of its customers and employees, as well as the community at large. For this reason, we are hopeful that Cal Advocates will agree that activities with respect to the data requests served outside of any proceeding – i.e., any further requests of responses, meet and confers (including our call currently scheduled for March 24, 2020), and motions relating thereto – be temporarily postponed until two weeks after the expiration of the Statewide and City of Los Angeles stay-at-home order. Currently, the City of Los Angeles has issued a stay-at-home order that is set to expire on April 19, 2020—so two weeks from April 19, 2020 is May 3, 2020. The State of California order currently has no expiration date.

We trust that you understand the seriousness of the current pandemic and will readily agree. Please let us know as soon as possible if you agree. If we do not hear from you by 5:00 pm on Tuesday, March 24, 2020, we will seek relief from the Commission.

Johnny Q. Tran
Senior Counsel, Regulatory
Southern California Gas Company | Law Department
555 West Fifth Street, Suite 1400
Los Angeles, California 90013
Tel: (213) 244-2981
Email: JQTran@socalgas.com



EXHIBIT B

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

Tran, Johnny Q

From: Tran, Johnny Q
Sent: Monday, March 23, 2020 9:32 PM
To: Bone, Traci
Cc: Lee, Shawane L; Campbell, Michael; Ward, Alec; Castello, Stephen; Lyser, Shelly; Prusnek, Brian C
Subject: RE: Meet and Confer Regarding SoCalGas' Emergency Motion for Protective Order

Ms. Bone, my responses below in red.

Johnny

From: Bone, Traci <traci.bone@cpuc.ca.gov>
Sent: Monday, March 23, 2020 6:24 PM
To: Tran, Johnny Q <JQTran@socalgas.com>
Cc: Lee, Shawane L <SLee5@socalgas.com>; Campbell, Michael <Michael.Campbell@cpuc.ca.gov>; Ward, Alec <Alec.Ward@cpuc.ca.gov>; Castello, Stephen <Stephen.Castello@cpuc.ca.gov>; Lyser, Shelly <Shelly.Lyser@cpuc.ca.gov>
Subject: [EXTERNAL] RE: Meet and Confer Regarding SoCalGas' Emergency Motion for Protective Order

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

Mr. Tran: I am in receipt of your email sent at 6:02 this evening. A few issues to be addressed:

1. I had understood that only Ms. Lee was working on Covid issues. Are you working on them as well? If so, please explain what you are doing in this regard. I am not currently assigned to SoCalGas's COVID-19 response.
2. Can you please explain why you cannot respond to discovery requests remotely? As you are aware, responding to Cal Advocates data request is not a one person job but requires input and coordination from various employees within our company. Due to the COVID-19 emergency, our key employees who would need to be involved in preparing the responses to these data request are busy with SoCalGas's relief efforts or are juggling work responsibilities while providing childcare. For example, Shawane Lee is the lead attorney on Cal Advocates data requests and she is tied up with handling COVID-19 related issues. Our key business unit representative has been pulled into a key role in the Incident Command Structure. As for myself, due to the closure of my two young children's day care, I have to care for my children while my wife is away at work. She is a healthcare professional whose job duties require her to be physically in the hospital.
3. Can you please explain why you cannot participate in a meet and confer conference call remotely? See my response to #2.
4. As I am sure you can appreciate, I am not in a position to grant your request. The Public Advocates Office executives will need to make this determination, and it may take more than the time you have provided to respond. I appreciate that you are not in a position to grant our request and that you have to elevate the request to Cal Advocates executives. Please provide me with a timeframe on when you can obtain that approval. In addition, I would appreciate it if Cal Advocates would temporarily stay all data requests, meet and confers, and motions while you seek your executives' approval. Please let me know if this is acceptable by COB Tuesday.

Traci Bone, Attorney
California Public Utilities Commission
505 Van Ness Avenue

San Francisco, CA 94102
Work: (415) 703-2048
Cell: (415) 713-3599
tbo@cpuc.ca.gov

From: Tran, Johnny Q <JQTran@socalgas.com>
Sent: Monday, March 23, 2020 6:02 PM
To: Bone, Traci <traci.bone@cpuc.ca.gov>
Cc: Lee, Shawane L <SLee5@socalgas.com>
Subject: Meet and Confer Regarding SoCalGas' Emergency Motion for Protective Order

Ms. Bone:

As you know, on Thursday, March 19, 2020, Governor Newsom issued a stay-at-home order. The City of Los Angeles issued a similar order that same day. These orders have impacted SoCalGas's business operations and its personnel. The legal staff and business unit employees who have been key in responding to California Advocates' data requests are now working from home. Many are affected by the closure of schools and daycares. Moreover, some of the key people to responding to Cal Advocates' data requests and other demands have been tasked with work directly related to the emergency. As I am sure you can understand, SoCalGas' business operations are stretched at this time.

As a natural gas utility, SoCalGas is required to operate. However, SoCalGas is focusing its energies on maintaining continuity of operations and focusing on the safety of its customers, employees and the public, while providing essential repairs and maintenance services during the COVID-19 pandemic. In light of the COVID-19 pandemic, SoCalGas cannot at this time continue to devote significant resources to responding to Cal Advocate's data requests.

We recognize that Cal Advocates has an important statutory role. Accordingly, SoCalGas is reluctant to ask for a stay. Unfortunately, the COVID-19 crisis is growing day by day and SoCalGas' main focus is the health and safety of its customers and employees, as well as the community at large. For this reason, we are hopeful that Cal Advocates will agree that activities with respect to the data requests served outside of any proceeding – i.e., any further requests or responses, meet and confers (including our call currently scheduled for March 24, 2020), and motions relating thereto be temporarily postponed until two weeks after the expiration of the Statewide and City of Los Angeles stay-at-home order. Currently, the City of Los Angeles has issued a stay-at-home order that is set to expire on April 19, 2020—so two weeks from April 19, 2020 is May 3, 2020. The State of California order currently has no expiration date.

We trust that you understand the seriousness of the current pandemic and will readily agree. Please let us know as soon as possible if you agree. If we do not hear from you by 5:00 pm on Tuesday, March 24, 2020, we will seek relief from the Commission.

Johnny Q. Tran
Senior Counsel, Regulatory
Southern California Gas Company | Law Department
555 West Fifth Street, Suite 1400
Los Angeles, California 90013
Tel: (213) 244-2981
Email: JQTran@socalgas.com



EXHIBIT C

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

Tran, Johnny Q

From: Bone, Traci <traci.bone@cpuc.ca.gov>
Sent: Tuesday, March 24, 2020 3:35 PM
To: Tran, Johnny Q
Cc: Lee, Shawane L; Campbell, Michael; Lyser, Shelly; Ward, Alec; Castello, Stephen; Serizawa, Linda; Farrar, Darwin
Subject: [EXTERNAL] RE: Meet and Confer Regarding SoCalGas' Emergency Motion for Protective Order

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

Johnny:

In response to SoCalGas's demand for stay of the investigation as set forth in your email below, I have conferred with the Public Advocates Office (Cal Advocate's) executive team, as well as the staff working on the investigation into SoCalGas' use of ratepayer monies to lobby against decarbonization.

As all of the people I have conferred with are working remotely, and many staff at the Commission, including my own husband, have been involved in COVID-19 related efforts, we appreciate the challenges that the COVID-19 crisis has placed on both the CPUC and the utilities it regulates. To this end, we are more than willing to work with SoCalGas to ensure it has adequate time to respond to the Cal Advocate's data requests.

As SoCalGas is aware, the investigation started before June 2019 and SoCalGas has routinely withheld information requested in data requests so that the Cal Advocates has had to submit two motions to compel, both of which were granted, and one of which SoCalGas has appealed. In addition, Cal Advocates has, for nearly every data request and meet and confer, granted SoCalGas extension requests. Thus, the amount of discovery that the Public Advocates Office has sought from SoCalGas, and the amount of time involved, is directly related to the fact that SoCalGas has not responded to that discovery in a timely and comprehensive manner.

It is unacceptable for SoCalGas to unilaterally cancel (after business hours) a scheduled meet and confer for today, particularly in light of the above circumstances. Rather than use the scheduled meet and confer to present your concerns and work toward accommodation, SoCalGas has unilaterally demanded that Cal Advocates cease all efforts on the SoCalGas investigation until some uncertain date in the future.

In lieu of responding substantively to SoCalGas' unilateral demands, Cal Advocates proposes that we reschedule the meet and confer that SoCalGas cancelled last night for a time later this week. At that time, we can discuss how and when SoCalGas will be able to comply with Cal Advocate's two prior discovery orders.

In addition, please be advised, based on our own experience during this crisis, that SoCalGas' claims that all of its attorneys and other employees cannot work on this issue because they are either out of the office or fully employed with Covid-19 work are not credible. There is a significant amount of work that SoCalGas employees can perform remotely in response to Cal Advocate's investigation – and such work should not be unduly burdensome. For example, Ms. Lee has stated that she has a list she could send us of which confidential designations could be lifted. Indeed, she obtained a one week extension for the meet and confer on this issue based on her prior representations that she would be consulting with her clients to identify those portions of the documents which would not require the confidential designations. At this point, review of those documents, lifting the confidential designations, and identifying the legal basis for any remaining confidential designations, can be easily performed remotely, and only requires the review of a single attorney. Similarly, the majority of the questions in data request CalAdvocates-TB-SCG-2020-02 ask SoCalGas to

explain how certain procedures work internally, or to provide documents, such as its GO77 filings. This type of information should be readily available and easily obtained through remote communications.

At the re-scheduled meet and confer, SoCalGas should be prepared to identify work that it can continue to perform in response to Cal Advocate's investigation and Administrative Law Judge DeAngelis' orders to comply with our discovery requests.

Cal Advocates staff are available for a meet and confer on Thursday, March 26 between 12-2 and 2:30-4 and are available on Friday, March 27, between 9-10:30 and 2-4. Please confer with Alec Ward to reschedule today's conference call.

Yours,

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

From: Tran, Johnny Q <JQTran@socalgas.com>
Sent: Monday, March 23, 2020 6:02 PM
To: Bone, Traci <traci.bone@cpuc.ca.gov>
Cc: Lee, Shawane L <SLee5@socalgas.com>
Subject: Meet and Confer Regarding SoCalGas' Emergency Motion for Protective Order

Ms. Bone:

As you know, on Thursday, March 19, 2020, Governor Newsom issued a stay-at-home order. The City of Los Angeles issued a similar order that same day. These orders have impacted SoCalGas's business operations and its personnel. The legal staff and business unit employees who have been key in responding to California Advocates' data requests are now working from home. Many are affected by the closure of schools and daycares. Moreover, some of the key people to responding to Cal Advocates' data requests and other demands have been tasked with work directly related to the emergency. As I am sure you can understand, SoCalGas' business operations are stretched at this time.

As a natural gas utility, SoCalGas is required to operate. However, SoCalGas is focusing its energies on maintaining continuity of operations and focusing on the safety of its customers, employees and the public, while providing essential repairs and maintenance services during the COVID-19 pandemic. In light of the COVID-19 pandemic, SoCalGas cannot at this time continue to devote significant resources to responding to Cal Advocate's data requests.

We recognize that Cal Advocates has an important statutory role. Accordingly, SoCalGas is reluctant to ask for a stay. Unfortunately, the COVID-19 crisis is growing day by day and SoCalGas' main focus is the health and safety of its customers and employees, as well as the community at large. For this reason, we are hopeful that Cal Advocates will agree that activities with respect to the data requests served outside of any proceeding – i.e., any further requests or responses, meet and confers (including our call currently scheduled for March 24, 2020), and motions relating thereto be temporarily postponed until two weeks after the expiration of the Statewide and City of Los Angeles stay-at-home order. Currently, the City of Los Angeles has issued a stay-at-home order that is set to expire on April 19, 2020—so two weeks from April 19, 2020 is May 3, 2020. The State of California order currently has no expiration date.

We trust that you understand the seriousness of the current pandemic and will readily agree. Please let us know as soon as possible if you agree. If we do not hear from you by 5:00 pm on Tuesday, March 24, 2020, we will seek relief from the Commission.

Johnny Q. Tran
Senior Counsel, Regulatory
Southern California Gas Company | Law Department
555 West Fifth Street, Suite 1400
Los Angeles, California 90013
Tel: (213) 244-2981
Email: JQTran@socalgas.com



A Sempra Energy company

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

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

**DECLARATION
NO. 3**

**Declaration of
Andy Carrasco**

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

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

**DECLARATION OF ANDY CARRASCO IN SUPPORT OF SOUTHERN CALIFORNIA
GAS COMPANY’S (U 904 G) EMERGENCY MOTION FOR A PROTECTIVE ORDER
STAYING ALL PENDING AND FUTURE DATA REQUESTS FROM CALIFORNIA
PUBLIC OFFICE ADVOCATES OFFICE SERVED OUTSIDE OF ANY PROCEEDING
(RELATING TO THE BUILDING DECARBONIZATION MATTER), AND ANY
MOTIONS AND MEET AND CONFERS RELATED THERETO, DURING
CALIFORNIA GOVERNMENT COVID-19 EMERGENCY “SAFER AT HOME”
ORDERS**

I, Andy Carrasco, hereby declare as follows:

1. I am the Director of Regional Public Affairs in the Strategy and Engagement, and Environmental group for the Southern California Gas Company (SoCalGas). My responsibilities include oversight of SoCalGas’s Regional Public Affairs across the entirety of our service territory with 30 employees. The Regional Public Affairs team engages the communities they serve, and educates stakeholders about SoCalGas’s activities, customer programs and services. I have been employed at SoCalGas for over 19 years. Prior to becoming the Director of Regional Public Affairs, I held positions within the supplier diversity and marketing areas of SoCalGas.

2. I have personal knowledge of the facts set forth in this declaration, except as to those matters that are stated on belief or understanding, and as to those matters, I believe them to be true. If called as a witness, I could and would testify competently as to the following:

3. I am the senior management employee tasked with reviewing and responding to data requests from California Public Advocates Office (Cal Advocates) served outside of any proceeding related to the Building Decarbonization matter. My responsibilities related to data requests include reviewing incoming data requests; coordinating with employees in various parts of the company to locate the requested documents or information; and approving the company’s response for submission to Cal Advocates.

4. On March 4, 2020, Governor Gavin Newsom declared a state of emergency arising from the COVID-19 (coronavirus) pandemic. On March 13, 2020, the President of the United States declared a national emergency for the same. As a result of the declarations of

emergency, effective March 20, 2020, I have been named the Public Information Officer (PIO) for the Incident Command System that SoCalGas has activated.

5. Some of my PIO duties include but are not limited to: using information from other members of the Incident Command System and general staff to develop accurate, accessible, and complete information on the incident, and other matters of general interest for both internal and external audiences; monitoring public information to ensure accuracy, acting as a liaison with elected and appointed officials; and interfacing with the public, media, other agencies, and stakeholders to provide information and updates based on changes in incident status.

6. Since becoming PIO, my full-time effort and focus is committed to SoCalGas's COVID-19 response.

7. As the SoCalGas PIO, I am committing my entire workday, after hours, and weekends to dealing with matters related to the COVID-19 response.

8. In my role as PIO, I have had to temporarily be relieved of my duties as Director of Regional Public Affairs, to focus on the needs of the company and our community. The majority of our employees at SoCalGas are having to do the same, as we are all focused on the immediate needs of our customers, community, and employees. The COVID-19 response will impact SoCalGas's business units from offering input to respond to Cal Advocates' inspection demands.

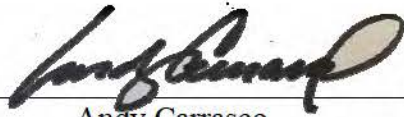
9. In my role as PIO, I am aware that all levels of SoCalGas employees, including senior management, are participating in emergency planning and response functions related to the COVID-19 crisis or are members of SoCalGas's Incident Command System.

10. With my refocused work duties COVID-19 related responsibilities, it is a significant and overwhelming hardship for me to effectively provide business unit support for the multitude of data requests, motions, and meet and confers propounded by Cal Advocates outside of a proceeding.

11. Upon information and belief, securing the time to input, review, and approve discovery and declarations and participate in meet and confers for Cal Advocates' data requests served outside of a proceeding during this emergency is very difficult.

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

Executed this 24 day of March, 2020, at Glendale, California.

By: 
Andy Carrasco
Director of Regional Public Affairs

DECLARATION NO. 4

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

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

DECLARATION OF [REDACTED] IN SUPPORT OF SOUTHERN CALIFORNIA GAS COMPANY'S (U 904 G) EMERGENCY MOTION FOR A PROTECTIVE ORDER STAYING ALL PENDING AND FUTURE DATA REQUESTS FROM CALIFORNIA PUBLIC OFFICE ADVOCATES OFFICE SERVED OUTSIDE OF ANY PROCEEDING (RELATING TO THE BUILDING DECARBONIZATION MATTER), AND ANY MOTIONS AND MEET AND CONFERS RELATED THERETO, DURING CALIFORNIA GOVERNMENT COVID-19 EMERGENCY "SAFER AT HOME" ORDERS

I, [REDACTED], hereby declare as follows:

1. I am a Public Policy Advisor in the Strategy and Engagement, and Environmental group for the Southern California Gas Company (SoCalGas). As it relates to the California Public Advocates Office's (Cal Advocates) data requests served outside of a proceeding (relating to the Building Decarbonization matter), my responsibilities include serving as the business unit operations point person. I have been employed at SoCalGas for approximately 6 months.

2. I have personal knowledge of the facts set forth in this declaration, except as to those matters that are stated on belief or understanding, and as to those matters, I believe them to be true. If called as a witness, I could and would testify competently as to the following:

3. From September 2019, up to the present time, my responsibilities as it relates to the Cal Advocates' data requests (outside of a proceeding) include managing and providing oversight to the business unit's responses to data requests.

4. On March 4, 2020, Governor Gavin Newsom declared a state of emergency arising from the COVID-19 (coronavirus) pandemic. On March 13, 2020, the President of the United States declared a national emergency for the same.

5. While I am not assigned to SoCalGas's Incident Command System at this time, a number of my colleagues are, including my direct supervisor. Moreover, given that so many employees have been temporarily relieved of their duties to serve on the crisis team and/or dealing with other COVID-19 impacts, it is incredibly difficult to meet business unit deadlines as it relates to data request responses and scheduling meet and confers.

6. For instance, each data request requires me to conduct multiple employee interviews, spanning across the entire team structure, of the employee whose work product would be considered responsive. After the interviews and drafting responses, I then must cross reference any contracts with supply management. For questions relating to cost estimates, at Cal Advocates' demand, I must work with the employees, accounting, and others to create these estimates to the best of my ability. All of this takes time and requires everyone involved to dedicate full attention to provide accurate responses.

7. Due to the current COVID-19 emergency, it is difficult to schedule business unit employee interviews and receive feedback in a timely manner. This includes being unable to compile proper responses within such short turnaround timeframes. Drafting business unit responses to data requests at this time could lead to unintentionally providing information that has not been fully reviewed and verified.

8. Due to the COVID-19 emergency, many SoCalGas employees are working from home, which makes getting physical signatures on declarations more difficult.

9. As of March 13, 2020, at the direction of my management, I am telecommuting 100 percent from my home.

10. My husband is a Captain in the United States Marine Corps, stationed at Marine Corps Air Station Miramar, where we reside in San Diego, California. Prior to the Safer-at-Home Orders, I have been commuting almost daily to my place of work, which is the Gas Company Tower in Los Angeles.

11. I am considered a high-risk for complications if I contract COVID-19 due to my pre-existing health issues, and I am also still a resident of San Diego County. Given these orders, and for the betterment of my health, I will continue to telecommute as warranted.


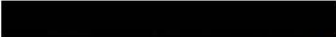
12. Because of the Safer at Home Orders, and unpredictable workload of our servicemembers during this time, I am the sole person responsible for the upkeep of our household; including making sure we have necessities, groceries, and care for our pets.

13. With the COVID-19 implications both professionally and personally, it is a significant and overwhelming hardship for me to effectively provide support for the multitude of data requests, motions, and meet and confers propounded by Cal Advocates related to Building Decarbonization (outside of a proceeding).

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

Executed this 24 day of March, 2020, at San Diego, California.

By:



Public Policy Advisor, Strategy and Engagement,
and Environmental

DECLARATION NO. 5

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

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

DECLARATION OF [REDACTED] IN SUPPORT OF SOUTHERN CALIFORNIA GAS COMPANY'S (U 904 G) EMERGENCY MOTION FOR A PROTECTIVE ORDER STAYING ALL PENDING AND FUTURE DATA REQUESTS FROM CALIFORNIA PUBLIC OFFICE ADVOCATES SERVED OUTSIDE OF ANY PROCEEDING (RELATING TO THE BUILDING DECARBONIZATION MATTER), AND ANY MOTIONS AND MEET AND CONFERS RELATED THERETO, DURING CALIFORNIA GOVERNMENT COVID-19 EMERGENCY "SAFER AT HOME" ORDERS

I, [REDACTED], hereby declare as follows:

1. I am a regulatory case manager for the Southern California Gas Company (SoCalGas). I am the lead regulatory case manager working on the data requests from California Public Advocates Office (Cal Advocates) served outside of a proceeding (related to the Building Decarbonization matter), including questions regarding Californians for Balanced Energy Solutions (C4BES). I started with the company in November 2013 in customer programs and assistance and joined regulatory affairs in June 2017 as a case manager.

2. I have personal knowledge of the facts set forth in this declaration, except as to those matters that are stated on belief or understanding, and as to those matters, I believe them to be true. If called as a witness, I could and would testify competently as to the following:

3. On May 23, 2019, Cal Advocates began serving data requests on SoCalGas regarding C4BES and Sierra Club's allegations in Building Decarbonization Proceeding, Rulemaking (R.) 19-01-011. The data requests were served outside of R. 19-01-011.

4. Cal Advocates' data requests have been voluminous; to date, it has propounded 13 rounds of data requests consisting of more than 100 individual requests and has expanded in scope to questions on SoCalGas' accounting, marketing and lobbying activities.

5. I received the 13th data request, CalAdvocates-TB-SCG-2020-02, on March 20, 2020. (A true and correct copy of this request is attached to this declaration as Exhibit A.) This data request is burdensome and seeks a very broad set of documents and information to be responded to within 15 business days.

6. It is my understanding that SoCalGas has diligently responded to each of Cal Advocates' requests and has met and conferred in good faith with Cal Advocates on disputes arising out of those requests.

7. Due to the recent Coronavirus pandemic, SoCalGas is allowing me to work from home full-time. My husband is also working from home full-time; however, his job requires him to leave home occasionally. We have a 16-month-old daughter who attends daycare Monday through Friday during normal work hours.

8. Unfortunately, due to the current Coronavirus pandemic, the owner of the daycare has decided to close services from at least Friday, March 20 to Monday, April 6, at which time she will re-assess the situation. A 16-month-old requires a lot of attention and therefore my husband and I take turns watching her so the other one can complete job related duties and we can work while she naps. I anticipate that we will lack daycare at least as long as the Safer at Home Orders are effective.

9. Due to the lack of childcare, I cannot work as quickly and as efficiently as I could before the Coronavirus crisis emerged. I have to tend constantly to my 16-month-old during the day and therefore cannot reliably attend conference calls or perform my other normal work functions.

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

Executed this 24th day of March, 2020, at Long Beach, California.



By: 

Regulatory Case Manager

EXHIBIT A

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



Public Advocates Office
California Public Utilities Commission

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

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

PUBLIC ADVOCATES OFFICE DATA REQUEST
No. CalAdvocates-TB-SCG-2020-02

Date: March 20, 2020

Response Requested: Within 15 business days but no later than April 13, 2020

To: [REDACTED] Phone: [REDACTED]
Regulatory Affairs for SoCalGas Email: [REDACTED]

Johnny Q. Tran Phone: (213) 244-2981
Attorney for SoCalGas Email: JQTran@semprautilities.com

Shawane Lee Phone: (213) 244-8499
Attorney for SoCalGas Email: SLee5@socalgas.com

Stacy Van Goor Email: SVanGoor@sempra.com
Sempra Energy

From: **Traci Bone** Phone: (415) 713-3599
Attorney for the Email: Traci.Bone@cpuc.ca.gov
Public Advocates Office

Alec Ward Phone: (415) 703-2325
Analyst for the Email: Alec.Ward@cpuc.ca.gov
Public Advocates Office

INSTRUCTIONS

General:

You are instructed to answer the following Data Requests in the above-captioned proceeding, with written, verified responses pursuant to Public Utilities Code §§ 309.5 and 314, and Rules 1.1 and 10.1 of the California Public Utilities Commission’s Rules of Practice and Procedure within ten (10) business days.

Each Data Request is continuing in nature. Provide your response as it becomes available, but no later than the due date noted above. If you are unable to provide a response by the due date, notify the Public Advocates Office within five (5) business days, with a written

explanation as to why the response date cannot be met and a best estimate of when the information can be provided. If you acquire additional information after providing an answer to any request, you must supplement your response following the receipt of such additional information.

This data request does not diminish or excuse any pending written or oral data requests to you.

The Public Advocates Offices expects you to respond to this data request in a timely manner and with the highest level of candor

Responses:

Responses shall restate the text of each question prior to providing the response, identify the person providing the answer to each question and his/her contact information, identify all documents provided in response to the question, and clearly mark such documents with the data request and question number they are responsive to.

Responses should be provided both in the original electronic format, if available, and in hard copy. (If available in Word format, send the Word document and do not send the information as a PDF file.) All electronic documents submitted in response to this data request should be in readable, downloadable, printable, and searchable formats, unless use of such formats is infeasible. Each page should be numbered. If any of your answers refer to or reflect calculations, provide a copy of the supporting electronic files that were used to derive such calculations, such as Excel-compatible spreadsheets or computer programs, with data and formulas intact and functioning. Documents produced in response to the data requests should be Bates-numbered, and indexed if voluminous.

Requests for Clarification:

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

Objections:

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

Assertions of Privilege:

If you assert any privilege for documents responsive to this data request, please provide within five (5) business days to the people listed above a privilege log identifying each withheld document, and: (a) a summary description of the document; (b) the date of the document; (c) the

name of each author or preparer; (d) the name of each person who received the document; and (e) the legal basis for withholding the document.

Assertions of Confidentiality:

If you assert confidentiality for any of the information provided, please identify the information that is confidential with highlights and provide a specific explanation of the basis for each such assertion. Assertions of confidentiality will be carefully scrutinized and are likely to be challenged absent a strong showing of the need for confidentiality, with the exception of the confidentiality for sensitive personal identifying information as described below.

Sensitive Personal Identifying Information:

Any sensitive personal identifying information other than an employee's name shall be fully redacted unless otherwise directed. Sensitive personal identifying information includes, without limitation:

- Social security numbers.
- Bank account numbers.
- Passport information.
- Healthcare related information.
- Medical insurance information.
- Student information.
- Credit and debit card numbers.
- Drivers license and State ID information.

Signed Declaration:

The data response shall include a signed declaration from a responsible officer or an attorney under penalty of perjury that you have used all reasonable diligence in preparation of the data response, and that to the best of their knowledge, it is true and complete.

In addition, any claim of confidentiality or privilege shall be supported by a declaration from your attorney stating that your attorney is familiar with the relevant case law and statutes pertaining to claims of confidentiality and privilege such that there is a good faith basis for the claim.

DEFINITIONS

- A. As used herein, the terms “you,” “your(s),” “Company,” “SCG,” and “SoCalGas” mean Southern California Gas Company and any and all of its respective present and former employees, agents, consultants, attorneys, officials, and any and all other persons acting on its behalf.

- B. The terms “and” and “or” shall be construed either disjunctively or conjunctively whenever appropriate in order to bring within the scope of these Data Requests any information or documents which might otherwise be considered to be beyond their scope.
- C. Date ranges shall be construed to include the beginning and end dates named. For example, the phrases “from January 1 to January 31,” “January 1-31,” “January 1 to 31,” and “January 1 through January 31” should be understood to include both the 1st of January and the 31st of January. Likewise, phrases such as “since January 1” and “from January 1 to the present” should be understood to include January 1st, and phrases such as “until January 31,” “through January 31,” and “up to January 31” should also be understood to include the 31st.
- D. The singular form of a word shall be interpreted as plural, and the plural form of a word shall be interpreted as singular whenever appropriate in order to bring within the scope of these Data Requests any information or documents which might otherwise be considered to be beyond their scope.
- E. The term “communications” includes all verbal and written communications of every kind, including but not limited to telephone calls, conferences, notes, correspondence, and all memoranda concerning the requested communications. Where communications are not in writing, provide copies of all memoranda and documents made relating to the requested communication and describe in full the substance of the communication to the extent that the substance is not reflected in the memoranda and documents provided.
- F. The term “document” shall include, without limitation, all writings and records of every type in your possession, control, or custody, whether printed or reproduced by any process, including documents sent and received by electronic mail, or written or produced by hand.
- G. “Relate to,” “concern,” and similar terms and phrases shall mean consist of, refer to, reflect, comprise, discuss, underlie, comment upon, form the basis for, analyze, mention, or be connected with, in any way, the subject of these Data Requests.
- H. When requested to “state the basis” for any analysis (including studies and workpapers), proposal, assertion, assumption, description, quantification, or conclusion, please describe every fact, statistic, inference, supposition, estimate, consideration, conclusion, study, and analysis known to you which you believe to support the analysis, proposal, assertion, assumption, description, quantification, or conclusion, or which you contend to be evidence of the truth or accuracy thereof.
- I. Terms related in any way to “lobbying,” lobbyist,” “lobbying firm” and “lobbyist employer” shall, without limitation, be construed broadly and, without limitation, to be inclusive of how those terms are used in the Sempra Energy Political Activities Policy (Policy) and the

California Political Reform Act (Act). For purposes of this data request, the Act's definitions shall understood to include all manner of state, regional, and local government or agencies.¹

DATA REQUEST

1. Please provide all documents related to SoCalGas and Sempra training and reporting programs that are used to ensure compliance with the Sempra Energy Political Activities Policy (Policy). See Policy at Section 1, p. 1 (“the company has a robust training and reporting program in place to ensure compliance”).
2. Regarding the Policy’s requirement at page 3 under “Lobbying” that all employees who engage in lobbying activities are required to report their activity in LATS, please explain what “LATS” is and all of the data fields it contains.
3. Please identify all SoCalGas and Sempra Energy employees who have LATS entries for activity between January 1, 2015 and today, and provide copies of all such LATS entries.
4. Please identify all SoCalGas and Sempra Energy employees who have engaged in lobbying activities at any time between January 1, 2015 and today who do not have LATS entries, and explain why they do not have LATS entries.
5. Please identify all SoCalGas and Sempra Energy employees who have lobbied at any time between January 1, 2015 and today regarding issues related to decarbonization.
6. Please explain how SoCalGas and Sempra decide whether an employee’s work should be allocated to shareholders or ratepayers and who makes such a determination. If this determination varies by business unit, please explain the process for each business unit.
7. Please explain how SoCalGas and Sempra record the cost of employee work that is shareholder-funded, and the accounts where such time is recorded.
8. Please explain how SoCalGas and Sempra record the cost of employee work that is ratepayer-funded, and the accounts where such time is recorded.
9. For all SoCalGas and Sempra Employees who have lobbied at any time between January 1, 2015 and today on behalf of either organization, please identify by each employee and for each year the portion of their time allocated to ratepayer-funded lobbying, and quantify the monetary value of that work for each employee by year.

¹ The Sempra Energy Political Activities Policy defines lobbying broadly on page 3 as: “any action intended to influence legislative or administrative action, including activities to influence government officials, political parties, or ballot measures. Lobbyists can be individual employees or the company that employees them, referred to as a Lobbyist-Employer.”

10. For all SoCalGas and Sempra Employees who have lobbied at any time between January 1, 2015 and today on behalf of either organization, please identify by each employee and for each year the portion of their time allocated to shareholder-funded lobbying, and quantify the monetary value of that work for each employee by year.
11. Please provide a fully executed copy of the entire contractual agreement between SoCalGas and Marathon Communications Inc. including the confidentiality provision which prevents SoCalGas from releasing the prices that Marathon charges for their services without being in breach of contract.² Please also provide supporting documentation to demonstrate that this contract is binding on SoCalGas and has not been superseded by any other contract.
12. For the period between January 1, 2015 and today, please provide all documents submitted to the to the California Public Utilities Commission pursuant to General Order 77 by SoCalGas and Sempra Energy, including both the public and confidential versions of such submissions. To the extent such submissions are available on the company's website, you may provide a link to that information.³

END OF REQUEST

² SoCalGas attorneys asserted during a Meet and Confer discussion on March 19, 2020 that such a term exists in its agreement with Marathon Communications, Inc.

³ We note that a public version of SoCalGas' 2017 GO-77M statement is available on its website, but that no other versions are available.

EXHIBIT 13

**CalAdvocates-SoCalGas March 10-20, 2020 Emails
re: Removal of Unwarranted Confidentiality
Designations**

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

From: [Bone, Traci](#)
To: [Shawane L. Lee \(slee5@socalgas.com\)](#); [Tran, Johnny Q](#)
Cc: [Campbell, Michael](#); [Stephen Castello \(Stephen.Castello@cpuc.ca.gov\)](#); [Ward, Alec](#); [Lyser, Shelly](#)
Subject: Summary of 3/19/2020 Meet and Confer re: Confidential Designations in 209 pages of materials
Date: Friday, March 20, 2020 4:54:00 PM
Attachments: [RE Confidentiality of Information in SoCalGas DRs provided to the Public Advocates Office.msg](#)

Ms. Lee and Mr. Tran:

The following summarizes our Meet and Confer on March 19, 2020, to discuss SoCalGas' claims of confidentiality for 209 pages of documents which SoCalGas has redacted. The conference call was attended by both of you as attorneys for SoCalGas, me, as an attorney for the Public Advocates Offices, and Stephen Castello, also with the Public Advocates Office.

I provides the 209 pages of confidential materials to you both via a secure web server on March 11, 2020, with each page numbered for ease of reference.

We had originally agreed to have this Meet and Confer on March 13, 2020, but on March 12, 2020, Ms. Lee proposed that we defer the Meet and Confer so that she could work with your clients to identify which redactions could be removed prior to our Meet and Confer so that we could have a speedier and more productive meeting. Ms. Lee implied during our conversation that this would result in a meaningful number of redactions being lifted. On this basis, I agreed with her proposal to extend the date of the Meet and Confer. I communicated this agreement in an email to you both, making clear that "given this significant extension, I expect that during our meet and confer on March 19, SoCalGas will limit itself to only good faith assertions of confidentiality and will be prepared to support such claims with relevant legal citations." See attached email chain dated March 12.

In Ms. Lee's confirming email, she retracted her representations on the call and suggested that "compromise" from the Office of Ratepayer Advocates was necessary: "I cannot confirm which documents or the number of documents that can be downgraded; therefore, I cannot agree there will be a "significant number" at this time. Hopefully, we will be able to come to a compromise regarding this matter." See attached email chain dated March 12.

The Meet and Confer regarding these issues occurred on Thursday, March 19, 2020. However, notwithstanding that the purpose of the extension had been so that Ms. Lee could identify those documents where the redactions could be removed, it quickly became evident during the Meet and Confer that Ms. Lee had not seriously considered which of the redactions were inappropriate and should be removed. For example, Ms. Lee insisted that the names of SoCalGas employees at pages 1-2 were entitled to confidentiality to, among other things, prevent them from receiving robocalls, even though no other personal identifying information regarding those employees was included in the relevant documents. She also insisted that the names of executives for various associations and businesses at pages 1-2 were confidential, even though this information could be readily obtained on the internet.

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

Regarding page 3, Ms. Lee claimed that the names of public figure, such as former California governors, were confidential. Mr. Tran suggested that the name of an attorney on pages 3-4 was also potentially confidential as an attorney client communication. Ms. Lee also claimed that SoCalGas has a confidentiality provision in its contract with Marathon which prevents SoCalGas from releasing the prices that Marathon charges SoCalGas for their services without being in breach of contract.

For pages 5-19, which appear to be a single document, you claimed the entire document was confidential because it disclosed internal business strategy. Neither one of you had considered the likelihood that this document has been shared with other parties outside of SoCalGas so that it would not be confidential. You committed to look into the possibility that these documents have been shared with parties outside of SoCalGas.

Both of you repeatedly requested that I explain to you why a document should not be kept confidential. Neither of you acknowledged the basic law at issue here - that SoCalGas does not have a right to simply mark anything that its wants as confidential and that SoCalGas, not the Public Advocates Office, has the burden of showing why something is confidential consistent with the law. Rather, you treated this as a "negotiation" in which Public Advocates Office representatives had to make their case to you why the claim of confidentiality could not be sustained.

I was clear that it appears that none of the documents are confidential under the law and that all of the redactions should be lifted.

You did provide citations to two cases which you claim allow you to keep employee names and business strategies confidential.

As a result of extensive questioning by me during the Meet and Confer, you conceded that the names of C4BES Board members are not confidential, and that information readily available on the internet may not be confidential. You also affirmed that pages 1-2 were a SoCalGas document, but that you did not know if it had been shared with any party outside of SoCalGas.

You were unable to explain why an email on page 26 from a SoCalGas employee that included the Chair of the C4BES was confidential. You agreed to look into this.

Given these begrudging concessions which should have been provided without significant questioning by me, I expressed my concern that you were not acting in good faith when you requested the extension, that you were not familiar with the documents, and that you were continuing to make baseless claims of confidentiality. I explained that as an officer of the court you have a responsibility to ensure that the claims of confidentiality that your client has made are supported, and that I would not hesitate to seek sanctions against you for your failure to act in good faith to ensure that your client was not making baseless claims of confidentiality. I pointed out that I was familiar with SoCalGas' tactics in both this investigation, and the recent determinations of the court in the *Gandsy v. SoCalGas* case.

You both expressed that you were offended by my remarks because you could not be responsible for all of the redactions made in roughly 8,000 documents produced to the Public Advocates Offices. Ms. Lee also explained that she was working on Covid-19 issues with Energy Division and had many other competing priorities. I pointed out that the 8,000 documents were not at issue, just the 209 pages that had been provided to you a week ago, and that I did not believe that Ms. Lee was acting consistent with her representations to me on Wednesday, March 12, 2020, that SoCalGas was seriously considering which redactions could be lifted.

Mr. Tran wanted to understand the reasons for making the information in the 209 pages public, and I explained that SoCalGas' use of ratepayer funds to develop business plans that undermine California's climate change goals were an issue of public importance that the public has a right to know about. Mr. Tran asserted that SoCalGas' advocacy in favor of natural gas and renewable gas was consistent with California policies. I replied that that was an open debate that requires an open forum.

At some point, we discussed the Public Affairs Managers (PAMs) identified on pages 1-2 and whether their salaries are paid by ratepayers, shareholders, or a combination, and whether and how SoCalGas allocates their time for those purposes. Both of you claimed to know nothing about those issues.

We concluded with the understanding that you would provide a list to us identifying where SoCalGas would agree to lift the confidentiality redactions and that the rest of the issues will be addressed in a Motion to the Commission's President.

In conclusion:

1. We encourage you to carefully review the 209 pages we have provided to you and that you ensure that those redactions that remain are consistent with well-established claims of confidentiality. For each page that you continue to claim contains confidential information, please provide citations to the relevant supporting law;
2. Please provide your list of redactions that will be removed, and specific supporting authorities for continued claims of confidentiality no later than a week from today, March 27, 2020. As an alternative to listing the redactions, you may choose instead to identify the lifting of the yellow highlights by coloring them green to indicate that SoCalGas is no longer claiming that the information is confidential;
3. Please identify the Energy Division staff Ms. Lee has been working with regarding the COVID 19 issues, including the leader of the call she was required to attend on March 19; and
4. Please confirm receipt of this email no later than Monday, March 23, 2020.

If you have any questions or concerns regarding the foregoing, please do not hesitate

to contact me. The Public Advocates Office looks forward to your prompt resolution of these issues.

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

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

From: [Lee, Shawane L](#)
To: [Bone, Traci](#)
Cc: [Ward, Alec](#); [Castello, Stephen](#); [Campbell, Michael](#); [Tran, Johnny Q](#); [Sierzant, Corinne M](#); [Arazi, Shirley](#)
Subject: RE: Confidentiality of Information in SoCalGas DRs provided to the Public Advocates Office
Date: Thursday, March 12, 2020 4:07:04 PM

Hello Traci,

Thank you for your courtesy, which is very much appreciated.

As we discussed, I will work with the Business Unit and review each document to determine if there are documents we can downgrade to remove from the scope of the Meet and Confer. I note in your email you said there would be a “significant number” of documents that SoCalGas will be seeking to remove. Without reviewing the documents, I cannot confirm which documents or the number of documents that can be downgraded; therefore, I cannot agree there will be a “significant number” at this time. Hopefully, we will be able to come to a compromise regarding this matter.

We look forward to speaking to you Thursday.

Regards,

Shawane

Shawane L. Lee
Senior Counsel – Regulatory
SoCalGas | Law Department
555 West 5th Street, GT-14E7 | Los Angeles, CA 90013
Tel: 213-244-8499 | Fax: 213-629-9620
Cell: 215-823-9144
E-Mail: slee5@socalgas.com

From: Bone, Traci <traci.bone@cpuc.ca.gov>
Sent: Thursday, March 12, 2020 3:48 PM
To: Lee, Shawane L <SLee5@socalgas.com>
Cc: Ward, Alec <Alec.Ward@cpuc.ca.gov>; Castello, Stephen <Stephen.Castello@cpuc.ca.gov>; Campbell, Michael <Michael.Campbell@cpuc.ca.gov>; Tran, Johnny Q <JQTran@socalgas.com>
Subject: [EXTERNAL] RE: Confidentiality of Information in SoCalGas DRs provided to the Public Advocates Office

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

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

Shawane: Per our conversation, we have agreed to an extension from Friday, March 13 at 9:30 a.m. to Thursday, March 19 from 1:00-2:30. This extension is being provided to enable SoCalGas to make a thorough review of the documents – which comprise a total of 209 pages not 209 documents. It is my understanding that SoCalGas will be seeking to remove the confidentiality designation from a significant number of the documents so that our meet and confer can be focused on a subset of documents that SoCalGas insists are confidential.

It is my understanding that this extension is required because of the Legal group's need to confer with the business group regarding the designations, and the fact that many of those SoCalGas employees are currently traveling.

Given this significant extension, I expect that during our meet and confer on March 19, SoCalGas will limit itself to only good faith assertions of confidentiality and will be prepared to support such claims with relevant legal citations.

I will send a confirming calendar invitation to you both and look forward to discussing these issues with you and Johnny next week.

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

From: Lee, Shawane L <SLee5@socalgas.com>
Sent: Thursday, March 12, 2020 2:22 PM
To: Bone, Traci <traci.bone@cpuc.ca.gov>
Cc: Ward, Alec <Alec.Ward@cpuc.ca.gov>; Castello, Stephen <Stephen.Castello@cpuc.ca.gov>; Campbell, Michael <Michael.Campbell@cpuc.ca.gov>; Tran, Johnny Q <JQTran@socalgas.com>
Subject: RE: Confidentiality of Information in SoCalGas DRs provided to the Public Advocates Office
Importance: High

Hello Traci,

Thank you for your email yesterday forwarding the 209 documents Cal Advocates is seeking to have the confidentiality designation removed. Based on the extensive number of documents, we will need to reschedule tomorrow's meet and confer to Friday, March 20. In order to make the meet and confer more productive, we would like to review the documents with the responsible Business Unit to determine if there are any compromises we can offer to downgrade specific documents.

We thank you for your consideration and look forward to working with you on this matter.

Best regards,

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

Shawane

Shawane L. Lee
Senior Counsel – Regulatory
SoCalGas | Law Department
555 West 5th Street, GT-14E7 | Los Angeles, CA 90013
Tel: 213-244-8499 | Fax: 213-629-9620
E-Mail: slee5@socalgas.com

From: Bone, Traci <traci.bone@cpuc.ca.gov>
Sent: Wednesday, March 11, 2020 10:36 AM
To: Lee, Shawane L <Slee5@socalgas.com>; Tran, Johnny Q <JQTran@socalgas.com>
Cc: Ward, Alec <Alec.Ward@cpuc.ca.gov>; Castello, Stephen <Stephen.Castello@cpuc.ca.gov>;
Campbell, Michael <Michael.Campbell@cpuc.ca.gov>
Subject: [EXTERNAL] RE: Confidentiality of Information in SoCalGas DRs provided to the Public Advocates Office

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

Shawane and Johnny:

For Friday's call, you should plan for an hour, starting at 9:30. I will forward a meeting invitation with the conference line information shortly.

In response to Johnny's request, I will also forward later today, probably via Kite Mail, the documents we are seeking to have the confidentiality designation removed from.

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

From: Lee, Shawane L <Slee5@socalgas.com>
Sent: Tuesday, March 10, 2020 6:59 PM
To: Bone, Traci <traci.bone@cpuc.ca.gov>; Tran, Johnny Q <JQTran@socalgas.com>
Subject: RE: Confidentiality of Information in SoCalGas DRs provided to the Public Advocates Office

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

Hello Traci,

I have a conflict on Friday, March 13 at 3:30 PM. Johnny and I are available Friday at 9:30 AM. Please let us know if this day and time is still available.

Thanks,

Shawane

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

Sent: Tuesday, March 10, 2020 4:01 PM

To: Tran, Johnny Q <JQTran@socalgas.com>

Cc: Lee, Shawane L <SLee5@socalgas.com>

Subject: [EXTERNAL] Confidentiality of Information in SoCalGas DRs provided to the Public Advocates Office

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

Johnny –

As you are probably aware, the Public Advocates Office (Cal Advocates) has obtained a number of data responses from SoCalGas regarding its lobbying activities related to the “Balanced Energy” campaign.

SoCalGas has marked specific information in many of the data responses as “confidential” and has identified generic reasons for that assertion. CalAdvocates is in the process of identifying documents with assertions of confidentiality that it believes are not supported, and should be made publicly available. To be clear, Cal Advocates does not seek to have any personal identifying information publicly disclosed.

I would like the opportunity to speak with you about those documents to better understand SoCalGas’s claims and whether or not SoCalGas is willing to remove the confidential designations from them.

Would 9:30 or 3:30 this Friday, March 13, work for you?

If not, is Ms. Lee available at one of those times or is there another time that day that would work?

Traci Bone, Attorney
California Public Utilities Commission
505 Van Ness Avenue

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

San Francisco, CA 94102
Work: (415) 703-2048
Cell: (415) 713-3599
tbo@cpuc.ca.gov

From: Tran, Johnny Q <JQTran@socalgas.com>
Sent: Friday, March 06, 2020 6:33 PM
To: Bone, Traci <traci.bone@cpuc.ca.gov>
Cc: Van Goor, Stacy <SVanGoor@sempra.com>; Lee, Shawane L <SLee5@socalgas.com>
Subject: RE: Relationship between Sempra Energy and SoCalGas

Hi Ms. Bone, please send the data request for Sempra to Stacy Van Goor (copied here). For SoCalGas, please send it to me and Shawane Lee (also copied here).

Johnny

From: Bone, Traci <traci.bone@cpuc.ca.gov>
Sent: Friday, March 6, 2020 3:02 PM
To: Tran, Johnny Q <JQTran@socalgas.com>
Subject: [EXTERNAL] RE: Relationship between Sempra Energy and SoCalGas

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

The data requests will address Sempra Energy and SoCalGas lobbying activities and activities to influence public opinion as those activities are defined or identified in the Political Reform Act and other legislation.

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

From: Tran, Johnny Q <JQTran@socalgas.com>
Sent: Friday, March 06, 2020 2:59 PM
To: Bone, Traci <traci.bone@cpuc.ca.gov>
Subject: RE: Relationship between Sempra Energy and SoCalGas

Hi Ms. Bone, can you let me know what topics the data request will cover so that I can try to find out who would be the appropriate attorney at Sempra Energy?

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

From: Bone, Traci <traci.bone@cpuc.ca.gov>
Sent: Friday, March 6, 2020 11:03 AM
To: Tran, Johnny Q <JQTran@socalgas.com>
Subject: [EXTERNAL] Relationship between Sempra Energy and SoCalGas

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

Mr. Tran:

I am an attorney from the CPUC and have recently been assigned to work on SoCalGas matters.

We would like to serve identical discovery on both Sempra Energy and SoCalGas.

Can you please confirm that you can ensure both entities respond to the data request, or identify another attorney who should respond for Sempra Energy?

Thank you, in advance, for your prompt response to this inquiry.

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

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

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

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

From: [Bone, Traci](#)
To: [Henry, Elliott S](#)
Cc: [Ward, Alec](#); [Castello, Stephen](#); [Tran, Johnny Q](#); [Jason H. Wilson \(jwilson@willenken.com\)](#); [Sierzant, Corinne M](#); [Holland, Brooke](#); [Campbell, Michael](#); [Sherin Varghese](#)
Subject: RE: SAP questions
Date: Friday, May 08, 2020 9:44:00 AM

Elliott:

Thank you for arranging for someone familiar with the SAP system to be on the call today. We had a chance to speak with our auditor, James Wuehler (Jim), and he confirmed that Cal Advocates can work with SoCalGas to identify specific databases we want to access, rather than requiring SoCalGas to create a fixed database of the entire SAP system.

First, we propose that SoCalGas make fixed database copies of the following accounts, ideally in the order set forth below:

ACCOUNT	DESCRIPTION
IO 300796601	Related to Balanced Energy
Cost Center 2200-2204	
Cost Center 2200-0811	Public Affairs Manager, LA
CTR F426400G	Exp-Civic & Related
IO FG9200002200	Administrative and General Salaries
CTR F920000G	A&G Salaries
IO FG9215632200	Public Affairs Administration - NonLabor
IO FG90800002200	
Cost Center 2200-2504	Public Policy and Planning
Cost Center 2200-0942	Related to Reach Codes
IO FG8706502200	Related to Reach Code

We are basing this request on account numbers provided in response to SoCalGas data responses. In some instances, we do not have a full description of the account, and there may be typographical errors in those data responses or in our transcription of them. We have tried to associate an account number with a description where one was available to minimize the impact of incomplete or inaccurate information.

Ideally, before our call today, your SAP person could quickly run through these accounts and confirm that we have a working account number. If this is not possible, and if SoCalGas has any problem identifying any of the listed accounts, we ask that you please contact us as soon as practicable so that we can determine what the correct account is. Among other things, we can attempt to direct you to the relevant data response where the account was identified.

Our hope is that you can start providing the fixed databases of these accounts early next week on a rolling basis so that we can start our review immediately.

As we review these databases, Jim is likely to send additional queries to his contact at SoCalGas for additional accounts.

Second, we ask that SoCalGas produce fixed databases for all accounts that are 100% shareholder funded.

Third, we ask that SoCalGas produce fixed databased for all accounts housing costs for activities related to influencing public opinion on decarbonization policies.

Fourth, we ask that SoCalGas identify all accounts housing costs for lobbying activities related to decarbonization policies. For this request, please be sure to identify those accounts housing costs related to CPUC Proceedings R.13-11-005 and R.19-01-011 and explain whether the costs in those accounts are limited to those proceedings, or contain costs for other lobbying activities related to decarbonization policies.

Of course, we reserve the right to request access to additional databases as we continue our audit.

Please let us know as soon as practicable if this start-up proposal is acceptable to SoCalGas and when we can expect to see our first delivery.

We thank you, in advance, for your assistance in this matter,

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

From: Henry, Elliott S <EHenry@socalgas.com>
Sent: Thursday, May 07, 2020 1:23 PM
To: Bone, Traci <traci.bone@cpuc.ca.gov>
Cc: Ward, Alec <Alec.Ward@cpuc.ca.gov>; Castello, Stephen <Stephen.Castello@cpuc.ca.gov>; Tran, Johnny Q <JQTran@socalgas.com>; Jason H. Wilson (jwilson@willenken.com) <jwilson@willenken.com>; Sierzant, Corinne M <CSierzant@socalgas.com>; Holland, Brooke <AHolland@socalgas.com>; Campbell, Michael <Michael.Campbell@cpuc.ca.gov>; Sherin Varghese <svarghese@willenken.com>
Subject: SAP questions

Hello Traci,

We should have someone on tomorrow who is familiar with the SAP system. They probably will not be able to be on the entire time (which I would guess you wouldn't need anyway), but I'll try to let you know their constraints before the meeting. Since different people are more familiar with

EXHIBIT 15

**R.13-11-005 – SoCalGas Data Response to
CalAdvocates-SK-SCG-2020-01 Q4**

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

SOUTHERN CALIFORNIA GAS COMPANY
(DATA REQUEST CALADVOCATES-SK-SCG-2020-01)
DATE RECEIVED: JANUARY 24, 2020
DATE SUBMITTED: FEBRUARY 7, 2020

QUESTION 4:

Please provide any and all documentary evidence that charges to IO 30076601 are shareholder funded.

RESPONSE 4:

SoCalGas objects to this request as seeking information that is outside the statutory authority delegated to the Public Advocates Office by Pub. Util. Code §§ 309.5 and 314. The consultant’s work is shareholder funded. The information requested would reveal relationships and strategic business choices made by SoCalGas and others with whom it associates and chill the exercise of SoCalGas’ and other’s constitutional rights. See e.g., *NAACP v. Alabama* (1958) 357 U.S. 449, 462; *Perry v. Schwarzenegger* (9th Cir. 2010) 591 F.3d 1147, 1160. The appropriateness of the disclosure of this information is the subject of an appeal being reviewed by the full Commission. SoCalGas objects to this request as overbroad in seeking “any and all documentary evidence.” Subject to the above, and without waiving its objection, SoCalGas responds as follows:

See response to question 5. The Balanced Energy internal order (IO) 300796601 was created in March 2019 for tracking all costs associated with Balanced Energy activities and the intent was to make it a shareholder funded IO. However, an incorrect settlement rule was set up for this IO to FERC 920.0 A&G Salaries, consequently, the costs initially settled to the incorrect FERC account. On September 21, 2019, the SoCalGas Accounting Controller and Accounting Director met with the Strategy, Engagement & Chief Environmental Officer, and confirmed that the Balanced Energy activities should be classified as FERC 426.4 - Expenditures-Civic & Related Activities/Lobbying Costs.

The settlement rule was corrected on October 30, 2019 with an effective date of November 1, 2019. Accounting booked retroactive adjustments in November and December 2019 to correct the FERC account balances.

Order	300796601		BALANCED ENERGY									
Plan settlement	Version		2		Plan version 2 - FERC Dist							
Plan - Settlement Rules												
Cat	Settlement Receiver	Receiver Short Text	%	Equivalence no.	Sett...	No.	From...	From ...	To P..	To Fisc...	First Used	Last Used
CTR	F920000G	A&G SALARIES	100.00	0	PER	1	3	2019	9	2019	009/2019	009/2019
CTR	F426400G	EXP-CIVIC & RELATED	100.00	0	PER	2	10	2019	16	9999	012/2019	012/2019

SOUTHERN CALIFORNIA GAS COMPANY
(DATA REQUEST CALADVOCATES-SK-SCG-2020-01)
DATE RECEIVED: JANUARY 24, 2020
DATE SUBMITTED: FEBRUARY 7, 2020

Order	300796601		BALANCED ENERGY									
Plan settlement			Version	2	Plan version 2 - FERC Dist							
Plan - Settlement Rules												
Cat	Settlement Receiver	Receiver Short Text	%	Equivalence no.	Sett...	No.	From...	From ...	To P...	To Fisc...	First Used	Last Used
CTR	F920000G	A&G SALARIES	100.00	0	PER	1	3	2019	9	2019	009/2019	009/2019
CTR	F426400G	EXP-CIVIC & RELATED	100.00	0	PER	2	10	2019	16	9999	012/2019	012/2019

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

EXHIBIT 16

**Minute Order from a Los Angeles Superior Court
Judge in the case *Gandsey v. SoCalGas*
(civil litigation related to Aliso Canyon)
February 20, 2020**

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

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Spring Street Courthouse, Department 12

BC601844

**WILLAM GANDSEY VS SOUTHERN CALIFORNIA GAS
COMPANY ET AL**

February 20, 2020

8:14 AM

Judge: Honorable Carolyn B. Kuhl
Judicial Assistant: Lori M'Greené
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Ruling on Submitted Matter

The Court, having taken the matter under submission on 02/11/2020 for Hearing on Motion for Sanctions of Private Plaintiffs for monetary, evidentiary and issue sanctions and an adverse-inference jury instruction (BC601844) on case BC601844, now rules as follows:

Motion of Private Plaintiffs for Monetary, Evidentiary, and Issue Sanctions and an Adverse-Inference Jury Instruction

Court's Ruling: The motion is granted in part. For the reasons set forth below, the court awards monetary sanctions of \$525,610 against Defendant and defense counsel jointly, payable within 20 days. The court also orders that Private Plaintiffs are allowed to reopen any deposition at the expense of Defendants up until the date of the final status conference, so long as Plaintiffs have a colorable claim that a document that was withheld under a claim of privilege, but then produced after November 1, 2019, will be the subject of the deposition. Defendants are ordered to pay both the costs and attorneys' fees for any such depositions. Plaintiffs may submit an accounting of such reasonable costs and fees to the court, to be accompanied by briefing if necessary. The court also imposes the following issue sanctions: (1) all documents on Defendants' privilege logs that were produced after November 1, 2019 shall be deemed authenticated; and (2) all documents on Defendants' privilege logs that were produced after November 1, 2019 shall be deemed admissible under the business records exception to the hearsay rule (but Defendants may object to a hearsay statement within such documents).

I. The Current Motion

Private Plaintiffs bring the current motion in order to seek monetary, evidentiary and issue sanctions, which Plaintiffs premise on Defendants' repeated failure to provide sufficient justification for the withholding of thousands of supposedly privileged documents. Plaintiffs

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argue that sanctions are warranted because Defendants have violated this court's September 18, 2019 order requiring production of a good faith and legally compliant privilege log and have engaged in a pattern of abusive discovery by repeatedly withholding large numbers of documents without substantial justification and by producing privilege logs that are insufficient to allow Plaintiffs or the court to evaluate Defendants' claims of privilege. Plaintiffs seek hundreds of thousands of dollars in monetary sanctions and numerous evidentiary and issue sanctions as set forth in Private Plaintiffs' Amended Notice of Motion, filed on January 16, 2020. They also seek a jury instruction pursuant to Evidence Code section 413.

Defendants argue that their claims of privilege were made in good faith and that their decisions to withdraw multiple claims of privilege also should be viewed as evidence of their good faith conduct of discovery. They point out that this case is large and complex, making discovery very burdensome for Defendants and state that they have done their best to meet their discovery obligations while acknowledging that some mistakes were made. They argue that this court's September 18, 2019 order is unenforceable, but that they have tried to comply with this court's "high standards" for claiming privilege. Defendants also argue that the requested sanctions are inappropriate, grossly excessive, and unavailable as a matter of law.

In their Reply papers, Plaintiffs challenge the argument that they will not suffer significant prejudice as a result of the late production of documents previously designated as privileged by Defendants. Lead counsel for Plaintiffs, Mr. Panish, explains that, with four months until trial, Plaintiffs have been placed at a significant disadvantage in trial preparation because they now will be required to spend time reviewing thousands of late-produced documents, and potentially have to reconvene completed depositions and spend substantial time questioning witnesses about those documents. (See Panish Decl. ISO Reply, ¶¶ 9-13.) Moreover, Mr. Panish states that continuing the trial date would prejudice his clients, as it would delay much-needed relief for a community that has been waiting for relief for over four years. (Panish Decl. ISO Reply, ¶ 8.)

II. Chronology of Defendants' Prior Unsubstantiated Claims of Privilege in this Case

The chronology below is largely repeated from this court's prior ruling of January 14, 2020 on Private Plaintiffs' Motions to Compel. It is equally relevant to the current Motion for Sanctions.

A. Summary of Prior Claims of Privilege and Extent of Unsubstantiated Claims

The current motion must be decided against the backdrop of the prior history of Defendants' withholding of documents purportedly on the basis of privilege. In summary:

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- As to one group of documents (AECOM communications), Defendants originally claimed privilege with respect to 771 documents; after two motions, claims of privilege were sustained as to a mere 6 documents.
 - As to another group of documents (communications with public relations firms), an initial claim of privilege as to 358 documents was eventually reduced to 32 claims of privilege after this court required trial counsel to personally assert that there was a good faith basis for assertion of the privilege as to each document.
 - Regarding a third group of documents (documents concerning development of data to be furnished to regulatory agencies) claims of privilege with respect to more than 4,000 documents were eventually reduced to 176 documents.
 - SoCalGas listed more than 36,000 privileged documents on a privilege log in June of 2019. On September 18, 2019 there were 14,417 documents still listed. And 3,472 documents of the original 36,000 documents claimed to be privileged were listed on the November 1, 2019 SoCalGas privilege log.

Based on the prior history of this case up to the time Defendants filed their November 1, 2019 privilege logs, Defendants' initial claims of privilege are unsupportable and/or are withdrawn an average of 94 percent of the time.

As demonstrated by the tortured history below, the documents that were withheld by Defendants were provided only after extraordinary efforts by Plaintiffs' counsel and by the court to force defense counsel to abandon unreasonable claims of privilege. What is not evident from this recitation, but is undeniably the case, is that the Plaintiffs were deprived of relevant documents during the time they were taking percipient discovery to meet the discovery deadline agreed to by the parties. (On July 2, 2019 this court set a trial date of June 24, 2020 for the first phase trial. Although counsel for defense requested a later trial date, both sides agreed to set the cut-off for percipient discovery of January 31, 2020. (See Minute Order of July 31, 2019.))

B. Detailed Chronology Regarding Defendants' Prior Claims of Privilege

AECOM was an environmental consultant to SoCalGas. On August 2, 2017, Private Plaintiffs issued a deposition subpoena for production of documents to AECOM. SoCalGas served objections, including objections on the basis of attorney client and work product privilege. After meet and confer efforts between counsel, AECOM produced documents on December 5, 2017, December 28, 2017 and June 7, 2018; eventually the production totaled 53,000 documents. The June 7, 2018 production included a 34-page privilege log listing 771 items. Subsequent to meet and confer discussions between Private Plaintiffs and SoCalGas, on July 26, 2018, AECOM,

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with SoCalGas's permission, produced 62 documents previously withheld on the basis of privilege. (Private Plaintiffs' Motion to Compel Production of Documents, Aug. 1, 2018, at pp. 4-5.)

At a hearing on August 27, 2018, the Hon. Lisa Hart Cole ordered the parties to continue to meet and confer in order to either resolve the issues or to narrow them for the court's consideration. Pursuant to the meet and confer, SoCalGas authorized the production of an additional 97 documents that previously were asserted to be privileged. (Defendant SoCalGas Company's Supplemental Brief in Opposition to Motion to Compel Production of Documents Relating to AECOM, Oct. 12, 2018, at p. 1.)

On October 18, 2018, the Hon. John Wiley ruled on Private Plaintiffs' Motion with respect to the remaining assertedly privileged AECOM documents and held as follows:

For the most part, Southern California Gas Company has failed to prove the voluminous and diverse communications among Company employees, people at third-party contractor AECOM, and Company lawyers were "reasonably necessary" for the lawyers to represent the Company. [Citations omitted.] There is no attorney work product privilege for the same reason. There is an exception, however, for four categories of documents: One: Documents that AECOM authored at the request of a Company lawyer. Two: Documents Company lawyers gave to AECOM for review and comment regarding technical expertise that would assist the lawyers in developing legal strategy. Three: Documents containing legal opinions that Company lawyers gave to AECOM for the purpose of evaluating whether technical information in the document was accurate. Four: Documents that are communications with the Company's retained (but not testifying) experts. As to these four categories of documents, the motion is denied. These four categories of documents are privileged.

(Notice of Ruling on Private Plaintiffs' Motion to Compel Third Party AECOM's Production of Documents, Oct. 19, 2018.) Defendants were ordered to produce all documents not included in these four specific categories. As explained below, Defendants did not do so.

When this court took over as the coordination trial judge for this proceeding, privilege issues had proliferated. In a Status Conference statement filed April 26, 2019, Plaintiffs attached a 26-page Appendix discussing Plaintiffs' disagreements with Defendants' claims of privilege and the status of meet and confer efforts with respect to those issues.

In a Minute Order dated May 1, 2019, the court ordered counsel to file (1) a joint statement of issues with respect to interpretation and application of Judge Wiley's ruling regarding documents involving AECOM and (2) a joint statement of issues regarding documents withheld by

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Defendants on the basis of privilege regarding development of data to be furnished by Defendants to regulatory authorities.

Having reviewed those joint statements, at a hearing on June 17, 2019 this court ordered Defendants to file a motion for protective order “[w]ith respect to privilege issues concerning the 400+ documents subpoenaed from AE Com [sic] that have been withheld on grounds of privilege.” (Minute Order, June 17, 2019.) With respect to “the 4000+ documents withheld by So Cal Gas on the theory that the data collection for regulatory agencies was directed by in-house counsel” the court ordered that Defendants “supplement the privilege log within 30 days by adding a column giving dates and names of counsel who directed the strategy for a particular data request that is the subject of the document and/or what other attorney involvement justifies the assertion of privilege as to that document.” (Id.)

In the Joint Status Conference Report filed August 12, 2019, Private Plaintiffs stated that they had become aware at a deposition that Defendants had withheld as privileged all communications between Defendants and a public relations firm. Defendants contended that Private Plaintiffs were incorrect in their “extreme, categorical position that no communications between a client, its attorneys and a public relations consultant can ever be protected by the attorney-client privilege or attorney work product doctrine.” (Joint Status Conference Statement for August 14, 2019, Aug. 12, 2019, at p. 13 (emphasis in original).) Defendants did not contest Private Plaintiffs’ representation that Defendants had withheld all communications with the public relations firm. Defendants asserted that the issue was not “ripe” for the court’s decision and that further meet and confer should take place. (Id. at pp. 13-16.)

On August 12, 2019, the court heard argument on Defendants’ Motion for a Protective Order with respect to the AECOM documents on which Defendants continued to claim privilege. The court ruled on the Motion on August 15, 2019. In the Motion, Defendants continued to claim privilege with respect to 174 AECOM documents. The court ordered all but 6 documents to be produced. The court ordered sanctions against Defendants because “there was not a colorable claim of privilege supported by this motion as to the vast majority of the documents at issue.” In litigating this motion, and true to a pattern of updating privilege logs only once formally challenged, Defendants filed an “updated version of the AECOM [privilege] Log” with its Reply brief. Even after the court issued a tentative ruling on August 11, 2019, on the day of the hearing Defendants attempted to file a supplemental declaration to support their privilege claims. The court did not consider those manifestly late-filed documents. (Minute Order, Aug. 15, 2019.)

The court’s level of concern with respect to Defendants’ good faith in claiming privilege was

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heightened at that juncture. Defendants had claimed privilege on a group of 771 AECOM documents. After a ruling by Judge Wiley, they continued to claim privilege on over 400 documents, and then on 174 documents. Defendants' claims of privilege were colorable only as to 6 of the original 771 documents.

Because of the court's concern over the good faith basis for Defendants' privilege claims, the court issued an order that was unprecedented in this court's 24 years of experience on the bench (including more than 12 years in a complex civil litigation assignment). With respect to the 358 documents evidencing communications between Defendants and their public relations consultant, the court ordered trial counsel to submit a "declaration stating that counsel has personally reviewed the documents in this category as to which privilege continues to be claimed, that counsel is familiar with the relevant case law and statutes pertaining to privilege concerning such documents and that there is a good faith basis for withholding such documents on the basis of privilege." (Minute Order, Aug. 14, 2019 (emphasis added).)

On September 3, 2019, trial counsel for Defendants filed declarations with respect to the 358 documents involving or referencing public relations consultants that had been withheld based on privilege. Counsel stated that attorneys under their direction or control had reviewed the documents, that SoCalGas was continuing to claim privilege as to 32 such documents, and that the declarants had a good faith basis to assert SoCalGas's attorney-client or work product privilege as to the 32 documents. (Declarations of James J. Dragna and Michelle Park Chiu, Sept. 3, 2019.) In a subsequent joint status conference report, counsel for Private Plaintiffs asserted that, of the 32 documents listed on that privilege log, only 17 continued to be withheld in their entirety, and that 14 documents had an identical redaction of an email communication. (Joint Status Conference Statement filed Sept. 20, 2019, at p. 14.)

On July 17, 2019, Defendants produced a revised privilege log with regard to the documents pertaining to data collection for regulatory agencies. Defendants continued to withhold 1,293 such documents (out of the original 4000+ documents claimed to be privileged). Private Plaintiffs contended that there was no appropriate basis for privilege disclosed in the revised privilege log. (Joint Status Conference Statement for Sept. 11, 2019, at pp. 16-19, 43-44.)

At the September 11, 2019 status conference, the court issued the following order: "Defense counsel shall report to the court at a specially set status conference on Sept. 18, 2019 at 1:45 pm as to how they propose to address the problem of Defendants' over-designation of privileged documents." (Minute Order, Sept. 11, 2019.)

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At the September 18, 2019 status conference, after hearing argument from counsel, the court ordered as follows:

- Within 45 days defense counsel shall review all previously produced privilege logs and shall produce, on a rolling basis, all documents as to which privilege is not legally supportable. Defense counsel shall correct and re-serve the privilege logs previously produced so as to accurately describe and designate as privileged only documents as to which a privilege is legally supportable.
- Before the September 25, 2019 status conference, defense counsel shall produce to plaintiffs all “data request” documents as to which privilege is not legally supportable and shall re-serve the privilege log previously produced for this category of documents so as to accurately describe and designate as privileged only documents as to which a privilege is legally supportable. To the extent any document is redacted to protect a legally supportable privilege, the redacted document shall be produced to plaintiffs. Defense counsel shall bring to the September 25, 2019 status conference all documents in the “data request” category that have been fully or partially withheld on the basis of privilege.
- Counsel shall meet and confer with respect to the deadline(s) for defendants to prepare and serve additional legally supportable privilege logs for documents that have been and will be produced in the future.

At the September 25, 2019 status conference, counsel for Defendants reported that 176 “data request” documents remained on the Defendants’ privilege log. Originally, privilege had been claimed on more than 4000 of these documents, and the previous privilege log (of July 17, 2019) listed 1293 documents in this set. The court reviewed the privilege log and discussed with both counsel several of the documents on which privilege continued to be claimed. The revised log had been produced at 6:00 pm the prior evening, and counsel for Private Plaintiffs had little time to prepare for the informal discussion with the court. The court ordered counsel to meet and confer if Plaintiffs’ counsel had additional questions with respect to the “data request” group of documents.

On November 1, 2019, Defendants produced a privilege log for SoCalGas with over 150,000 entries, as well as a privilege log for Sempra with 5,913 entries. As stated above, on September 18, 2019 the court had ordered Defendants to “correct and re-serve the privilege logs previously produced so as to accurately describe and designate as privileged only documents as to which a privilege is legally supportable.” At a status conference on December 4, 2019, the court asked counsel for Defendants to state how many documents that had been listed on previous privilege logs remained on the November 1, 2019 privilege log. In response to the court’s query, defense counsel reported that, whereas there had been 36,295 documents on SoCalGas’s privilege log in

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June 2019, on September 18, 2019 there were 14,417 documents still listed, and of those, 3,472 documents remained on the November 1, 2019 SoCalGas privilege log. (Declaration of Deanne L. Miller re Minute Order of December 4, 2019 Regarding Defendant Southern California Gas Company's Privilege Log, ¶¶ 3-10.)

At the December 4, 2019 status conference, this court ordered counsel for Private Plaintiffs to lodge 80 consecutive pages of the November 1, 2019 SoCalGas privilege log for the court's review. The court also ordered counsel for each side to file a two-page document on December 9, 2019 making a recommendation as to how the court should address the extent to which Defendants' claims of privilege were proper in light of Private Plaintiffs' claims that they were overbroad.

On December 10, 2019, the court held an informal discovery conference to discuss the court's observations about the sufficiency of the November 1, 2019 defense privilege logs. The court will let the court reporter's record for that hearing speak for itself and will not attempt to summarize the discussion. At the conclusion of the December 10, 2019 status conference, the court stated that Private Plaintiffs would be permitted to file a motion to compel with respect to Defendants' privilege claims.

C. Plaintiffs' Motion to Compel Production of Documents Listed on Defendants' November 1, 2019 Privilege Logs

On December 19, 2019, Private Plaintiffs filed a Motion to Compel Production of 136,504 of the documents as to which SoCalGas claimed privilege in its November 1, 2019 privilege log and a Motion to Compel Production of 5,459 of the documents as to which Sempra claimed privilege in its November 1, 2019 privilege log. These Motions were set for hearing on January 14, 2020.

Although Defendants' Opposition Briefs on the Motions to Compel contended that the November 1, 2019 privilege logs were sufficient to meet legal requirements, Defendants nevertheless filed substitute privilege logs with their Opposition Briefs on January 6, 2020. These privilege logs dropped claims of privilege as to 33,787 documents listed on the SoCalGas November 2019 privilege log, and as to 1,550 documents listed on the Sempra November 2019 privilege log. The January 6, 2020 privilege logs also provided some additional information as to claims of privilege for some documents for which privilege continued to be asserted. (On January 10, 2020, Private Plaintiffs filed the current Motion for Sanctions.)

On January 14, 2020, this court heard argument on the Motions to Compel and issued its

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decision. The court's reasoning is set forth at length in the January 14, 2020 Minute Order. The court ordered Defendants to produce by February 11, 2020 a privilege log for all documents that continue to be claimed as privileged by Defendants. The court required the privilege log to comply with the prior rulings of the court (including the prior rulings of Judge Wiley), and required it to be sufficient under the law set forth in the court's January 14 ruling. Further, the court required the revised privilege logs to be accompanied by a declaration of trial counsel that there is a good faith basis for the assertion of the privileges claimed. The court ordered rolling production of documents on which the Defendants will not be claiming privilege as a result of this further review. As of the date the current Motion for Sanctions was argued, the revised privilege logs and declarations of counsel had not been filed. Thus, the legal sufficiency of those privilege logs and of the claims of privilege included therein are not considered in ruling on the current motion.

The court also ordered Defendants to produce by Friday, January 17, 2020 all documents listed on the January 6, 2020 privilege logs that are claimed to be privileged solely on the basis that they were attachments to a privileged communication. This order extended to documents where the asserted basis for the privilege claim was only the following: "Attachment to confidential communication between client and in-house and/or outside counsel made in the course of the attorney-client relationship." This portion of the court's order subsequently was stayed by the Court of Appeal after Defendants (without seeking a stay from this court) filed a petition for writ of mandate and request for an immediate stay. The Court of Appeal ordered a briefing schedule, which was concluded on January 31, 2020. The stay was lifted by the Court of Appeal on February 19, 2020, but this court has not considered the substance of the appellate court's order in this ruling on the Motion for Sanctions.

III. Sanctions Are Warranted in Light of Defendants' Abuse of the Discovery Process

A court may impose monetary, issue, evidence, terminating, and contempt sanctions "against anyone engaging in conduct that is a misuse of the discovery process." (Code Civ. Proc., § 2023.030.) "Misuse of the discovery process" includes, but is not limited to, such actions as "[e]mploying a discovery method in a manner or to an extent that causes unwarranted annoyance, embarrassment, or oppression, or undue burden and expense," "[m]aking, without substantial justification, an unmeritorious objection to discovery," or "[m]aking an evasive response to discovery." (Code Civ. Proc., § 2023.010.) Code of Civil Procedure Section 128(a)(4) empowers a court to "compel obedience to its judgments, order, and process" (See also *Peat, Marwick, Mitchell & Co. v. Superior Court* (1988) 200 Cal.App.3d 272, 288 (holding that courts have the inherent power to curb abuses and promote fair process));

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Rutherford v. Owens-Illinois, Inc. (1997) 16 Cal.4th 953, 967 (“courts have fundamental inherent equity, supervisory, and administrative powers, as well as inherent power to control litigation before them”).)

The court finds that Defendants’ (1) abusive misconduct in discovery; (2) repeated, unmeritorious objections to discovery by assertion of unsubstantiated claims of privilege; (3) repeated failure to provide opposing counsel and the court with legally required information to permit opposing counsel and the court to evaluate Defendants’ claims of privilege; and (4) willful violation of court orders addressing these issues, when taken together, warrant sanctions under Code of Civil Procedure section 2023.030, under Code of Civil Procedure section 128(a)(4), and pursuant to the inherent authority of the court.

A. Unmeritorious Objections to Discovery

As set forth above in the “Summary of Prior Claims of Privilege and Extent of Unsubstantiated Claims,” more than 90 percent of Defendants’ initial claims of privilege either have been determined by the court to be unsupported or have been withdrawn by Defendant. As described in detail above in the “Detailed Chronology,” the documents that were withheld by Defendants were provided only after extraordinary efforts by Private Plaintiffs’ counsel and by the court to force defense counsel to abandon unreasonable claims of privilege. Thus, Defendants have misused the discovery process by making unmeritorious objections to discovery without substantial justification and by using those objections, and the quantity of unsupported objections, to delay Plaintiffs’ right to discovery of relevant documents.

Defendants attempt to defend their conduct by asserting that they removed from earlier privilege logs “approximately 36.40% of the 197,513 documents over which Defendants have asserted privilege in the course of these proceedings (not 94%).” (Defs’ Opp., at p. 16.) Defendants’ calculation is based on initial claims of privilege that include the more than 150,000 documents on the November 1, 2019 privilege log. However, it remains to be seen how many of the documents listed as privileged on the November 1, 2019 privilege log will meet the test of a good faith assertion of privilege. This court ordered on January 14, 2020 that Defendants were required to produce by February 11, 2020 a privilege log that “compl[ies] with the prior rulings of this court (including the prior rulings of Judge Wiley), [is] sufficient under the law set forth [in this court’s order of January 14, 2020] and [is] accompanied by a declaration of trial counsel that there is a good faith basis for the assertion of the privileges claimed.” (Minute Order, Jan. 14, 2020.) The court further ordered that documents on which the Defendants are no longer claiming privilege are to be produced on a “rolling” basis. (Id.) As stated above, because the

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February 11, 2020 compliance date was the same date that the current Motion for Sanctions was heard, the court has no final tally with which to calculate the percentage of initial claims of privilege on the November 1, 2019 privilege log that will be withdrawn or determined to be without merit. Defendants do not take issue with the court's calculation of 94% as the percentage of their claims of privilege withdrawn or determined to be unsupported prior to November 1, 2019.

Defendants argue that their initial claims of privilege have been made in good faith. The record does not support that characterization. Defendants complain that they have produced more than 1.5 million documents in this case and have borne an exceptional burden to collect and produce these documents as well as to prepare privilege logs for withheld documents. The necessary document production in this case has been exceptional, but it has not necessarily been more challenging than the burden other mass tort defendants face in JCCP or MDL litigation (for example, in litigation against pharmaceutical defendants). The firm appearing to represent Defendants in this case does not contend that it lacks the resources to properly litigate this case.

Defendants argue that the privilege issues were difficult and that initially they lacked clear guidance. However, even when Defendants had clear guidance from a prior court order, they ignored those legal standards. As discussed above, on October 18, 2018 then-Judge John Wiley ruled on a discovery motion and explained that Defendants had failed to demonstrate privilege as to "the voluminous and diverse communications" between SoCalGas and AECOM. The court's order carefully delineated four specific categories of documents involving AECOM as to which privilege could be claimed. (Notice of Ruling on Private Plaintiffs' Motion to Compel Third Party AECOM's Production of Documents, filed Oct. 19, 2018.) Rather than carefully apply Judge Wiley's ruling, Defendants required this court to hear another Motion, with respect to 174 AECOM documents. The court determined that all but 6 documents were required to be produced and determined that "there was not a colorable claim of privilege supported by this motion as to the vast majority of the documents at issue." (Minute Order, Aug. 15, 2019.)

With respect to the data request documents, Defendants admit that they did not make sufficient inquiry to determine whether there was a defensible claim of privilege for each document when submitting the privilege logs. Defendants state: "In order to comply with the evidentiary requirements this Court requires for Defendants to protect their privileged communications, Defendants would have had to muster proof of attorney involvement and direction on a document-by-document basis for tens thousands [sic] of data request documents. ... [T]hat would have been extremely burdensome and in many instances, impossible." (Defs' Opp., at p. 11.) When a party asserts a claim of privilege on the ground that an attorney directed the actions

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of non-attorneys in creating documents so as to assist counsel in providing legal advice, the party must have a basis for stating that the attorney did provide such direction and that the documents claimed to be privileged resulted from carrying out that direction. (See *Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 735-736 (fact-gathering by an attorney is privileged where its purpose is to allow the attorney to render legal advice); Cal. Prac. Guide Civ. Trials & Ev. (The Rutter Group) Ch. 8E-A ¶ 8:1946 (“[t]he party claiming a privilege has the burden of establishing whatever preliminary facts are essential to the claim (e.g., existence of privileged relationship when communication was made”) (emphasis in original).) Whether or not this is burdensome, it is legally required. The size of these proceedings does not give Defendants license to hide behind unjustified privilege claims; nor does it mean that Plaintiffs and the court must be subject to an infinite process wherein Defendants’ logs are reviewed, challenged, and then ordered to be re-served with greater detail to justify the privilege claims.

In their papers, Defendants repeatedly make reference to the court’s “high standards” for claims of privilege. (See, e.g., Def’s Opp., at p. 4.) Defendants do not argue in opposing the current Motion that the court’s standards for review of privilege have been wrong—just “high.” The requirements for a claim of privilege are established by case law. “It is established that otherwise routine, non-privileged communications between corporate officers or employees transacting the general business of the company do not attain privileged status solely because in-house or outside counsel is ‘copied in’ on correspondence or memoranda.” (*Zurich American Ins. Co. v. Superior Court* (2007) 155 Cal.App.4th 1485, 1504.) “[T]he attorney-client privilege attaches only to confidential communication made in the course of or for the purposes of facilitating the attorney-client relationship.” (*Catalina Island Yacht Club v. Superior Court* (2015) 242 Cal.App.4th 1116, 1129, fn. 5 (Catalina Island).) Sometimes these determinations can be made on the face of the document; sometimes they cannot. Certainly, further inquiry is necessary when the document is not itself a communication to or from an attorney. For example, many of the documents concerning development of data to be furnished to regulatory agencies were not directed to or from an attorney. In order to have a reasonable basis to claim privilege on these documents, inquiry beyond the face of the document was necessary. Defendants apparently take the position that they can claim privilege without making an individualized inquiry as to the basis for a claim of privilege where the basis for the claim of privilege is not apparent on the face of the document. By this reasoning, Defendants have attempted to shift the burden to the Plaintiffs to challenge Defendants’ broad claims of privilege. However, our discovery statutes make clear that it is sanctionable conduct to “[m]ak[e], without substantial justification, an unmeritorious objection to discovery.” (Code Civ. Proc., § 2023.010, subd. (e).)

In many ways, what is most upsetting about the litigation tactics of Defendants is that they have

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only asserted good faith objections when threatened with sanctions or when this court required trial counsel to declare under penalty of perjury that there was a good faith basis for the privilege claims asserted. As described in the chronology above, after finding that the Defendants' claims of privilege for the AECOM documents were not substantially justified (even after a prior order by Judge Wiley), the court continued to be faced with extensive, broad claims of privilege that were insufficiently described on existing privilege logs. This court then issued an order that the court never before had felt necessary in the court's previous 24 years of experience as a judge. The August 14, 2019 Minute Order required, as to 358 documents that involved Defendants' public relations firm, that trial counsel declare under penalty of perjury that there was a good faith basis for a claim of privilege. When counsel's declaration was filed, there were 32 documents remaining on the privilege log. (In a subsequent status conference report, Plaintiffs asserted that of the 32 documents only 17 continued to be withheld in their entirety and 14 had an identical redaction of an email communication; Defendants did not take issue with this characterization.)

On the basis of that exercise of good faith by counsel, the court did not require trial counsel's declaration under penalty of perjury to support the privilege log revisions ordered by the court on September 18, 2019. The court expected that counsel would ensure that only objections in good faith and with substantial justification would be made when the court ordered that privilege logs be prepared "so as to accurately describe and designate as privileged only documents as to which a privilege is legally supportable." (Minute Order, Sept. 18, 2019.) The court did not wish to impose a specific burden on Defendants' trial counsel in the midst of the many depositions that were occurring at that time. However, the November 1, 2019 privilege logs had over 155,000 entries and the court has found that these privilege logs were legally insufficient. (Minute Order, Jan. 14, 2020.) It is disturbing, to say the least, that the court only can obtain legally compliant litigation conduct by making outside trial counsel individually responsible in a posture that could support sanctions against counsel personally.

B. Defendants Have Repeatedly Failed to Provide Legally Adequate Privilege Logs in a Manner that Has Caused Private Plaintiffs Undue Burden and Expense

As the procedural history above makes clear, this court has repeatedly found that Defendants have failed to offer sufficient explanation to support their claims of privilege. In this court's January 14, 2020 Minute Order deciding Private Plaintiffs' Motions to Compel, the court found that Defendants' November 1, 2019 privilege logs did not provide the information required by the caselaw and did not provide Private Plaintiffs or the court with sufficient information to evaluate Defendants' claims of privilege as to the 155,000 documents listed on those privilege

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logs. (Minute Order, Jan. 14, 2020.)

In part this court found:

The November 1, 2019 privilege logs do not meet the standard set forth in *Catalina Island*. As the court noted at the December 10, 2019 status conference, after the court had reviewed 80 pages of the November 1, 2019 log entries, the logs substantially employ generic macros that fail to offer a sufficiently detailed explanation of the basis for withholding individual documents. Thousands of documents contain the explanation “Confidential communication between client and in-house and/or outside counsel made in the course of the attorney-client relationship.” Seldom does the accompanying description of the document itself meet the statutory requirement of “provid[ing] sufficient factual information for other parties to evaluate the merits of [the privilege] claim” (CCP sec. 2031.240(c)(1).) “Even assuming all of the documents were communications with an attorney, not all communications with an attorney are privileged. Instead, the attorney-client privilege attaches only to confidential communication made in the course of or for the purposes of facilitating the attorney-client relationship.” (*Catalina Island*, supra, 242 Cal.App.4th at p. 1130, fn. 5.) “The purpose of providing a specific factual description of documents is to permit a judicial evaluation of the claim of privilege.” (*Hernandez v. Superior Court* (2003) 112 Cal.App.4th 285, 292.) “The information in the privilege log must be sufficiently specific to allow a determination of whether each withheld document is or is not in fact privileged.” (*Wellpoint Health Networks v. Superior Court* (1997) 59 Cal.App.4th 110, 130.)

Many of the documents on which privilege is claimed have an attorney listed among several “cc” recipients and have a generic “re” line subject matter. Defendants’ conclusory statement that such documents are communications “made in the course of the attorney-client relationship” are insufficient to allow Private Plaintiffs or the court to evaluate whether each withheld document is or is not in fact privileged. This is particularly so when the attorney name is an in-house counsel, who may be involved in a communication in a business capacity. As discussed in previous rulings of this court, when business persons are doing their work and copying an in-house lawyer, the communication may not be privileged unless the business person is seeking advice of counsel or is providing information requested by counsel so as to assist counsel in providing legal advice. (Minute Order of Sept. 11, 2019 at pp. 3-4.) “It is established that otherwise routine, non-privileged communications between corporate officers or employees transacting the general business of the company do not attain privileged status solely because in-house or outside counsel is ‘copied in’ on correspondence or memoranda.” (*Zurich American Ins. Co. v. Superior Court* (2007) 155 Cal.App.4th 1485, 1504.) Unless Defendants provide factual information to indicate the purpose of the communication, Defendants have not met the requirements for

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creating a legally compliant privilege log.

(Minute Order, Jan. 14, 2020 at pp. 10-11.) This court also found that Defendants had failed to provide a complete list of attorneys who had represented Defendants and whose names appeared on the privilege logs until January 6, 2020. (Id. at pp. 11-12.) Finally, the court found that Defendants had improperly claimed privilege for documents attached to emails sent to attorneys on the sole basis that such documents were sent to counsel. (Id. at pp. 12-15.) The court's order as to the latter finding currently was stayed by the Court of Appeal until yesterday. In ruling on the current Motion for Sanctions, the court does not rely on its prior finding with respect to attachments claimed to be privileged on that basis alone.

The undue burden and expense caused to Private Plaintiffs by Defendants' insufficient privilege logs is obvious. The chronology set forth above details Private Plaintiffs' repeated attempts to challenge Defendants' claims of privilege and to find a way to overcome the disadvantage of privilege logs that were manifestly inadequate to allow Plaintiffs or the court to evaluate the claims of privilege. Defendants further manipulated the vague claims of privilege to present a moving target as they backed off substantial numbers of claims of privilege tardily and only when challenged. Such behavior continued even as Plaintiffs' Motions to Compel were being litigated in December 2019 and January 2020. With their Opposition to Plaintiffs Motion to Compel, Defendants submitted, on January 6, 2020, privilege logs that dropped claims of privilege as to 22% of the documents on the November 1, 2019 privilege logs and provided more detail as to the claims of privilege for some of the privilege claims. The undue burden and expense caused to Private Plaintiffs was substantially magnified by the fact that Plaintiffs were deprived of documents to which they were entitled during periods of intense litigation activity while the majority of Defendants' current and former employees were deposed.

C. Defendants' Conduct Was Willful and Violated Court Orders

Judge Wiley issued an order on October 18, 2018 stating that Defendants had, for the most part, failed to prove that voluminous claims of privilege with regard to communications involving third-party contractor AECOM were privileged. As part of that order, Judge Wiley defined four specific categories of AECOM documents as to which privilege could be claimed and ordered all other AECOM documents to be produced. (Notice of Ruling on Private Plaintiffs' Motion to Compel Third Party AECOM's Production of Documents, filed Oct. 19, 2018.) Nearly a year later, Defendants had not complied with Judge Wiley's Order. On August 12, 2019, this court heard argument on Defendants' Motion for a Protective Order with respect to the AECOM documents as to which Defendants continued to claim privilege. As to all but 6 of the 174

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documents still being withheld by Defendants the court found “there was not a colorable claim of privilege supported by this motion” (Minute Order, Aug. 15, 2019.) The failure to produce these documents during the 10-month period following Judge Wiley’s ruling was without substantial justification and constituted a violation of Judge Wiley’s order.

As the pattern of Defendants’ over-designation and insufficient designation of purportedly privileged documents continued to reveal itself (as described in the detailed chronology set forth above) the court ordered as follows: “Defense counsel shall report to the court at a specially set status conference on Sept. 18, 2019 at 1:45 pm as to how they propose to address the problem of Defendants’ over-designation of privileged documents.” (Minute Order, Sept. 11, 2019.) The court already had ordered defense trial counsel to declare under penalty of perjury that there was a good faith basis for withholding documents evidencing communications between Defendants and their public relations consultants. (Minute Order, Aug. 14, 2019.) The court was searching for a way to ensure that only good faith claims of privilege were asserted without imposing on trial counsel the personal obligation to review each document and declare under penalty of perjury that there was a good faith basis for claiming privilege. At the September 18, 2019 status conference, after hearing argument from counsel, the court ordered that, by November 1, 2019:

- [D]efense counsel shall review all previously produced privilege logs and shall produce, on a rolling basis, all documents as to which privilege is not legally supportable. Defense counsel shall correct and re-serve the privilege logs previously produced so as to accurately describe and designate as privileged only documents as to which a privilege is legally supportable.

.....

- [D]efendants [shall] prepare and serve additional legally supportable privilege logs for documents that have been and will be produced in the future.

(Minute Order, Sept. 18, 2019.)

As discussed above, the court’s January 14, 2020 order determined that the November 1, 2019 privilege logs were “insufficient to meet the legal requirement that a privilege log contain sufficient information to allow the requesting party to evaluate whether there is a colorable basis for the assertion of privilege.” (Minute Order, Jan. 14, 2020, at p. 9.) This violation of the court’s September 18, 2019 Order was not limited to a few document descriptions – it was widespread in the logs of 156,000 documents.

Defendants contend that this court’s September 18, 2019 order “cannot support the imposition of nonmonetary sanctions” because the order “was issued following a discussion by counsel during

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a status conference and was not based on the identification of specific documents or any briefing.” (Defs’ Opp., at p. 23.) Appellate precedent does not allow a trial court’s orders to be so lightly dismissed. Unless appellate review is timely sought, even an erroneous trial court order “does not excuse the failure to obey; i.e., disobedient parties may not avoid sanctions by challenging the validity of the order.” (Cal. Prac. Guide Civ. Pro. Before Trial (The Rutter Group) Ch. 8M-5 ¶ 8:2150 (emphasis in original), citing Marriage of Niklas (1989) 211 Cal.App.3d 28, 34-35.) Defendants also argue (without citation) that “[a] general directive to limit privilege claims to those that are ‘legally supportable’ is not so definite and does not compel production of certain documents; it permits good-faith privilege positions” (Defs’ Opp., at p. 23.) Given the prior history of the case, there was nothing vague about the court’s direction to produce legally supportable privilege logs. Defendants had previously been instructed as to the required content of a privilege log sufficient to allow opposing counsel and the court to evaluate the claims of privilege. Indeed, the court’s order did permit good faith assertions of privilege and a good faith effort to present a compliant privilege log. The clear and widespread deficiencies in the privilege logs demonstrate that Defendants’ noncompliance with the September 18, 2019 order was not in good faith but rather was part of a continuing effort to delay production of documents to which Plaintiffs were entitled while critical depositions proceeded.

Before Private Plaintiffs filed their Motions to Compel, this court had held an informal discovery conference based on review of 80 pages of the November 1, 2019 privilege logs and informed Defendants of the court’s tentative views that the privilege log was substantially insufficient. The court also had given Defendants an opportunity to state how the court should address the extent to which Defendants’ claims of privilege were proper. (Minute Order, Dec. 4, 2019.) Defendants did not offer to revise the November 1, 2019 privilege logs or to re-review and produce documents when the claim of privilege was not substantially justified. (See, e.g., Defendants’ Statement Pursuant to December 4, 2019 Minute Order, filed Dec. 9, 2019.) It is especially telling that Defendants, in a pattern that had already become familiar, attempted to derail a formal motion to challenge their actions by submitting revised (although still insufficient) privilege logs on January 6, 2020, with Defendants’ Opposition Brief to Private Plaintiffs’ Motion to Compel.

The intentionality of Defendants’ conduct in asserting unsubstantiated privilege claims and stonewalling Plaintiffs’ efforts to challenge those claims is evident from Defendants’ conduct (through its counsel) dating back to 2017. As recited in Plaintiffs’ Opening Brief on this Motion, and as supported by accompanying evidence, a privilege log produced by Defendants in 2017 had an identifiable attorney listed on only 2% of the 12,000 entries, and a privilege log produced

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in 2018 with 39,000 entries had an attorney identified on only 2% of the entries. (Motion for Sanctions, at p. 5, lines 8-12, p. 7, lines 15-19.) While documents that are not directed from or to an attorney may be privileged under certain circumstances (for example, if they disclose the legal advice of counsel), subsequent events have demonstrated that Defendants' claims of privilege where no attorney is an author or recipient have frequently been unsupported and withdrawn. Subsequently, defense counsel sought to shift the burden to Plaintiffs to identify documents from the privilege logs that did not include an attorney, provide a basis for why Plaintiffs required more information to evaluate such privilege claims, and provide legal authority for why non-attorney communications were not privileged. (Id. at p. 7, lines 10-14.)

In 2018, Plaintiffs filed three motions to compel production of documents withheld as privileged. Two of the motions addressed documents listed as privileged involving two custodians who were to be deposed as PMQ witnesses. In their Opposition briefs on these motions, Defendants represented that they had not refused to produce non-privileged documents pertaining to these witnesses. Private Plaintiffs withdrew those motions and proceeded with the PMQ depositions without the documents listed as privileged. Plaintiffs assert that they did so based on the presumed good faith of Defendants' assurances. However, according to Plaintiffs' evidence, in the past two months as Defendants have produced documents previously claimed to be privileged, Defendants produced 2,362 documents involving those two PMQ witnesses. (Id. at p. 7, line 20, to p.8, line 4.)

Thus, Defendants, through their counsel, stonewalled over an extended period of this litigation by misusing claims of privilege to attempt to throw Plaintiffs' counsel off the track with respect to documents to which they were entitled. As a result, Plaintiffs' counsel were delayed in obtaining documents at a time when they could have been used in deposing Defendants' current and former employees.

When resisting the production of documents listed on deficient privilege logs, Defendants have relied on *Catalina Island*, supra, to argue that a trial court may not find a waiver of attorney-client privilege and work product doctrine when an objecting party submits an inadequate privilege log. (See *Catalina Island*, 242 Cal.App.4th at p. 1120.) But the court in *Catalina Island* did not leave Plaintiffs without a remedy in the face of Defendants' repeated failure to justify the withholding of documents they claim to be privileged.

The court in *Catalina Island* offered guidance for the very situation before this court: If the response and any privilege log provide sufficient information to permit the court to determine whether the asserted privilege protects specific documents from disclosure, the court

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may rule on the merits of the objection by either sustaining it or overruling it as to each document. [Citation.]

If the response and any privilege log fail to provide sufficient information to allow the trial court to rule on the merits, the court may order the responding party to provide a further response by serving a privilege log or, if one already has been served, a supplemental privilege log that adequately identifies each document the responding party claims is privileged and the factual basis for the privilege claim. [Citations.] In ordering a further response, the court also may impose monetary sanctions on the responding party if that party lacked substantial justification for providing its deficient response or privilege log. (§ 2031.310, subd. (h).)

If the responding party thereafter fails to adequately comply with the court's order and provide the information necessary for the court to rule on the privilege objections, the propounding party may bring another motion seeking a further response or a motion for sanctions. At that stage, the sanctions available include evidence, issue, and even terminating sanctions, in addition to further monetary sanctions. (§ 2031.310, subd. (i).) But the court may not impose a waiver of the attorney-client privilege or work product doctrine as a sanction for failing to provide an adequate response to an inspection demand or an adequate privilege log. [Citations.]

(Id. at pp. 1127 (emphasis added) (citations omitted).) Notwithstanding Defendants' arguments to the contrary, it is clear that Defendants have failed to adequately comply with court orders, and that sanctions are therefore justified under the structure adopted by Catalina Island as an alternative to requiring production of assertedly privileged documents.

Refusal to furnish an adequate privilege log is not an insignificant violation of the duty to abide by the rules of discovery. A privilege log not only allows the opposing party to assess the claims of privilege; a factual description of withheld documents also permits a judicial evaluation of the claim of privilege. (Best Products, Inc. v. Superior Court (2004) 119 Cal.App.4th 1181, 1188–1189.) In the absence of a good-faith attempt to inform the parties and the court of the basic facts supporting a claim of privilege, a party's privilege claims could easily serve as a mere strategy for flaunting the discovery rules and thereby avoiding the disclosure of relevant information. That is the case here.

“A trial court has broad discretion to impose discovery sanctions, but two facts are generally prerequisite to the imposition of nonmonetary sanctions . . . : (1) absent unusual circumstances, there must be a failure to comply with a court order, and (2) the failure must be willful.” (Biles v. Exxon Mobil Corp. (2004) 124 Cal.App.4th 1315, 1327.) Findings that a party “acted

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intentionally and in bad faith are the functional equivalent of a finding that it acted willfully.” (Karlsson v. Ford Motor Co. (2006) 140 Cal.App.4th 1202, 1225 (Karlsson).) A finding of bad faith need not be based only on the circumstances surrounding a violation of a court order or orders, but may consider “a persistent pattern of discovery abuse.” (Id. at p. 1217.)

Given the history of Defendants’ repeated failure to submit adequate privilege logs, the court concludes that Defendants’ failure to comply with the September 18, 2019 order was willful. The court, through its past orders and comments during hearings and status conferences, gave more than sufficient guidance on what the law requires in preparing privilege logs; Defendants repeatedly failed to comply.

Defendants have repeatedly failed to stand by their initial privilege claims. The court, after viewing the conduct of Defendants and defense counsel over the course of the proceedings, determines that Defendants make blanket, unsupported claims of privilege, which then force Plaintiffs to dedicate hours reviewing deficient privilege logs and bringing privilege issues to this court’s attention. Pushed to offer basic justifications for the withholding of documents, Defendants either make unsupported statements to try to deter Plaintiffs from pursuing assistance from the court or hand over some documents and further edit the privilege logs. The sheer number of privilege assertions that ultimately were unsupported is evidence that Defendants’ conduct is the result of a concerted policy, and not the hapless mistakes of a few document-review attorneys.

The court already has discussed and rejected Defendants’ excuse that the work was burdensome and that a document-by-document review should not be expected. The court has merely required that Defendants meet their most basic obligations under the discovery rules: namely, that an assertion of privilege be made in good faith and supported by sufficient factual information so that it can be evaluated by Plaintiffs and by this court; anything less would allow a party to hide relevant, non-privileged documents from its opponent, thereby undermining the entire litigation process. Plaintiffs and the court cannot be subjected to an infinite process wherein Defendants’ logs are reviewed, challenged, and then ordered to be re-served with greater detail to justify the privileges. Catalina Island offers the imposition of sanctions as Plaintiffs’ only way out of such an impasse.

The court finds that Defendants’ pattern of conduct in this case with respect to Defendants’ claims of privilege, including repeated assertion of unmeritorious objections, repeated refusal to furnish a legally compliant privilege log, violation of court orders (in particular this court’s September 18, 2019 order) and related efforts over an extended period (as discussed above) to

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misuse claims of privilege to attempt to deprive Plaintiffs of documents to which they are entitled, was willful, intentional and in bad faith.

IV. Determination of Appropriate Sanctions

There is clear prejudice to Plaintiffs resulting from Defendants' conduct. Fact discovery as to Defendants' current and former employees and as to the initial discovery group of individual Plaintiffs was ordered to end (by agreement of the parties) on January 31, 2020. Ninety-four depositions occurred before November 1, 2019, when Defendants submitted yet another set of inadequate privilege logs. More documents may be produced with the privilege logs required to be filed February 11, 2020. The late production of documents for which there was no colorable claim of privilege has meant that Plaintiffs conducted many depositions without access to necessary documents, that deposition witnesses were improperly instructed on the grounds of privilege not to answer questions, and that Plaintiffs have been delayed in general case preparation and strategy.

Moreover, while defense counsel now can turn to depositions of third-party witnesses and to preparing for expert depositions, Plaintiffs' counsel is required to (1) continue to analyze yet another revised privilege log to be produced with a declaration by trial counsel on February 11, 2020; (2) review for the first time key documents recently produced (as described by Plaintiffs' counsel at oral argument on this Motion) and documents that will be produced with the again-revised privilege logs of February 11; (3) make decisions as to which witnesses that have already been deposed will need to be deposed again in order to allow Plaintiffs' counsel to question witnesses as to key documents recently produced; (4) as part of the decision as to which witnesses to depose again, weigh the potential value of a renewed deposition against the loss of time and effort from other trial preparation tasks; and (5) prepare experts for their testimony without knowing whether recently produced documents can be authenticated and without having a deposition to lay a foundation for the business records exception to the hearsay rule. These are substantial disadvantages to Private Plaintiffs in this challenging litigation.

Where "sanctions are called for, they " "... "should be appropriate to the dereliction, and should not exceed that which is required to protect the interests of the party entitled to but denied discovery." [Citations.] " "... [¶] The sanctions the court may impose are such as are suitable and necessary to enable the party seeking discovery to obtain the objects of the discovery he seeks, but the court may not impose sanctions which are designed not to accomplish the objects of discovery but to impose punishment. [Citations.]' " [Citations.]' [Citation.]" (Do it Urself, supra, 7 Cal.App.4th at p. 35.)" (Biles v. Exxon Mobil Corp. (2004) 124 Cal.App.4th 1315, 1327.)

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“Sanctions should be designed to remedy discovery abuses, but should not put the party seeking the sanctions in a better position than he or she would have been in, had the requested discovery been provided.” (NewLife Sciences, LLC v. Weinstock (2011) 197 Cal.App.4th 676, 689, fn. 10.) In other words, the court should utilize sanctions to level the playing field in light of the discovery abuse.

A. Monetary Sanctions

In their motion, Plaintiffs seek a total of \$949,699.50 in monetary sanctions: \$498,650 in monetary sanctions against Defendants and their counsel for time spent directly on privilege disputes; and \$451,049.50 in monetary sanctions against Defendants and their counsel for lost productivity and inefficiencies related to depositions resulting from Defendants’ misuse of discovery. Given Defendants’ discovery abuses, Plaintiffs are entitled to recover “the reasonable expenses, including attorney’s fees, incurred by anyone as a result of [Defendants’] conduct.” (Code Civ. Proc., § 2023.030, subd. (a).)

As for the first category of sanctions, Defendants point to time spent directly on privilege disputes, “including meet and confers, analysis of Defendants’ privilege logs, court hearings, and motion practice.” (Pls’ Mot., at p. 26.) To support this claim, Plaintiffs point to the declarations of Jesse Creed, Devin Bolton, Gary Praglin, Kelly Weil, Michael Kelly, Patricia Oliver, Brian Panish, and Alexander Behar. For example, Mr. Praglin states that he has been in practice for 38 years, his published billing rate is \$850.00, and that he spent approximately three hours meeting and conferring regarding privilege issues and preparing his declaration. (Praglin Decl., ¶¶ 11-13.) Mr. Panish gives his billing rate as \$1,500 per hour and asserts that he spent approximately 10 hours on activities such as meeting and conferring on privilege issues with Defense counsel and collaborating with Mr. Creed on privilege issues. (Panish Decl., ¶¶ 1-7.) Mr. Behar states that he spent 3 hours preparing an ex parte application related to privilege issues in this coordinated proceeding and provides a billing rate of \$250 per hour. (Behar Decl., ¶ 2-5.) Ms. Weil declares that she spent 10 hours meeting and conferring regarding privilege and contributing to Plaintiffs’ motion to compel, that she spent 1.5 hours preparing her declaration, and that her published hourly billing rate is \$650. (Weil Decl., ¶ 12-14.) Mr. Kelly states that he spent one hour preparing his declaration in support of the Motion for Sanctions, and that his hourly billing rate is \$950.00. (Kelly Decl., ¶¶ 15-16.) Mr. Bolton states that he has spent 303.49 hours working to resolve privilege issues and to obtain the discovery to which Plaintiffs believe they are entitled, and that he anticipates spending another 10 hours responding to this issue, for a total of \$172,419.50 at an hourly rate of \$550. (Bolton Decl., ¶¶ 31-33.) Mr. Creed, who claims an hourly billable rate of \$650, requests \$196,878.50 in fees for 302.89 hours spent on privilege

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February 20, 2020

8:14 AM

Judge: Honorable Carolyn B. Kuhl
Judicial Assistant: Lori M'Greené
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

issues. (Creed Decl., ¶¶114-117.)

The vast majority of hours claimed are from Mr. Creed, Ms. Oliver, and Mr. Bolton. Mr. Creed offers a detailed account of his hours spent on privilege issues. (See Creed Decl., ¶ 14.) Though Mr. Creed includes travel time to and from court in his total hours, he only does so where his participation in a status conference was due to the fact that privilege issues were set to be discussed at the hearing. (Creed Decl., ¶ 14(g), fn. 1.) Similarly, Mr. Bolton has lodged with the court a ten-page document offering a detailed account of his time spent working on privilege issues. (See Bolton Decl., Ex. 28.) The court is satisfied by Exhibit 28 that Mr. Bolton's claimed costs are reasonable.

Ms. Oliver asserts that her team spent 238.30 hours (with a cost of more than \$101,277 in attorney fees) reviewing privilege logs, and that this time estimate excludes paralegal work. (Oliver Decl., ¶ 21.) To explain the billing rate, Ms. Oliver states that her team "relied almost entirely on first year attorneys billing at \$425 to assess these privilege log issues to avoid excess costs." (Oliver Decl., ¶ 21.) She also states that she spent approximately 2 hours preparing her declaration, and that her hourly billing rate is roughly \$675. (Oliver Decl., ¶ 23-24.) The court credits Ms. Oliver's statement that her team spent 238.30 hours reviewing privilege logs. Defendants have not challenged any of the hourly rates sought by the various members of Plaintiffs' counsel's team.

The court credits the declarations of counsel and finds that the billable rates and time spent on privilege issues are reasonable in light of the large number of documents at issue. The majority of these costs are due to the fact that Plaintiffs, rather than Defendants, were required to expend time reviewing the withheld documents to assess the claims of privilege. These costs were the result of Defendants' conduct.

With their Reply papers, Plaintiffs request an additional \$33,460 for time spent on the privilege disputes after the filing of the current motion. Mr. Creed asserts that he has spent 38.4 hours preparing for oral argument on the January 14, 2020 privilege motions, on appearing for that hearing, on reviewing Defendants' Opposition to the current motion, and preparing the Reply papers for the current motion. (Creed Decl. ISO Reply, ¶ 22.) This time amounts to \$24,960. (Creed Decl. ISO Reply, ¶ 23.) Similarly, Mr. Praglin asserts that, since the time of the filing of the current motion, he has spent approximately 10 hours in connection with evaluating privilege issues for the current motion: i.e., reading the Opposition papers, reviewing privilege claims and making comparisons to previous versions, searching deposition transcripts, and conferring with co-counsel. (Praglin Decl. ISO Reply, ¶ 9.) Given Mr. Praglin's hourly rate of \$850, the cost of

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ERM: None
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such time is \$8,500. (Praglin Decl. ISO Reply, ¶ 9.) These costs are reasonable.

The court may not award monetary sanctions on top of monetary sanctions that already have been awarded based on Defendants' unmeritorious privilege claims. In denying Defendants' Motion for a Protective Order with respect to the vast majority of AECOM documents, the court awarded monetary sanctions in the amount of \$6,500. (Minute Order, Aug. 15, 2019, at p. 1.) The court therefore deducts that amount from the monetary sanctions awarded on this Motion.

The court awards monetary sanctions in favor of Private Plaintiffs' counsel and jointly against Defendants and defense counsel in the amount of \$525,610, payable within 20 days. Counsel should meet and confer with respect to how Private Plaintiffs' counsel desire to receive payment.

With respect to the monetary sanctions Plaintiffs' counsel request for lost productivity, however, the court finds that Plaintiffs' counsel have failed to offer a reasonable basis on which to award sanctions. To illustrate what Plaintiffs mean by "lost productivity and inefficiencies," they offer the example of Mr. Creed, who states that, when preparing for a deposition, he has "repeatedly had [the] experience of searching for unprivileged versions of improperly redacted documents that are clearly privileged." (Creed Decl., ¶ 133.) Other declarants note that the prevalence of claims of privilege slows down the deposition, requires more preparation, and may ultimately require that some depositions be retaken. (See, e.g., Weil Decl., ¶¶ 2-10.) From these claims, most counsel declarants take the position that roughly 20% of the total time spent on preparing for and completing depositions can be attributed to inefficient or lost time because of privilege issues. (Weil Decl., ¶ 11; Praglin Decl., ¶ 9; Oliver Decl., ¶ 22; Baymann Decl., ¶ 3.) Apart from lacking sufficient evidentiary support, the 20% figure appears to be an arbitrary number that is not likely to represent the actual amount of time wasted because of privilege issues. At oral argument Mr. Panish stated that there were inefficiencies because he would fully prepare to depose a witness only to receive, the night before the deposition, newly produced documents as to which Defendants previously had claimed privilege. The court does not doubt that additional time had to be spent preparing for depositions of defense witnesses when counsel taking the deposition had to add preparation time because of recently produced documents. But there has been no reliable estimate to show that this added preparation time resulted in a 20% inefficiency as to every deposition.

As Plaintiffs state, the effect of Defendants' conduct is likely to result in the reopening of certain depositions, given that previously withheld documents have since been produced or may be produced in the future. A more certain calculation of Plaintiffs' reasonable costs with respect to depositions can thus be determined based on the time spent in taking those future depositions.

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Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

Therefore, the court rules that Private Plaintiffs counsel are entitled to reasonable costs, including attorneys' fees, for the taking of any future depositions that are reopened due to the late production of documents over which Defendants previously asserted privilege or work product protection. The court will allow Plaintiffs to reopen any deposition at the expense of Defendants up until the date of the final status conference, so long as Plaintiffs have a colorable claim that a document which was withheld under a claim of privilege, but then produced after November 1, 2019, will be the subject of the deposition. Once such depositions are concluded, Plaintiffs may submit an accounting of such costs and fees to the court, to be accompanied by briefing if necessary.

B. Non-monetary Sanctions

Given the conduct of Defendants and Defense counsel, the court may "impose an issue sanction ordering that designated facts shall be taken as established in the action in accordance with the claim of the party adversely affected by the misuse of the discovery process," "impose an issue sanction by an order prohibiting any party engaging in the misuse of the discovery process from supporting or opposing designated claims or defenses," and/or "impose an evidence sanction by an order prohibiting any party engaging in the misuse of the discovery process from introducing designated matters in evidence." (Code Civ. Proc., § 2023.030, subs. (b), (c).)

This court is not able to level the playing field for the parties to try this case by precluding the party that misused the discovery process from introducing previously withheld documents that are unfavorable to that party. Nevertheless, the court needs to consider how the delay in production of documents previously claimed to be privileged has adversely affected Plaintiffs' trial preparation, and to determine whether that disadvantage can be mitigated.

Ninety-four depositions took place prior to November 1, 2019, the date on which Defendants produced another inadequate privilege log. Plaintiffs were disadvantaged during those depositions because they were unable to question witnesses based on Defendants' documents that were initially withheld on the basis of privilege but produced after November 1, 2019. Because of the delay in production of purportedly privileged documents, Plaintiffs are now put to the choice of whether to spend valuable trial preparation time setting additional days of deposition of previously deposed witnesses merely to lay a foundation for documents that were withheld on the basis of Defendants' claims of privilege. Plaintiffs are now having to depose third party witnesses based on such documents without knowing whether a foundation can be laid for the admissibility of such documents. And Plaintiffs are having to prepare their experts' testimony without knowing whether they will be able to lay an evidentiary foundation for the

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Courtroom Assistant: None

CSR: None
ERM: None
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admissibility of such documents.

These adverse effects on Private Plaintiffs caused by Defendants' unwarranted withholding of documents on the basis of privilege can be mitigated by an issue sanction that limits the grounds upon which Defendants can challenge the admissibility of any document that once appeared on Defendants' privilege logs but was produced after November 1, 2019. In order to attempt to even the playing field but not punish Defendants, the court determines that Defendants may not oppose admissibility of such documents on the basis of lack of authenticity or the inapplicability of the business records exception to the hearsay rule. These are, after all, Defendants' own records. Defendants are not precluded, however, from objecting to a hearsay statement within such documents.

These sanctions will allow Plaintiffs to immediately begin relying on the documents as to which Defendants' improperly delayed production on grounds of privilege. However, such sanctions are not sufficient to level the playing field in light of Defendants' misconduct. Private Plaintiffs do not have unlimited resources and they do not have unlimited time. Defendants repeatedly say that there is still plenty of time for Plaintiffs to prepare their case set for trial four months from now. But Defendants cannot deny that the preparation of this case for trial is such a mammoth undertaking that Defendants themselves argued strenuously for a trial in September, 2020, not June, 2020, on the assumption that the cut-off for discovery of Defendants' and Plaintiffs' witnesses would be January 31, 2020. It ill-behooves Defendants now to argue that four months is plenty of time for Plaintiffs to prepare for trial.

Plaintiffs should not have to accept a trial continuance in order to be able to properly prepare for trial in light of Defendants' misconduct. There are 36,000 Plaintiffs in this case and, despite this court's best efforts, not a single trial has begun. The event that is the subject of this lawsuit occurred in 2015 and the five-year rule on the first cases filed would run in November 2020 if the parties had not waived that rule in light of the exigencies of case management and trial preparation. The Plaintiffs' right to present their case to a jury should not be further delayed as a result of Defendants' misconduct.

At this time, Plaintiffs have not made a sufficient showing to justify issue sanctions that affect proof of the elements of Plaintiffs' claims. However, even on the eve of the hearing on this Motion for Sanctions, Plaintiffs were reviewing for the first time recently produced documents that, Plaintiffs contend, contradicted the positions that Defendants' witnesses had taken in deposition. Without the documents, Plaintiffs assertedly were unable effectively to cross examine Defendants' witnesses at deposition. Nevertheless, the Motion currently before the

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CSR: None
ERM: None
Deputy Sheriff: None

court does not draw a sufficient connection between late-produced or still-withheld documents formerly claimed by Defendants to be privileged and a disadvantage suffered by Plaintiffs in their ability to prove a particular element of their claims against Defendants. Without such a connection, issue sanctions that would find Plaintiffs to have made out a prima facie case on an element or elements of one of their claims or would preclude Defendants from offering a defense on a matter at issue in the case are not currently appropriate.

As to Plaintiffs' request for a jury instruction pursuant to Evidence Code section 413, such an instruction is meant to inform a jury about their consideration of evidence when a party's conduct has made evidence unavailable, or effectively unavailable, at trial. (CACI 204; Karlsson, supra, 140 Cal.App.4th at pp. 1215, 1224-1227.) Evidence Code section 413 allows a jury to have insight into the discovery process (e.g., spoliation of evidence) and invites them to draw conclusions unfavorable to a party when evidence is absent. As with Private Plaintiffs' request for stronger issue sanctions, the current Motion does not sufficiently connect the Defendants' misuse of privilege claims, privilege logs, or late production of evidence to specific categories of documents that have not been made available to them. The court will not, at this stage of the proceedings, determine that CACI 204 should be given to the jury.

The sanctions imposed herein are made under the assumption that Defendants will keep their promise that "Plaintiffs have received or will receive by the deadline set by this Court's January 14, 2020 order every document to which they are entitled." (Defs' Opp., at p. 22.) If Defendants fail to keep their promise to abide by this court's January 14, 2020 order, then the court will allow further briefing and consider stricter additional evidentiary and issue sanctions, as well as a jury instruction under Evidence Code section 413. The court also may permit Private Plaintiffs to seek additional sanctions based on information about withheld documents that have only recently been disclosed to them.

The Judicial Assistant hereby gives notice.

Clerk's Certificate of Service By Electronic Service is attached.

A copy of this minute order will append to the following coordinated case under JCCP4861:
BC601844.

EXHIBIT 17

Los Angeles Times, “*SoCalGas Union Leader Threatened Protest ‘Potentially Adding To This Pandemic,’*” by Sammy Roth

May 6, 2020

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



Los Angeles Times

CLIMATE & ENVIRONMENT

How to stop a climate vote? Threaten a 'no social distancing' protest



As San Luis Obispo planned to vote on a climate change policy, a SoCalGas union leader emailed city officials saying he would bus in hundreds of protesters. (Alex Gallardo / Los Angeles Times)

By SAMMY ROTH
STAFF WRITER

MAY 6, 2020 | 5 AM

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

San Luis Obispo was on the verge of passing an ambitious climate change policy when the proposal's most vocal critic, Eric Hofmann, found a trump card: fear of the coronavirus.

Elected officials in this city along California's Central Coast planned to vote on an energy code that would encourage construction of all-electric buildings, which don't use gas appliances and aren't hooked up to the gas grid. It's an increasingly popular tool for cities looking to phase out fossil fuels — and a threat to the gas industry, which has mounted a vigorous counteroffensive.

On March 16, Hofmann sent an email to San Luis Obispo officials that left them shocked.

"If the city council intends to move forward with another reading on a gas ban I can assure you there will be no social distancing in place," he wrote. "I strongly urge the city council to kick this can down the road to adhere to public health safety measures. Please don't force my hand in bussing in hundreds and hundreds of pissed off people potentially adding to this pandemic."

Hofmann is president of Utility Workers Union of America Local 132, which represents thousands of employees of Southern California Gas Co. — one of the nation's largest gas utilities, and a prominent crusader against local efforts to phase out gas. He also chairs the board of directors of Californians for Balanced Energy Solutions, a pro-gas advocacy group that has received funding from SoCalGas and worked closely with the utility to generate opposition to all-electric building policies.

"We will pull permits and close streets and have a massive protest on April 7th. Now is not the time to do this," Hofmann wrote. "Please tell mayor harmon and the rest of the council for the sake of people's health, that their efforts are better focused on how to better deal with this pandemic than to stir up all the emotions of people losing their jobs along with this disease."

The next week, San Luis Obispo officials scrapped plans for an April 7 vote on the energy code. The vote has not been rescheduled.

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The city's community development director, Michael Codron, attributed the indefinite delay in part to Hofmann's threat.

"There's no way to know whether it was bluster," he said in an interview.



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A sign declares the boundary line of the Southern California Gas Company gas fields at Aliso Canyon. (Michael Owen Baker)

The fight in San Luis Obispo is a particularly intense example of a battle playing out across the state.

More than two dozen California cities have approved policies over the last year banning or discouraging the use of natural gas for space heating, water heating and cooking in new buildings.

Climate activists and many energy experts see transitioning to all-electric buildings as the best way to slash emissions from homes and businesses. Gas is a fossil fuel that contributes to climate change, whereas California's electricity is increasingly supplied by climate-friendly sources such as solar and wind farms.

SoCalGas has responded by convincing nearly 120 cities and counties to approve similarly worded resolutions, originally drafted by the gas company, calling for "balanced energy solutions." The company's climate solution of choice is renewable natural gas — a fuel that could replace some of the fossil gas that contributes to climate change, but which experts say has serious limitations.

CLIMATE & ENVIRONMENT

California ditched coal. The gas company is worried it's next

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

Natural gas workers, fearful for their livelihoods, are on the front lines of the battle.

The Utility Workers Union of America has joined SoCalGas in funding Californians for Balanced Energy Solutions, or C4BES, which critics deride as a front for the gas company. In addition to Hofmann, two other UWUA officials serve on the group's board.

Separately, a union representing Los Angeles utility workers protested Mayor Eric Garcetti's decision last year to shut down three gas-fired power plants along the coast. The International Brotherhood of Electrical Workers Local 18 attacked Garcetti over his climate agenda, and briefly used its political influence to hold up the city's approval of a record-cheap contract for solar power.

Under San Luis Obispo's proposed energy code, all-electric buildings would be the preferred option for new construction. Developers would still be allowed to build homes and commercial structures that use gas, so long as they retrofit an existing building, or pay a fee to the city to reduce gas consumption elsewhere. Existing homes and businesses would not be affected.



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California's electricity is increasingly supplied by climate-friendly sources such as solar and wind farms. (Mark Boster / Los Angeles Times)

Hofmann described the policy proposal in existential terms. Asked about his March 16 email, he sent The Times a written statement claiming that San Luis Obispo "has made a provocative attack on the livelihood of our members with its anti-gas policy."

"That has stirred vehement reactions from our members, including mass attendance at past City Council meetings," Hofmann wrote. "When the City Council announced that it would re-start its anti-gas effort at the April 7th meeting, we thought it best to both organize our members' attendance in an orderly way, and at the same time try to persuade the City Council to postpone its anti-gas effort to a more prudent time."

"Fortunately the Council agreed and did so," he added.

Hofmann also noted that his email "predated the Governor's COVID-crisis shutdown."

Gov. Gavin Newsom didn't issue a statewide stay-at-home order until three days after Hofmann's email. But Newsom's office had already announced that public events "can proceed only if the organizers can implement social distancing of 6 feet per person." San Luis Obispo had reiterated Newsom's directive, noting that "there will be limited capacity" for attendance at council meetings.

Hofmann's email was obtained by the Climate Investigations Center, a fossil fuel industry watchdog group, under the California Public Records Act, and shared with The Times. He addressed the message to Codron, copying several other city officials.

Michael,

If the city council intends to move forward with another reading on a gas ban I can assure you there will be no social distancing in place. I strongly urge the city council to kick this can down the road to adhere to public health safety measures. Please don't force my hand in bussing in hundreds and hundreds of pissed off people potentially adding to this pandemic.

We will pull permits and close streets and have a massive protest on April 7th. Now is not the time to do this. Please tell mayor harmon and the rest of the council for the sake of people's health, that their efforts are better focused on how to better deal with this pandemic than to stir up all the emotions of people losing their jobs along with this disease. Let's be smart about this

Let me know how you'd like to proceed.

-Eric

A screenshot of Eric Hofmann's March 16 email to city officials in San Luis Obispo.

San Luis Obispo Mayor Heidi Harmon, a longtime climate activist, said it is "incredibly disappointing and disturbing and concerning to hear that this group is willing to risk our community's health and safety." She described Hofmann's threat as consistent with the fossil fuel industry's willingness to "continue down this incredibly dangerous path" of heating the planet.

Harmon said she's sympathetic to gas utility workers fearful of losing their jobs. But she feels strongly that fossil fuels need to stay in the ground, and that government ought to help fossil fuel workers transition to new jobs in the clean-energy economy.

She also pointed to emerging scientific research suggesting that poor air quality makes people more vulnerable to COVID-19.

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“All these things are interconnected and interrelated,” Harmon said.

CALIFORNIA

Exposure to air pollution linked to higher coronavirus-related death rates

San Luis Obispo’s city council had voted in September to approve the new energy code, after a packed meeting where dozens of people commented for and against the policy, including SoCalGas employees. But before the council could vote a second time — which was required for the policy to take effect — UWUA Local 132 accused council member Andy Pease of a conflict of interest, saying she should have recused herself because she’s a partner in a consulting firm that specializes in energy-efficient buildings.

Pease said at the time that she didn’t believe she had a conflict. And the energy code would have passed even without her vote. But city officials delayed a final vote and asked the state’s Fair Political Practices Commission to review the union’s complaint.

With no answer yet from the FPPC, San Luis Obispo staff decided to bring the energy code back to the City Council in April for a redo of the first vote, with Pease recusing herself.

The union leader threatened the protest



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



A key pipeline for SoCalGas, Line 235, runs through the desert near Newberry Springs, California. The line carries natural gas toward the Los Angeles Basin. (Brian van der Brug / Los Angeles Times)

Hofmann, a lead construction tech at SoCalGas, is on a three-year leave of absence from the company due to his union leadership position. SoCalGas said he did not discuss or coordinate his protest threat with company executives or managers.

The company otherwise declined to comment on Hofmann's email.

"SoCalGas workers are out there on the front lines performing the work needed to safely maintain our infrastructure, while also protecting the safety and well-being of the communities we serve," gas company spokesman Chris Gilbride said in an email.

Jon Switalski, executive director of Californians for Balanced Energy Solutions, didn't respond to a request for comment about whether Hofmann discussed or coordinated his threatened protest with C4BES before emailing San Luis Obispo officials.

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

The SoCalGas-backed advocacy group published a Facebook post March 13 warning that San Luis Obispo “could put in place rules that will make natural gas energy in new and existing buildings too expensive and out of reach for many Californians.”

SoCalGas, meanwhile, continues to face accusations that it has inappropriately used ratepayer funds to fight clean energy policies — potentially including in San Luis Obispo. California Public Utilities Commission staff ruled last week that their ongoing investigation into the utility’s expenditures could include questions raised by the commission’s Public Advocates Office, and by the Sierra Club, about whether SoCalGas has used customer money to lobby against city ordinances promoting all-electric buildings.

CLIMATE & ENVIRONMENT

SoCalGas shouldn’t be using customer money to undermine state climate goals, critics say

The gas company sent a comment letter to San Luis Obispo last year opposing the city’s proposed energy code.

It’s unclear when San Luis Obispo will reschedule the vote. Codron said city officials determined that “having a council meeting with extraordinary participation just wasn’t something that was appropriate to move forward with.” The city recently started hosting digital council meetings open to public commenters, but they’ve been “fraught with technical challenges,” Codron said.

“We’re going to look for the soonest opportunity where the logistics of a meeting of this scope can be managed,” he said.

SLO Climate Coalition chair Eric Veium, who advocated for the new energy code, noted that San Luis Obispo leaders have set a goal of carbon neutrality by 2035 — one of the country’s most ambitious climate targets. He’s confident they won’t back down.

"We will not allow the fossil fuel industry and their front groups to bully us," he said.

CLIMATE & ENVIRONMENT BUSINESS CORONAVIRUS PANDEMIC

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

EXHIBIT 19
SoCalGas Response to
CalAdvocates-SC-SCG-2019-07, Q 4

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

SOUTHERN CALIFORNIA GAS COMPANY
(DATA REQUEST CALADVOCATES SC-SCG-2019-07)
Date Received: October 24, 2019
Date Submitted: November 7, 2019

QUESTION 4:

The banner ad referenced in question 1 directs to SoCalGas' website "Our Vision." The "Our Vision" page lists "Local Municipalities that have adopted Balanced Energy Resolutions." For each local municipality (103 total) listed on <https://www.socalgas.com/vision/balanced-energy-resolutions>, in attachment B please provide the costs associated with lobbying each municipality to adopt a balanced energy resolution as listed below. Include the cost center, IO, and general ledger (G/L) account and designation of whether that account was originally recorded to a ratepayer or shareholder funded account.

- a. Employee Labor
- b. Employee Expenses
- c. Materials Cost
- d. Other Costs



Attachment B.xlsx

RESPONSE 4:

There are no lobbying costs associated with the municipalities in attachment B that have adopted Balanced Energy Resolutions. It is appropriate for SoCalGas to present our, and our customers', view with respect to what is happening from an energy perspective in the state. Such discussion allows local governments to take those views into consideration in making informed and balanced decisions.

SoCalGas' Regional Public Affairs ("RPA") initiated outreach to municipalities about how to achieve the State's 2030 and 2050 emission reduction goals. RPA discussed the importance of using all the tools and resources at the state's disposal – including electricity and natural gas to achieve these goals. RPA further discussed how a balanced energy policy in California takes into account existing infrastructure, customer choice, affordability and reliability. RPA also provided interested municipalities with inclusive language for their consideration as a resolution.

The inclusive language is consistent with state goals. The balanced energy resolution states: *"That the city or county supports balanced energy solutions that provide it with the decision-making authority and resources needed to achieve the state's climate goals and supports proposed state legislation and regulation that retains local control by allowing all technologies*

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and energy resources that can power buildings and fuel vehicles, and also meet or exceed emissions reductions regulations.”

Indeed, the California Public Utility Commission (CPUC) has acknowledged a future energy resource mix that includes natural gas. In September 2019, the CPUC issued the document titled, “Building Decarbonization: Fact vs. Fiction,” which includes the following language:

Myth #1: The CPUC is mandating that all buildings stop using natural gas

Reality: There is no such mandate. The BUILD and TECH programs create incentives for utility customers to invest in new low carbon-emitting building technologies. The programs will be created in accordance with state statute and do not include any mandate to dismantle or diminish California’s existing natural gas pipeline infrastructure.

The document further stated:

Myth #2: Californians will be forced to retrofit their homes

Reality: Nobody will be forced to convert any of their appliances. Both BUILD and TECH are entirely voluntary programs. If a homebuilder does not want to construct new residential housing that utilizes near-zero-emission building technologies, they do not have to. Similarly, a consumer planning to retrofit her home with a new appliance will have no obligation to purchase electric appliances instead of natural gas appliances. Consumers will continue to be free to purchase whatever appliance best meets their needs.

As stated in the direct GRC testimony of Gina Orozco Mejia, RPA’s engagement with local governments on this issue is consistent with traditional RPA activities: “...RPA’s primary focus is supporting field operations through its work with regional and local governments and municipal districts on issues regarding permitting, proposed regulations, franchises and emergency preparedness and response. RPA also informs county, city officials and special districts about SoCalGas issues that could impact customers. To a somewhat lesser degree, RPA is also a point of contact in the communities SoCalGas serves, educating stakeholders about SoCalGas construction activities, customer programs and service offerings, responding to customer and media inquiries, and resolving customer complaints. These activities are crucial to mitigating operational costs that would otherwise put upward pressure on customer rates.” (GOM-81, Lines 17-25)

“RPA also provides elected officials with information – both proactively and in response to inquiries – about pending operational and regulatory matters that could impact customers, planned or proposed rate changes, utility safety, and utility programs and services. By informing elected officials, RPA enables them to share critical information with their

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

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Date Submitted: November 7, 2019

constituents, thereby allowing those constituents to realize the full benefits of SoCalGas' service." (GOM-83, Lines 8-12).

Educating municipalities about various means of achieving state goals for greenhouse gas reductions that preserve customer choice and energy affordability is related to pending regulatory matters before the Commission and is consistent with RPA's role.

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

EXHIBIT 20
SoCalGas Response to
CalAdvocates-SC-SCG-2019-08, Q 1

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

SOUTHERN CALIFORNIA GAS COMPANY
(DATA REQUEST CALADVOCATES SC-SCG-2019-08)
Date Received: November 20, 2019
Date Submitted: December 6, 2019

QUESTION 1:

For each local municipality (103 total) listed on <https://www.socalgas.com/vision/balanced-energy-resolutions>, please identify the total costs to SoCalGas associated with communications between the municipality and SoCalGas' Regional Public Affairs (RPA) department, since January 1, 2018. This should include, but not be limited to, costs associated with the following types of activities:

- a. In person meetings (public and private)
- b. Signed letters from the Company
- c. Writing or furnishing a draft resolution
- d. Email communication with city officials

RESPONSE 1:

SoCalGas objects to this question as overbroad and unduly burdensome, as well as vague with respect to the phrases "total costs to SoCalGas associated with" and "costs associated with." Subject to and without waiving its objection, SoCalGas responds as follows:

SoCalGas did not track the costs associated with communications between Regional Public Affairs employees and municipalities. The Regional Public Affairs employees who communicated with the municipalities are all salaried employees.

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

EXHIBIT 21
Sempra Energy Political Activities Policy
Revised July 23, 2018

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



Political Activities

Responsible Dept.: External Affairs
Responsible Officer: VP Corporate
Communications & Sustainability
Applicability: **All Employees of Sempra
Energy & the Sempra Energy
Companies**

EFFECTIVE DATE: 2/23/2012
REVISION DATE: 07/23/2018
REVIEW DATE: 07/23/2018
INFORMATION TYPE: Internal

Questions?
[See Policy Contact List](#)

1. POLICY:

Engaging with policymakers is an important, necessary and appropriate part of doing business as long as it is conducted in a legal and transparent manner. We track hundreds of proposed laws, rules, regulations and policies annually and engage in political activity to ensure that the perspectives of our company, shareholders, customers and employees are represented before lawmakers and regulators. When warranted, we may take positions for or against proposals and sometimes suggest amendments as part of the public policy process. In the U.S., there are federal, state and local lobbying registration and disclosure laws with which Sempra Energy and the Sempra Energy Companies comply, and the company has a robust training and reporting program in place to ensure compliance.

This policy sets forth rules and procedures regarding lobbying, political contributions and gift activities for the Sempra Energy Companies as well as employee contributions to political candidates and participation in political campaigns for office in the United States (U.S.) federal, state and local jurisdictions.

Political activities, including gifts and political contributions, outside of the U.S. jurisdictions are governed by the [Anti-Bribery and Anti-Corruption](#) policy as well as country-specific Sempra Energy Company policies. Management oversight for corporate political activity resides with the highest-ranking external affairs executive of the company.

Personal Political Activity

Allowable Activity:

- *Making Personal Campaign Contributions:* Most employees can make personal contributions to candidates without triggering any reporting obligation. However, company officers, registered lobbyists or any employee directly involved in bidding, negotiating, or contracting with a jurisdiction over which the candidate presides **must** contact Political Reporting and Compliance prior to making any contribution and, once the contribution is screened and approved by Political Compliance and Reporting, report his or her personal contribution using the Sempra Energy's Lobbying Activity Tracking System ([LATS](#)). It is important to note that *anything* that benefits a candidate's campaign for office (e.g., money, time, or use of the company's facilities or assets) can be considered a contribution.
- *Running for Elected Office or Being Appointed to a Government Position:* It is an employee's right to run for elected office or serve in an appointed government position, however, if the employee plans to continue to work for Sempra Energy or one of the Sempra Companies, he or she must be mindful of potential conflict of interest issues, both with the elected/appointed position and the employee's position at Sempra Energy. Employees should be sure to check with their supervisor and contact the Political Reporting and Compliance department for specific guidance before deciding to run for elected office or being considered for an appointed position.

Prohibited Activity:

- Working on a political campaign for a candidate, ballot measure or proposition during working hours, or using the facilities or property of Sempra Energy for such purpose unless it is a campaign or measure sponsored by the Sempra Company and/or you are an employee who has been designated to support the effort.
- Coercing or bringing undue pressure on an employee, contract employee, company vendor or business partner to contribute to, support, or oppose any political group, candidate or ballot measure.
- Displaying political messaging in common areas. Employees should also use common sense when it comes to personal office space and the use of political buttons, pins, signage and other materials.

You may raise questions or concerns about compliance or ethics issues by visiting our anonymous Sempra Energy Ethics & Compliance Helpline website at www.SempraEthics.com or by calling one of the Ethics & Compliance Helplines below:

United States – 800-793-7723
Mexico – 001-770-582-5249

Chile: 600-320-1700
Peru: 0800-7-0690

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



Political Activities

Responsible Dept.: External Affairs
Responsible Officer: VP Corporate Communications & Sustainability
Applicability: **All Employees of Sempra Energy & the Sempra Energy Companies**

EFFECTIVE DATE: 2/23/2012
REVISION DATE: 07/23/2018
REVIEW DATE: 07/23/2018
INFORMATION TYPE: Internal

Questions?
[See Policy Contact List](#)

Corporate Political Contributions

Sempra Energy makes corporate political contributions as permitted by law only from special budgets funded at shareholder expense.

- Sempra Energy may contribute to candidates, political parties, ballot measure committees and political action committees (PAC), but does not make contributions to officeholder accounts or federal "Super PACs". The company rarely allows any contributions to 527 organizations. Any employee wanting to make a contribution to a state level 527 organization cannot do so unless approved, in advance, by the most senior Sempra Energy External Affairs officer prior to making a commitment.
- Sempra Energy will not use company funds to make independent expenditures to expressly advocate for the election or defeat of federal, state, or local candidates.
- Sempra Energy shall comply with all federal, state and local laws as well as reporting requirements governing corporate political contributions.
- Political contributions must always be submitted to the Political Compliance department and never processed in individual departments' cost centers.
- Sempra Energy's contributions are posted on Sempra.com semi-annually for transparency purposes.
- No contributions shall be given in anticipation of, in recognition of, or in return for, any official act.
- Employees are never allowed to make political contributions to candidates from personal funds and then seek reimbursement from the company.

Please refer to the procedures in APPENDIX 2 of this policy before committing to make a contribution to a Government Official.

Employee Political Action Committee Contributions

Employees of Sempra Energy or the Sempra Energy Companies meeting specific eligibility requirements can join the Sempra Energy's federal FEC-registered political action committee, Sempra Energy Employee's Political Action Committee ("SEEPAC").

- SEEPAC is a voluntary political action committee independent of any political party.
- The Company also sponsors a California-registered political action committee, also named SEEPAC, which may make contributions at the state and local level.
- Political spending by SEEPAC is reviewed and approved by the SEEPAC Board of Directors and receives political reporting and compliance clearance before checks are issued.
- SEEPAC complies with all applicable reporting requirements and political contribution laws.
- All SEEPAC contributions must be requested, submitted and approved by Federal Government Affairs before being sent to the Political Reporting and Compliance department for clearance and processing.
- Employees are never to make political contributions to candidates from personal funds, and then seek reimbursement from SEEPAC.

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Political Activities

Responsible Dept.: External Affairs
Responsible Officer: VP Corporate
Communications & Sustainability
Applicability: **All Employees of Sempra
Energy & the Sempra Energy
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EFFECTIVE DATE: 2/23/2012
REVISION DATE: 07/23/2018
REVIEW DATE: 07/23/2018
INFORMATION TYPE: Internal

Questions?
[See Policy Contact List](#)

Lobbying

Lobbying is any action intended to influence legislative or administrative action, including activities to influence government officials ("Government Official"), political parties, or ballot measures. Lobbyists can be individual employees or the company that employees them, referred to as a Lobbyist-Employer.

- Only employees authorized to act on behalf of the company may perform lobbying activities and only if permitted by law.
- Even customary and ordinary communications with elected or appointed regulatory or agency officials or their staff may be considered lobbying activity that is subject to rules in certain jurisdictions.
- Employees who engage in these activities are required to report this activity in [LATS](#) and/or register as a lobbyist if certain thresholds are met.

Contact Political Reporting and Compliance to ensure compliance with applicable registration and reporting laws prior to engaging in any lobbying or communications activities with officials or their staffs at any level of government.

Retention of Lobbyists or Firms that Lobby

You must obtain prior approval before hiring a lobbyist or lobbying firm by following the process set forth in the procedures found [here](#). You will subsequently need to enter all related expenses on a monthly basis into [LATS](#). It is the responsibility of the employee who hires the firm to relay this policy to outside consultants and ensure compliance. These procedures apply for all jurisdictions.

Revolving-Door Laws

Former Government Officials who become employees of private or public companies may be subject to "revolving-door" restrictions on their work. If you are considering hiring former Government Officials who will be representing Sempra Energy externally, you **must** obtain approval in advance of hiring from the most senior Sempra Energy External Affairs officer.

Business Courtesies to Government Officials

Business courtesies ("Business Courtesies") that provide personal benefit to a Government Official or to their families are covered by rules and regulations that vary widely by jurisdiction.

For all U.S. jurisdictions, such gifts are often either prohibited or subject to strict yearly and/or monthly limits, and often trigger reporting requirements that can cause officials to be disqualified from voting on matters related to the Sempra Energy or can cause reputational damage to the company once publicly reported.

Please refer to the procedures in [Appendix 1](#) of this policy before giving any gift or courtesy to a Government Official or any of their staff members.

You may raise questions or concerns about compliance or ethics issues by visiting our anonymous Sempra Energy Ethics & Compliance Helpline website at www.SempraEthics.com or by calling one of the Ethics & Compliance Helplines below:

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Mexico – 001-770-582-5249

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



Political Activities

Responsible Dept.: External Affairs
Responsible Officer: VP Corporate Communications & Sustainability
Applicability: **All Employees of Sempra Energy & the Sempra Energy Companies**

EFFECTIVE DATE: 2/23/2012
REVISION DATE: 07/23/2018
REVIEW DATE: 07/23/2018
INFORMATION TYPE: Internal

Questions?
[See Policy Contact List](#)

Required Training

All employees who are directly involved in activities that could involve contact with a Government Official as well as those who provide support to those employees, are required to complete Political Reporting training, which is provided on a periodic basis.

2. BACKGROUND INFORMATION

Political activity is heavily regulated at all levels of government and often requires reporting to government agencies. U.S. law governing political reporting and compliance generally requires disclosure on a consolidated basis, including in many cases, direct and indirect relationships (e.g., subsidiaries, JVs, etc.). Accordingly, the compliance and reporting function for all the Sempra Companies is administered by Sempra Energy’s Political Reporting and Compliance department.

For guidance on non-U.S. political contributions and gifts, refer to the [Anti-Bribery and Anti-Corruption Policy](#) and contact the Legal Department. You must seek guidance prior to acting.

3. KEY TERMS

Business Courtesies – Generally anything that has a value provided to an elected or appointed official. Examples include gifts, meals, drinks (e.g., cup of coffee), edibles (such as boxes of chocolates, fruit baskets), entertainment (such as tickets to sporting events or concerts), recreation (such as golf course fees or sailing excursions), raffles, honoraria, transportation, discounts, promotional items and accommodations.

Government Official –An officer, employee, agent or representative of any government agency, department, entity or political subdivision, or any candidate for political office, political party or an official of a political party at the federal, state and local level of government, as well as their staff members. Each jurisdiction defines Government Official differently and requires different levels of reporting.

Lobbying – Although definitions vary greatly by jurisdiction, lobbying is generally defined as communication with a Government Official intended to influence legislative or administrative action. You do not have to be a registered lobbyist to engage in lobbying.

Political Action Committee or PAC – An organization that raises money in order to contribute money to political campaigns. Sempra Energy sponsors an employee-funded political action committee (SEEPAC), which raises money from its eligible employees.

Sempra Energy Company/Sempra Company – A subsidiary or other entity as to which Sempra Energy has majority ownership and control.

You may raise questions or concerns about compliance or ethics issues by visiting our [anonymous Sempra Energy Ethics & Compliance Helpline website at \[www.SempraEthics.com\]\(http://www.SempraEthics.com\)](#) or by calling one of the Ethics & Compliance Helplines below:

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Mexico – 001-770-582-5249

Chile: 600-320-1700
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Political Activities

Responsible Dept.: External Affairs
Responsible Officer: VP Corporate
Communications & Sustainability
Applicability: **All Employees of Sempra
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EFFECTIVE DATE: 2/23/2012
REVISION DATE: 07/23/2018
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INFORMATION TYPE: Internal

Questions?
[See Policy Contact List](#)

4. RELATED DOCUMENTS

[Anti-Bribery and Anti-Corruption Policy](#)
[Business Courtesies Policy](#)
[Contributions Policy](#)
[Memberships Policy](#)

5. INFORMATION RETENTION GUIDANCE

For guidance as to the appropriate retention period for information related to this policy, please refer to the [Information Management Policy](#).

APPENDIX 1: Required Steps **Before** Giving a Gift or Extending a Courtesy to a Government Official

- Obtain clearance.** Due to strict restrictions on gifts at all levels of government, before giving any gift to any Government Official, obtain clearance from Political Reporting and Compliance. Send an email to PoliticalReporting@Sempra.com with an estimate of the gift value and the name, title and jurisdiction of the Official. If for any reason prior approval is not obtained, you must contact Political Reporting and Compliance immediately by phone at (619) 696-2599 or via email at PoliticalReporting@Sempra.com to report the gift.
- Be transparent.** Once clearance is obtained, you should let the Official know that if they choose to accept the gift/courtesy, they will receive a gift letter from you, as a courtesy, outlining the cost of the gift (e.g., ticket, meal, beverages) in case they want to reimburse the Company for these gifts within a 30-day period.
- Retain all receipts.** Once you have attended the meeting or event with the official, you should retain relevant receipts of the expenditures, clearly marking the names, titles and agencies of those who benefited from the expenditure. This will be required for your reimbursement of the expense, and may also be required by Political Reporting & Compliance.

As a general rule and unless otherwise noted on the receipt, the full cost of the tab will be divided equally by the number of people in attendance.

- Report the expense.** The gift expense must be reported in the Gift Section of [LATS](#) **within 5 days of the event or meeting**. This information will be used to track whether a particular official is approaching applicable limits. It is extremely important to be expedient with entering the data into LATS, as the window for seeking reimbursements or making changes is very narrow.

These procedures apply for all domestic jurisdictions, unless the most senior Sempra Energy External Affairs officer, in consultation with the Law Department, determines that a different procedure is appropriate under applicable law and approves the gift.

You may raise questions or concerns about compliance or ethics issues by visiting our anonymous Sempra Energy Ethics & Compliance Helpline website at www.SempraEthics.com or by calling one of the Ethics & Compliance Helplines below:

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REVISION DATE: 07/23/2018
REVIEW DATE: 07/23/2018
INFORMATION TYPE: Internal

Questions?
[See Policy Contact List](#)

APPENDIX 2: Required Steps Before Committing to Make a Political Contribution to a Government Official

Steps 1-3 are annual in nature and must be successfully addressed in Quarter 1 of each calendar year:

1. **Obtain senior management budget approval:** Corporate political spending plans are reviewed by senior management annually, based on input and feedback from government affairs employees.
2. **Present to board for review:** Political spending budgets are reviewed by the Sempra Energy Company boards of directors before being submitted to Sempra Energy for review and approval.
3. **Obtain consolidated budget approval:** The most senior Sempra Energy External Affairs officer shall approve consolidated budgets for political spending once the Sempra Energy Company boards have reviewed spending plans.

Steps 4-9 articulate what authorized employees must do prior to making a commitment to provide a political contribution to a candidate for office or Government Official throughout the course of the year:

4. **Obtain VP approval for each contribution request:** Send an email to PoliticalReporting@Sempra.com to request a political contribution request form. Once the form is completed, each contribution request must be approved and authorized by a vice president or higher level officer and submitted to the Political Reporting and Compliance department.
5. **Submit to Political Reporting and Compliance for legal review:** Send the request to the Political Reporting and Compliance department at PoliticalReporting@Sempra.com. The team will review the contributions and ensure compliance with all applicable laws. Contributions are never to be processed in cost centers other than the approved cost center.
6. **Obtain Executive VP approval for certain contributions:** Contributions over \$100,000 and those in excess of the approved budget require approval of the most senior Sempra Energy External Affairs officer at the Company. In addition, any employee wanting to make a contribution to a candidate, PAC, or ballot measure under investigation, in legal trouble, or controversial in any way cannot do so unless approved, in advance, by the most senior Sempra Energy External Affairs officer.
7. **Submit to AP for processing:** Once legal review is complete, the Political Reporting and Compliance department will submit a check request for processing.
8. **Send check:** Once the check is received, the Political Reporting and Compliance department will send the check with instructions to the recipient, unless prior delivery plans have been made.
9. **Report contributions:** The Political Compliance department shall report all contributions to the government as required by law and posts them semi-annually on the Sempra Energy website.

You may raise questions or concerns about compliance or ethics issues by visiting our anonymous Sempra Energy Ethics & Compliance Helpline website at www.SempraEthics.com or by calling one of the Ethics & Compliance Helplines below:

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Political Activities

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EFFECTIVE DATE: 2/23/2012
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REVIEW DATE: 07/23/2018
INFORMATION TYPE: Internal

Questions?
[See Policy Contact List](#)

These procedures apply for all domestic jurisdictions, unless the most senior Sempra Energy External Affairs officer, in consultation with the Law Department, determines that a different procedure is appropriate under applicable law and approves the contribution.

*You may raise questions or concerns about compliance or ethics issues by visiting our anonymous Sempra Energy Ethics & Compliance Helpline website at www.SempraEthics.com or
by calling one of the Ethics & Compliance Helplines below:*

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

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

**RESPONSE OF PUBLIC ADVOCATES OFFICE TO THE SOUTHERN
CALIFORNIA GAS COMPANY MOTION TO SUPPLEMENT THE RECORD
AND REQUEST FOR EXPEDITED DECISION BY THE FULL COMMISSION
ON MOTION FOR RECONSIDERATION**

(NOT IN A PROCEEDING)

TRACI BONE
Attorney for the
Public Advocates Office

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-2048
Email: traci.bone@cpuc.ca.gov

June 1, 2020

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

I. INTRODUCTION

Pursuant to Public Utilities (Pub. Util.) Code §§ 309.5(e) and 314, and Rule 11.3 of the California Public Utilities Commission's (Commission's) Rules of Practice and Procedure (Rules),¹ the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) submits this Response to Southern California Gas Company's (SoCalGas') Motion to Supplement.² That Motion asks the Commission to supplement the record of SoCalGas' December 2, 2020, Motion for Reconsideration³ - which raises various First Amendment claims arguing against disclosure of certain information - *if the Commission does not grant SoCalGas' currently pending Motion to Quash*.⁴ Specifically, SoCalGas asks to supplement its Motion for Reconsideration with "all of the records attached" to the Motion to Supplement,⁵ which are five declarations with multiple attachments. The first is a current declaration from a SoCalGas attorney; the four other declarations were submitted with its frivolous March 19, 2020 Emergency

¹ The Motion to Supplement was originally filed on May 20, 2020, with a Substitute filed May 22, 2020. This Response is timely filed consistent with a May 29, 2020, email from ALJ DeAngelis confirming that the Response could be filed on June 1, 2020 based on the date of the filing of the Substitute Motion.

² SoCalGas' Motion to Supplement is entitled "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 29th Completion Of Software Solution To Exclude Those Protected Materials In The Databases (Not in a Proceeding)."

³ SoCalGas' Motion for Reconsideration is entitled "Motion for Reconsideration/Appeal Regarding Administrative Law Judge's Ruling in the Discovery Dispute Between The Public Advocate Office and Southern California Gas Company, October 7, 2019 (Not in a Proceeding)."

⁴ SoCalGas' Motion to Quash was originally filed on May 19, 2020, with a Substitute filed May 22, 2020, and is entitled "Southern California Gas Company's (U 904 G) Motion to Quash Portion of the Subpoena To Produce Access to Certain Materials in Accounting Databases and to Stay Compliance until the May 29th Completion of Software Solution to Exclude Those Protected Materials in the Databases (Not in a Proceeding)."

⁵ Motion to Supplement, p. 15 ("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.").

Motion to Stay.⁶ That Emergency Motion to Stay was denied on April 6, 2020, before the Public Advocates had an opportunity to respond. The Administrative Law Judge's April 6, 2020 Order (ALJ Order) found that the motion was not supported by California law:

SoCalGas' Emergency Motion for a Protective Order Staying all Pending and Future Data Requests from California Public Office of Advocates is asking the Commission to act contrary to California law both in substance and form. No further consideration of SoCalGas' motion is warranted.⁷

The instant Motion to Supplement is similarly frivolous and should be denied, with the following exceptions:

- (1) In the event SoCalGas' Motion to Quash is denied, SoCalGas should be permitted to include the challenged subpoena and the companion data request and SoCalGas' May 15, 2020 response⁸ as an exhibit to its Motion for Reconsideration; and
- (2) The Public Advocates Office supports SoCalGas' request that the Commission address the issues in SoCalGas' Motion for Reconsideration as expeditiously as possible.

All other requests set forth in the Motion to Supplement should be denied. As an initial matter, the Motion to Supplement is premature. More significantly, the information SoCalGas seeks to add to the "record" of its Motion for Reconsideration is, for the most part, not relevant to the First Amendment claims raised in that Motion. Rather, those five declarations are primarily intended to support SoCalGas claims that the Public Advocates Office has unreasonably pursued discovery from it. In addition, those

⁶ SoCalGas' Emergency Motion to Stay is entitled "Southern California Gas Company's (U 904 G) Emergency Motion For A Protective Order Staying All Pending And Future Data Requests From The California Public Advocates Office Served Outside Of Any Proceeding (Relating To The Building Decarbonization Matter), And Any Motions And Meet And Confers Related Thereto, During California Government COVID-19 Emergency "Safer At Home" Orders."

⁷ See Exhibit A, ALJ April 6, 2020 Order denying SoCalGas' Motion for Emergency Stay.

⁸ Public Advocates Office Data Request, No. CalAdvocates-TB-SCG-2020-03. SoCalGas's response to that data request is at SoCalGas Motion to Supplement, Declaration of Henry Elliot, Exhibit B.

declarations are replete with misrepresentations that the Public Advocates Office would be required to respond to, further wasting Commission resources.

Public Advocates Offices' first proposal above, permitting SoCalGas to enter the subpoena, the companion data request, and its May 15, 2020 response to that data request into the record on its Motion for Reconsideration resolves these issues without prejudice to either party.

II. DISCUSSION²

A. SoCalGas' Motion to Supplement Should be Rejected as Premature

The following facts are not reasonably subject to dispute:

- On May 5, 2020 counsel for the Public Advocates Office sent a subpoena executed by the Commission's Executive Director to SoCalGas via email.¹⁰
- The subpoena served by the Public Advocates Office required that SoCalGas "make available to the Public Advocates Office at the California Public Utilities Commission (Cal Advocates), and staff and consultants working on its behalf, access to all databases associated in any manner with the company's accounting systems."
- The subpoena served by the Public Advocates Office was marked with a due date of no later than May 8, 2020.
- On May 19, 2020, SoCalGas submitted its Motion to Quash, with a substitute Motion to Quash served May 22, 2020.

SoCalGas' Motion to Supplement is premature because the Commission has not yet ruled on the Motion to Quash. Simply put, if the Commission grants SoCalGas' Motion to Quash, then claims of any harm to SoCalGas will be moot because Public Advocates Office will not be permitted to access the information in its accounts and records that SoCalGas claims are protected by the First Amendment.

² An extensive discussion of the background leading to SoCalGas' Motion to Supplement is provided in Section II "Background" of the Public Advocates Office concurrently served Response to SoCalGas' Motion to Quash.

¹⁰ See Exhibit B, Commission Subpoena served May 5, 2020.

B. The Bulk Of The Information SoCalGas Proposes To Add To The Record Is Not Related To Its First Amendment Claims

By way of its Motion to Supplement, SoCalGas seeks to supplement the record on its December 2, 2019 Motion for Reconsideration/Appeal with “a full record” Unfortunately, SoCalGas has failed to provide either a full or accurate recounting of events related to the subpoena. Instead, the bulk of the information SoCalGas proposes to add to the record of its Motion for Reconsideration involves SoCalGas claims that it is being treated unfairly by the Public Advocates Office. Indeed, four of the five declarations were prepared by SoCalGas to support its baseless claims in its Emergency Motion for Stay that it would be “irreparably harmed” if the Commission did not impose a stay on all discovery in the Public Advocates Office investigation until the stay at home orders were terminated. All of the declarations proposed to be added to the record contain numerous and significant misrepresentations which Public Advocates Office would need the opportunity to respond to if they were to be added to the record of the Motion for Reconsideration. Given that the bulk of the information is not relevant to SoCalGas’ First Amendment claims, there is no basis to add it to the record of the Motion for Reconsideration and the request to supplement should therefore be denied.

If SoCalGas wished to include the subpoena within its existing First Amendment claim, it only needed to seek judicial notice of the subpoena and ask to include the companion data request and its response as an exhibit to its appeal. Indeed, had SoCalGas bothered to mention the motions it was preparing to file during any of its several meetings with the Public Advocates Office, it could have agreed to such an approach to conserve the resources of both parties and the Commission.

Instead, SoCalGas presents a meandering collection of erroneous statements and demonstrably false contentions, that it urges the Commission to incorporate as a supplement to the record of its appeal because the subpoena and related data request “mirror the issues already before the Commission.” Rather than endorsing SoCalGas’ attempts to skew the record with irrelevant and unsubstantiated complaints of abuse at

Public Advocates hands, the Commission should deny the instant request and direct SoCalGas to seek judicial notice of the subpoena, data request, and its May 15, 2020 response.¹¹

C. The Public Advocates Office Does Not Oppose SoCalGas' Request For An Expedited Decision On Its Motion for Reconsideration

The Public Advocates Office believes it is important for the Commission to send a clear and timely message to SoCalGas and other parties that it will not tolerate any abuse of its processes and will not allow intransigence and aggressive litigation tactics to be used to deter staff from performing their duties. The Public Advocates Office agrees that SoCalGas Motion for Reconsideration should be clearly, substantively, and expeditiously resolved.

III. CONCLUSION

For the reasons set forth above, the Public Advocates Office requests that the Commission swiftly reject SoCalGas' Motion to Supplement. The Motion is procedurally improper because it is premature. It is substantively improper because the bulk of the information SoCalGas seeks to add to the record of its Motion for Reconsideration is not relevant to the First Amendment Claims. Granting SoCalGas' request would clutter the record of the Motion for Reconsideration with numerous half-truths, inferences, and misrepresentations that would require an opportunity for the Public Advocates Office to respond. Instead, the Commission need only provide SoCalGas the opportunity to enter the subpoena, data request, and its data response into the record of the Motion for Reconsideration.

Finally, as noted above, Cal Advocates has been attempting to investigate SoCalGas' funding of activities related to promoting the use of natural and renewable gas and to defeating state and local ordinances proposed to limit the use of natural and renewable gas for approximately 12 months now. It is important for the Commission to

¹¹ SoCalGas never specifically asks that the subpoena and data request be entered into the record of its appeal, these documents are provided as attachments in support of SoCalGas' arguments.

send a clear and timely message that it will not tolerate any abuse of its processes and will not allow intransigence and aggressive litigation tactics to be used to deter staff from performing their duties. For these reasons, the Public Advocates Office supports the clear, accurate and expeditious resolution of SoCalGas' Motion for Reconsideration.

Respectfully submitted,

/s/ TRACI BONE

Traci Bone

Attorney for the
Public Advocates Office

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102
Telephone: (415) 703-2048
Email: traci.bone@cpuc.ca.gov

June 1, 2020

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EXHIBIT A
ALJ April 6, 2020 Order denying SoCalGas' Motion
for Emergency Stay.

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

From: [DeAngelis, Regina](#)
To: [Bone, Traci](#); [Trujillo, Leslie A](#); [Batier, Marybel](#); [Simon, Anne](#); [Ward, Alec](#); [Castello, Stephen](#); [Prusnek, Brian C](#); [Sierzant, Corinne M](#); [Lee, Shawane L](#); [Tran, Johnny Q](#); [Fohrer, Jeffrey B](#); [Henry, Elliott S](#)
Cc: [Farrar, Darwin](#); [Serizawa, Linda](#); [Campbell, Michael](#)
Subject: RE: SoCalGas Emergency Motion to File Under Seal and Motion for a Protective Order (Not in a Proceeding)
Date: Monday, April 06, 2020 10:34:00 AM

Commission Staff, including California Public Advocates, has statutory rights to inspect the accounts, books, papers, and documents of any public utility at any time. Further, Public Utilities Code section 309.5(e) allows California Public Advocates Office to compel the production or disclosure of any information if there are any objections to any request for information. This code section does not provide such relief to regulated entities. SoCalGas' Emergency Motion for a Protective Order Staying all Pending and Future Data Requests from California Public Office of Advocates is asking the Commission to act contrary to California law both in substance and form. No further consideration of SoCalGas' motion is warranted.

However considering such extraordinary times, I ask the parties to work together to find a schedule that is mutually agreeable and accommodates the additional demands resulting from the COVID-19 shelter-in-place directive.

Thank you.

Regina M. DeAngelis
Administrative Law Judge
California Public Utilities Commission
415.703.2011
regina.deangelis@cpuc.ca.gov

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

From: Bone, Traci <traci.bone@cpuc.ca.gov>
Sent: Thursday, March 26, 2020 12:02 PM
To: Trujillo, Leslie A <LTrujillo@socalgas.com>; Batjer, Marybel <Marybel.Batjer@cpuc.ca.gov>; Simon, Anne <anne.simon@cpuc.ca.gov>; Ward, Alec <Alec.Ward@cpuc.ca.gov>; Castello, Stephen <Stephen.Castello@cpuc.ca.gov>; Prusnek, Brian C <BPrusnek@semprautilities.com>; Sierzant, Corinne M <CSierzant@socalgas.com>; Lee, Shawane L <SLee5@socalgas.com>; Tran, Johnny Q <JQTran@socalgas.com>; Fohrer, Jeffrey B <JFohrer@socalgas.com>; Henry, Elliott S <EHenry@socalgas.com>
Cc: Farrar, Darwin <darwin.farrar@cpuc.ca.gov>; Serizawa, Linda <linda.serizawa@cpuc.ca.gov>; Campbell, Michael <Michael.Campbell@cpuc.ca.gov>; DeAngelis, Regina <regina.deangelis@cpuc.ca.gov>
Subject: RE: SoCalGas Emergency Motion to File Under Seal and Motion for a Protective Order (Not in a Proceeding)

Ms. Trujillo:

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The Public Advocates Office is in receipt of SoCalGas' Motion and will be filing a Reply in Opposition to the Motion, which will be served on all of the people on this email, and any others listed on the SoCalGas Certificate of Service.

We ask that SoCalGas follow the same protocol for all future filings regarding this Motion.

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

From: Trujillo, Leslie A <LTrujillo@socalgas.com>

Sent: Wednesday, March 25, 2020 4:51 PM

To: Batjer, Marybel <Marybel.Batjer@cpuc.ca.gov>; Simon, Anne <anne.simon@cpuc.ca.gov>; Bone, Traci <traci.bone@cpuc.ca.gov>; Ward, Alec <Alec.Ward@cpuc.ca.gov>; Castello, Stephen <Stephen.Castello@cpuc.ca.gov>; Prusnek, Brian C <BPrusnek@semprautilities.com>; Sierzant, Corinne M <CSierzant@socalgas.com>; Lee, Shawane L <SLee5@socalgas.com>; Tran, Johnny Q <JQTran@socalgas.com>; Fohrer, Jeffrey B <JFohrer@socalgas.com>; Henry, Elliott S <EHenry@socalgas.com>

Subject: SoCalGas Emergency Motion to File Under Seal and Motion for a Protective Order (Not in a Proceeding)

Sent on Behalf of Attorney Johnny Tran

Dear President Batjer,

Attached please find *Southern California Gas Company's (SoCalGas) Emergency Motion for a Protective Order Staying All Pending and Future Data Requests from the California Public Advocates Office Served Outside of any Proceeding (Relating to the Building Decarbonization Matter), and any Motions and Meet and Confers Related Thereto, During California Government COVID-19 Emergency "Safer at Home" Orders (Emergency Motion), and the accompanying Motion to File Under Seal.* This discovery dispute is not part of any open Commission proceeding, therefore SoCalGas is submitting this motion to the President's office per Public Utilities Code § 309.

Due to the current Coronavirus (COVID-19) health crisis, accordingly, pursuant to CPUC COVID-19 Temporary Filing and Service Protocol for Formal Proceedings, paper copies of these documents are not being filed at this time, and will not be mailed to the Administrative Law Judge or to parties on the service list, and the sealed documents will be delivered to the Docket Office by April 14, 2020 or as directed by the assigned judge.

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Sincerely,

Leslie Trujillo

Leslie Trujillo
Legal Administrative Associate
Southern California Gas Company | Law Department
555 West 5th Street, GT14E7 | Los Angeles, CA 90013
Tel: 213.244.2972 | Fax: 213.629-9620 | E-mail: LTrujillo@socalgas.com



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Exhibit B
Commission Subpoena served May 5, 2020

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PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

IN THE MATTER OF THE PUBLIC
ADVOCATES OFFICE INVESTIGATION
PERTAINING TO SOUTHERN CALIFORNIA
GAS COMPANY'S ACCOUNTING

**SUBPOENA TO PRODUCE ACCESS TO
COMPANY ACCOUNTING DATABASES**

PRACTICES, USE OF RATEPAYER
MONIES TO FUND ACTIVITIES RELATED
TO THE ADOPTION OF ANTI-
DECARBONIZATION AND GAS
THROUGHPUT POLICIES, AND OTHER
ACTIVITIES POTENTIALLY CONTRARY
TO STATE POLICIES

**Public Utilities Code Sections 311, 314, 314.5,
314.6, 581, 582, 584, 701, 702, and 771**

THE PEOPLE OF THE STATE OF CALIFORNIA,
TO: SOUTHERN CALIFORNIA GAS COMPANY

1. Pursuant to sections 311(a), 314, 314.5, 314.6, 581, 582, 584, 701, 702, and 771 *et seq.* of the California Public Utilities Code, you are ordered to make available to the Public Advocates Office at the California Public Utilities Commission (Cal Advocates), and staff and consultants working on its behalf, access to all databases associated in any manner with the company's accounting systems no later than three business days after service of this Subpoena.
2. Such access shall include both on-site and remote access; on-site access shall be provided at the times and locations requested by Cal Advocates.
3. Both on-site and remote access shall be as near to identical in quality as the access provided to the company's own employees and/or auditors, including, without limitation, any instructional materials or access to persons knowledgeable about the databases, including knowledge about both on-site and remote access to those databases.
4. IF YOU HAVE ANY QUESTIONS ABOUT THIS SUBPOENA, CONTACT THE FOLLOWING PERSON:

Name: Traci Bone

E-Mail: tbo@cpuc.ca.gov

Telephone: 415-703-2048

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COMMISSION.

By order of the Public Utilities Commission of the State of California.

Dated this 4th day of May, 2020.



By: Alice Stebbins

Title: Executive Director

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DECLARATION IN SUPPORT OF SUBPOENA

I, TRACI BONE, declare as follows:

1. I am an attorney duly licensed to practice before all courts of the State of California and am employed as a staff attorney for the California Public Utilities Commission (Commission). My business address is 505 Van Ness Avenue, San Francisco, California, 94102.
2. The California Constitution and the Public Utilities Code confer jurisdiction on the Commission to regulate public utilities in California in a number of areas, including, without limitation, cost, safety and maintenance of facilities.
3. The Public Utilities Code provides for an independent Public Advocate's Office to represent and advocate on behalf of the interests of public utility customers and subscribers within the jurisdiction of the Commission.
4. The Commission's Public Advocates Office is currently conducting an investigation of Southern California Gas Company's (SoCalGas') accounting practices, use of ratepayer monies to fund activities related to the adoption of anti-decarbonization and gas throughput policies, and other activities potentially contrary to state policies.
3. Section 314(a) of the Public Utilities Code, and others, authorize the Commission and persons employed by the Commission to inspect the accounts, books, papers and documents of any public utility. Section 311 authorizes the Commission, each Commissioner, the executive director, and the assistant executive directors to issue subpoenas for, among other things, accounts and documents in any investigation in any part of the state.
4. SoCalGas' responses to data requests in the investigation have been incomplete and untimely. Consequently, good cause exists for SoCalGas to be ordered to produce both

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remote and on-site access to its accounting databases so that the Public Advocates Office, its staff and/or consultants may conduct their own examination of the utility's records.

Executed under penalty of perjury under the laws of the State of California, on this 5th day of May, 2020, at San Francisco, California.



Traci Lynn Bone
Staff Counsel

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PROOF OF SERVICE

I am employed with the California Public Utilities Commission and I am over 18 years of age. My business address is 505 Van Ness Ave., San Francisco, CA 94102

On May 5th, 2020, I electronically served the attached **SUBPOENA TO PRODUCE ACCESS TO COMPANY ACCOUNTING DATABASES** on the following representatives for Southern California Gas Company:

Johnny Tran - JQTran@socalgas.com
Corinne Sierzant - CSierzant@socalgas.com
Brooke Holland - AHolland@socalgas.com
Elliot Henry - EHenry@socalgas.com
Jason Wilson – jwilson@willenken.com
Sherin Varghese – svarghese@willenken.com

Executed under penalty of perjury of perjury under the laws of the State of California, on this 5th day of May 2020, at San Francisco, California.



Traci Lynn Bone

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CERTIFICATE OF SERVICE

I hereby certify that I have on this date served a copy of **RESPONSE OF PUBLIC ADVOCATES OFFICE TO THE SOUTHERN CALIFORNIA GAS COMPANY MOTION TO SUPPLEMENT THE RECORD AND REQUEST FOR EXPEDITED DECISION BY THE FULL COMMISSION ON MOTION FOR RECONSIDERATION (NOT IN A PROCEEDING)** to the following by electronic mail:

rmd@cpuc.ca.gov
MHovsepian@socalgas.com
TCarman@socalgas.com
Marybel.Batjer@cpuc.ca.gov
Alec.Ward@cpuc.ca.gov
Stephen.Castello@cpuc.ca.gov
CSierzant@socalgas.com
JQTran@socalgas.com
BCPrusne@socalgas.com
EHenry@socalgas.com
jwilson@willenken.com;
darwin.farrar@cpuc.ca.gov
linda.serizawa@cpuc.ca.gov
Michael.Campbell@cpuc.ca.gov
traci.bone@cpuc.ca.gov
Shannon.O'Rourke@cpuc.ca.gov

Executed on **June 1, 2020** at San Francisco, California.

/s/ TRACI BONE

TRACI BONE

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

In The Matter Of The Public Advocates
Office Investigation Pertaining To Southern
California Gas Company's Accounting
Practices, Use Of Ratepayer Monies To
Fund Activities Related To Anti-
Decarbonization And Gas Throughput
Policies, And Related Matters

Not In A Proceeding

**PUBLIC ADVOCATES OFFICE MOTION TO FIND SOUTHERN CALIFORNIA
GAS COMPANY IN CONTEMPT OF THIS COMMISSION IN VIOLATION OF
COMMISSION RULE 1.1 FOR FAILURE TO COMPLY WITH A COMMISSION
SUBPOENA ISSUED MAY 5, 2020, AND FINED FOR THOSE VIOLATIONS
FROM THE EFFECTIVE DATE OF THE SUBPOENA**

TRACI BONE
Attorney for the
Public Advocates Office

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-2048
Email: traci.bone@cpuc.ca.gov

June 23, 2020

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- EXHIBIT 2 – Data Request CalAdvocates-TB-2020-03
- EXHIBIT 3 – Commission Subpoena Served May 5, 2020
- EXHIBIT 4 – Declaration of Stephen Castello May 28, 2020
- EXHIBIT 5 – T.Bone 5-22-20 Email to SoCalGas Demanding Immediate Access To Accounts And Records
- EXHIBIT 6 – J.Wilson & T.Bone Emails to ALJ May 29-June 3 2020 Re Access to Accounts and Records
- EXHIBIT 7 – CalMatters, “*California Officials Should Look Into SoCalGas Threat Of A COVID-19 Protest Against San Luis Obispo,*” by San Luis Obispo Mayor Heidi Harmon, May 22, 2020
- EXHIBIT 8 – J.Wilson Letter to T.Bone 5-18-20

I. INTRODUCTION

Pursuant to Public Utilities Code §§ 309.5(e), 311(a), 314, 314.5(a), 581, 582, 584, 701 and 702,¹ the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) moves for the California Public Utilities Commission (Commission) to find Southern California Gas Company (SoCalGas) in contempt of this Commission, and therefore in violation of Rule 1.1 of the Commission's Rules of Practice and Procedure (Rules), for its refusal to comply with a subpoena issued May 5, 2020 by this Commission (Commission Subpoena).² Cal Advocates' also moves for imposition of daily penalties for these SoCalGas violations.

A. This Motion is Timely and Appropriate

This Motion is both timely and appropriately filed. Because this Commission has no obligation to rule on either SoCalGas' December 2, 2019 Motion for Reconsideration³ or its late-filed May 22, 2020 Motion to Quash the Commission Subpoena,⁴ the fact that

¹ All section references are to the California Public Utilities Code unless otherwise stated.

² Five days before service of the subpoena, Cal Advocates' issued a data request seeking the same access to SoCalGas' accounts and records as required by the subpoena. As Cal Advocates explained to SoCalGas when the subpoena was issued: "The subpoena is consistent with the data request we served on Friday, May 1, 2020. While a subpoena is not a prerequisite to obtaining access to a utility's accounts, given our history with SoCalGas on this investigation, the Public Advocates Office (Cal Advocates) opted for the additional authority provided by a subpoena." See Exhibit 1, T.Bone 5-5-20 EMail serving subpoena on SoCalGas and Exhibit 2, Data Request CalAdvocates-TB-SCG-2020-03.

³ The SoCalGas December 2, 2019 Motion for Reconsideration is entitled: "*Southern California Gas Company's (U 904 G) Motion For Reconsideration/Appeal To The Full Commission Regarding Administrative Law Judge's Ruling In The Discovery Dispute Between Public Advocates Office And Southern California Gas Company, October 7, 2019 (Not In A Proceeding).*"

⁴ The SoCalGas May 22, 2020 Motion to Quash is entitled: "*Southern California Gas Company's (U 904 G) Motion to Quash Portion of the Subpoena To Produce Access to Certain Materials in Accounting Databases and to Stay Compliance until the May 29th Completion of Software Solution to Exclude Those Protected Materials in the Databases (Not in a Proceeding).*" It was originally served on May 19, 2020 with redacted declarations. When Administrative Law Judge DeAngelis ordered SoCalGas to provide confidential electronic versions of the declarations to the Commission and Cal Advocates, SoCalGas elected to instead

these filings have been made does not stay SoCalGas’ obligation to comply with the subpoena. SoCalGas’ inability to identify any statute or Commission Rule permitting it to file a motion with the Commission for reconsideration of an Administrative Law Judge discovery ruling not in a proceeding, or to file a motion to quash a validly issued Commission subpoena, emphasizes this point.⁵ In contrast, multiple statutes grant Cal Advocates the right to obtain discovery from SoCalGas without delay.⁶ Consistent with these statutes, the Commission must now act in support of Cal Advocates’ and its own discovery rights, and make clear that SoCalGas’ continued willful violation of the May 5, 2020 Commission Subpoena, and other contempt of the Commission, violates Rule 1.1.

As set forth below, the Public Utilities Code and Commission precedent support the imposition of daily fines for violation of a subpoena. In light of SoCalGas’ prior willful violation of a Commission subpoena – described in Section I.C below – this Motion seeks:

- (1) A Commission determination that SoCalGas is in contempt of this Commission for its willful and continuing refusal to comply with the Commission Subpoena;
- (2) Imposition of fines of \$100,000 per day pursuant to Public Utilities Code §§ 2107 and 2113, and Commission Rule 1.1 for each day that SoCalGas’ violates the Commission Subpoena;⁷
- (3) An order that SoCalGas comply immediately with the Commission Subpoena as set forth in the Conclusion below; and

file a “substituted” version of the Motion to Quash on May 22, 2020.

⁵ SoCalGas asserts that Commission “precedent” permitted it to move for reconsideration (see Motion for Reconsideration, Footnotes 1 and 2) and pursuant to Rules 11.1 and 11.3, which only apply to open proceedings, to quash the Commission Subpoena.

⁶ See, e.g., Public Utilities Code §§ 309.5(e), 311(a), 314, 314.5(a), 581, 582, 584, 701 and 702.

⁷ Rule 10.2(f) states: Anyone who disobeys a subpoena issued pursuant to this rule may be found to be in contempt of superior court and punished accordingly, as provided in Public Utilities Code Sections 1792 and 1793. In appropriate circumstances, such disobedience may be found to be a violation of Rule 1.1, punishable as contempt of the Commission under Public Utilities Code Section 2113.

- (4) Resolution of outstanding discovery disputes through the adoption of the going-forward procedures proposed in the Conclusion below.^{8, 2}

B. Cal Advocates' Investigation and the Commission's Issuance of the Subpoena

Since May 2019, Cal Advocates has been investigating SoCalGas' use of ratepayer monies to fund anti-decarbonization campaigns through "astroturf" organizations,¹⁰ including efforts to both promote the use of natural and renewable gas, and to defeat state and local laws and ordinances proposed to limit the use of these resources. Cal Advocates has pursued this investigation pursuant to its statutory authority and obligation under Public Utilities Code § 309.5 to represent the interests of public utility customers.

As a result of SoCalGas' systematic failure to comply with discovery requests, on May 5, 2020, Cal Advocates served on SoCalGas a subpoena signed by the Commission's Executive Director. The Commission Subpoena orders SoCalGas to make available to Cal Advocates no later than May 8, 2020 "access to all databases associated in any manner with the company's accounting system."¹¹ The Commission Subpoena is consistent with the Commission's statutory authority to review *at any time* a utility's books and records.¹²

⁸ Note that the fines sought in this Motion are limited to SoCalGas violations of the Commission Subpoena. Cal Advocates reserves the right to seek further sanctions, including monetary penalties, for SoCalGas' other (numerous) violations of state laws and Commission requirements revealed by Cal Advocates' investigation.

² If the Commission desires to first issue rulings on SoCalGas' Motion for Reconsideration and/or Motion to Quash prior to granting the sanctions Cal Advocates requests here, it may stay action on this Motion for Contempt until those rulings have issued.

¹⁰ "Astroturfing" is the practice of masking the sponsors of a message or organization to make it appear as though it originates from and is supported by grassroots participants. For a comedic explanation of what astroturfing is and why it is problematic, see John Oliver, Last Week Tonight, at <https://www.youtube.com/watch?v=Fmh4RdIwswE>

¹¹ Exhibit 3, Commission Subpoena served May 5, 2020.

¹² See, e.g., Public Utilities Code §§ 309.5(e), 311(a), 314, 314.5(a), 581, 582, 584, 701 and 702.

In lieu of compliance with the Commission Subpoena, SoCalGas delayed its response to the Commission Subpoena and ultimately filed an untimely Motion to Quash the Commission Subpoena. At this point, SoCalGas has willfully disobeyed the Commission Subpoena for more than six weeks.

C. SoCalGas’ Practice Of Openly Defying Commission Orders Requires A Swift And Meaningful Response

SoCalGas has demonstrated that it is willing to disregard Commission subpoenas on multiple occasions, in clear disregard of the Commission’s regulatory authority. On October 22, 2019, the Commission issued a subpoena on behalf of the Commission’s Safety and Enforcement Division (SED) in the Order Instituting Investigation (OII) regarding SoCalGas’ operations and practices with respect to the Aliso Canyon Storage Facility. SoCalGas refused to comply with that subpoena, and, in spite of being advised of the need to act timely, late filed a motion to quash. SoCalGas’ motion to quash was denied.¹³ SED then requested an order to show cause why SoCalGas should not be sanctioned for contempt and monetary penalties for SoCalGas’ refusal to comply with the subpoena.¹⁴ That motion was denied on procedural grounds.¹⁵

SoCalGas’ refusal to comply with the Commission Subpoena in this investigation is perhaps understandable given its prior unpunished defiance of a Commission subpoena in the Aliso Canyon investigation. Why should SoCalGas comply with Commission orders when there are no consequences for violations?

¹³ See *Administrative Law Judges’ Ruling Denying Southern California Gas Company’s Motion for an Order to Quash the Subpoena of the Safety and Enforcement Division*, filed December 30, 2019 in I.19-06-016.

¹⁴ See *Motion Of The Safety And Enforcement Division Requesting The Commission Issue An Order To Show Cause Against Southern California Gas Company As To Why It Should Not Be Sanctioned For Being In Contempt Of A Commission Subpoena And Violating Rule 1.1 Of The Commission’s Rules Of Practice And Procedure*, filed February, 21, 2020 in I.19-06-016.

¹⁵ *E-Mail Ruling Denying, Without Prejudice, the Motion of The Safety and Enforcement Division For an Order to Show Cause*, filed April 28, 2020.

II. BACKGROUND REGARDING ISSUANCE OF THE SUBPOENA AND SOCALGAS' DEFIANCE OF THAT SUBPOENA

On May 5, 2020, Cal Advocates served a Commission Subpoena signed by the Commission's Executive Director on SoCalGas ordering the utility to "make available to the Public Advocates Office at the California Public Utilities Commission (Cal Advocates), and staff and consultants working on its behalf, access to all databases associated in any manner with the company's accounting system no later than three business days after service of this subpoena."¹⁶ The Commission Subpoena also provided that "[s]uch access shall include both on-site and remote access... ."¹⁷

After unilaterally determining that on-site access was not appropriate given the COVID-19 situation, SoCalGas obtained several extensions from Cal Advocates to provide remote access. Cal Advocates participated in four meet and confers with SoCalGas to facilitate its compliance with the Commission Subpoena, and to obtain complete responses to other outstanding data requests. In response to Cal Advocates' questions during the last meet and confer, SoCalGas represented that it was: (1) "taking its obligations under the subpoena extremely seriously,"¹⁸ and (2) prioritizing compliance with the Commission Subpoena so that it was unable to provide other information that was long overdue.¹⁹ The next day, SoCalGas filed a 27 page Motion to Quash the Commission Subpoena, along with over 150 pages of exhibits and declarations.²⁰

¹⁶ Exhibit 3, Commission Subpoena served May 5, 2020.

¹⁷ Exhibit 3, Commission Subpoena served May 5, 2020.

¹⁸ See, e.g. SoCalGas Motion to Quash, p. 2 and Exhibit 8, J.Wilson Letter to T.Bone 5-18-20.

¹⁹ Exhibit 4, Declaration of Stephen Castello, ¶ 23.

²⁰ That Motion to Quash is entitled: "Southern California Gas Company's (U 904 G) Motion to Quash Portion of the Subpoena To Produce Access to Certain Materials in Accounting Databases and to Stay Compliance until the May 29th Completion of Software Solution to Exclude Those Protected Materials in the Databases (Not in a Proceeding)." It was originally served on May 19, 2020 with redacted declarations. When Administrative Law Judge DeAngelis ordered SoCalGas to provide confidential electronic versions of the declarations to the Commission and Cal Advocates, SoCalGas elected to instead file a "substituted" version of the Motion to Quash on May 22, 2020.

In response to SoCalGas' late-filed (and unanticipated) Motion to Quash, Cal Advocates served a formal response on June 1, 2020.²¹ However, Cal Advocates' first action, upon service of the Motion to Quash, was to demand immediate read-only access to all of SoCalGas' accounts and records. Cal Advocates also demanded that "SoCalGas provide all outstanding discovery that has been the subject of the prior conference calls."²² SoCalGas has ignored these demands.

Instead, on the afternoon of May 29, 2020, SoCalGas notified Cal Advocates that "SAP Access is live for the users that you've requested" but that it was limited "[t]o protect our privileged information and First Amendment rights, information and transaction details (invoice transactions and accounting journal entries) pertaining to our outside counsel firms and also vendors performing 100% shareholder activities have been programmatically excluded from the display list."²³

SoCalGas remains in willful violation of the Commission Subpoena based on the fact that it has – by its own admission – "programmatically excluded" accounts related to law firms and vendors performing 100% shareholder activities.²⁴ It is unreasonable for a regulated utility to unilaterally determine what portion of its financial records are available for inspection by Commission staff. Approval of such a mechanism would effectively render SoCalGas unregulated because it would be able to shield any expenses from review by Commission.

²¹ That Cal Advocates Response to the SoCalGas Motion to Quash is entitled: "Response Of Public Advocates Office To Southern California Gas Company Motion To Quash Portion Of Subpoena, For An Extension, And To Stay Compliance."

²² Exhibit 5, T.Bone 5-22-20 Email to SoCalGas demanding immediate access to accounts and records.

²³ Exhibit 6, J.Wilson & T.Bone Emails to ALJ May 29-June 3 2020 Re Access to Accounts and Records.

²⁴ Exhibit 6, J.Wilson & T.Bone Emails to ALJ May 29-June 3 Re Access to Accounts and Records.

III. DISCUSSION

A. SoCalGas Is In Contempt of The Commission

Public Utilities Code § 2113 is explicit regarding the Commission’s authority to punish contempt. It provides:

Every public utility, corporation, or person which fails to comply with any part of any order, decision, rule, regulation, direction, demand, or requirement of the commission or any commissioner is in contempt of the commission, and is punishable by the commission for contempt in the same manner and to the same extent as contempt is punished by courts of record. The remedy prescribed in this section does not bar or affect any other remedy prescribed in this part, but is cumulative and in addition thereto.

To find a respondent in contempt, Commission decisions require the following:

- The person’s conduct must have been willful in the sense that the conduct was inexcusable; or
- That the person accused of the contempt had an indifferent disregard of the duty to comply; and
- Proof must be established beyond a reasonable doubt.²⁵

A review of the record here shows that the factors for a finding of contempt against SoCalGas have been established beyond a reasonable doubt.

It is undisputed that SoCalGas received the Commission Subpoena on May 5, 2020 – so that it had knowledge of the Commission Subpoena and what it required. It is also undisputed that SoCalGas has the ability to comply with the Commission Subpoena. SoCalGas confirmed that all of its accounting staff are working remotely and have remote access to its accounts and records, including the SAP system.²⁶ SoCalGas also confirmed that a third-party consultant was also granted full remote access to its

²⁵ D.15-08-032, *Modified Presiding Officer’s Decision Finding The San Francisco Municipal Transportation Agency in Contempt, in Violation of Rule 1.1 of the Commission’s Rules of Practice and Procedures*, mimeo p. 10 citing *Re Facilities-based Cellular Carriers and Their Practices, Operations and Conduct in connection with Their Siting of Towers*, D.94-11-018, 57 CPUC2d 176 at 205, citing *Little v. Superior Court* (1968) 260 Cal.App.2d 311, 317; *In Re Burns* (1958) 161 Cal.App.2d 137, 141-142; 68 CPUC 245; 63 CPUC 76; 80 CPUC 318; and D.87-10-059.

²⁶ Exhibit 4, Declaration of Stephen Castello, ¶¶ 10 & 11.

systems.²⁷ More recently, SoCalGas has offered remote access to Cal Advocates, but only with certain accounts “excluded.”²⁸

The Commission Subpoena explicitly required SoCalGas to provide Cal Advocates “access to all databases associated in any manner with the company’s accounting systems.”²⁹ In response, SoCalGas has shown a willful disregard for the Commission Subpoena through: (1) its misrepresentations to Cal Advocates staff regarding its efforts to comply with the Commission Subpoena;³⁰ and (2) its programmatic exclusion of accounts related to law firms and vendors performing 100% shareholder activities.³¹

SoCalGas’ willfulness is magnified by the fact that it has ignored Cal Advocates’ demands, promptly issued after SoCalGas’ service of its Motion to Quash, to provide immediate and unfettered remote read-only access to its accounts and records.³² Instead of compliance, SoCalGas has demanded that Cal Advocates execute a non-disclosure agreement to access the subset of accounts and records it has offered to make available to Cal Advocates, even though there is no legal basis for requiring such an agreement from the Commission or any of its divisions or offices.³³

²⁷ Exhibit 4, Declaration of Stephen Castello, ¶¶ 10 & 11.

²⁸ Exhibit 6, J.Wilson & T.Bone Emails to ALJ May 29-June 3 Re Access to Accounts and Records.

²⁹ Exhibit 3, Commission Subpoena served May 5, 2020.

³⁰ Exhibit 4, Declaration of Stephen Castello, ¶ 23.

³¹ Exhibit 67, J.Wilson & T.Bone Emails to ALJ May 29-June 3 Re Access to Accounts and Records.

³² Exhibit 5, T.Bone 5-22-20 Email to SoCalGas demanding immediate access to accounts and records and Exhibit 6, J.Wilson & T.Bone Emails to ALJ May 29-June 3 Re Access to Accounts and Records.

³³ Exhibit 6, J.Wilson & T.Bone Emails to ALJ May 29-June 3 Re Access to Accounts and Records.

B. SoCalGas' Disagreement With A Commission Order Does Not Allow It To Disobey The Order

1. Cal Advocates Has A Statutory Right To Investigate SoCalGas

Cal Advocates has a statutory right to “compel the production or disclosure of any information it deems necessary to perform its duties from any entity regulated by the commission.”³⁴ This authority exists to support the Cal Advocates mandate to “represent and advocate on behalf of the interest of public utility customers and subscribers within the jurisdiction of the commission” and to “obtain the lowest possible rate for service consistent with reliable and safe service levels.”³⁵

Numerous other statutes provide the Commission and its staff, including Cal Advocates, similarly broad authority to review regulated utilities' accounts and records, including those of their unregulated subsidiaries and affiliates.³⁶ SoCalGas' challenges these statutes and decisions by insisting that it can unilaterally and indefinitely “wall off” from its regulator information in its accounts and records regarding “100% shareholder-funded activities” based on claims of a First Amendment right of association, or law firm invoices that *might* contain attorney-client communications or attorney work product, even though the law already provides meaningful protections against a regulator's unauthorized disclosure of a utility's – and its subsidiaries' and affiliates' – confidential information.³⁷

2. SoCalGas Has Unilaterally And Improperly Determined To Withhold Information From The Commission

Nothing in the law allows SoCalGas, as a regulated utility, to unilaterally and indefinitely disobey a Commission order simply by serving a motion disagreeing with

³⁴ Public Utilities Code § 309.5(e) (emphasis added).

³⁵ Public Utilities Code § 309.5(a).

³⁶ See, e.g., Public Utilities Code §§ 311, 314, 314.5, 314.6, 581, 582, 584, 701, and 702.

³⁷ See, e.g., Public Utilities Code § 583.

that order.³⁸ Indeed, Commission decisions are almost always effective immediately, and Public Utilities Code § 1735 provides that filing an application for rehearing of a decision does not excuse compliance with any order or decision of the Commission. Decision (D.) 15-08-032 took a similar position when the San Francisco Municipal Transportation Authority (SFMTA) failed to comply with a Commission subpoena issued at the Safety and Enforcement Divisions (SED) request.

In that investigation, SFMTA withheld certain employee records requested by the Commission, claiming those records were protected by the employee’s constitutional right to privacy.³⁹ The Presiding Officer’s decision in that investigation, which was subsequently and unanimously ratified by the Commission, was comprehensive and is instructive here. Among other things, similar to the situation presented here, it found that SFMTA willfully disobeyed the Commission subpoena issued in that case by asserting legally untenable arguments.⁴⁰ Specifically, that decision found that:

- (1) SFMTA did not have the legal option to only make the records available for inspection rather than producing them in full to the Commission;⁴¹

³⁸ SoCalGas may assert attorney/client communications and work product privileges, but must provide a privilege log to support such assertions, which it has not done here. Regarding SoCalGas’ constitutional claims, see the California Court of Appeal’s rejection of Pacific Gas and Electric Company’s efforts to “repackage in constitutional wrapping” arguments already rejected. *Pacific Gas & Electric Co. v. Public Utilities Com.*, 237 Cal. App. 4th 812, 865 (2015) (“PG&E will not prevail in its attempt to repackage in constitutional wrapping the same intent-based arguments we have already rejected.”).

³⁹ The difference in D.15-08-032 was that SFMTA was willing to make the records available to Commission staff, but only at SFMTA’s office; it would not permit Commission staff to copy or otherwise take possession of those records. Here, SoCalGas insists on complete withholding of the records it claims are entitled to constitutional protection, or other privilege, by implementing a “custom software solution” to prevent Cal Advocates from accessing this information that it has unilaterally determined should not be made available to Cal Advocates. SoCalGas May 22, 2020 Motion to Quash, p. 2.

⁴⁰ D.15-08-032, *mimeo* at 15.

⁴¹ *Id.*

- (2) The claimed constitutional privacy rights of the employee did not outweigh the Commission's right to the employee's training, accident, and drug testing records;⁴²
- (3) The employee did not have an objectively reasonable expectation of privacy;⁴³
- (4) The production of the records did not constitute a serious invasion of a privacy interest;⁴⁴
- (5) The employee's rights to privacy cannot overcome the Commission's statutory duty to obtain and analyze the records;⁴⁵
- (6) Alleged prior practices of Commission staff in reviewing such records at SFMTA's offices did not excuse SFMTA's disobedience of the subpoena;⁴⁶
- (7) Because the Commission had a statutory obligation to pursue the investigation, it would be redundant for the Commission to have to establish a compelling need for the records;⁴⁷
- (8) The SFMTA's alleged fear of tort liability to the employee was not justification for disobeying the subpoena;⁴⁸
- (9) SFMTA's violation of the subpoena violated Rule 1.1;⁴⁹ and
- (10) By violating the subpoena, SFMTA was subject to fines under Public Utilities Code § 2107.⁵⁰ —

Many of the same observations can be made here:

⁴² Id. at 18.

⁴³ Id. at 21.

⁴⁴ Id. at 23.

⁴⁵ Id. at 27.

⁴⁶ Id. at 28.

⁴⁷ Id. at 29.

⁴⁸ Id. at 31.

⁴⁹ Id. at 35.

⁵⁰ Id. at 37.

- (1) SoCalGas did not have the legal option to unilaterally design and impose a “custom software solution” to limit Cal Advocates’ review of its accounts and records;
- (2) Existing law requires SoCalGas to make its accounts and records fully available to the Commission and its staff at any time;
- (3) Prior practices of Commission staff in reviewing SoCalGas’ accounts and records do not excuse SoCalGas’s disobedience of the subpoena;
- (4) Because the Commission has a statutory right and obligation to review SoCalGas’ accounts and records, it would be redundant for the Commission to have to establish a compelling need for access to those accounts and records;
- (5) SoCalGas’ violation of the subpoena violates Rule 1.1; and
- (6) By violating the subpoena, SoCalGas is subject to fines under Public Utilities Code § 2107.

Thus, consistent with the determinations in D.15-08-032, while SoCalGas may timely assert valid legal arguments, it may not unilaterally or indefinitely withhold information pending resolution of those arguments, nor assert frivolous claims that frustrate Commission oversight.⁵¹

C. SoCalGas Should Be Penalized For Disobeying The Subpoena

1. The Commission Has Clear Authority To Punish SoCalGas For Contempt

As a public utility regulated by the Commission, Public Utilities Code § 2113 permits the Commission to find SoCalGas in contempt and to punish it for contempt “in the same manner and to the same extent as contempt is punished by courts of record.”⁵²

⁵¹ Cal Advocates has fully briefed the reasons why SoCalGas’ constitutional arguments have no merit in Cal Advocates’ December 17, 2019 response to SoCalGas’ Motion for Reconsideration and Cal Advocates’ June 1, 2020 response to the SoCalGas Motion to Quash, pp. 22-29.

⁵² Public Utilities Code § 2113 provides in full:

While the civil punishment for contempt is \$1,000, § 2113 also provides that “[t]he remedy prescribed in this section does not bar or affect any other remedy prescribed in this part, but is cumulative and in addition thereto.” To this end, the Commission has determined that where it finds a jurisdictional entity in contempt, it can impose additional fines for violating Rule 1.1.⁵³ The Commission can and has found Rule 1.1 violations where there has been a “lack of candor, withholding of information, or failure to correct information or respond fully to data requests.”⁵⁴

Section 2107 provides that any utility that fails to comply with a direction, demand, or requirement of the Commission is subject to a penalty of not less than \$500 nor more than \$100,000 for each offense.⁵⁵ Section 2108 provides that in the case of a continuing violation, such as SoCalGas’ ongoing refusal to comply with the Commission Subpoena, “each day's continuance thereof shall be a separate and distinct offense.”⁵⁶

Every public utility, corporation, or person which fails to comply with any part of any order, decision, rule, regulation, direction, demand, or requirement of the commission or any commissioner is in contempt of the commission, and is punishable by the commission for contempt in the same manner and to the same extent as contempt is punished by courts of record. The remedy prescribed in this section does not bar or affect any other remedy prescribed in this part, but is cumulative and in addition thereto.

⁵³ D.15-08-032 *mimeo* pp. 34-36.

⁵⁴ D.15-08-032 *mimeo* p. 38, quoting from D.13-12-053 *mimeo* p. 21.

⁵⁵ Public Utilities Code § 2107 provides in full:

Any public utility that violates or fails to comply with any provision of the Constitution of this state or of this part, or that fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars (\$500), nor more than one hundred thousand dollars (\$100,000), for each offense.

⁵⁶ See, e.g. D.15-08-032, *mimeo*, p. 39.

2. Burden of Proof

The burden of proof for establishing a Rule 1.1 violation is not as stringent as the burden of proof for establishing contempt. The party claiming the violation must establish a Rule 1.1 violation “by a preponderance of the evidence.”⁵⁷

That standard is easily met here, based on the facts set forth in Sections II and III.A above:

- (1) It is undisputed that the Commission Subpoena explicitly required SoCalGas to provide Cal Advocates “access to all databases associated in any manner with the company’s accounting systems.”⁵⁸
- (2) It is undisputed that SoCalGas received the Commission Subpoena on May 5, 2020 – so that it had knowledge of the Commission Subpoena and what it required.
- (3) It is undisputed that SoCalGas had and has the ability to comply with the Commission Subpoena.⁵⁹
- (4) It is undisputed that SoCalGas has offered to provide only limited access to its databases associated with its accounting system, rather than the complete access required by the Commission Subpoena, and that it has demanded that Cal Advocates sign a non-disclosure agreement to obtain even this limited access.⁶⁰
- (5) As shown by the facts set forth in Sections II and III.A, SoCalGas has shown a willful disregard for the Commission through its

⁵⁷ D.15-08-032 *mimeo*, pp. 35-36. See also, D.90-07-026, D.94-11-018, D.16-01-014, and D.19-12-041.

⁵⁸ Exhibit 3, Commission Subpoena served May 5, 2020.

⁵⁹ As described in Section III.A above, SoCalGas has confirmed that all of its accounting staff are working remotely and have remote access to its accounts and records, including the SAP system. SoCalGas also confirmed that a third-party consultant was also granted full remote access to its systems. More recently, SoCalGas has offered remote access to Cal Advocates, but only with certain accounts “excluded.” See Exhibit 4, Declaration of Stephen Castello, ¶¶ 10 and 11 and Exhibit 6, J.Wilson T.Bone Emails to ALJ May 29-June 3 Re Access to Accounts and Records.

⁶⁰ Exhibit 6, J.Wilson T.Bone Emails to ALJ May 29-June 3 Re Access to Accounts and Records.

misrepresentations to Cal Advocates staff during meet and confers regarding its compliance with the Commission Subpoena;

- (6) As shown by the facts set forth in Sections II and III.A, SoCalGas has shown a willful disregard for the Commission Subpoena through its unilateral exclusion of accounts related to law firms and vendors performing 100% shareholder activities.⁶¹
- (7) As shown by the facts set forth in Sections II and III.A, SoCalGas has shown a willful disregard for the Commission Subpoena through its demand that Cal Advocates execute a non-disclosure agreement before it can access the subset of accounts and records it has offered to make available to Cal Advocates.⁶²

SoCalGas' willful disregard is also evidenced by the fact that it has failed to provide any information identifying the specific accounts that it has "walled off" from Cal Advocates review.

3. Criteria Considered When Setting The Fine

Commission Decision 98-12-075⁶³ and Public Utilities Code §§ 2107 and 2108 provide guidance on the application of fines. Two general factors are considered in setting fines: (1) the severity of the offense and (2) the conduct of the utility.⁶⁴ In addition, the Commission considers the financial resources of the utility, the totality of the circumstances in furtherance of the public interest, and the role of precedent.⁶⁵ The Commission also considers the sophistication, experience and size of the utility; the

⁶¹ Exhibit 6, J.Wilson T.Bone Emails to ALJ May 29-June 3 Re Access to Accounts and Records.

⁶² Exhibit 6, J.Wilson T.Bone Emails to ALJ May 29-June 3 Re Access to Accounts and Records.

⁶³ D.98-12-075, 1998 Cal. PUC LEXIS 1016 distills the essence of numerous Commission decisions concerning penalties in a wide range of cases, and states that the Commission expects to look to these principles as precedent in determining the level of penalty in a full range of Commission enforcement proceedings. See D.98-12-075, 1998 Cal. PUC LEXIS 1016 at *52-*53.

⁶⁴ D.98-12-075, 1998 Cal. PUC LEXIS 1016 at *54-*60.

⁶⁵ Id.

number of victims and economic benefit received from the unlawful acts; and the continuing nature of the offense.⁶⁶ The following discussion addresses each of these specific criteria and their applicability to SoCalGas' willful and continuing violation of the Commission Subpoena.

a) Criterion 1: Severity of the Offense

In D.98-12-075, the Commission held that the size of a fine should be proportionate to the severity of the offense. To determine the severity of the offense, the Commission stated that it would consider the following factors.

- **Physical harm**: The most severe violations are those that cause physical harm to people or property, with violations that threatened such harm closely following.
- **Economic harm**: The severity of a violation increases with (i) the level of costs imposed upon the victims of the violation, and (ii) the unlawful benefits gained by the public utility. Generally, the greater of these two amounts will be used in setting the fine. The fact that economic harm may be hard to quantify does not diminish the severity of the offense or the need for sanctions.
- **Harm to the regulatory process**: A high level of severity will be accorded to violations of statutory or Commission directives, including violations of reporting or compliance requirements.
- **The number and scope of the violations**: A single violation is less severe than multiple offenses. A widespread violation that affects a large number of consumers is a more severe offense than one that is limited in scope.⁶⁷

SoCalGas' willful refusal to comply with the Commission Subpoena – especially in light of the fact that this is SoCalGas' second refusal to comply with a Commission subpoena in less than eight months – has significantly harmed the regulatory process. Such harms cannot be taken lightly. The California Court of Appeal recognized that the Commission “takes a very dim view of denying it information, treating it as a factor in

⁶⁶ Id. at *73-*77.

⁶⁷ Id.

aggravation when it comes to fixing penalty.”⁶⁸ The Court of Appeal cited the Commission’s own words to support this conclusion: “The withholding of relevant information causes substantial harm to the regulatory process, which cannot function effectively unless participants act with integrity at all times. ... [T]his criterion weighs in favor of a significant fine.”⁶⁹

SoCalGas has disrespected the Commission and its staff in violation of Rule 1.1. It has also acted in conscious violation of the law, which clearly requires – Commission Subpoena or not – that the Commission and its staff, including Cal Advocates, must have the ability to inspect *all* of the accounts and records of a utility *at any time*.⁷⁰ This requirement is critical to, among other things, prevent a utility’s ability to destroy or otherwise tamper with evidence.

SoCalGas’ unilateral and continuing withholding of access to its accounts and records for over a month based on untenable legal claims, combined with its refusal to comply with a Commission subpoena issued in October 2019 for SED’s Aliso Canyon investigation, and its pattern and practice of filing frivolous motions in this investigation, cannot be countenanced. SoCalGas has consciously and systematically wasted limited Commission resources with these antics, and has unquestionably harmed the regulatory process, the Commission, Cal Advocates, and the ratepayers it serves. As San Luis Obispo Mayor Heidi Harmon accurately observed in a recent editorial, the Commission’s failure to sanction SoCalGas for its May 2019 activities in the Building Decarbonization proceeding “allowed my city to continue to be bullied.”⁷¹ She called on “state leadership to be part of [the] vision for a prosperous California by ensuring that SoCalGas leaves

⁶⁸ *Pacific Gas & Electric Co. v. Public Utilities Com.*, 237 Cal. App. 4th 812, 865 (2015).

⁶⁹ *Pacific Gas & Electric Co. v. Public Utilities Com.*, 237 Cal. App. 4th 812, 865 (2015), quoting D.13-09-028, 2013 Cal.P.U.C. Lexis 514 at pp. *51-*52.

⁷⁰ Public Utilities Code § 314.

⁷¹ Exhibit 7, Mayor Harmon CalMatters Commentary, p. 3.

their schoolyard bullying behind and joins us in creating a better world where – in times of crisis – we turn toward each other and not on each other.”⁷²

These factors compel the highest sanctions that can be imposed on SoCalGas.

b) Criterion 2: The Utility’s Conduct

In D.98-12-075, the Commission held that the size of a fine should reflect the conduct of the utility. When assessing the conduct of the utility, the Commission stated that it would consider the following factors:⁷³

- **The Utility’s Actions to Prevent a Violation:** Utilities are expected to take reasonable steps to ensure compliance with applicable laws and regulations. The utility’s past record of compliance may be considered in assessing any penalty.
- **The Utility’s Actions to Detect a Violation:** Utilities are expected to diligently monitor their activities. Deliberate, as opposed to inadvertent wrongdoing, will be considered an aggravating factor. The level and extent of management’s involvement in, or tolerance of, the offense will be considered in determining the amount of any penalty.
- **The Utility’s Actions to Disclose and Rectify a Violation:** Utilities are expected to promptly bring a violation to the Commission’s attention. What constitutes “prompt” will depend on circumstances. Steps taken by a utility to promptly and cooperatively report and correct violations may be considered in assessing any penalty.

Here, SoCalGas had the ability to comply with the Commission Subpoena yet engaged in a calculated decision not to comply for as long as possible by engaging in numerous meet and confers to defer compliance, filing an untimely Motion to Quash,⁷⁴ and conditioning Cal Advocates’ access to that information it was willing to provide on Cal Advocates’ execution of a non-disclosure agreement. These behaviors were calculated and deliberate. In addition, SoCalGas’ refusal to comply with the Commission

⁷² Exhibit 7, Mayor Harmon CalMatters Commentary, p. 4.

⁷³ D.98-12-075, 1998 Cal. PUC LEXIS 1016 at *73-*75.

⁷⁴ See Cal Advocates June 1, 2020 Response to SoCalGas Motion to Quash at § II.B.

Subpoena is ongoing, and is consistent with a pattern and practice of behavior that disrespects the Commission, Commission staff, and the regulatory process.⁷⁵

c) Criterion 3: The Utility's Financial Resources

In D.98-12-075, the Commission held that the size of a fine should reflect the financial resources of the utility. When assessing the financial resources of the utility, the Commission stated that it would consider the following factors:⁷⁶

- **Need for Deterrence:** Fines should be set at a level that deters future violations. Effective deterrence requires that the Commission recognize the financial resources of the utility in setting a fine.
- **Constitutional Limitations on Excessive Fines:** The Commission will adjust the size of fines to achieve the objective of deterrence, without becoming excessive, based on each utility's financial resources.

The need for deterrence is one of the primary factors driving this Motion for Sanctions. SoCalGas has determined to violate state laws and Commission requirements to achieve its objectives, whether related to the Commission's investigation of its Aliso Canyon activities, or its astroturfing activities that undermine state and local decarbonization efforts. Only substantial fines imposed for each day of its failure to comply with the Commission Subpoena will have the deterrent effect needed to curb SoCalGas' determination to disregard state laws and Commission requirements.

SoCalGas is a large company with the resources to pay a substantial fine. Sempra Energy Company's most recently filed Form 10-K reflects that SoCalGas supplies natural gas to approximately 22 million people over a 24,000 square mile service territory in Southern California. SoCalGas' operating revenues have increased every year for the

⁷⁵ SoCalGas' practice of slow rolling or otherwise withholding responses to data requests is described in the Cal Advocates June 1, 2020 Response to SoCalGas' Motion to Quash at § III.C.3. SoCalGas' prior refusal to comply with the Commission subpoena is described in § I.C above.

⁷⁶ D.98-12-075, 1998 Cal. PUC LEXIS 1016, *75-*76.

past five years from \$3.489 billion in 2015 to \$4.525 billion in 2019. Its assets have increased in value over the past five years from \$12.104 billion in 2015 to \$17.077 billion in 2019. It had earnings of \$641 million in 2019, an increase of \$216 million from the prior year.⁷⁷

Given SoCalGas' significant resources and prior violation of a Commission subpoena, anything less than imposition of the highest fine possible would not have any deterrent effect. Consequently, fining SoCalGas \$100,000 for each day of its violation of the Commission Subpoena is both necessary and appropriate.

Finally, this Commission needs to unequivocally communicate to SoCalGas that this is just the beginning, and that the Commission will take swift and decisive action for every violation that SoCalGas commits.⁷⁸ No other strategy will get SoCalGas' attention.

d) Criterion 4: Totality of the Circumstances

In D.98-12-075, the Commission held that a fine should be tailored to the unique facts of each case considering the following factors:⁷⁹

- **The Degree of Wrongdoing**: The Commission will review facts that tend to mitigate the degree of wrongdoing as well as facts that exacerbate the wrongdoing.
- **The Public Interest**: In all cases, the harm will be evaluated from the perspective of the public interest.

As described in the sections above, SoCalGas' has willfully and remorselessly engaged in a pattern and practice of violations of state laws and Commission rules and orders. In the process, these actions have disrespected the Commission and its regulatory process, have wasted the Commission's limited resources, and have prevented the Commission from meeting its obligations to protect the public interest. In considering

⁷⁷ SoCalGas is a subsidiary of Sempra Energy Company (Sempra). Sempra's most recent Form 10-K, filed February 27, 2020, is available at <https://investor.sempra.com/financial-information>

⁷⁸ In his book *The Tipping Point – How Little Things Can Make a Big Difference*, Malcolm Gladwell describes in Chapter 4 how a similar strategy was used to significantly diminish years of unchecked graffiti and fare evasions on New York City subways.

⁷⁹ D.98-12-075, 1998 Cal. PUC LEXIS 1016, *76.

the totality of circumstances and degree of wrongdoing, a daily fine of \$100,000 for the entirety of the time that SoCalGas has violated the Commission Subpoena is justified. Indeed, the totality of the circumstances suggest that an even larger amount – if permitted by law – would be appropriate.

e) Criterion 5: The Role of Precedent in Setting the Fine Amount

In D.98-12-075, the Commission held that any decision that imposes a fine should (1) address previous decisions that involve reasonably comparable factual circumstances, and (2) explain any substantial differences in outcome.⁸⁰

As precedent for considering the level of fines against SoCalGas, the Commission should consider past Commission decisions involving Rule 1.1 violations that occurred over multiple days, including D.15-08-032 – the SFMTA sanctions cases – given its comparable factual circumstances.

In considering the amount of the fine against SFMTA, D.15-08-032 considered the City of San Francisco’s budget situation, the surplus available, and the amount necessary to serve as an incentive to deter future violations:

The SFMTA is a part of the City and County of San Francisco. Its Mayor, Edwin M. Lee, presented proposed balanced budgets for the fiscal years 2013-2014, 2014-2015, and 2016. Additionally, San Francisco revealed a surplus of nearly \$22 million. We conclude that the fine we establish of \$210,500 is significant enough to serve as an incentive to deter future violations. Yet, the amount of the fine is conservative enough not to be excessive in view of the financial health that the City and County of San Francisco currently enjoys.⁸¹

The SFMTA fine is admittedly modest in comparison to fines assessed against utilities, presumedly because of SFMTA’s more limited resources, its public agency status, and the determination that the amount was a sufficient deterrent. In contrast, the fines assessed against utilities are typically far more significant.

⁸⁰ D.98-12-075, 1998 Cal. PUC LEXIS 1016, *77.

⁸¹ D.15-08-032, *mimeo* at 44-45 (citations omitted).

- In D.08-09-038 the Commission imposed a \$30 million penalty on Southern California Edison Company (SCE) for Rule 1.1 and other violations associated with seven years of false reporting of data in connection with its performance based ratemaking mechanism, *taking into consideration SCE’s good faith cooperation with the CPUC once the violations were identified*;
- In D.02-10-059 the Commission imposed a \$20.34 million penalty on Qwest Communications Corporation for slamming and unauthorized billings that occurred over approximately a year; and
- In D.04-09-062 the Commission imposed a \$12.14 million penalty on Cingular Wireless for collecting early termination fees over a period of more than two years.⁸²

Here, given SoCalGas’ significant financial resources, the totality of the circumstances, prior Commission decisions, and what “is significant enough to serve as an incentive to deter future violations,” a daily fine of \$100,000 for a total of more than \$4.5 million is appropriate.⁸³ To the extent the Commission is concerned that SoCalGas’ First Amendment arguments will be upheld – which is unlikely – the Commission can require that the funds be sequestered until such time as a final ruling resolves those issues.

IV. CONCLUSION

For all of the reasons set forth above, Cal Advocates request that the Commission:

- (1) Find SoCalGas in contempt of this Commission for its willful and continuing refusal to comply with the Commission Subpoena;
- (2) Impose a fine of \$100,000 per day pursuant to Public Utilities Code §§ 2107 and 2113, and Commission Rule 1.1 for each day that SoCalGas’ violates the Commission Subpoena;
- (3) Order SoCalGas to, within 24 hours, provide remote read-only access to Cal Advocates with no filters or walls and no requirements

⁸² In each of these cases, restitution to consumers was addressed separately and was not a component of the penalty described here. In addition, none of these cases involved loss of life, which can result in significantly higher penalties.

⁸³ The total grows each day that SoCalGas fails to comply with the subpoena.

such as execution of a non-disclosure agreement.⁸⁴ Such an order should also require SoCalGas to:

- a. Provide a chart of its accounts that shows how they are tracked to the FERC Uniform System of Accounts;
 - b. Identify by account number every 100% shareholder-funded account;
 - c. Identify by account number every account where costs associated with the activities that are the subject of its First Amendment arguments are booked;
 - d. Identify by name and vendor number all vendors associated with the activities that are the subject of its First Amendment arguments;
 - e. Identify by name and vendor number all vendors performing 100% shareholder-funded activities, including those activities that are the subject of its First Amendment arguments;
 - f. Provide full access to all Work Orders and identify all of the Work Orders associated with the activities that are the subject of its First Amendment arguments;
 - g. Provide any other information related to its accounts and records that Cal Advocates requests within five business days; and
 - h. Provide a declaration under penalty of perjury from SoCalGas' Chief Financial Officer that the read-only remote access provided to Cal Advocates does not contain any modifications to exclude information from Cal Advocates' review.
- (4) Resolve ongoing discovery disputes by ordering SoCalGas to:
- a. Respond clearly and completely to all outstanding discovery in the next ten business days;
 - b. Respond in no more than five business days with objections to the publication of any documents obtained through

⁸⁴ While Cal Advocates had previously discussed signing a Non-Disclosure Agreement (NDA) with SoCalGas in order to speed its release of information, such an NDA is unnecessary given the statutory protections provided and Cal Advocates no longer proposes to sign one given that the purpose of the NDA was defeated by SoCalGas' May 22, 2020 Substitute Motion to Quash.

discovery in this investigation based on privilege or confidentiality claims; and

- c. In addition to complying with GO-66 to support any privilege or confidentiality claim, provide a declaration under penalty of perjury from a SoCalGas attorney that the attorney has reviewed the materials associated with the privilege or confidentiality claims and that such claims have a good faith basis in the law.

Only by granting these requests will Cal Advocates be able to pursue its investigation. And only by granting these requests will SoCalGas understand that its willful disrespect of the Commission and its requirements must end.

Respectfully submitted,

/s/ TRACI BONE

Traci Bone

Attorney for the
Public Advocates Office

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102
Telephone: (415) 703-2048
Email: traci.bone@cpuc.ca.gov

June 23, 2020

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CERTIFICATE OF SERVICE

I hereby certify that i have on this date served a copy of “Public Advocates Office Motion To Find Southern California Gas Company In Contempt For Failure To Comply With A Commission Subpoena Issued May 5, 2020 In Violation Of Commission Rule 1.1, Imposition Of Monetary Penalties For Those Violations, And Other Relief To Address Outstanding Discovery Disputes (Not In A Proceeding)” to the following by electronic mail:

rmd@cpuc.ca.gov
MHovsepian@socalgas.com
TCarman@socalgas.com
Marybel.Batjer@cpuc.ca.gov
Alec.Ward@cpuc.ca.gov
Stephen.Castello@cpuc.ca.gov
CSierzant@socalgas.com
JQTran@socalgas.com
BCPrusne@socalgas.com
EHenry@socalgas.com
jwilson@willenken.com;
darwin.farrar@cpuc.ca.gov
linda.serizawa@cpuc.ca.gov
Michael.Campbell@cpuc.ca.gov
traci.bone@cpuc.ca.gov
Shannon.O'Rourke@cpuc.ca.gov
Mariam.Sleiman@cpuc.ca.gov

Executed on **June 23, 2020** at San Francisco, California.

/s/ TRACI BONE

TRACI BONE

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EXHIBIT 1

T.Bone 5-5-20 EMail Serving Subpoena on SoCalGas

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Proposed Agenda for Cal Advocates / SoCalGas 11:00 Conference Call on Wednesday, May 6, 2020

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

Tue 5/5/2020 1:48 PM

To: Jason H. Wilson (jwilson@willenken.com) <jwilson@willenken.com>

Cc: Ward, Alec <Alec.Ward@cpuc.ca.gov>; Castello, Stephen <Stephen.Castello@cpuc.ca.gov>; JQTran@socalgas.com <JQTran@socalgas.com>; EHenry@socalgas.com <EHenry@socalgas.com>; CSierzant@socalgas.com <CSierzant@socalgas.com>; AHolland@socalgas.com <AHolland@socalgas.com>; Campbell, Michael <Michael.Campbell@cpuc.ca.gov>; Sherin Varghese <svarghese@willenken.com>

📎 1 attachments (3 MB)

Subpoena to SoCalGas for Accounting Database Access - Service Copy.pdf;

Jason:

In preparation for our call tomorrow, please find attached hereto a Subpoena to Produce Access To Company Accounting Databases signed by the Commission's Executive Director. The subpoena is consistent with the data request we served on Friday, May 1, 2020. While a subpoena is not a prerequisite to obtaining access to a utility's accounts, given our history with SoCalGas on this investigation, the Public Advocates Office (Cal Advocates) opted for the additional authority provided by a subpoena.

Consistent with Friday's data request and our goal to obtain access to SoCalGas' accounts as soon as practicable, we propose to focus our discussion at tomorrow's scheduled meeting on how and when our staff will be able to access SoCalGas' accounting systems both remotely and on-site. As the Friday data request explained:

At a minimum, SoCalGas should be prepared to identify the following information on the conference call:

- The date remote access to the SAP system will be provided, and if not feasible, the specific reasons why it is not feasible, including confirmation of whether or not any SoCalGas employees or auditors have remote access to the SAP system.
- If remote access is not available, the date and location for a site visit so that the auditor can access the SAP system.
- At least two primary points of contact to ensure that the Cal Advocates auditor is able to access the SAP system and any accounts the auditor seeks to review. These contacts must be highly knowledgeable about SoCalGas' SAP system and available to answer questions that will facilitate Cal Advocates' inquiry.
- An afterhours contact to resolve SAP issues if such a contact exists for SoCalGas employees or auditors.
- Any other SAP resources available to SoCalGas employees or auditors.

In addition, while I had committed to provide a list of questions related to the SoCalGas/Sempra "Lobbying Activity Tracking System" or "LATS" on the same call, it appears that many of the documents provided by SoCalGas regarding LATS training, which would inform that discussion, have been redacted, and several appear to be missing pages of information that would have been in the original version. In addition, as communicated to

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you yesterday, the list of LATS data fields provided in response to DR #13, Question 2 appears to be incomplete. Consequently, we should plan to address those issues – is data missing and why are there redactions?

Regarding the redactions, we understand that these documents were provided by Sempra, but that does not excuse the failure to properly mark information claimed to be confidential with highlights – rather than blackouts – or the failure to provide declarations identifying the legal basis for any confidentiality claims pursuant to General Order (GO) 66. Further, to the extent this information has been redacted because of assertions of privilege, SoCalGas/Sempra should provide a privilege log.

For context, you should understand that these are all issues that were raised in Cal Advocates' first Motion to Compel, which was granted. Consequently, Cal Advocates is understandably troubled by the fact that we are revisiting these issues now.

Given these concerns, we propose to address the LATS issues as follows:

- That SoCalGas and/or Sempra provide no later than this Friday, May 8, 2020, full and complete copies of all of the LATS training materials (including Appendices) with no redactions unless you or a SoCalGas attorney is willing to provide a declaration that there is a good faith basis for any claims or privilege or confidentiality asserted. In that case, any confidential information should be highlighted as provided in previous data requests, rather than redacted.
 - We note that SoCalGas and/or Sempra clearly have ready access to these documents and so producing them without the unjustified redactions should be easily accomplished.
 - We also note that the current black outs appear to be names of Sempra or SoCalGas employees. Please be advised that such information is not confidential absent other personal identifying information such as a social security number, bank account number, or medical information – in which case that personal identifying information (but not the employee's name) should be redacted consistent with the instructions in DR #13.
- That SoCalGas answer the question I posed yesterday, which is whether the list of LATS data fields provided in response to DR #13, Question 2 is complete and lists all LATS data fields, as requested.
- That, consistent with yesterday's request, a SoCalGas and/or Sempra employee knowledgeable about the LATS system, including how it works, what it contains, and when it is required to be used, be available for the Wednesday, May 6, 2020 scheduled conference call. These are the basic questions that need to be answered. In addition, employees should be available to explain the reasons for the redactions and whether information is missing from the LATS training documents. If such a person (or persons) is not available on Wednesday, they should be made available for the conference call we currently have scheduled for this Friday, May 8.

We look forward to SoCalGas' prompt resolution of these matters on tomorrow's conference call.

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

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EXHIBIT 2
Data Request CalAdvocates-TB-2020-03

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Public Advocates Office
California Public Utilities Commission

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

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

PUBLIC ADVOCATES OFFICE DATA REQUEST
No. CalAdvocates-TB-SCG-2020-03

Date: May 1, 2020

Conference Call: No later than May 6, 2020

Access to Accounts: No later than May 8, 2020 for remote access; if remote access is not available, no later than May 11, 2020 for physical access

To: **Corinne Sierzant**
Regulatory Affairs for SoCalGas
CSierzant@semprautilities.com

Phone: (213) 244-5354
Email:

Johnny Q. Tran
Attorney for SoCalGas

Phone: (213) 244-2981
Email: JQTran@semprautilities.com

Shawane Lee
Attorney for SoCalGas

Phone: (213) 244-8499
Email: SLee5@socalgas.com

Stacy Van Goor
Sempra Energy

Email: SVanGoor@sempra.com

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

Phone: (415) 713-3599
Email: Traci.Bone@cpuc.ca.gov

James Wuehler
Accountant for the
Public Advocates Office

Phone: (415) 703-2671
Email: James.Wuehler@cpuc.ca.gov

INSTRUCTIONS

General:

You are instructed to answer the following Data Requests in the above-captioned proceeding, with written, verified responses pursuant to Public Utilities Code §§ 309.5

and 314, and Rules 1.1 and 10.1 of the California Public Utilities Commission's Rules of Practice and Procedure within ten (10) business days.

Each Data Request is continuing in nature. Provide your response as it becomes available, but no later than the due date noted above. If you are unable to provide a response by the due date, notify the Public Advocates Office within five (5) business days, with a written explanation as to why the response date cannot be met and a best estimate of when the information can be provided. If you acquire additional information after providing an answer to any request, you must supplement your response following the receipt of such additional information.

This data request does not diminish or excuse any pending written or oral data requests to you.

The Public Advocates Offices expects you to respond to this data request in a timely manner and with the highest level of candor

Responses:

Responses shall restate the text of each question prior to providing the response, identify the person providing the answer to each question and his/her contact information, identify all documents provided in response to the question, and clearly mark such documents with the data request and question number they are responsive to.

Responses should be provided both in the original electronic format, if available, and in hard copy. (If available in Word format, send the Word document and do not send the information as a PDF file.) All electronic documents submitted in response to this data request should be in readable, downloadable, printable, and searchable formats, unless use of such formats is infeasible. Each page should be numbered. If any of your answers refer to or reflect calculations, provide a copy of the supporting electronic files that were used to derive such calculations, such as Excel-compatible spreadsheets or computer programs, with data and formulas intact and functioning. Documents produced in response to the data requests should be Bates-numbered, and indexed if voluminous.

Requests for Clarification:

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

Objections:

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

Assertions of Privilege:

If you assert any privilege for documents responsive to this data request, please provide within five (5) business days to the people listed above a privilege log identifying each withheld document, and: (a) a summary description of the document; (b) the date of the document; (c) the name of each author or preparer; (d) the name of each person who received the document; and (e) the legal basis for withholding the document.

Assertions of Confidentiality:

If you assert confidentiality for any of the information provided, please identify the information that is confidential with highlights and provide a specific explanation of the basis for each such assertion. Assertions of confidentiality will be carefully scrutinized and are likely to be challenged absent a strong showing of the need for confidentiality, with the exception of the confidentiality for sensitive personal identifying information as described below.

Sensitive Personal Identifying Information:

Any sensitive personal identifying information other than an employee's name shall be fully redacted unless otherwise directed. Sensitive personal identifying information includes, without limitation:

- Social security numbers.
- Bank account numbers.
- Passport information.
- Healthcare related information.
- Medical insurance information.
- Student information.
- Credit and debit card numbers.
- Drivers license and State ID information.

Signed Declaration:

The data response shall include a signed declaration from a responsible officer or an attorney under penalty of perjury that you have used all reasonable diligence in preparation of the data response, and that to the best of their knowledge, it is true and complete.

In addition, any claim of confidentiality or privilege shall be supported by a declaration from your attorney stating that your attorney is familiar with the relevant case law and statutes pertaining to claims of confidentiality and privilege such that there is a good faith basis for the claim.

DEFINITIONS

- A. As used herein, the terms “you,” “your(s),” “Company,” “SCG,” and “SoCalGas” mean Southern California Gas Company and any and all of its respective present and former employees, agents, consultants, attorneys, officials, and any and all other persons acting on its behalf.
- B. The terms “and” and “or” shall be construed either disjunctively or conjunctively whenever appropriate in order to bring within the scope of these Data Requests any information or documents which might otherwise be considered to be beyond their scope.
- C. Date ranges shall be construed to include the beginning and end dates named. For example, the phrases “from January 1 to January 31,” “January 1-31,” “January 1 to 31,” and “January 1 through January 31” should be understood to include both the 1st of January and the 31st of January. Likewise, phrases such as “since January 1” and “from January 1 to the present” should be understood to include January 1st, and phrases such as “until January 31,” “through January 31,” and “up to January 31” should also be understood to include the 31st.
- D. The singular form of a word shall be interpreted as plural, and the plural form of a word shall be interpreted as singular whenever appropriate in order to bring within the scope of these Data Requests any information or documents which might otherwise be considered to be beyond their scope.
- E. The term “communications” includes all verbal and written communications of every kind, including but not limited to telephone calls, conferences, notes, correspondence, and all memoranda concerning the requested communications. Where communications are not in writing, provide copies of all memoranda and documents made relating to the requested communication and describe in full the substance of the communication to the extent that the substance is not reflected in the memoranda and documents provided.
- F. The term “document” shall include, without limitation, all writings and records of every type in your possession, control, or custody, whether printed or reproduced by

any process, including documents sent and received by electronic mail, or written or produced by hand.

- G. “Relate to,” “concern,” and similar terms and phrases shall mean consist of, refer to, reflect, comprise, discuss, underlie, comment upon, form the basis for, analyze, mention, or be connected with, in any way, the subject of these Data Requests.
- H. When requested to “state the basis” for any analysis (including studies and workpapers), proposal, assertion, assumption, description, quantification, or conclusion, please describe every fact, statistic, inference, supposition, estimate, consideration, conclusion, study, and analysis known to you which you believe to support the analysis, proposal, assertion, assumption, description, quantification, or conclusion, or which you contend to be evidence of the truth or accuracy thereof.
- I. Terms related in any way to “lobbying,” lobbyist,” “lobbying firm” and “lobbyist employer” shall, without limitation, be construed broadly and, without limitation, to be inclusive of how those terms are used in the Sempra Energy Political Activities Policy (Policy) and the California Political Reform Act (Act). For purposes of this data request, the Act’s definitions shall be understood to include all manner of state, regional, and local governments or agencies.¹

DATA REQUEST

Public Advocates Office (Cal Advocates) requests a conference call with SoCalGas by no later than Wednesday, May 6, 2020 to arrange for SoCalGas’ provision of the following to Cal Advocates:

1. Remote access to the SoCalGas SAP system to a Cal Advocates auditor no later than May 8, and sooner if possible. If remote access is not possible, identify a time and place where the auditor may access the SoCalGas SAP system that is no later than May 11, 2020.
2. Access to SoCalGas’ SAP system, whether remote or physical, equivalent to the highest quality and functionality available to SoCalGas accountants and auditors – whether employees or contractors.

¹ The Sempra Energy Political Activities Policy defines lobbying broadly on page 3 as: “any action intended to influence legislative or administrative action, including activities to influence government officials, political parties, or ballot measures. Lobbyists can be individual employees or the company that employees them, referred to as a Lobbyist-Employer.”

3. Training and assistance for the auditor to allow the auditor to determine the following in SAP related to adjustments to the Marathon Communications contract referred to in the SoCalGas July 12, 2019 amended response to Data Request (DR) CALPA-SCG-051719.
 - a. The date those adjustments were made, if it is different from the June 14, 2019 date reported in the August 13, 2019 response to Question 5 of DR CAL ADVOCATES SCG-2019-03.
 - b. The dollar amounts of adjustments made and the time period over which those dollars were incurred.
 - c. All subsequent entries in SAP related to the Marathon Communications contract up to the present time that demonstrate that those costs will not be mingled with ratepayer funded accounts.
 - d. Access to the "...separate invoice/order that is not ratepayer funded accounts for all work done by Marathon to found and support Californians for Balanced Energy Solutions" as referred to in response to Data Request CalAdvocates-SC-SCG-2019-02, Question 6(b).
 - e. The Modified Submission dated August 13, 2019 to Data Request CALPA-SCG-051719, Question 3 states "...that all of George Minter's and Ken Chawkins's time from May 1, 2018 through the present would be shareholder funded (i.e., this time is booked to a distinct invoice (I/O) that is not ratepayer funded)." Please provide the auditor with the amounts actually recorded from May 1, 2018 to present and access to SAP to verify that those amounts are recorded in a distinct SAP account that is not ratepayer funded.
 - f. Please also provide access to all of George Minter's and Ken Chawkins's time entries for accounting purposes from January 1, 2017 to the present.
4. Training and assistance for the auditor to access all SoCalGas accounts, including FERC accounts.
5. Training and assistance for the auditor to access information regarding all contracts, invoices, and payments made to third parties.
6. Training and assistance for the auditor to access and identify the allocation of a specific employee's labor expenses for every activity that they support and access to relevant cost centers, internal orders, and expense types or cost elements. See SoCalGas Response to CALADVOCATES-TB-SCG-2020-02, Question 6 which refers to these same terms.

7. Training and assistance for the auditor to be able to determine whether an account is intended to be shareholder costs or ratepayer costs, or a combination of the two, and how to determine which specific internal orders will be excluded from SoCalGas' General Rate Case.
8. Training and assistance so that the auditor can record their findings, including downloading, and screen shot applications.

At a minimum, SoCalGas should be prepared to identify the following information on the conference call:

- The date remote access to the SAP system will be provided, and if not feasible, the specific reasons why it is not feasible, including confirmation of whether or not any SoCalGas employees or auditors have remote access to the SAP system.
- If remote access is not available, the date and location for a site visit so that the auditor can access the SAP system.
- At least two primary points of contact to ensure that the Cal Advocates auditor is able to access the SAP system and any accounts the auditor seeks to review. These contacts must be highly knowledgeable about SoCalGas' SAP system and available to answer questions that will facilitate Cal Advocates' inquiry.
- An afterhours contact to resolve SAP issues if such a contact exists for SoCalGas employees or auditors.
- Any other SAP resources available to SoCalGas employees or auditors.

END OF REQUEST

EXHIBIT 3

Commission Subpoena Served May 5, 2020

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

PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

IN THE MATTER OF THE PUBLIC
ADVOCATES OFFICE INVESTIGATION
PERTAINING TO SOUTHERN CALIFORNIA
GAS COMPANY'S ACCOUNTING
PRACTICES, USE OF RATEPAYER
MONIES TO FUND ACTIVITIES RELATED
TO THE ADOPTION OF ANTI-
DECARBONIZATION AND GAS
THROUGHPUT POLICIES, AND OTHER
ACTIVITIES POTENTIALLY CONTRARY
TO STATE POLICIES

**SUBPOENA TO PRODUCE ACCESS TO
COMPANY ACCOUNTING DATABASES**

**Public Utilities Code Sections 311, 314, 314.5,
314.6, 581, 582, 584, 701, 702, and 771**

THE PEOPLE OF THE STATE OF CALIFORNIA,
TO: **SOUTHERN CALIFORNIA GAS COMPANY**

1. Pursuant to sections 311(a), 314, 314.5, 314.6, 581, 582, 584, 701, 702, and 771 *et seq.* of the California Public Utilities Code, you are ordered to make available to the Public Advocates Office at the California Public Utilities Commission (Cal Advocates), and staff and consultants working on its behalf, access to all databases associated in any manner with the company's accounting systems no later than three business days after service of this Subpoena.
2. Such access shall include both on-site and remote access; on-site access shall be provided at the times and locations requested by Cal Advocates.
3. Both on-site and remote access shall be as near to identical in quality as the access provided to the company's own employees and/or auditors, including, without limitation, any instructional materials or access to persons knowledgeable about the databases, including knowledge about both on-site and remote access to those databases.
4. IF YOU HAVE ANY QUESTIONS ABOUT THIS SUBPOENA, CONTACT THE FOLLOWING PERSON:

Name: Traci Bone

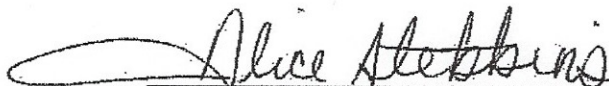
E-Mail: tbo@cpuc.ca.gov

Telephone: 415-703-2048

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COMMISSION.

By order of the Public Utilities Commission of the State of California.

Dated this 4th day of May, 2020.



By: Alice Stebbins

Title: Executive Director

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DECLARATION IN SUPPORT OF SUBPOENA

I, TRACI BONE, declare as follows:

1. I am an attorney duly licensed to practice before all courts of the State of California and am employed as a staff attorney for the California Public Utilities Commission (Commission). My business address is 505 Van Ness Avenue, San Francisco, California, 94102.
2. The California Constitution and the Public Utilities Code confer jurisdiction on the Commission to regulate public utilities in California in a number of areas, including, without limitation, cost, safety and maintenance of facilities.
3. The Public Utilities Code provides for an independent Public Advocate's Office to represent and advocate on behalf of the interests of public utility customers and subscribers within the jurisdiction of the Commission.
4. The Commission's Public Advocates Office is currently conducting an investigation of Southern California Gas Company's (SoCalGas') accounting practices, use of ratepayer monies to fund activities related to the adoption of anti-decarbonization and gas throughput policies, and other activities potentially contrary to state policies.
3. Section 314(a) of the Public Utilities Code, and others, authorize the Commission and persons employed by the Commission to inspect the accounts, books, papers and documents of any public utility. Section 311 authorizes the Commission, each Commissioner, the executive director, and the assistant executive directors to issue subpoenas for, among other things, accounts and documents in any investigation in any part of the state.
4. SoCalGas' responses to data requests in the investigation have been incomplete and untimely. Consequently, good cause exists for SoCalGas to be ordered to produce both

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remote and on-site access to its accounting databases so that the Public Advocates Office, its staff and/or consultants may conduct their own examination of the utility's records.

Executed under penalty of perjury under the laws of the State of California, on this 5th day of May, 2020, at San Francisco, California.



Traci Lynn Bone
Staff Counsel

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PROOF OF SERVICE

I am employed with the California Public Utilities Commission and I am over 18 years of age. My business address is 505 Van Ness Ave., San Francisco, CA 94102

On May 5th, 2020, I electronically served the attached **SUBPOENA TO PRODUCE ACCESS TO COMPANY ACCOUNTING DATABASES** on the following representatives for Southern California Gas Company:

Johnny Tran - JQTran@socalgas.com
Corinne Sierzant - CSierzant@socalgas.com
Brooke Holland - AHolland@socalgas.com
Elliot Henry - EHenry@socalgas.com
Jason Wilson – jwilson@willenken.com
Sherin Varghese – svarghese@willenken.com

Executed under penalty of perjury of perjury under the laws of the State of California, on this 5th day of May 2020, at San Francisco, California.



Traci Lynn Bone

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EXHIBIT 4

Declaration of Stephen Castello May 28, 2020

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

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

DECLARATION OF STEPHEN CASTELLO

I, Stephen Castello, hereby declare:

1. I am a Public Utilities Regulatory Analyst II in the Electricity Pricing and Customer Programs Branch of the Public Advocates Office at the California Public Utilities Commission. If called as a witness, I could and would competently testify as to the matters stated herein from my own personal knowledge, except as to any matters that I state upon information and belief, and, as to those matters, I am informed and believe them to be true.
2. I have been assigned to the Public Advocates Office investigation – not in any proceeding – of Southern California Gas Company’s (SoCalGas’) funding and other activities related to promoting the use of natural and renewable gas and to defeating state and local efforts to achieve greenhouse gas reductions (Investigation).
3. In my work on the Public Advocates Office Investigation, I have attempted to identify, among other things, whether and to what extent ratepayer money has been used to fund these efforts, including SoCalGas’ creation and funding of Californians for Balanced Energy Solutions (C4BES), an issue that came to light in Rulemaking (R.) 19-01-011.
4. I am familiar with SoCalGas’ Motion for an Emergency Stay which was served March 25, 2020, and the ALJ Ruling of April 6, 2020 that denied that motion.
5. After the motion was denied, SoCalGas was unable to meet and confer regarding a re-start of discovery in the Investigation, until April 16, 2020 – more than a week after the ALJ’s ruling was issued.
6. I am familiar with the subpoena issued to SoCalGas on May 5, 2020.
7. I have reviewed the SoCalGas “Motion To Quash Portion Of The Subpoena To Produce Access To Certain Materials In Accounting Databases And To Stay

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Compliance Until The May 29th Completion Of Software Solution To Exclude Those Protected Materials In The Databases” served on May 19, 2020.

8. I have attended multiple meet and confer discussions with SoCalGas to advance Public Advocates Office discovery related to the Investigation, including meetings on the following dates: June 4, 2019, July 25, 2019, August 12, 2019, September 16, 2019, September 27, 2019, October 18, 2019, January 9, 2020, January 21, 2020, March 19, 2020, April 16, 2020, April 24, 2020, May 1, 2020, May 6, 2020, May 8, 2020, May 13, 2020, and May 19, 2020.
9. After service of the subpoena on May 5, 2020, SoCalGas and Public Advocates Office participated in four conference calls related to the details of SoCalGas providing access under the subpoena, and identifying dates SoCalGas would provide responses to data requests issued in December, February, and March.
10. During those calls, SoCalGas confirmed that all SoCalGas accounting staff were working from home and had remote access to the utility’s accounts and records through its SAP system. SoCalGas also confirmed that it had previously made full remote access available to an auditor.
11. By the last conference call on May 18, 2020, it was evident that SoCalGas could provide nearly immediate remote access to the Public Advocates Office auditors, but that it would continue to withhold remote access from Public Advocates Office based on its First Amendment claims, and concerns regarding the disclosure of attorney/client communications or attorney work product.
12. At no time did SoCalGas suggest on any of the calls following issuance of the subpoena that it sought an extension of its right to quash the subpoena
13. While Public Advocates Office readily acknowledged that it had no desire to review any privileged information in the SAP database, at no time did Public Advocates Office concede during those calls that attorney/client communications or attorney work product would actually exist in SoCalGas’ SAP database, or that it could only review SoCalGas’ SAP database once such material was “walled off.”

14. During the last call on these matters, on Monday, May 18, 2020, SoCalGas requested that Public Advocates Office give it an extension to comply with the subpoena until May 29, 2020, so that it could implement a form of “custom” computer program to wall off its law firm invoices and information it asserts is “protected” by the First Amendment. Public Advocates Office did not refuse to provide the extension; rather, it replied that such an extension would need to be considered by its management.
15. During that conversation, the Public Advocates Office observed, among other things, that had its auditors appeared at SoCalGas’ offices to review its accounts and records, SoCalGas would have been obligated under the law to provide the auditors immediate on-site access to all of these materials. Consequently, SoCalGas’ proposal to withhold remote access in order to build a “custom software solution” to exclude information from auditor review was troubling to Public Advocates Office.
16. The Public Advocates Office was also clear on May 18, 2020 call that it would not accept any “wall” for access to accounts associated with vendors and consultants that SoCalGas claimed were “protected” by the First Amendment because such information was not “privileged” and SoCalGas’ had no valid legal claims for precluding Public Advocates Office’s access to those accounts.
17. I believe SoCalGas clearly understood that those were precisely the types of accounts, among others, that Public Advocates Office intended to audit.
18. Public Advocates Office has received copies of several SoCalGas contracts, invoices, and other materials related to the vendors it is working with to pursue the activities that are the subject of the Investigation. Those materials include the type of information which SoCalGas proposes to “wall off” from Public Advocates Office review in its Motion to Quash.
19. Discovery requests issued in December, February, and March have not been fully and accurately responded to. For example, SoCalGas has declined to provide complete responses to CALADVOCATES SC-SCG-2019-11, which was issued

on December 11, 2019. Among other things, SoCalGas’ responses failed to include all costs associated with influencing public opinion on the type of buses the Los Angeles County Metropolitan Authority should procure, failed to break down those costs by year, failed to disaggregate those costs by requested categories, and failed to identify the accounts where those costs were charged. It appears that much of this information should have been recorded in SoCalGas’ Lobbying Activities Tracking System (LATS) consistent with the training manuals SoCalGas has provided. However, none of this information appears to be available in that system.

20. SoCalGas has delayed its responses to the Public Advocates Office data request issued February 14, 2020. Notwithstanding numerous discussions regarding this data request – the utility insisted on using its own definition of lobbying to answer the questions – the Public Advocates Offices has been waiting more than three months for complete responses.
21. The Public Advocates Office has participated in at least seven conference calls with SoCalGas since the ALJ’s April 6 denial of SoCalGas’ emergency motion for a stay of discovery. SoCalGas initially represented its desire to “reset” the relationship with the Public Advocates Office. However, in retrospect, it is evident that SoCalGas made a number of misrepresentations to the Public Advocates Office during those calls in an effort to continue to delay its discovery responses.
22. This was not the first time that SoCalGas had proposed to “reset” the relationship with Public Advocates Office. The first time occurred during a meet and confer on October 18, 2019. SoCalGas attorneys Shawane Lee and Johnny Tran, both new to the case at the time, used the same words stating a desire to “reset” the relationship with Public Advocates Office.
23. On the last call on May 18, 2020, when directly asked whether SoCalGas was “slow rolling” responses to the Public Advocates Office’s outstanding requests, SoCalGas representatives assured Public Advocates Office that SoCalGas *was not*

slow rolling its responses. Rather, SoCalGas explained that it was working hard to respond to the data requests and that many things that seemed simple were much more time consuming and were absorbing staff's time. SoCalGas also represented that it was prioritizing compliance with the subpoena so that it was unable to provide other information at the same time, such as the removal of unsupported confidentiality designations that the Public Advocates Offices had requested more than two months ago, on March 10, 2020.

Dated this 28 of May, 2020, at Berkeley, California.



Stephen Castello
Public Utilities Regulatory Analyst II
Public Advocates Office
California Public Utilities Commission

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

EXHIBIT 5

**T.Bone 5-22-20 Email to SoCalGas Demanding Immediate Access
To Accounts And Records**

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

From: [Bone, Traci](#)
To: [Sierzant, Corinne M](#); [Ward, Alec](#); [Castello, Stephen](#); [Henry, Elliott S](#); [Holland, Brooke](#); [Jason Wilson](#); [Sherin Varghese](#)
Subject: RE: Meet & Confer
Date: Friday, May 22, 2020 7:59:00 AM

Please cancel today's scheduled conference call.

In lieu of a conference call, Cal Advocates demands that SoCalGas to provide full read-only remote access to all of its accounts and records today. Any specifics that need to be addressed to facilitate the provision of that access should be set forth in writing to the Cal Advocates Team.

Cal Advocates also demands that SoCalGas provide all outstanding discovery that has been the subject of the prior conference calls.

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

-----Original Appointment-----

From: Sierzant, Corinne M <CSierzant@socalgas.com>
Sent: Wednesday, May 13, 2020 2:07 PM
To: Sierzant, Corinne M; Ward, Alec; Bone, Traci; Castello, Stephen; Henry, Elliott S; Holland, Brooke; Jason Wilson; Sherin Varghese
Subject: Meet & Confer
When: Friday, May 22, 2020 11:30 AM-1:00 PM (UTC-08:00) Pacific Time (US & Canada).
Where: Skype Meeting

[Join Skype Meeting](#)

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Toll number: +1 (858) 284-1506,,641365348# (Dial-in Number) English (United States)

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EXHIBIT 6

J.Wilson & T.Bone Emails to ALJ May 29 through June 3, 2020

Re Access to Accounts and Records

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

From: Bone, Traci
Sent: Wednesday, June 3, 2020 2:31 PM
To: Jason Wilson; DeAngelis, Regina
Cc: DeAngelis, Regina; Hovsepian, Melissa A; Carman, Teresa A; Batjer, Marybel; Ward, Alec; Castello, Stephen; Sleiman, Mariam (Intern); Sierzant, Corinne M; Tran, Johnny Q; Prusnek, Brian C; Henry, Elliott S; Farrar, Darwin; Serizawa, Linda; Campbell, Michael; O'Rourke, Shannon
Subject: RE: SoCalGas (U 904 G) Motion to Quash in Part Cal Advocates' May 5, 2020 Subpoena

Judge DeAngelis:

In response to Mr. Wilson's email below, Cal Advocates reiterates its request that SoCalGas immediately provide Cal Advocates full access to its accounts and records consistent with the subpoena issued May 5, 2020.

In addition, consistent with footnote 131 of Cal Advocates' Response to SoCalGas' May 22, 2020 Motion to Quash, Cal Advocates will not sign a non-disclosure agreement in order to obtain access to SoCalGas' accounts and records. Footnote 131 explains: While Cal Advocates has previously discussed signing a Non-Disclosure Agreement (NDA) with SoCalGas in order to speed its release of information, such an NDA is unnecessary given the statutory protections provided and Cal Advocates no longer proposes to sign one given that the purpose of the NDA has been defeated by the instant Motion to Quash.

Lastly, please add Mariam Sleiman to the service list for this proceeding: mariam.sleiman@cpuc.ca.gov

Thank you for your attention to these matters,

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

From: Jason Wilson <jwilson@willenken.com>
Sent: Monday, June 01, 2020 4:07 PM
To: DeAngelis, Regina <regina.deangelis@cpuc.ca.gov>
Cc: DeAngelis, Regina <regina.deangelis@cpuc.ca.gov>; Hovsepian, Melissa A <MHovsepian@socalgas.com>; Carman, Teresa A <TCarman@socalgas.com>; Batjer, Marybel <Marybel.Batjer@cpuc.ca.gov>; Ward, Alec <Alec.Ward@cpuc.ca.gov>; Castello, Stephen <Stephen.Castello@cpuc.ca.gov>; Sierzant, Corinne M <CSierzant@socalgas.com>; Tran, Johnny Q <JQTran@socalgas.com>; Prusnek, Brian C <BCPrusne@socalgas.com>; Henry, Elliott S <EHenry@socalgas.com>; Jason Wilson <jwilson@willenken.com>; Farrar, Darwin <darwin.farrar@cpuc.ca.gov>; Serizawa, Linda <linda.serizawa@cpuc.ca.gov>; Campbell, Michael <Michael.Campbell@cpuc.ca.gov>; Bone, Traci <traci.bone@cpuc.ca.gov>; O'Rourke, Shannon <Shannon.O'Rourke@cpuc.ca.gov>
Subject: SoCalGas (U 904 G) Motion to Quash in Part Cal Advocates' May 5, 2020 Subpoena

Judge DeAngelis:

In its Motion to Quash in part Cal Advocates' May 5, 2020 subpoena, SoCalGas represented that it would make available remote access to its SAP system with limitations in place to block access to confidential attorney-client matters and information related to its 100% shareholder activities protected by the First Amendment by May 29, 2020. As it promised, (as evident by the email below) SoCalGas offered such access to Cal Advocates on May 29, 2020. However, Cal Advocates suggested, and SoCalGas agreed, that the parties use a NDA to help deal with confidentiality issues. Furthermore, Cal Advocates agreed that the NDA would be in place before it accessed the SAP System. Unfortunately, as the date of this email, SoCalGas has not received any NDA documentation from Cal Advocates. Finally, as of the time of this email, Cal Advocates has not yet responded to SoCalGas's May 29, 2020 email. As such, while SoCalGas stands ready to provide Cal Advocates with SAP access, it cannot do so until Cal Advocates enters into the NDA with SoCalGas.

Jason Wilson
Counsel for Southern California Gas Company



Jason H. Wilson

Direct: 213.955.8020 | Fax: 213.955.9250 | jwilson@willenken.com | www.linkedin.com/in/jason-h-wilson
WILLENKEN LLP | 707 Wilshire Blvd. | Suite 3850 | Los Angeles, CA 90017 | willenken.com

Service List for SoCalGas/Cal Advocates Not In A Proceeding

rmd@cpuc.ca.gov; Hovsepian, Melissa A <MHovsepian@socalgas.com>; Carman, Teresa A <TCarman@socalgas.com>; Prusnek, Brian C <BCPrusne@socalgas.com>; Henry, Elliott S <EHenry@socalgas.com>; jwilson@willenken.com; Fa <Shannon.O'Rourke@cpuc.ca.gov>

From: Jason Wilson
Sent: Friday, May 29, 2020 4:18 PM
To: Bone, Traci <traci.bone@cpuc.ca.gov>; Ward, Alec <Alec.Ward@cpuc.ca.gov>; Castello, Stephen <Stephen.Castello@cpuc.ca.gov>
Cc: Holland, Brooke <AHolland@socalgas.com>; Sierzant, Corinne M <CSierzant@socalgas.com>; Willenken-CalPA <willenken-calpa@willenken.com>
Subject: Remote Access to SAP

Traci,

As promised, SAP Access is live for the users that you've requested. Corinne Sierzant will send credentials as soon as Cal Advocates signs the NDA and provides us with the users' non-disclosure certificates. (As you know, the parties agreed to having an NDA in place and the draft NDA was sent to you on May 18, 2020). If we do not receive the NDA documents by 5 pm today, then access will have to be delayed until Monday morning. Please note that the network will be unavailable for system updates from 10 PM on Saturday, 5/30 through 5 AM on Sunday, 5/31.

We have looked into the support available to our users. Standard support is available Monday to Friday from 8 AM to 5 PM. Only emergency support is available outside of that time. Accordingly, we will provide Cal Advocates' SAP users access assistance Monday to Friday during from 8 AM to 5PM. However, the remote access to SAP should be available after hours and during weekends/holidays unless there is an outage or maintenance.

Ping Ng (PNg@socalgas.com, 213-231-8850) will be your contact for questions related to SAP. You can email Corinne (CSierzant@socalgas.com, 215-290-3144) for IT questions, and she'll direct them to the appropriate team member for resolution.

To protect our privileged information and First Amendment rights, information and transaction details (invoice transactions and accounting journal entries) pertaining to our outside counsel firms and also vendors performing 100% shareholder activities have been programmatically excluded from the display list.

There is one accounting journal entry referencing 100% shareholder work, but which also references non-shareholder work. This has likewise been excluded from the display list. However, we will provide a PDF of this journal entry redacting the identity of the 100% shareholder-funded entity by early next week.

As a matter of routine, and to support the production of our monthly financial statements that present fairly our financial position and results of operations in all material respects, a series of procedures, processes, and controls are followed each month for the previous fiscal month. Until those procedures, processes, and controls for the fiscal month are completed, all transactions for that fiscal month will also be excluded from the display list. As such, these activities will not be displayed until the end of the following month. This process also allows time to protect information in the two categories we are restricting access to where there may be new vendors/firms to protect or other potential complications with related entries. Further, it should be noted that while certain costs are currently recorded to certain cost centers in SAP, it does not mean that the costs will be requested for recovery from ratepayers, as noted in the TY2019 GRC workpapers. During the development of the GRC forecasts, it is sometimes necessary to remove incurred costs to further ensure that ratepayers are not funding activities that should be borne by shareholders.

If you have any questions, please feel free to contact me.

Jason



Jason H. Wilson

Direct: 213.955.8020 | Fax: 213.955.9250 | jwilson@willenken.com | www.linkedin.com/in/jason-h-wilson

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

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

EXHIBIT 7

CalMatters, “*California Officials Should Look Into SoCalGas Threat Of A COVID-19 Protest Against San Luis Obispo,*” by San Luis Obispo Mayor Heidi Harmon, May 22, 2020

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

CAL MATTERS

MY TURN

COMMENTARY

ENVIRONMENT

California officials should look into SoCalGas threat of a COVID-19 protest against San Luis Obispo

BY GUEST COMMENTARY 

PUBLISHED: MAY 22, 2020



The chairman of Californians for Balanced Energy Solutions, a group created and funded by SoCalGas Co., threatened to bring hundreds of protesters who would add to the COVID-19 pandemic in San Luis Obispo, if the city council voted on an ordinance to encourage construction of all-electric buildings that would not use gas appliances. Photo via iStock

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



By Heidi Harmon, Special to CalMatters

The COVID-19 pandemic invites us to grapple with our interconnectedness as we rely on each other to keep ourselves safe and supported. Yet amid efforts to collaborate and creatively solve problems, Southern California Gas Co. is capitalizing on this crisis to bully and to sow division.

That was the case when the city of San Luis Obispo, where I lead as mayor, received an unusual threat from the chairman of Californians for Balanced Energy Solutions, a group that SoCalGas created and funds. The chairman **threatened a protest** with “no social distancing” as he planned to bus in “hundreds and hundreds of pissed off people potentially adding to this pandemic,” if the city council voted on an ordinance to encourage construction of all-electric buildings that would not use gas appliances.



We took the threat seriously – we care about the health of our community and those workers – and removed the agenda item. But this situation was a continuation of a series of bullying tactics and misinformation that has been deployed by SoCalGas and other fossil fuel interests since August.

They want to divide our community over our efforts to address climate change and improve public health – and it’s something we simply won’t stand for, especially right now.

Fossil fuel executives have cultivated a toxic culture in which they fight progress by any means necessary – at the cost of public health, public dollars, their own workers and the precious time we have left to transition to clean energy and cut climate pollution before it’s too late.

I am as concerned about the future of SoCalGas workers as I am about the climate crisis. And I look forward to working with them to create a world where their jobs are as safe as our future. These two issues are intimately linked. That’s why California is already engaged in a [long-term transition off of gas](#) – which will help us plan for a just transition for gas utility workers over this decades-long process.

Yet SoCalGas has chosen to fight rather than participate, and instead has become one of California’s primary obstacles to local and statewide efforts to plan for the future of their workers as we move to a clean-energy economy powered by zero-emission technologies.

And unfortunately, California’s Public Utility Commission, which is tasked with overseeing the behavior of regulated utilities like SoCalGas, has not stopped them. Last summer it was revealed that SoCalGas and Californians for Balanced Energy Solutions [had violated a number of laws](#) in their efforts to fight building electrification. It’s now been nine months, and still the utility has not been held to account. That inaction allowed my city to continue to be bullied.

We are living through a terribly difficult time. People are frightened for their health. More than 30 million people have lost their jobs since March. Wildfire season is coming. We must address these compounding crises with compassionate, proactive solutions – protecting public health, putting people back to work in the clean economy and phasing out fossil fuels to combat the climate crisis.

We need to show workers that the people of California will not allow them to be sacrificed. With a Green New Deal, they won’t be. Clean technologies like offshore wind require some of the same skills in use by oil and gas workers. There can be a rich future for the fossil fuel workforce so long as we aren’t prevented from planning for their transition by corporate executives’ obstruction.

Coronavirus has proven we can afford the Green New Deal that puts workers first, and that we cannot afford to delay action any longer. It’s proven that people, when tested, can band together for the good of all. This is the spirit we need to carry forward. Workers, CEOs, activists, rate payers, elected officials – our fates are woven together. By supporting climate policies that lower emissions while supporting workers to move into careers in clean energy sectors that will exist for decades to come, we can thrive.

I call on state leadership to be part of this vision for a prosperous California by ensuring that SoCalGas leaves their schoolyard bullying behind and joins us in creating a better world where – in times of crisis – we turn toward each other and not on each other.

Heidi Harmon is the mayor of San Luis Obispo, Hharmon@slocity.org. She wrote this commentary for CalMatters.



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EXHIBIT 8

J.Wilson Letter to T.Bone 5-18-20

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

May 18, 2020

VIA E-MAIL ONLY

Traci Bone
Public Advocates Office
505 Van Ness Ave.
San Francisco, CA 94102
Email: tbo@cpuc.ca.gov

Re: *Meet and Confer re Cal Advocates' Data Request and Subpoena for SAP Access*

Dear Traci:

I am writing to confirm our meet and confer of Wednesday, May 13, 2020 and to update you on our efforts to provide you with remote access. We once again want to affirm, as we did on our call that we are taking our obligations under the subpoena extremely seriously. We are working diligently to obtain both Copy, or Fixed, Access to the SAP database as well as Remote Access.

We provided updates on our progress in providing the Copy Access, in that we would be rolling out to you fixed copies of the accounts as we had done previously during the GRC process. We further explained that this process had been slowed significantly due to remote work forcing onsite processes to take place over VPN. As noted in an email from SoCalGas late Friday, that information should be available Monday.

We further explained that we had undertaken the process of providing remote access to the live SAP database. As we've explained previously, our team has no previous experience providing remote access to the live database to Cal Advocates, or to any party where doing so would waive privilege. As we began to prepare live access, we encountered two obstacles that we are diligently working to resolve: the ability to access privileged information in the form of bills from outside counsel and access to materials currently subject to an appeal in front of the Commission related to its political associations for 100% shareholder-funded contracts.

On Wednesday's call, SoCalGas proposed a solution in consultation with its SAP and IT teams whereby access to attachments and invoices would be shut off but could be requested by Cal Advocates' auditor. SoCalGas indicated this might not be the entire solution, but a substantial piece of it. An attorney would then able to quickly review requested invoices and provide nonprivileged and non-appeal-related materials to the auditor. You stated this was not a workable solution and that the auditor needed instantaneous access to all attachments and invoices. We therefore stopped pursuing such a solution.



May 18, 2020

Page 2

The solution that SoCalGas proposed Wednesday was based upon the existing functions in the SAP software. After our call Wednesday, we learned that we might be able to create custom software written that gives Cal Advocates remote access while at the same time restricting access to material protected by attorney-client privilege and the 1st Amendment.

Realizing that providing Cal Advocates' remote access is critical, we worked on this issue over the weekend. After speaking with IT specialists, we believe that we can provide Cal Advocates with remote access by May 29, 2020. A special program will be written which will prevent access to attorney-client information and 1st Amendment protected information. SoCalGas has assigned two people from their IT team to work on this custom software until it is completed. The custom software will prevent Cal Advocates from having access on the SAP system to information from the approximately 40 law firms and the 10 consulting shops¹ that have 100% shareholder contracts. We understand that SoCalGas deals with over 2000 vendors a year. Hence, this software fix will be a narrowly targeted one which will affect a tiny fraction of SoCalGas's vendors.

We will maintain close contact with the software development team and let you know if anything happens that negatively affects our target date on May 29, 2020.

In the meantime, we will continue to make available in a fixed format other information from the SAP system.

Over the weekend, we learned the for the first time that it might be possible to access the social security numbers and bank account information of our employees. We are exploring this issue to see if it will have any impact on our target date of May 29, 2020.

As part of our efforts to work cooperatively with Cal Advocates, we will provide an IT expert with knowledge of the SAP System on Monday's meet and confer.

We will also provide an NDA on Monday related to the confidential materials located in SAP. Because this situation is unique, the NDA is not a typical one used by SoCalGas, and we are happy to answer questions and consider revisions you may have for it.

Very truly yours,



Jason H. Wilson

¹ These are initial numbers and may vary. We are providing them to give a sense of the limited amount of protected information within the vendor population.

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





FILED
06/25/20
12:59 PM

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking
Regarding Building Decarbonization.

Rulemaking 19-01-011

**ADMINISTRATIVE LAW JUDGE'S RULING DISPOSING OF
VARIOUS MOTIONS RELATED TO CALIFORNIANS FOR
BALANCED ENERGY SOLUTIONS AND SOUTHERN
CALIFORNIA GAS COMPANY**

Summary

This ruling disposes of several motions related to Californians for Balanced Energy Solutions (C4BES) and Southern California Gas Company (SoCalGas) filed in 2019.

1. The March 13, 2019 Motion for Party Status to C4BES is moot.
2. The May 14, 2019 Motion to Deny Party Status of Californians for Balanced Energy Solutions or, in the Alternative to Grant Motion to Compel Discovery (Motion to Deny Party Status/Motion to Compel) filed by Sierra Club, is moot as to the motion to deny party status to C4BES but is granted as to the motion to compel discovery.
3. The June 19, 2019 Motion to Strike Sierra Club's Reply to Responses to Motion to Deny Party Status of Californians for Balanced Energy Solutions or, in the Alternative to Grant Motion to Compel Discovery (Motion to Strike), filed by SoCalGas is denied.
4. The August 20, 2019 Motion to Withdraw Party Status of C4BES is granted.

1. Procedural Background

Senate Bill (SB) 1477 (Stern, 2018) requires the Commission to develop programs to test two specific programmatic approaches to building decarbonization. Through SB 1477, the Legislature intended “to build upon the success of the New Solar Homes Partnership Program by providing incentives to builders to design innovative, low-emission buildings, and to make low-emission heating equipment readily available and affordable in California.”¹ On February 8, 2019, the Commission opened this rulemaking (Building Decarbonization Rulemaking) in order to fulfill the requirements SB 1477 and to begin to craft a policy framework for decarbonization of buildings.

C4BES became a party to this proceeding on March 25, 2019, when it filed reply comments to the Order Instituting Rulemaking. C4BES also filed a motion for party status. In its comments, C4BES described itself as follows:

Californians for Balanced Energy Solutions is a coalition of natural gas and renewable gas suppliers and users. We represent members of the public, small and large businesses, labor, agriculture, and nonprofits that serve seniors and low-income communities.

Our goals are to educate the public about natural and renewable gas and their importance for the economy and the environment. We support balanced energy solutions that fight climate change while protecting energy reliability, affordability, and choice. Electricity and natural gas (NG) along with renewables - gas (RNG), wind, solar, hydro - have important and unique roles to play in fighting climate change while providing energy affordability, reliability, and choice for California’s households and businesses.²

¹ SB 1477 Section 1(b).

² C4BES March 25, 2020 Reply Comments at 1.

On May 14, 2019, Sierra Club filed its Motion to Deny Party Status to Californians for Balanced Energy Solutions Or, in the Alternative, to Grant Motion to Compel Discovery.³

On May 17, 2019, the assigned Commissioner issued his Scoping Memo and Ruling setting forth the issues and procedural schedule for this proceeding. The Scoping Memo and Ruling was amended on July 16, 2019 to clarify the issues.

On May 29, 2019, C4BES and SoCalGas each filed a response opposing Sierra Club's Motion to Deny Party Status/Motion to Compel. Also on May 9, 2019, the Public Advocates Office of the Commission (Cal Advocates) filed a response supporting the Motion to Deny Party Status/Motion to Compel. On June 10, 2019, Sierra Club filed a reply to the responses.

On June 19, 2019, SoCalGas filed a Motion to Strike Sierra Club's Reply to Responses to Motion to Deny Party Status to Californians for Balanced Energy Solutions or, in the Alternative to Grant Motion to Compel Discovery. Cal Advocates filed a response opposing the Motion to Strike on July 5, 2019. Cal Advocates' response included documents obtained from SoCalGas apparently in response to a data request for "all invoices and contracts to which SoCalGas is a party for work which relates to the creation or support of C4BES."⁴

On July 5, 2019, responses to the Motion to Strike were filed by Cal Advocates and Sierra Club individually, and by Natural Resources Defense Council, Sierra Club and California Environmental Justice Alliance jointly.

³ This ruling refers to the alternative motions separately as "Motion to Deny Party Status" and "Motion to Compel" and together as "Motion to Deny Party Status/Motion to Compel."

⁴ Cal Advocates July 5, 2019 Response at Attachment 1.

On August 20, 2019, C4BES filed a Motion to Withdraw. On September 3, 2019, Sierra Club filed a response opposing the Motion to Withdraw arguing that the Commission:

should require C4BES to remain a respondent to this proceeding and compel both C4BES and SoCalGas to answer Sierra Club's discovery to enable needed transparency and a complete record for the Commission to evaluate sanctions for C4BES' and SoCalGas' conduct.⁵

Cal Advocates agrees with Sierra Club on the need for transparency about the relationship between SoCalGas and C4BES and supports further discovery.⁶

On April 6, 2020, the Commission issued its Decision Establishing Building Decarbonization Pilot Programs (Decision (D.) 20-03-027). Decision 20-03-027 resolved all of the issues required by SB 1477 and set direction for the Commission's Energy Division and the California Energy Commission (CEC) to finish implementation of the pilots. The remaining issues to resolve in this proceeding are:

- a. Should the Commission implement any programs dedicated specifically to support the construction of decarbonized buildings in communities affected by wildfires?
- b. Should the Commission make any changes to existing policies, rules, or procedures in order to facilitate better coordination with the development of Title 24 and Title 20 standards at the Energy Commission that facilitate building decarbonization?

⁵ Sierra Club Response to Motion to Withdraw Party Status for Californians for Balanced Energy Solutions, filed September 3, 2019 at 1.

⁶ Cal Advocates May 29, 2019 Response.

- c. What policies, rules, and procedures should the Commission adopt to facilitate the decarbonization of buildings?⁷

2. C4BES Motion for Party Status; Sierra Club Motion to Deny Party Status

Because C4BES established party status by filing reply comments on the Order Instituting Rulemaking, the Motion for Party Status and Sierra Club's Motion to Deny Party Status are both moot.

3. Cost Recovery for SoCalGas Spending on C4BES; Sierra Club Motion to Compel

It is well-established that regulated utilities cannot receive cost recovery for advocacy-related activities that are inherently political or do not benefit ratepayers.⁸ The burden is on the utility to show that the expenditures are eligible for recovery.⁹ In its most recent decision addressing the SoCalGas revenue requirement, D.19-09-051, the Commission stated that:

To the extent that SoCalGas utilizes ratepayer funds on expenditures that go beyond providing information about

⁷ Scoping memo at 4-5.

⁸ *Southern California Edison Co.*, 2012 Cal. PUC LEXIS 555, *765, (D.12-11-051) (finding that membership subscriptions to organizations that advance tax reduction policies are inherently political and, therefore, funding for them should be disallowed from rate recovery); *Southern California Gas Co.*, 1993 Cal. PUC LEXIS 728, *103 (D.93-12-043) (finding 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."); see also *Southern California Edison Co.*, 2004 Cal. PUC LEXIS 325, *339 (D.04-07-022) (finding that a utility's efforts to coordinate with local governments on land-use issues, undergrounding requests, among others, can provide ratepayer benefits in the form of cost savings when those efforts give the utility influence to resolve conflicts with local governments).

⁹ *Pacific Gas & Electric Co.*, 2007 Cal. PUC LEXIS 173, *66 (D.07-03-044) (requiring the utility to keep records to demonstrate whether program costs include funding for lobbying activities); *San Diego Gas & Electric Co.*, 2019 Cal. PUC LEXIS 569, 762-763 (finding that only the quantifiable portion of membership dues that are designated as lobbying activities should be disallowed).

natural gas and constitute inappropriate political activity, the Commission will address such activities in the appropriate proceeding. Furthermore, the Commission reminds SoCalGas that any informational or educational material funded by ratepayers should not contravene the State's implementation of adopted legislation furthering programs to incentivize low emission buildings and increasing transportation electrification to achieve the State's climate goals.¹⁰

In order to address whether the funding of C4BES is eligible for cost recovery from ratepayers, the Commission will need additional information.

Sierra Club states that it "issued targeted data requests to both SoCalGas and C4BES to better understand the extent of financial, communications, and policy support SoCalGas provides to C4BES and its role in the development of C4BES positions in this proceeding."¹¹ Sierra Club believes that discovery could "reveal whether or to what extent SoCalGas is approving or reviewing C4BES's filings in this proceeding" and "how many of the board members of C4BES were recruited by SoCalGas, or by consultants acting under its direction, and how many were compensated by the utility for their participation."¹²

Pursuant to Rule 11.3 of the Commission's Rules of Practice and Procedure,¹³ prior to filing a motion to compel a party must make good faith efforts to resolve the discovery dispute. Sierra Club's Motion to Compel includes documentation of its good faith efforts to meet and confer with SoCalGas and C4BES. Specifically, Sierra Club held a meet and confer with SoCalGas on April 29, 2019 and with C4BES on May 2, 2019.

¹⁰ Decision 19-09-051 at 379-80 (footnotes omitted).

¹¹ Sierra Club Motion to Compel at 9-10.

¹² *Id.* at 10.

¹³ All subsequent references to a Rule are to the Commission's Rules of Practice and Procedure.

In light of the continued need for information on the relationship between SoCalGas and C4BES, this ruling grants Sierra Club's Motion to Compel as it relates to this need. Discovery remains subject to the Commission's Rules of Practice and Procedure and all other applicable law, including Rule 10.1 limiting discovery to a matter that either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence.

4. SoCalGas Motion to Strike

The Motion to Strike asserts that Sierra Club's reply to the responses to the Motion to Deny Party Status/Motion to Compel contains "unfounded conclusions" which were "systematically refuted by SoCalGas or C4BES in their respective responses . . ." ¹⁴ Specifically, SoCalGas asserts that:

SoCalGas was not solely responsible for funding C4BES;
SoCalGas did not compensate Matt Rahn or any institution
with which he is involved for his membership in C4BES;
C4BES is not a "utility-created front group;" and SoCalGas
does not control C4BES.¹⁵

SoCalGas points out that an evidentiary record has not been developed on this issue. If there are disputed facts, an evidentiary record will be necessary in order for the Commission to determine if SoCalGas can recover funds from ratepayers. Because the Building Decarbonization Rulemaking is the appropriate place to make this determination, the concerns asserted by Sierra Club are still relevant. Therefore, the Motion to Strike is denied.

5. C4BES Motion to Withdraw

C4BES's Motion to Withdraw should be granted. C4BES is under no obligation to participate in this proceeding and is not regulated by the

¹⁴ Motion to Strike at 2.

¹⁵ *Ibid.* (footnotes omitted).

Commission. However, because it is in the public interest to fully understand the interests of a party to a proceeding, C4BES is ordered to cite this ruling in any current proceeding in which it is a party and any future proceeding to which it becomes a party.¹⁶ This will promote transparency and provide an opportunity for parties and the Commission to be reminded of the issues raised in this ruling. This requirement shall remain in place for three years from today's date.

IT IS RULED that:

1. The March 13, 2019 Motion for Party Status of Californians for Balanced Energy Solutions is moot.
2. The May 14, 2019 Sierra Club Motion to Deny Party Status of C4BES is moot.
3. The May 14, 2019 Sierra Club Motion to Compel is granted.
4. The June 19, 2019 SoCalGas Motion to Strike is denied.
5. The August 20, 2019 Motion to Withdraw Party Status of C4BES is granted.
6. C4BES is ordered to cite to this ruling in any future proceeding to which it becomes a party or to which it is now a party.

Dated June 25, 2020 at San Francisco, California.

/s/ JEANNE M MCKINNEY
Jeanne M. McKinney
Administrative Law Judge

¹⁶ See, e.g., Rule 1.4(b)(1) requiring a person seeking party status to “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 . . .”

**BEFORE THE PUBLIC UTILITIES COMMISSION
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SUBPOENA ISSUED MAY 5, 2020, AND FINED FOR THOSE VIOLATIONS FROM
THE EFFECTIVE DATE OF THE SUBPOENA (NOT IN A PROCEEDING)**

JASON H. WILSON
KENNETH M. TRUJILLO-JAMISON
AMELIA L. B. SARGENT
Willenken LLP
707 Wilshire Blvd., Suite 3850
Los Angeles, California 90017
Telephone: (213) 955-9240
Facsimile: (213) 955-9250
Email: jwilson@willenken.com

July 2, 2020

Attorneys for:
SOUTHERN CALIFORNIA GAS COMPANY

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

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

**SOUTHERN CALIFORNIA GAS COMPANY’S (U 904 G) RESPONSE TO PUBLIC
ADVOCATES OFFICE’S MOTION TO FIND SOUTHERN CALIFORNIA GAS
COMPANY IN CONTEMPT OF THIS COMMISSION IN VIOLATION OF
COMMISSION RULE 1.1 FOR FAILURE TO COMPLY WITH A COMMISSION
SUBPOENA ISSUED MAY 5, 2020, AND FINED FOR THOSE VIOLATIONS FROM
THE EFFECTIVE DATE OF THE SUBPOENA (NOT IN A PROCEEDING)**

Southern California Gas Company (“SoCalGas”) hereby files this response to Public Advocates Office’s Motion to Find Southern California Gas Company in Contempt of This Commission in Violation of Commission Rule 1.1 for Failure to Comply with a Commission Subpoena Issued May 5, 2020, and Fined for Those Violations from the Effective Date of the Subpoena (Not in a Proceeding) (the “Contempt Motion”).

I. INTRODUCTION

The Contempt Motion rests on a fundamentally flawed premise: Public Advocates Office (“Cal Advocates”) claims its authority to access SoCalGas’s books and records is unlimited, and therefore SoCalGas’s attempts to resist this access should be punished with millions of dollars of fines. Cal Advocates is wrong. While Cal Advocates has broad discretion to obtain SoCalGas’s books and records, that power is not limitless. Rather, under the United States and California Constitutions, its inspection authority is limited by SoCalGas’s First Amendment rights to association, free expression, and to petition the government, and further, its powers are curtailed by this state’s statutory attorney-client and work product privileges.

Indeed, the United States Supreme Court has confirmed that regulated utilities such as SoCalGas enjoy First Amendment protections.¹ Further, the California Supreme Court has

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

explicitly held that the Commission’s power to inspect SoCalGas’s books and records is “tempered by the attorney-client privilege,” and that “no provision exempts [the Commission] from complying with the statutory attorney-client privilege.”²

Cal Advocates’ statutory powers to inspect SoCalGas’s books and records are limited by these rights and privileges. Therefore, *it is entirely proper* for SoCalGas to assert these rights and privileges in the face of the overbroad and unconstitutional Subpoena. To preserve those rights and to avoid irreparable harm, it must shield its protected and privileged materials from Cal Advocates while those rights and privileges are adjudicated. Cal Advocates’ demand that SoCalGas give over these materials prior to adjudication of its rights and privileges is unlawful; doing so would vitiate those rights and privileges altogether, which the law does not permit. The Contempt Motion should therefore be denied because it rests upon this fatally flawed premise.

The Contempt Motion is also procedurally improper. *First*, it improperly seeks sanctions for SoCalGas’s purported refusal to comply with the Subpoena, but the legality of the Subpoena is the subject of SoCalGas’s pending Motion to Quash.³ The Contempt Motion therefore puts the proverbial cart before the horse, and should be denied or at the very least stayed until the Motion to Quash is adjudicated. *Second*, should this tribunal wish to entertain the merits of the Contempt Motion, Cal Advocates faces a further hurdle—due process requires that contempt proceedings and Rule 1.1 fines be heard and assessed in a full adjudicatory proceeding with an evidentiary hearing on disputed issues of fact (which SoCalGas will demand). For this Motion to be considered at all, Cal Advocates must seek to have this matter recategorized.

Finally, although this court should not consider this motion on prematurity and due process grounds, the motion nonetheless fails on the merits. The record shows that SoCalGas has produced significant amounts of data in response to the Subpoena, and that over a month ago it made available to Cal Advocates roughly 96% of the data in its accounting database, while shielding approximately 4% of constitutionally protected and privileged data necessary to preserve its rights and privileges. The record further demonstrates that the reason Cal Advocates does not already have access is because it refuses to sign a non-disclosure agreement it itself

² *Southern California Gas Co. v. Public Utilities Com.* (1990) 50 Cal. 3d 31, 38-39.

³ The full title of the Motion to Quash is “Southern California Gas Company’s (U 904 G) Motion to Quash Portion of the Subpoena to Produce Access to Certain Materials in Accounting Databases and to Stay Compliance Until the May 29th Completion of Software Solution to Exclude Those Protected Materials in the Databases (Not in a Proceeding).”

proposed and committed to signing. Accordingly, no finding of contempt or violation of Rule 1.1 is supported by the record.

The Contempt Motion is an effort to coerce SoCalGas to waive its privileges and First Amendment rights, under the threat of millions of dollars in fines. In so doing, Cal Advocates seeks to leverage the Commission’s contempt powers to “punish” SoCalGas for its supposed “defiance” in asserting those rights and privileges. That illegitimate and improper gambit should be rejected. The Contempt Motion should be denied.⁴

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Cal Advocates’ Contempt Motion rests upon a false factual premise: That SoCalGas made no meaningful attempt to comply with the Subpoena, and acted in bad faith to delay and stonewall its response. Cal Advocates’ account omits key facts and context to create a distorted impression about SoCalGas’s faithful efforts and candor.

Since being served with the Subpoena, SoCalGas has worked diligently to comply with it as promptly as practicable, but in a manner that preserves its rights under the attorney-client privilege, the attorney work product doctrine, and the First Amendment. Notwithstanding the breathtaking breadth and nature of the Subpoena’s demands, SoCalGas completed the following within a mere 24-day period: (1) SoCalGas offered Cal Advocates at least three different options for compiling and delivering responsive data and providing the remote access it sought; (2) SoCalGas produced multiple fixed data accounting reports which Cal Advocates also demanded; and (3) SoCalGas, on its own initiative, designed, developed, and implemented a customized software solution to furnish Cal Advocates with a secure means to remotely access

⁴ As a further example of Cal Advocates’ attempts to pierce SoCalGas’s privileges and constitutional protections, Cal Advocates served a data request on June 30, 2020 which seeks, among other things, records and invoices relating to SoCalGas’s outside counsel in this matter, Willenken LLP. Declaration of Jason H. Wilson [“Wilson Decl.”], Exh. P, at 7. Such information is clearly privileged, and Cal Advocates’ efforts to obtain that information are wholly inappropriate. See *Los Angeles Cty. Bd. of Supervisors v. Superior Ct* (2016) 2 Cal.5th 282, 297 (“When a legal matter remains pending and active, the privilege encompasses everything in an invoice, including the amount of aggregate fees.”); see also *id.* p. 298 (“During active litigation, that information [i.e., “the cumulative amount of money spent on the case”] can threaten the confidentiality of legal consultation by revealing legal strategy.”). The June 30 data request also seeks information on contracts subject to SoCalGas’s appeal on First Amendment grounds before the full Commission. Wilson Decl., Exh. P, at 9-10. The data request therefore seeks to deprive SoCalGas of its rights to full litigation of its First Amendment rights before further disclosure to Cal Advocates.

approximately 96%⁵ of the requested data, while shielding from its view privileged and constitutionally protected material.

Further, throughout the entire meet-and-confer process, SoCalGas communicated with Cal Advocates every step of the way to apprise them on the status of its responsive efforts, to answer Cal Advocates' ongoing inquiries, and to ask clarifying instructions. When Cal Advocates confirmed that it sought access to materials protected by the First Amendment, the attorney-client privilege, and the attorney work product doctrine, SoCalGas immediately alerted Cal Advocates of its concerns. And when it became clear that the parties could not resolve their differences about these protected materials before Cal Advocates' deadline for SoCalGas to produce, SoCalGas filed its Motion to Quash with respect to the very limited amount of data in dispute—and continued its work to make the remainder of the data (approximately 96%) available to Cal Advocates as quickly as possible. Indeed, the only reason Cal Advocates has yet to access SoCalGas's records is because of Cal Advocates' own inexplicable about-face on its commitment to execute an NDA to protect the confidentiality of highly sensitive accounting information, separate and apart from the privileged and constitutionally protected material, contained in the database sought by the Subpoena.⁶

A. The Subpoena and SoCalGas's SAP System

On May 5, 2020, Cal Advocates served the Subpoena on SoCalGas, which required compliance by May 8, 2020, that is, no later than three days after service of the Subpoena.⁷ Cal Advocates' email transmitting the Subpoena, as well as its data request served on May 1, 2020, both expressly sought access to SoCalGas's SAP system.⁸ That database houses data on nearly

⁵ SoCalGas has made financial information fully available for roughly 96% of its vendors. SoCalGas has approximately 2,300 vendors. SoCalGas is claiming that information from 86 vendors (73 law firm and 13 firms that assist SoCalGas in exercising its political rights) are protected by either the attorney-client privilege, the attorney work product privilege, or the First Amendment. Thus, SoCalGas's Motion to Quash sought to protect information from approximately 4% of its vendors.

⁶ For clarity, the NDA would not cover material that is the subject of SoCalGas's Motion to Quash—that is, material protected under the attorney-client privilege, attorney work product doctrine, or the First Amendment. As articulated in the Motion to Quash, Cal Advocates is not entitled to access that information even on a confidential basis.

⁷ Wilson Decl., Exh. A.

⁸ *Id.* [asking for, among other things, “[t]he date remote access to the SAP system will be provided,” “[i]f remote access is not available, the date and location for a site visit so that the auditor can access the SAP system,” “[a]t least two primary points of contact to ensure that the Cal Advocates auditor is able to access the SAP system,” “[a]n afterhours contact to resolve SAP issues if such a contact exists for SoCalGas employees or auditors,” and “[a]ny other SAP resources available to SoCalGas employees or auditors.”]; see also Contempt Motion, Exh. 2 (requesting,

all financial transactions made by SoCalGas.⁹ It captures a wide variety of transactions, including payments to contractors and other third parties, worker compensation payments, and individual employee reimbursements.¹⁰ The database currently references and contains information relating to approximately 2,300 unique vendors of SoCalGas.¹¹ The database also has line item records and attachments for payments made.¹² This means a user can often access, for example, a record of the corresponding invoice for a payment, which may include the vendor’s description of the services provided and other narrative information about the work they performed.¹³ For example, invoices for an outside law firm may include descriptions of the legal work it performed for SoCalGas.¹⁴ With respect to consulting firms that aid SoCalGas in exercising its political rights, the invoices may include the name of the consultant as well as descriptions of its sensitive political work done on behalf of SoCalGas.¹⁵ All combined, SoCalGas’s SAP system contains millions of accounting records.¹⁶

B. After Being Served With the Subpoena, SoCalGas Took Immediate Action to Confer with Cal Advocates On Potential Ways to Provide Responsive Data As Promptly As Practicable

1. SoCalGas Initially Focused on Facilitating Remote Access, as Cal Advocates Instructed, and to Provide Data to Cal Advocates as Promptly as Practicable.

SoCalGas met and conferred with Cal Advocates the day after being served with the Subpoena, on May 6, 2020.¹⁷ In advance of the meet and confer, SoCalGas carefully reviewed the Subpoena, as well as the email from Traci Bone, Cal Advocates’ counsel, that transmitted the

among other things, “[r]emote access to the SoCalGas SAP system to a Cal Advocates auditor no later than May 8, and sooner if possible.”]

⁹ Attachment A: Declaration of Dennis Enrique in Support of Motion to Quash [“Enrique Decl. ISO Mot. to Quash”], at ¶ 4. Some of the information covered by the Subpoena does not reside on the SAP system. In certain instances, the documentation (*i.e.*, invoices) underlying certain transactions do not reside in SAP, although the transactions are recorded in SAP. Should Cal Advocates require access to such documentation, SoCalGas will agree to provide hard copies of that information, assuming it is not protected by SoCalGas’s First Amendment rights, attorney-client privilege, or attorney work product privilege.

¹⁰ *Id.*

¹¹ Declaration of Dennis Enrique [“Enrique Decl.”] ¶ 6.

¹² Enrique Decl. ISO Mot. to Quash ¶ 6.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Declaration of Kelly Contratto [“Contratto Decl.”], at ¶ 9.

¹⁷ Wilson Decl., Exh. B.

Subpoena. While the Subpoena on its face demanded “both on-site and remote access” to SoCalGas’ SAP accounting system, Ms. Bone’s accompanying email instructed that Cal Advocates preferred remote access.¹⁸ Relying on Ms. Bone’s explicit instruction, SoCalGas prioritized its efforts on identifying potential remote access solutions, as opposed to on-site access.¹⁹

During the May 6 meet and confer, SoCalGas offered three options to furnish Cal Advocates with remote access to data.²⁰ The first option was to provide the information in a fashion similar to what SoCalGas did for Cal Advocates in connection with a prior General Rate Case: Cal Advocates would first identify the specific cost centers it wished to review, and then SoCalGas would download, copy, and transmit to Cal Advocates data in the SAP system from those cost centers. (This is known as “copy-access.”) Cal Advocates initially declined this option because it did not know which specific cost centers it sought to review.²¹

SoCalGas also offered Cal Advocates a second form of copy-access: SoCalGas could download data from *all* of its cost centers within SAP and transmit the same to Cal Advocates.²² Although it did not know how long this process would take, SoCalGas was willing to investigate and report back.²³ Cal Advocates ultimately declined this option.²⁴

SoCalGas proposed Cal Advocates yet another option: SoCalGas could investigate providing Cal Advocates with “read-only” access to SAP, whereby it could remotely log into the database and access information in the database directly, but would not be able to add or alter any information.²⁵ SoCalGas cautioned that read-only access had been created and granted for

¹⁸ See Wilson Decl., Exh. A [“If remote access is not available, [provide] the date and location for a site visit so that the auditor can access the SAP system”]. Further, before serving the Subpoena, Cal Advocates served Data Request 14 (DR-14), also seeking access to SoCalGas’s SAP system. See Contempt Motion, Exh. 2. DR-14 similarly prioritized remote access. *Id.*, Question 1 [“If remote access is not possible, identify a time and place where the auditor may access the SoCalGas SAP system”].

¹⁹ For this reason, Cal Advocates’ allegation that SoCalGas “unilaterally determin[ed]” that on-site access was not appropriate, (Contempt Motion at 5), is false. Indeed, during the May 6, 2020 meet and confer, the parties discussed and “seemed to agree” that the “restrictions due to coronavirus” “made physical access more difficult.” Wilson Decl., Exh. B, at 1-2. On-site access therefore would have been difficult to secure and potentially hazardous from a public health standpoint.

²⁰ Wilson Decl., Exh. B, at 1.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Wilson Decl., Exh. C, at 1.

²⁵ *Id.*, Exh. B, at 1.

only one other third party in the company's recent past.²⁶ Further, even in that one instance, the circumstances were materially different because it involved an auditor retained by Sempra Energy, not SoCalGas, and the auditor executed a non-disclosure agreement.

During that meet and confer, the parties also discussed the nature of remote SAP access enjoyed by SoCalGas's accounting personnel.²⁷ Cal Advocates asked whether these employees had remote access to the SAP system.²⁸ If they did, Cal Advocates posited, it should be fairly straightforward and quick for the company to give Cal Advocates the same access.²⁹ But SoCalGas explained that the type of access Cal Advocates was seeking (read-only) is not equivalent to the access which company employees have (live access).³⁰ With live access, employees can read information in SAP *and* add to and change the information. Providing live access to Cal Advocates' auditor would therefore pose unacceptable risks to the integrity of data contained in the SAP system.

Given the unprecedented scope and nature of Cal Advocates' access demand, SoCalGas committed to investigate, report back, and confirm whether such access could in fact be created, and how long that might take.³¹ In light of this, Cal Advocates agreed to extend the Subpoena compliance date to May 13, 2020 so that SoCalGas could investigate the feasibility of providing remote read-only access.³²

2. SoCalGas Promptly Complied with Cal Advocates' Request for Copy-Access to Data In the SAP System, and Produced Data in Response to the Subpoena

On May 8, 2020, as SoCalGas was setting out to investigate an effective way to provide Cal Advocates with read-only access to the entire SAP system, Cal Advocates reversed its position stated two days earlier and requested fixed database copies of SAP data for eleven individual accounts.³³ In response to this request, SoCalGas produced multiple fixed data accounting reports in copy-access form to Cal Advocates on May 20, 2020.³⁴

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at 1-2.

³² *Id.* at 2.

³³ Wilson Decl., Exh. C, at 1.

³⁴ Wilson Decl., Exh. D; Enrique Decl. ¶ 8.

3. SoCalGas Notified Cal Advocates of Its Objections to the Subpoena

The parties held their second meet and confer on the Subpoena on May 8, 2020. In advance of the meet and confer, Cal Advocates notified SoCalGas that it expected and demanded access to accounts for 100% shareholder-funded activities, including political activities that are protected by SoCalGas's First Amendment rights.³⁵ Upon learning this, SoCalGas immediately raised its concern that Cal Advocates' demand violates its First Amendment rights to association, free speech, and to petition the government—the very subject of its appeal of an ALJ ruling that is pending before the full Commission.³⁶ During the meet and confer, SoCalGas notified Cal Advocates that it intended to create a way to provide SAP access “without waiving issues it has on appeal related to First Amendment protections conferred on its fully shareholder-funded contracts.”³⁷

In the meet and confer process, Cal Advocates also conceded that it should not have access to SoCalGas's privileged materials. On May 12, 2020, counsel for Cal Advocates stated unequivocally and unqualifiedly that, “*SoCalGas need not provide access to law firm invoices, which could contain privileged information . . .*”³⁸ In that email, Cal Advocates also extended the date by which it requested SoCalGas provide remote access to May 19, 2020.³⁹

4. SoCalGas Repeatedly Explained to Cal Advocates that It Needed Additional Time to Create A Technical Solution to Shield Its Privileged and Constitutionally Protected Information From Disclosure

Throughout its process of responding to the Subpoena, SoCalGas has forthrightly and repeatedly informed Cal Advocates exactly why it needed additional time to respond to the

³⁵ Wilson Decl., Exh. C, at 1 [seeking “all accounts that are 100% shareholder funded”].

³⁶ Wilson Decl., Exh. E, at 1.

³⁷ *Id.*

³⁸ Wilson Decl., Exh. F, at 1 (emphasis added). Despite this statement, Cal Advocates inexplicably takes issue with the fact that SoCalGas's customized read-only access solution will prevent Cal Advocates from viewing on SAP invoices from the company's outside law firms containing descriptions that would reveal sensitive attorney-client privilege and attorney work product material. See Contempt Motion, Exh. 4 [Declaration of Stephen Castello] ¶ 13 (acknowledging that although Cal Advocates “had no desire to review any privileged information in the SAP database,” it objected to the notion that “it could only review SoCalGas' SAP database once such material was ‘walled off’”). SoCalGas further notes that the identity of the law firms that SoCalGas uses as well as the amount spent with each law firm is contained in its General Order 77 report, and is therefore a matter of public record. However, information subject to the attorney client privilege and work product are not included in the General Order 77 report.

³⁹ *Id.*

Subpoena: It was developing a technical software solution to restrict Cal Advocates from accessing its protected and privileged material in the SAP system.⁴⁰

As it designed, developed, and implemented its software solution, SoCalGas kept Cal Advocates informed of its work every step of the way. For example, during the May 8, 2020 meet and confer, SoCalGas notified Cal Advocates that it was “still determining” how to provide SAP access “without waiving” First Amendment protections in certain documents, and thus it needed “more time” for its IT professionals to do the necessary “security work.”⁴¹ Further, in a letter dated May 18, 2020, SoCalGas told Cal Advocates that a “special program will be written which will prevent access to attorney-client information and 1st Amendment protected information,” and stated that it needed until May 29, 2020 to implement its software solution and provide remote access to Cal Advocates.⁴² SoCalGas reiterated this intention during a meet and confer also held on May 18, 2020.⁴³

Moreover, SoCalGas matched its words with deeds. It invested substantial resources and hours to accomplish precisely what it promised.⁴⁴ The company assigned at least nine employees to design, build, test, and implement the custom software solution for Cal Advocates.⁴⁵ This team consisted of a software development manager, two technical leads, one programmer, at least two business unit personnel, and three individuals from accounting and finance, who spent over three hundred hours building, testing, and completing the customized access solution.⁴⁶ Notably, these individuals did not stop working on May 19, 2020, the date on which SoCalGas initially filed its Motion to Quash. Rather, they persisted in their efforts until May 29, 2020, when they completed their project and offered Cal Advocates its customized SAP access.⁴⁷

⁴⁰ For this reason, Cal Advocates’ allegation that SoCalGas employed pretext to forestall responding to the Subpoena until it had completed preparing its Motion to Quash is speculative and simply incorrect. Contempt Motion at 18 [SoCalGas made a “calculated decision not to comply for as long as possible by engaging in numerous meet and confers to defer compliance” so it could file an “untimely Motion to Quash”].

⁴¹ Wilson Decl., Exh. E, at 1.

⁴² Wilson Decl., Exh. G, at 2.

⁴³ Attachment B: Declaration of Elliott Henry in Support of Motion to Quash ¶ 13.

⁴⁴ Contratto Decl. ¶¶ 5-6.

⁴⁵ *Id.*

⁴⁶ *Id.* ¶¶ 6-8; Enrique Decl. ¶¶ 4-7.

⁴⁷ Contratto Decl. ¶¶ 6-8; Enrique Decl. ¶¶ 4-7.

5. With the Software Solution in Place, SoCalGas Has Been Ready Since May 29, 2020 to Provide Access to Approximately 96% of the Data Accessible In the SAP System

The software solution implemented by SoCalGas will give Cal Advocates unfettered read-access to the entirety of SoCalGas's SAP system, except for the records of specified vendors which would reveal materials protected by the First Amendment, the attorney-client privilege, or the attorney work product doctrine. Out of the approximately 2,300 SoCalGas vendors which populate SAP, SoCalGas excluded just 86 vendors, consisting of outside law firms and 100% shareholder-funded consultants that aid SoCalGas in exercising its political rights.⁴⁸ Accordingly, SoCalGas is prepared to provide unrestricted access to approximately 96% of all the vendors and their information residing within the SAP system.

6. Cal Advocates Proposed and Offered to Enter into a Non-Disclosure Agreement It Now Refuses to Sign

Because of the vast amount of accounting information (millions of records) contained in SoCalGas's SAP system,⁴⁹ it is impossible, as discussed in greater detail below, to isolate and pre-mark confidential information on the SAP system as before it is produced via remote read-only access. Given this difficulty, SoCalGas was relieved when Cal Advocates proposed to enter into a non-disclosure agreement with SoCalGas to protect the confidentiality of accounting information contained in that system.⁵⁰ Since then, Cal Advocates has entirely reversed its position on this issue. Indeed, had Cal Advocates executed the non-disclosure agreement it represented it would sign, it would have had access to SoCalGas's SAP system a month ago.

In a normal document production, a party can review and mark the responsive documents for confidentiality before production pursuant to Commission General Order ("GO") 66-D. Here, however, Cal Advocates seeks access to all of SoCalGas books and records in its SAP system. The SAP system contains millions of records.⁵¹ Further, the SAP system cannot be marked for confidentiality as is required by GO 66-D section 3.2(a).⁵² Thus, absent a non-disclosure

⁴⁸ Enrique Decl. ¶ 6.

⁴⁹ Contratto Decl. ¶ 9.

⁵⁰ To be clear, the non-disclosure agreement would not permit Cal Advocates to examine SoCalGas's privileged and First Amendment-protected material on a confidential basis.

⁵¹ Contratto Decl. ¶ 9.

⁵² GO 66-D, Section 3.2(a): "If confidential treatment is sought for any portion of information, the information submitter must designate each page, section, or field, or any portion thereof, as confidential. If only a certain portion

agreement, it is impossible for SoCalGas to protect its confidential materials as prescribed by GO 66-D. Further, it is well recognized that a non-disclosure agreement is the right way to protect vast databases.⁵³

Cal Advocates recognized early on that special arrangements were necessary to protect the confidentiality of the vast amount of sensitive information in the SAP system. This issue was first discussed during the first meet and confer call the parties held on May 6, 2020. This is recounted in SoCalGas's May 7, 2020 confirming letter (the accuracy of which Cal Advocates has never disputed):

Regarding confidential information, you [Cal Advocates] agreed that SoCalGas could review any outputs you desired to use for confidentiality, and that such items would be held securely and branded as confidential to prevent any public release via a CPRA request or any similar requirement to make public records in Cal Advocates' possession.⁵⁴

On May 12, 2020, Cal Advocates' counsel expressly represented that Cal Advocates would execute a non-disclosure agreement ("NDA") for these purposes:

As we have discussed previously, for the documents that the auditor seeks to retain copies of, *Cal Advocates can execute a non-disclosure agreement (NDA)* that permits SoCalGas to review and mark documents as confidential prior to public disclosure, provided that it does not limit Cal Advocates' rights to seek a Commission determination to de-designate information it concludes is not confidential. *Please provide a draft NDA for Cal Advocates' review and approval.*⁵⁵

Further, on May 18, 2020, Cal Advocates' counsel reiterated her offer and support for an NDA. In response to a question raised by SoCalGas regarding the potential confidentiality of certain accounting records found in SAP, Ms. Bone asked:

What kind of confidentiality issues are raised in the accounting information that you would be providing us, and *can't this be addressed by the NDA we have discussed . . .?*⁵⁶

of information is claimed to be confidential, then only that portion rather than the entire submission should be designated as confidential."

⁵³ See *The Sedona Conference Database Principles Addressing the Preservation and Production of Databases and Database Information in Civil Litigation*, THE SEDONA CONFERENCE JOURNAL (Vol. XV 2014), at 194 ["the requesting party usually must sign stringent confidentiality agreements to prevent the inadvertent disclosure of any proprietary information (relevant or irrelevant) that the requesting party may see when accessing the database."].

⁵⁴ Wilson Decl., Exh. B, at 2.

⁵⁵ *Id.*, Exh. F, at 1 (emphasis added).

⁵⁶ *Id.*, Exh. H, at 1 (emphasis added).

Relying on these representations, SoCalGas drafted the NDA and forwarded it to Cal Advocates on May 18, 2020.⁵⁷ It reiterated its request for Cal Advocates to sign the NDA on May 28, 2020, and it sent a version containing a minor revision on May 29, 2020.⁵⁸

On May 29, 2020, after SoCalGas had completed its customized software to enable Cal Advocates to gain SAP access, SoCalGas advised that as soon as Cal Advocates executed the NDA, it would provide Cal Advocates with all of the necessary credentials to log on and that Cal Advocates' access would go live.⁵⁹ Cal Advocates did not respond to this email. In fact, since SoCalGas filed its Motion to Quash, Cal Advocates has cancelled all meet and confers related to the Subpoena.⁶⁰

In its June 1, 2020 response to the Motion to Quash, SoCalGas learned of Cal Advocates' about-face on the NDA and its purported reasons why. In the response, Cal Advocates states, "While Cal Advocates had previously discussed signing a Non-Disclosure Agreement (NDA) with SoCalGas in order to speed its release of information, such an NDA is unnecessary given the statutory protections provided and Cal Advocates no longer proposes to sign one given that the purpose of the NDA was defeated by SoCalGas' May 22, 2020 Substitute Motion to Quash."⁶¹ Cal Advocates stated an identical rationale in the Contempt Motion.⁶² Cal Advocates has not further explained why it contends that the purpose of the NDA was defeated by the Motion to Quash nor has it denied that there is sensitive confidential information in SoCalGas's system. The Motion to Quash did not eliminate the highly unusual situation posed by the Subpoena, which involves access to millions of records some of which contain confidential information, nor did it resolve that, absent an NDA, SoCalGas could not comply with the requirements of GO 66-D necessary to preserve the confidentiality of the information contained in the database.

⁵⁷ *Id.*, Exh. I.

⁵⁸ *Id.*, Exhs. J, K.

⁵⁹ *Id.*, Exh L.

⁶⁰ *Id.* Exh. M-O.

⁶¹ Attachment B: Cal Advocates' Response to Motion to Quash (June 1, 2020), at 38 n. 131.

⁶² Contempt Motion at 23 n. 84.

C. Procedural History

1. SoCalGas's Pending Appeal Of An ALJ's Ruling That Erroneously Permits Access to Information Protected By the First Amendment

Because the SAP system contains information protected under the First Amendment, the Subpoena raises the same constitutional issues present in an appeal filed by SoCalGas that is pending before the full Commission. That appeal also involves Cal Advocates' efforts to obtain information on SoCalGas's 100% shareholder-funded political activities.

On August 13, 2019, Cal Advocates served SoCalGas with a data request seeking "all contracts (and contract amendments) covered by the WOA which created the BALANCED ENERGY IO."⁶³ 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 sections 309.5 and 314. On October 7, 2019, Cal Advocates moved to compel production of the 100% shareholder-funded contracts. In opposition, SoCalGas argued that this request could have a chilling effect on SoCalGas's First Amendment rights.⁶⁴ 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.⁶⁵ On November 4, 2019, SoCalGas filed an Emergency Motion to Stay the ALJ Ruling. But with no ruling on that motion and facing significant potential fines of up to \$100,000 a day, SoCalGas produced under protest the 100% shareholder-funded contracts at issue on November 5, 2019 and reserved its rights to appeal the decision.⁶⁶

On December 2, 2019, SoCalGas filed a Motion for Reconsideration/Appeal to the Full Commission Regarding Administrative Law Judge's Ruling in the Discovery Dispute Between Public Advocates Office and Southern California Gas Company, October 7, 2019 (Not in a Proceeding) ("Motion for Reconsideration/Appeal").⁶⁷ There, SoCalGas explained why the 100% shareholder-funded contracts are entitled to First Amendment protection, and that Cal

⁶³ Attachment C: Mot. to Compel Responses from Southern California Gas Company to Question 8 of Data Request CalAdvocates-SC-SCG-2019-05 (Not in a Proceeding) (Oct. 7, 2019) at 2, 6.

⁶⁴ Attachment D: Declaration of Elliott Henry in Support of Motion to Quash, Exh. K.

⁶⁵ *Id.*, Exh. L.

⁶⁶ *Id.*, Exh. M at 8.

⁶⁷ *Id.*

Advocates failed to meet its evidentiary burden demonstrating that it had a compelling government interest in requesting the contracts, and that its request was narrowly tailored to achieve that interest.⁶⁸ As of the date of this Response, the Motion for Reconsideration/Appeal has been pending before the Commission for over six months.

2. SoCalGas's Motion to Quash

On May 19, 2020, SoCalGas filed its Motion to Quash.⁶⁹ There, SoCalGas sought an order quashing the portion of the Subpoena that would permit access to SoCalGas's material protected from disclosure under the attorney-client privilege and attorney work product doctrine, and an extension of the compliance deadline for the Subpoena until May 29, 2020 so that SoCalGas could complete a software solution necessary to exclude those protected materials from Cal Advocates' access.⁷⁰ The Motion also sought a stay of the Subpoena with respect to Cal Advocates' access to information and documents for SoCalGas's 100% shareholder-funded activities that are protected by the First Amendment, such as those related to its advocacy for natural gas, renewable natural gas, and green gas as a part of the solution to achieving the State's decarbonization goals, again until May 29, 2020 so that SoCalGas could implement its software solution.⁷¹ (As noted above, SoCalGas completed that software solution as promised on May 29, 2020.)

III. ARGUMENT

The Contempt Motion should be denied for several reasons.

First, the motion rests on a fundamentally false premise: That SoCalGas should be punished for exercising its rights to shield from Cal Advocates its material protected from compelled disclosure under the attorney-client privilege, the attorney work product doctrine, and the First Amendment. Cal Advocates' authority to inspect SoCalGas's books and records is broad, but not limitless; rather, its authority is limited by the United States and California Constitution, as well as statutes providing for the attorney-client privilege and the attorney work

⁶⁸ *Id.* at 10-25.

⁶⁹ On May 22, 2020, SoCalGas filed a substitute version of its Motion to Quash. That version is the operative one filed before the ALJ.

⁷⁰ *Id.* at 3.

⁷¹ *Id.* at 3-4.

product doctrine. The Contempt Motion improperly seeks to punish SoCalGas for asserting those rights.

Second, the motion is premature and should not be considered. On May 19, 2020, SoCalGas timely filed a Motion to Quash the Subpoena, and that motion is still pending. Any consideration of contempt or penalties associated with SoCalGas's purported disobedience of the Subpoena must be stayed until the issues presented in the Motion to Quash are fully adjudicated.

Third, if this motion is to be entertained, due process guaranteed by the United States and California Constitutions, applicable case law, and Commission precedent requires that the Commission (1) first recategorize this as an adjudicatory proceeding, and (2) provide SoCalGas the due process required for such proceedings, including among other things an evidentiary hearing on issues of disputed material fact.

Fourth, the Contempt Motion fails on the merits. Cal Advocates comes nowhere close to proving beyond a reasonable doubt that SoCalGas should be found in contempt. The full record—much of which is omitted from the Contempt Motion—demonstrates SoCalGas's extensive efforts to comply with the Subpoena. SoCalGas undertook great effort to implement a customized software solution to provide Cal Advocates with unfettered access to approximately 96% of the data contained in the SAP system, in a way that shields from Cal Advocates' view SoCalGas's privileged and constitutionally protected information. SoCalGas completed the customized software solution on May 29, 2020—just three and half weeks after service of the subpoena. The only thing standing in the way of Cal Advocates' access to the database is its mystifying refusal to sign an NDA that it itself proposed.

For similar reasons, SoCalGas has not violated Rule 1.1 of the Commission's Rules of Practice and Procedure. The underlying premise of Cal Advocates' argument on Rule 1.1 is that SoCalGas's efforts to defend its rights under the First Amendment, the attorney-client privilege, and the attorney work product doctrine—while taking steps to provide Cal Advocates with access to the vast majority of data in its database as required by the Subpoena—constitutes a Rule 1.1 violation. But while SoCalGas acknowledges Cal Advocates' generally broad authority to inspect its records, applicable law provides that Cal Advocates' inspection authority simply does not extend to SoCalGas's privileged and First Amendment-protected material. SoCalGas has not violated Rule 1.1 by asserting its legal rights.

Fifth, in asserting a litany of additional inappropriate discovery demands in the last two pages of its Contempt Motion,⁷² Cal Advocates seeks to deny SoCalGas its due process rights guaranteed by the California Constitution. Article XII, Section 2 of the California Constitution provides that the Commission’s procedures must comply with due process. Granting these demands—asserted in passing at the end of a Contempt Motion, not in a data request or validly issued subpoena—would be procedurally improper and would eviscerate SoCalGas’s due process rights to object to those demands and have them litigated.

Essentially, Cal Advocates seeks to leverage the Commission’s contempt powers to “punish” SoCalGas for its supposed “defiance” in asserting its privilege and constitutional rights, and for pursuing policy goals regarding the future of natural gas with which Cal Advocates disagrees. That is highly improper. If such an approach is endorsed by the Commission, it will eviscerate SoCalGas’s constitutional rights and important privileges. The Contempt Motion should be denied.

A. The Fundamental Premise Underlying the Contempt Motion—That Cal Advocates Has Unlimited Authority to Inspect SoCalGas’s Books and Records—Is False and Inconsistent With the Law

The Contempt Motion relies on the following fundamental premise: In its view, Cal Advocates’ authority to inspect SoCalGas’s books and records is unbounded by any other law or constitutional provision, and so SoCalGas’s efforts to preserve its rights under the attorney-client privilege, the attorney work product doctrine, and the First Amendment constitute grounds for contempt and should be met with millions of dollars in fines. Not only is this premise wrong, Cal Advocates’ attempt to punish SoCalGas for exercising its well-established constitutional and statutory rights is outrageous.

More than 30 years ago, the California Supreme Court admonished the Commission that “[a]lthough [it] is granted broad powers under the [California] Constitution, no provision exempts it from complying with the statutory attorney-client privilege.”⁷³ It further held that “the commission’s powers pursuant to the state

⁷² Contempt Motion at 23-24.

⁷³ *S. Cal. Gas. Co. v. Pub. Util. Com.* (1990) 50 Cal.3d 31, 38-39.

constitution . . . are subject to the statutory limitation of the attorney-client privilege.”⁷⁴ By claiming that SoCalGas has shown “willful disregard” of the Subpoena by shielding its privileged material, Cal Advocates is willful disregarding binding California Supreme Court precedent and seeks to punish SoCalGas for asserting its rights under that precedent.

Further, longstanding United States and California Supreme Court precedent guarantees to SoCalGas the “right to associate for the purpose of engaging in those activities protected by the First Amendment.”⁷⁵ Well-established precedent also provides that demands for the production of materials furthering political association and expression encroach on constitutionally protected activity,⁷⁶ and that organizations cannot be forced to disclose “strategy and messages” that advance a certain political viewpoint, position, or belief, because those organizations have a right to associate and exchange such ideas in private.⁷⁷ Ninth Circuit law also provides that, to compel the disclosure of information arguably protected under the First Amendment, the government must “demonstrate that the information sought” through the discovery is “rationally related to a compelling government interest,” and the “least restrictive means of obtaining the desired information.”⁷⁸ Again, Cal Advocates seeks to punish SoCalGas for asserting these fundamental protections whose authority it chooses to ignore. This effort should be rejected out of hand.

⁷⁴ *Id.*

⁷⁵ *Roberts v. U.S. Jaycees* (1984) 468 U.S. 609, 618; see also *Golden Gateway Center v. Golden Gateway Tenants Assn.* (2001) 26 Cal.4th 1013, 1019 [given its “more definitive and inclusive” language, the California Constitution’s free-speech clause is interpreted even “more expansive[ly]” than the First Amendment, citation omitted]; *NAACP v. Alabama*, 357 U.S. 449, 460 [it is “beyond debate” that the freedom to engage with others to advance “beliefs and ideas is an inseparable aspect of the ‘liberty’” protected by the Constitution.]; *Buckley v. Valeo*, 424 U.S. 1, 14 [the First Amendment constitutes a “profound national commitment” to the idea that debating public issues “should be uninhibited, robust, and wide-open.” (quoting *New York Times v. Sullivan* (1964) 376 U.S. 254, 270)]; *Governor Gray Davis Committee v. Am. Taxpayers Alliance* (2002) 102 Cal.App.4th 449, 464 [the right to free association is “fundamental”].

⁷⁶ See *Britt v. Super. Ct.* (1978) 20 Cal.3d 844, 861 (the forced “revelation of . . . details of [an] association’s finances and contributions” is far more detrimental to First Amendment interests than the compelled disclosure of “organizational affiliations which ha[d] routinely been struck down” before.); see also *In re GlaxoSmithKline plc* (Minn. 2007) 732 N.W.2d 257, 267-269 [associational freedom protects an organization’s external interactions and internal communications].

⁷⁷ *Perry v. Schwarzenegger* (9th Cir. 2010) 591 F.3d 1147, 1162-1163; see *AFL-CIO v. FEC* (D.C. Cir. 2003) 333 F.3d 168, 170, 177-178 [substantial First Amendment interests implicated by forcing release of “political groups’ strategic documents and other internal materials”].

⁷⁸ *Perry, supra*, 591 F.3d at 1161 (citation omitted).

B. The Contempt Motion Is Premature and Should Not be Decided Before SoCalGas’s Motion to Quash the Subpoena

Cal Advocates’ Contempt Motion is premature and thus should not be considered. Here, Cal Advocates seeks an order finding SoCalGas in contempt (and a violation of Rule 1.1 of the Commission’s Rules of Practice and Procedure) for its purported disobedience of the Subpoena.⁷⁹ But the question whether the Subpoena validly orders access to SoCalGas’s privileged and constitutionally protected information is the subject of SoCalGas’s Motion to Quash, which was originally filed on May 19, 2020—that is, more than three weeks before Cal Advocates filed this Contempt Motion. The Motion to Quash is the proper procedure to challenge the Subpoena,⁸⁰ and SoCalGas is entitled to seek neutral adjudication of the challenged portion of the Subpoena before penalties are assessed for non-compliance.⁸¹ Accordingly, the Contempt Motion puts the proverbial cart before the horse, and consideration of this Motion should, at the very least, be stayed until the issues presented in SoCalGas’s Motion to Quash are fully litigated.⁸² Indeed, Cal Advocates acknowledges that “[i]f the Commission desires to first

⁷⁹ Contempt Motion at 1.

⁸⁰ The Subpoena cites as legal authority (among other statutes) Section 311 of the Public Utilities Code, which permits the Executive Director to “issue subpoenas for the . . . production of papers, waybills, books, accounts, [and] documents . . . in any inquiry, investigation, hearing, or proceeding in any part of the state.” Contempt Motion, Exh. 3, at 1. Neither the Commission’s Rules of Practice and Procedure nor the Public Utilities Code expressly address motions to quash such a subpoena, and in such circumstances the Commission has relied on the Code of Civil Procedure as instructive authority. *Pac-W. Telecomm, Inc. (U5266C) v. Comcast Phone of California, LLC (U5698C)* (Feb. 12, 2015), D.15-02-011, 2015 WL 781078, at *1 (“Particularly with respect to procedural matters that are not the subject of specific rules under the Public Utilities Code, the Commission has historically looked to the Civil Code and/or the Code of Civil Procedure for guidance.”).

Section 1987.1 of the California Code of Civil Procedure provides that, “upon motion reasonably made” by any party, a court may issue an “order quashing the subpoena entirely, modifying it, or directing compliance with it upon those terms or conditions as the court shall declare, including protective orders.” Motions to quash subpoenas have been granted where they encompass material protected under the attorney-client privilege, see *Bank of America, N.A. v. Super. Ct.* (2013) 212 Cal.App.4th 1076, 1102; the attorney work-product privilege, see *Aetna Casualty & Surety Co. v. Super. Ct.* (1984) 153 Cal.App.3d 467, 479; and for information protected by the First Amendment, see *Krinsky v. Doe 6* (2008) 159 Cal.App.4th 1154, 1180 [reversing order denying motion to quash subpoena requiring disclosure of identity of online user asserting First Amendment rights in his anonymity].

⁸¹ See, e.g., *Craib v. Bulmash* (1989) 49 Cal.3d 475, 482 [“the subpoenaed party must have the opportunity for judicial review before suffering any penalties for refusing to comply”]; *Patel v. City of Los Angeles* (9th Cir. 2013) 738 F.3d 1058, 1064 [“[t]he party subject to the demand must be afforded an opportunity to obtain judicial review of the reasonableness of the demand prior to suffering penalties for refusing to comply.” (citations omitted)]; see also *Donovan v. Lone Steer* (1984) 464 U.S. 408, 415 [a subpoenaed party may “question the reasonableness of the subpoena, before suffering any penalties for refusing to comply with it, by raising objections in an action in district court”].

⁸² See *Harris v. U.S.* (9th Cir. 1969) 413 F.2d 314, 315 [issuing a stay of compliance with a subpoena “until the merits of the subpoena can be tested.”].

issue rulings on SoCalGas’ Motion for Reconsideration and/or Motion to Quash prior to granting the sanctions Cal Advocates requests here, it may stay action on this Motion for Contempt until those rulings have issued.”⁸³

Cal Advocates tries to sidestep this issue by contending—without proof—that SoCalGas’s Motion to Quash was untimely filed.⁸⁴ Cal Advocates’ failure to identify any evidence on the timeliness issue is telling; there is none. SoCalGas timely asserted its objections to the Subpoena on privilege and First Amendment grounds, and filed its Motion to Quash on May 19, 2020, the final date to which Cal Advocates extended the compliance deadline for the Subpoena. Moreover, a court may grant a motion to quash served even *after* the date set for production.⁸⁵ The Motion to Quash was timely and should be decided on the merits—before consideration of the Contempt Motion.

C. If The Contempt Motion Is to Be Considered, Due Process Requires that Cal Advocates Seek and Obtain Recategorization of this Matter to an Adjudicatory Proceeding with an Evidentiary Hearing⁸⁶

The Contempt Motion is procedurally improper. Due process requires that the Commission recategorize this non-proceeding to be an adjudicatory proceeding under Rule 7 of the Commission’s Rules of Practice and Procedure, with among other things an evidentiary hearing. This matter has not been categorized as an adjudicatory matter, and this motion can be heard—if at all—only after Cal Advocates has obtained recategorization of this matter as an adjudicatory process.

Further, SoCalGas expressly demands that the Commission protect its rights to be heard prior to a determination of Cal Advocates’ contempt and Rule 1.1 allegations, and that the Commission afford SoCalGas all the of due process protections of an adjudicatory proceeding, including an evidentiary hearing. Any attempt to award contempt and Rule 1.1 sanctions in this “non-proceeding” would be a blatant violation of SoCalGas’s due process rights.

⁸³ Contempt Motion at 3 n.9.

⁸⁴ Contempt Motion at 4, 18.

⁸⁵ *Slagle v. Superior Ct.* (1989) 211 Cal. App. 3d 1309, 1312-1313.

⁸⁶ As explained below, Section III.D., the record here comes nowhere close to justifying a finding for contempt or a fine under Rule 1.1. Accordingly, SoCalGas has not sought to have this matter recategorized.

1. The Commission Cannot Impose Monetary Penalties or Sanctions Without Notice and a Hearing

Under the United States and California Constitutions, the government may not deprive a person of property without due process of law.⁸⁷ “An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”⁸⁸ Thus, as the California Supreme Court has held as applied to the Commission, “[d]ue process as to the [C]ommission’s ... action is provided by the requirement of adequate notice to a party affected and an opportunity to be heard before a valid order can be made.”⁸⁹ Further, as the Commission has recognized, “the United States Supreme Court has provided guidance and has stated that in an administrative law context, due process requires some type of notice and an opportunity to be heard.”⁹⁰

This due process requirement is triggered by the determination of monetary penalties or sanctions. As the Court of Appeal has recognized, an agency “cannot impose administrative penalties unless an administrative hearing is held if such a hearing is requested.”⁹¹ Further, the California Rules of Court require that “[s]anctions must not be imposed . . . except on noticed motion by the party seeking sanctions or on the court’s own motion after the court has provided

⁸⁷ U.S. CONST. amend. V; XIV; CALIF. CONST. § 7.

⁸⁸ *Pac. Gas & Elec. Co. v. Pub. Utilities Com.* (2015) 237 Cal.App.4th 812, 859 [“PG&E”] [citing *Mullane v. Central Hanover Tr. Co.* (1950) 339 U.S. 306, 314].

⁸⁹ *People v. Western Air Lines, Inc.* (1954) 42 Cal.2d 621, 632; see also *PG&E, supra*, 237 Cal. App. 4th at 859 [the PUC’s power to establish its own procedures is “subject, of course, to the constitutional obligation to satisfy due process[.]”].

⁹⁰ *Order Instituting Investigation & Ordering Pac. Gas & Elec. Co. to Appear & Show Cause Why It Should Not Be Sanctioned for Violations of Article 8 & Rule 1.1 of the Rules of Practice & Procedure & Pub. Utilities Code Sections 1701.2 & 1701.3.* (C.P.U.C. Apr. 26, 2018) No. D. 18-04-014, 2018 WL 2149032, at *7; see also 53 Cal. Jur. 3d, Public Utilities, § 95 [“The Public Utilities Commission, consistent with due process, public policy, and statutory requirements, must determine whether a proceeding requires a hearing.”].

⁹¹ *State ex rel. Dep’t of Pesticide Regulation v. Pet Food Express* (2008) 165 Cal. App. 4th 841, 852; see also *In re S. Pac. Trans. Co.* (Feb. 18, 1999) 85 CPUC 2d 117 [utility claimed “penalties were imposed in violation of SP’s right to due process without adequate notice or an opportunity to be heard...”]; *Annex British Cars, Inc. v. Parker-Rhodes* (1988) 198 Cal.App.3d 788, 793 [in context of court-issued sanctions, “it is basic that counsel must have the opportunity to be heard on the issue before sanctions can be imposed]; *In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 654 [“sanctions [for frivolous appeals] should be imposed rarely and only if the mandates for procedural due process are obeyed”]; *ibid.* [“[T]he rudiments of fair play include notice, an opportunity to respond, and a hearing.”].)

notice and an opportunity to be heard.”⁹² Citing to this rule, the Commission has refused to impose sanctions for violations not included in notice and hearing procedures.⁹³

Thus far, Cal Advocates’ investigation has been in a “non-proceeding.” SoCalGas currently lacks the very basic protections of the Commission’s Rules of Practice and Procedure.⁹⁴ SoCalGas has no right to even file briefs except at the ALJ’s discretion.⁹⁵ These procedures are insufficient to meet the demands of due process imposed by the United States Constitution, applicable law, and Commission precedent. Before the ALJ can entertain Cal Advocates’ motion, sufficient procedures complying with SoCalGas’s constitutional due process rights must be implemented.

2. Before Cal Advocates’ Motion Can Be Heard, This Non-Proceeding Matter Must Be Recategorized as Adjudicatory Under Rule 7

“A case where the Commission considers imposing monetary penalties is an adjudicatory matter.”⁹⁶ The Commission’s Rules of Practice and Procedure No. 1.3(a) defines “[a]djudicatory’ proceedings” as “enforcement investigations into possible violations of any provision of statutory law or order or rule of the Commission[.]” This encompasses Cal Advocates’ motion claiming that SoCalGas has violated the Subpoena, an “order” of the Commission, and should therefore be held in contempt, and that it violated Rule 1.1 of the Commission’s Rules and Procedures.

The Legislature has provided that the Commission’s powers to adjudicate contempt proceedings must be done “in the same manner and to the same extent as contempt is punished by courts of record.”⁹⁷ Findings of contempt are “quasi-criminal in nature, and therefore the procedural and evidentiary requirements are the most rigorous and exacting of all matters

⁹² Cal. Rules of Court 2.30(c).

⁹³ *Application of Pac. Gas & Elec. Co. Proposing Cost of Serv. & Rates for Gas Transmission & Storage Servs. for the Period of 2015-2017. (U39g) & Related Matter* (C.P.U.C. Nov. 20, 2014) No. D.13-12-012, 2014 WL 6791604, at *3 n. 2 [“[D]ue process restricts the Commission from imposing sanctions at this juncture for violations that were not noticed in the order to show cause.”] [citing to Cal. Rules of Court Rule 2.30(c)]; see also *ibid.* [“While the California Rules of Court do not govern, they are instructive.”].)

⁹⁴ See Attachment E [“[O]utside any formal proceeding, the Commission’s Rules of Practice and Procedure and filing requirements for formal proceedings do not directly apply.”].

⁹⁵ See *id.* [“No other documents [regarding discovery disputes in this matter] may be submitted for filing without the prior approval of ALJ [Regina] DeAngelis.”].

⁹⁶ *PG&E, supra*, 237 Cal.App.4th at 829 n. 9.

⁹⁷ Pub. Util. Code § 2113.

handled by the Commission.”⁹⁸ When sanctions or penalties are threatened, the Commission has recognized that due process requires it to provide notice and a hearing—by recategorizing investigations or proceedings as “adjudicatory” under Rule 7 and requiring a hearing.

The Commission examined this issue in *Order Instituting Investigation whether Pac. Gas & Elec. Co., So. Cal. Edison Co., San Diego Gas & Elec. Co., and their respective holding companies PG&E Corp., Edison Intl., and Sempra Energy, respondents, have violated relevant statutes and Commission decisions, and whether changes should be made to rules, orders, and conditions pertaining to respondents’ holding company systems*, No. D.01-05-0161 (May 14, 2001). There, the Commission recategorized the proceeding to the “ratesetting” category but acknowledged that “[w]e were and continue to be fully prepared to recategorize the proceeding as adjudicatory if and when we find probable cause to believe Respondents have violated the law and we opt to make final findings on such violations and settle on remedies.”⁹⁹ Similarly, relying on this decision in a proceeding considering sanctions on PG&E for violation of Public Utilities Code Section 851, General Order 69-C, Rule 1.1, and other Commission decisions, the Commission found it necessary to recategorize a proceeding as adjudicatory, as well as provide a more detailed specification of violations and evidence against PG&E, “in a manner that provides PG&E adequate notice and opportunity to be heard.”¹⁰⁰ Moreover, although the Commission at times assesses fines outside of an adjudicatory proceeding, the Commission recognized that even in a ratesetting proceeding “due process requires adequate notice and an opportunity to be heard” prior to fines being assessed – procedural requirements SoCalGas currently lacks in this “non-proceeding.”¹⁰¹

⁹⁸ *Order Instituting Investigation on the Commissions Own Motion into the Fatal Accident at the San Francisco Mun. Transportation Agency’s Mission Rock Station in the City & Cty. of San Francisco, on Dec. 1, 2012.*, No. D. 15-08-032, 2015 WL 5159105, at *5 (Aug. 27, 2015) [“SFMTA”].

⁹⁹ *Id.* at *6; see also *id.* at *7-8 [“At the end of the investigation, if we determine that one or more of the Respondents likely have violated the conditions imposed by our holding company decisions or other law, we will specify, in detail, the nature of those alleged violations, and the evidence supporting those charges. At that point, if we decide to proceed to determine finally whether such violations occurred, and whether Respondents should be held liable for such violations, we will recategorize the proceedings as adjudicatory—thus imposing an ex parte ban and affording Respondents the right to cross-examine witnesses—and proceed to make those determinations.”].)

¹⁰⁰ *In Re Application of Pac. Gas & Elec. Co.* (C.P.U.C. Sept. 20, 2001) No. D.01-06-043, 2001 WL 1287503.

¹⁰¹ See *In the Matter of the Application of Ilatanet, LLC for Authorization to Obtain A Certificate of Pub. Convenience & Necessity As A Tel. Corp. Pursuant to the Provisions of Pub. Utilities Code Section 1001* (C.P.U.C. Apr. 16, 2020) No. D.20-04-036, 2020 WL 1942753, at *11 [finding Ilatanet had been provided adequate due process where the Scoping Memo had provided sufficient notice of the possibility of fines, and the respondent had the opportunity to be heard in a merits brief, reply brief, and comments on the proposed decision].)

3. An Evidentiary Hearing Is Required Where, As Here, Material Factual Disputed Issues Exist

Consistent with the requirements of due process, a full evidentiary hearing is required to adjudicate the Contempt Motion.

Under the Code of Civil Procedure, civil contempt can be adjudicated only “[u]pon the answer and evidence taken.”¹⁰² Because Public Utilities Code Section 2113 authorizes the Commission the power to adjudicate contempt only “in the same manner and to the same extent as contempt is punished by courts of record,” the Legislature has therefore mandated that the Commission take evidence before contempt can be adjudicated. For contempt proceedings, when, as here, “virtually none of the facts involved in the alleged contempt have occurred in the judge’s presence, but have arisen entirely outside the courtroom . . . due process requires notice and hearing lest the alleged contemner be convicted ex parte.”¹⁰³ Second, evidentiary hearings are required when “there are material factual disputed issues.”¹⁰⁴ More specifically, the Commission has provided guidance that cross examination of witnesses was necessary to satisfy due process when “motive, intent, or credibility are at issue or there is a dispute over a past event.”¹⁰⁵

The Contempt Motion and this Response present several “material factual disputed issues” going to “motive, intent, or credibility.” As discussed extensively above, SoCalGas vehemently disputes the misleading factual record presented by Cal Advocates,¹⁰⁶ and cross examination is required to assess the credibility of Cal Advocates’ account of what transpired, including the cross-examination of Cal Advocates’ staff members Stephen Castello (who submitted a declaration in support of the Contempt Motion) and Alec Ward, who participated in the meet and confers involving these issues. Whether SoCalGas, absent a non-disclosure agreement, could protect the confidentiality of the millions of accounting records contained in its SAP database also presents material factual disputed issues. Further, SoCalGas’s intent in its efforts to respond to the Subpoena go to whether SoCalGas should be found in contempt of the

¹⁰² Cal. Civil Proc. Code § 1218(a).

¹⁰³ *Arthur v. Super. Ct.* (1965) 62 Cal.2d 404, 408-09.

¹⁰⁴ *In Re in Touch Commc'ns, Inc.* (C.P.U.C. May 27, 2004) No. 03-11-011, 2004 WL 1368185 [“The Commission concluded that ‘evidentiary hearings . . . are warranted only to the extent there are material factual disputed issues[.]’”] [citing D.95-07-054].)

¹⁰⁵ *In Re Verizon Commc'ns, Inc.* (C.P.U.C. Nov. 18, 2005) No. D.05-04-020, 2005 WL 3355225.

¹⁰⁶ Section II.A-B, *supra*.

subpoena, and whether fines or other penalties should be assessed, and an evidentiary hearing is required to assess that intent. As outlined below, disputed issues of fact are also present regarding Cal Advocates' contention that SoCalGas has violated Rule 1.1 of the Commission's Rules of Practice and Procedure.¹⁰⁷

The criteria to be applied by the Commission in assessing a penalty for any contempt finding or Rule 1.1 violation also present material factual disputed issues. For example, in considering a Rule 1.1 violation, "the question of intent to deceive . . . goes to the question of how much weight to assign to any penalty that may be assessed."¹⁰⁸ The Commission considers two general factors in setting fines: "(1) the severity of the offense and (2) the conduct of the utility," as well as "the financial resources of the utility, the totality of the circumstances in furtherance of the public interest, and the role of precedent."¹⁰⁹ An evidentiary hearing would be required to resolve disputed issues of fact between the parties on these issues.

Perhaps the best example of the process due to SoCalGas concerning the Contempt Motion is the very case Cal Advocates insists is most analogous, involving the San Francisco Metropolitan Transit Authority's ("SF MTA") withholding of documents responsive to a Commission subpoena under a claim of privacy.¹¹⁰ There, the Commission's Safety and Enforcement Division issued a subpoena outside of a proceeding, and in response to SF MTA's noncompliance with the subpoena, the Commission instituted an Order Instituting Investigation against SF MTA.¹¹¹ The Commission held a prehearing conference, and set forth a Scoping Memo and Ruling identifying specific issues for resolution.¹¹² That memo identified which rulings were legal and which required an evidentiary hearing; briefing was permitted on the legal issues, and an evidentiary hearing was held on the factual issues.¹¹³ After the evidentiary hearing, the parties filed concurrent post-hearing briefs and reply briefs, the record was reopened, and further briefing was submitted.¹¹⁴ Finally, the matter was submitted and a reasoned decision was issued.¹¹⁵ SF MTA was also permitted to file an appeal.¹¹⁶ All of this process was issued

¹⁰⁷ See Section III.D, *infra*.

¹⁰⁸ *SFMTA*, *supra*, 2015 WL 5159113, at *20 (citing D.01-08-019).

¹⁰⁹ *Id.* at *23 (citing D.98-12-075, mimeo at 34-39).

¹¹⁰ See generally *id.*

¹¹¹ *Id.*

¹¹² *Id.* at *1-2.

¹¹³ *Id.* at *2-3.

¹¹⁴ *Id.*

¹¹⁵ *Id.* at *4.

¹¹⁶ *Id.* at *26.

consistent with Commission Rules of Practice and Procedure Rules 7.1 [categorization], 7.2 [prehearing conference], 7.3 [scoping memo], 7.6 [categorization appeal rights]; Rule 15.5 [appeal of decision]; and Public Utilities Code section 1701.2.

To be clear, as explained above, the Contempt Motion is procedurally improper and can be dismissed for that reason. However, before any adjudication of the motion on the merits can be made, the Commission is required to ensure SoCalGas is provided its constitutionally mandated due process. To satisfy those requirements, the Commission should open an adjudicatory proceeding and hold evidentiary hearings on the issue of whether any contempt has taken place, and if so whether fines should be assessed similar to what it did in the SF MTA matter.

D. The Contempt Motion Fails On the Merits¹¹⁷

1. The Contempt Motion Fails to Prove Beyond a Reasonable Doubt that SoCalGas Should Be Found in Contempt

Section 2113 of the Public Utilities Code authorizes the Commission to punish as contempt noncompliance with a Commission “order, decision, rule, regulation, demand, or requirement . . . in the same manner and to the same extent as by contempt is punished by courts of record.”¹¹⁸ Findings of contempt are “quasi-criminal in nature, and therefore the procedural and evidentiary requirements are the most rigorous and exacting of all matters handled by the Commission.”¹¹⁹ SoCalGas is entitled to a presumption of innocence.¹²⁰ Because the contempt power is a court’s “ultimate weapon,” it must be used “with great prudence and caution.”¹²¹

To find SoCalGas in contempt, Cal Advocates must prove “beyond a reasonable doubt” that SoCalGas’s conduct was “willful in the sense that the conduct was inexcusable” or that SoCalGas “has an indifferent disregard of the duty to comply.”¹²² Here, the record not only falls far short of that standard; rather, it demonstrates that SoCalGas has taken extensive efforts to

¹¹⁷ As explained above, Section III.A-B, this Contempt Motion should be denied as premature, or if it is entertained at all, it can be considered only after Cal Advocates obtains a recategorization of the matter in which the merits of the Contempt Motion can be weighed within the confines of the constitutional process due SoCalGas. In an abundance of caution, however, SoCalGas includes here the preliminary arguments it presently intends to make if such a proceeding was convened, and reserves the right to assert additional arguments in such a proceeding.

¹¹⁸ Cal. Pub. Util. Code § 2113.

¹¹⁹ *SFMTA, supra*, 2015 WL 5159113, at *5.

¹²⁰ E.g., *Hustedt v. Workers’ Comp. Appeals Bd.* (1981) 30 Cal.3d 329, 347 n.15; *McCann v. Municipal Court* (1990) 221 Cal.App.3d 527, 537.

¹²¹ *In re Koehler* (2010) 181 Cal.App.4th 1153, 1171.

¹²² *SFMTA, supra*, 2015 WL 5159113, at *5.

comply with the Subpoena in a way that protects its privileged and constitutionally protected information.

a) SoCalGas’s Extensive Efforts to Comply with the Subpoena Without Waiving Its Important Privileges and Constitutional Protections Do Not Demonstrate Willful Disregard for the Subpoena

Since the Subpoena was issued, SoCalGas has taken the following steps to comply with the Subpoena in a manner that preserves its privileged and First Amendment-protected material. But SoCalGas’s ability to comply with the Subpoena has been frustrated by Cal Advocates’ refusal to much of SoCalGas’s efforts to provide access to its database.

SoCalGas’s Efforts To Comply With the Subpoena	Cal Advocates’ Response
SoCalGas proposed downloading data from all of its cost centers in the SAP system and transmitting that to Cal Advocates ¹²³	Declined ¹²⁴
SoCalGas developed and implemented a custom technical software solution to shield privileged and First Amendment-protected material from Cal Advocates’ view, which would allow it to access the vast majority of records in the SAP system ¹²⁵	Refused ¹²⁶
SoCalGas arranged for “read only” access to the SAP system and agreed to execute a non-disclosure agreement to address the confidentiality of material contained in the SAP system, as Cal Advocates proposed ¹²⁷	Refused, because Cal Advocates reversed its position on the non-disclosure agreement ¹²⁸
SoCalGas sought to continue to meet and confer about the parties’ disagreements about the Subpoena ¹²⁹	Canceled all scheduled meet and confers ¹³⁰

Further, at Cal Advocates’ request, SoCalGas allocated one of its employees to be available to Cal Advocates’ staff should it have any technical questions about using SoCalGas's SAP system.¹³¹ SoCalGas has also produced multiple fixed data accounting reports that Cal

¹²³ Wilson Decl., Exh. B.

¹²⁴ *Id.*, Exh. C.

¹²⁵ *Id.*, Exh. G, at 2; *id.*, Exh. L, at 1; Contratto Decl. ¶¶ 6-9; Enrique Decl. ¶¶ 4-7.

¹²⁶ See Cal Advocates’ Response to Motion to Quash, at 17-29; Contempt Motion at 9-10.

¹²⁷ Wilson Decl., Exhs. E-L.

¹²⁸ See Cal Advocates’ Response to Motion to Quash, at 38 n. 131; Contempt Motion at 9; see also *id.* at 23 n.84.

¹²⁹ Wilson Decl., Exhs. M-O.

¹³⁰ *Id.*

¹³¹ Wilson Decl., Exh. L at 1.

Advocates requested.¹³² The Contempt Motion overlook these significant efforts to provide Cal Advocates with as much access and support as SoCalGas could, as quickly as practicable.

Cal Advocates contends, however, that SoCalGas has showed a “willful disregard” for the Subpoena through purported “misrepresentations to Cal Advocates staff regarding its efforts to comply with” the Subpoena and its “programmatically exclusion of accounts related to law firms and vendors performing 100% shareholder activities.”¹³³ Cal Advocates fails to identify even one actual “misrepresentation” made to Cal Advocates. Perhaps this is unsurprising; not only did SoCalGas never misrepresent its efforts to comply with the Subpoena, it actually informed Cal Advocates of each step it took to comply with its plethora of requests related to the Subpoena.¹³⁴ Importantly, SoCalGas apprised Cal Advocates of the challenges it faced with providing the “real-time” access to its staff in the manner sought by Cal Advocates, as documented in contemporaneously prepared writings memorializing the parties’ meet and confer discussions.¹³⁵

b) SoCalGas’s Motion to Quash and Its Software Solution Shielding Its Privileged and Constitutionally Protected Information from Cal Advocates While That Motion Is Pending Do Not Demonstrate Willful Disregard of the Subpoena

Although SoCalGas acknowledges that Cal Advocates, as part of the Commission, has the statutory authority under the Public Utilities Code to inspect SoCalGas’s books and records, that authority is not absolute, as Cal Advocates contends. Rather, its inspection rights are subject to the restraints imposed by the United States and California Constitutions and other applicable law. SoCalGas’s rights under the attorney-client privilege, the attorney work product doctrine, and the First Amendment of the United States Constitution (and its California constitutional counterpart) impose restrictions on Cal Advocates’ rights to inspect SoCalGas’s books and records.¹³⁶ SoCalGas filed its Motion to Quash to enforce its rights under the attorney-client privilege, the attorney work product doctrine, and the First Amendment. Further, SoCalGas developed and implemented a custom software solution so that it could shield those materials from disclosure to Cal Advocates, but also provide Cal Advocates access to the undisputed

¹³² Wilson Decl., Exh. D.

¹³³ Contempt Motion at 8.

¹³⁴ See Section II.A-B, *supra*.

¹³⁵ *Id.*

¹³⁶ See Motion to Quash at 14-26.

material in its SAP system (assuming an appropriate non-disclosure agreement was executed) while the issues were being litigated.

Cal Advocates' argument that SoCalGas is willfully disregarding the Subpoena by not providing "immediate and unfettered" remote access to its SAP system, notwithstanding the pending Motion to Quash, defies common sense and the law.¹³⁷ By Cal Advocates' logic, SoCalGas must provide unfettered access to its SAP system now—including to its privileged and constitutionally protected information—and if the ALJ or a court later determines that SoCalGas should not have obtained that information, the information would be returned. That ignores the irreparable harm that would ensue from the disclosure of that information; once conveyed, there would be no way to cure the harm to SoCalGas's rights to confidential communications with its attorneys, and its First Amendment rights to association, free speech and to petition the government. Indeed, "once privileged matter has been disclosed there is no way to undo the harm which consists in the very disclosure. The attorney-client privilege 'deserves a particularly high degree of protection in this regard since it is a legislatively created privilege protecting important public policy interests, particularly the confidential relationship of attorney and client and their freedom to discuss matters in confidence.'"¹³⁸

¹³⁷ Contempt Motion at 9-10.

¹³⁸ *Korea Data Systems Co. v. Sup. Ct.* (1997) 51 Cal.App.4th 1513, 1516 (citations omitted); see also *Maness v. Meyers* (1975) 419 U.S. 449, 460 ["[w]hen a court during trial orders a witness to reveal information . . . [c]ompliance could cause irreparable injury because appellate courts cannot always 'unring the bell' once the information has been released."]; *In re Grand Jury Witness* (9th Cir. 1982) 695 F.2d 359, 362 [reversing contempt order with respect to attorney's failure to comply with subpoena duces tecum that sought, among other things, attorney time records describing the services performed the attorneys, retainer agreements, contracts, letters of agreement, and related correspondence]; *In re Navarro* (1979) 93 Cal.App.3d 325, 330-31 [attorney who refused to answer question inquiring into attorney-client privileged communication committed no contempt of court].

Cal Advocates tries to avoid SoCalGas's privilege objections by arguing in a footnote that SoCalGas must "provide a privilege log to support such assertions, which it has not done here." Contempt Motion at p. 10 n. 38. But waiver of the attorney-client privilege occurs only "when any holder of the privilege 'has disclosed a significant part of the communication or has consented to such disclosure made by anyone.'" *Mitchell v. Superior Court* (1984) 37 Cal. 3d 591, 601 [citing Evid. Code § 912]. A court "may not impose a waiver of the attorney-client privilege or work product doctrine as a sanction for failing to provide an adequate response to an inspection demand or an adequate privilege log"—and neither can this Commission. *Catalina Island Yacht Club v. Superior Court* (2015) 242 Cal. App. 4th 1116, 1127. As for Cal Advocates' suggestion that because legal protections exist to keep Cal Advocates from, in turn, disclosing SoCalGas's privileged information to third parties, SoCalGas's privileged information is somehow protected—disclosure to Cal Advocates threatens the very heart of the privilege, which is "the preservation of the confidential relationship between attorney and client"—not the "risk that parties seeking discovery may obtain information to which they are not entitled." *Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal. 4th 725, 740-41.

Cal Advocates contends that the *SFMTA* case supports its view that SoCalGas should be found in contempt for shielding its privileged and First Amendment-protected material from its view, but that case is clearly distinguishable on the facts.¹³⁹ There, the SF MTA responded to a Commission-issued subpoena demanding the production of documents related to a light rail train crash. Instead of moving to quash the subpoena, the SF MTA redacted certain documents on privacy grounds, and refused to produce the unredacted versions as required by the subpoena. Though SF MTA argued that the subpoenaed documents could properly be withheld, the Commission disagreed, and found SF MTA in contempt and in violation of Rule 1.1 for refusing to produce the requested documents for 14 months after the subpoena’s compliance date.¹⁴⁰

Here, by contrast, SoCalGas timely filed its Motion to Quash, properly seeking the Commission’s intervention to partially quash the Subpoena to exclude from its scope material protected from disclosure under the attorney-client privilege, the attorney work product doctrine, and the First Amendment. Further, it took steps to provide access to the remainder of the information in its SAP system as promptly as practicable after implementing a technical solution to exclude the modest amount of privileged and constitutionally protected information in the database. In doing so, SoCalGas did not “willfully disobey” the Subpoena as the SF MTA did by not challenging the Subpoena on the merits.

Cal Advocates also attempts to brush aside the First Amendment by suggesting that the Court of Appeal in *PG&E* somehow dismissed *all* constitutional claims that could be raised by regulated utilities (or those that may have been previously rejected by a lower-level tribunal or officer, such as an ALJ). Contempt Motion at p. 10, fn. 38. The court did no such thing. *PG&E* arose from false or misleading statements regarding pipeline safety made to the CPUC in the aftermath of the 2010 San Bruno pipeline explosion, and the language quoted by Cal Advocates—that PG&E could “not prevail in its attempt to repackage in constitutional wrapping the same intent-based arguments we have already rejected”—was a reference to the *Court of Appeal’s own* prior rejection of PG&E’s arguments that both Rule 1.1 and the Excessive Fines Clause contain an intent requirement. *PG&E*, at p. 865. The court said nothing about the First Amendment, and it certainly did not say—as Cal Advocates seems to suggest—that any and all constitutional arguments (or those previously rejected by a lower-level tribunal or officer) have been foreclosed in Commission proceedings. Any such holding would, of course, run afoul of section 1760 of the Public Utilities Code, as well as well-settled standards of review of constitutional and other legal arguments on appeal. That another regulated utility unsuccessfully raised arguments under a different provision of the Constitution in another proceeding against the Commission does not give Cal Advocates carte blanche to violate SoCalGas’s First Amendment rights.

¹³⁹ Contempt Motion at 10-12.

¹⁴⁰ *Id.* at *15.

c) *SoCalGas's Request that Cal Advocates Execute the Non-Disclosure Agreement It Committed to Signing Does Not Demonstrate Willful Disregard of the Subpoena*

Cal Advocates' argument that SoCalGas is willfully disregarding the Subpoena by requiring it to enter into a non-disclosure agreement as a condition of providing Cal Advocates' access mischaracterizes the record. Executing a non-disclosure agreement to address SoCalGas's confidentiality concerns was *Cal Advocates'* idea. Indeed, Cal Advocates itself represented *in writing* that "*Cal Advocates can execute a non-disclosure agreement (NDA)* that permits SoCalGas to review and mark documents as confidential prior to public disclosure" and even asked SoCalGas to "*provide a draft NDA for Cal Advocates' review and approval.*"¹⁴¹ In the Contempt Motion, Cal Advocates asserts that SoCalGas's Motion to Quash "defeat[ed]" the purpose of the NDA—but the purpose of the NDA is, as Cal Advocates itself put it, to "permit[] SoCalGas to review and mark documents as confidential prior to public disclosure."¹⁴² The filing of SoCalGas's Motion to Quash did nothing to dispel the SoCalGas's confidentiality concerns to be addressed by the NDA, including the treatment of confidential information other than that subject to the Motion to Quash (including, but not limited to, social security numbers, vendor pricing, and third-party banking information). It appears, rather, that Cal Advocates' reversal on its position on the NDA is part of its effort to punish SoCalGas for filing a Motion to Quash.

Further, contrary to Cal Advocates' protestations, SoCalGas requires a non-disclosure agreement so that it can comply with Public Utilities Code Section 583 and the CPUC's GO 66-D, which applies to the treatment of confidential information provided to the Commission or its staff. Under that order, to merit confidential treatment of information it produces to Cal Advocates, SoCalGas must (among other things) identify in advance confidential information in material it produces to Cal Advocates. GO 66-D provides that a regulated entity "bears the burden of proving the reasons why the Commission shall withhold any information, or any portion thereof, from the public" and that "[u]nless information is submitted in accordance with Section 3.2-3.4 [of the Order], information submitted in non-compliance with this Section, may be released to the public. . . ." As explained above, because the SAP system contains millions of records, SoCalGas has no commercially reasonable or practicable means of designating each and

¹⁴¹ Wilson Decl., Exh. F, at 1.

¹⁴² *Id.*

every confidential “page, section, or field, or any portion thereof” before providing Cal Advocates with access to the SAP system—particularly in the three days before the original compliance date on the Subpoena.¹⁴³ For this reason, GO 66-D does not provide for a procedure that would adequately protect the confidentiality of SoCalGas’s highly sensitive information in the SAP system. Absent a non-disclosure agreement to preserve the confidentiality of information accessed by Cal Advocates before SoCalGas could review it for confidentiality in compliance with GO 66-D, SoCalGas runs the risk of all of its highly confidential information in the SAP system being released to the public.¹⁴⁴ For this reason, Cal Advocates’ contention that “the law already provides meaningful protections against a regulator’s unauthorized disclosure of a utility’s—and its subsidiaries’ and affiliates’—confidential information” rings hollow: To secure those legal protections, SoCalGas must comply with Section 583 and GO 66-D, which it cannot do absent a non-disclosure agreement.¹⁴⁵

2. The Contempt Motion Fails to Prove That SoCalGas Violated Rule 1.1

Rule 1.1 of the Commission’s Rules of Practice and Procedure provides that “[a]ny person who signs a pleading or brief, enters an appearance at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission or its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law.” The Commission has found Rule 1.1 violations “[w]here there has been a lack of candor, withholding of information, or failure to correct information or respond fully to data requests.”¹⁴⁶ “The party claiming the violation must establish that fact by a preponderance of the evidence.”¹⁴⁷

Cal Advocates’ argument that SoCalGas has violated Rule 1.1 relies entirely on the same allegations it made in support of its argument to find SoCalGas in contempt.¹⁴⁸ Accordingly, for the same reasons as explained above in refuting its arguments on

¹⁴³ *Id.* at § 3.2(a).

¹⁴⁴ *Id.*

¹⁴⁵ Contempt Motion at 9; see also *id.* at 23 n.84 [“an NDA is unnecessary given the statutory protections provided”].

¹⁴⁶ See, e.g., *SFMTA, supra*, 2015 WL 5159113, at *20 [citations omitted].

¹⁴⁷ *Id.* [citations omitted].

¹⁴⁸ Contempt Motion at 14-15.

contempt, Section III.C, *supra*, SoCalGas has not engaged in *any* conduct meriting a Rule 1.1 violation. Far from it: SoCalGas has expended considerable effort to comply with the Subpoena and provide access to Cal Advocates, in a manner that does not waive its rights under the attorney-client privilege, the attorney work product doctrine, and the First Amendment.¹⁴⁹ Further, its technical software solution to shield from disclosure this privileged and First Amendment-protected material will facilitate Cal Advocates' access to roughly 96% of the data contained in the SAP system, so long as Cal Advocates agrees to execute the non-disclosure agreement it itself proposed to assure that SoCalGas can produce data responsive to the Subpoena that allows it to comply with the Commission's own order governing confidentiality. Moreover, SoCalGas communicated with Cal Advocates every step of the way to apprise them on the status of its responsive efforts. In sum, SoCalGas's conduct in responding to the Subpoena was proper and comes nowhere close to constituting a violation of Rule 1.1.

3. Cal Advocates' Request for Fines Are Excessive and Unreasonable

Cal Advocates acknowledges that the punishment for contempt is a \$1,000 fine under Public Utilities Code Section 2113.¹⁵⁰ Eager to impose unreasonable and unwarranted penalties on SoCalGas, though, it seeks "additional" fines under Rule 1.1 of the Commission's Rules of Practice and Procedure, relying on its meritless allegations that SoCalGas has shown "willful disregard" in regards to the Subpoena.¹⁵¹

Cal Advocates' request for a fine of \$4.5 million for SoCalGas's purported noncompliance is unreasonable on its face and exceeds constitutional limits. The United States and California Constitutions prohibit the imposition of "excessive fines."¹⁵² The Excessive Fines Clause places a constitutional limit on the Commission's power to punish, including imposing civil fines or penalties.¹⁵³ The "touchstone of the constitutional inquiry . . . is the principle of proportionality."¹⁵⁴ In assessing whether a

¹⁴⁹ Further, any factual dispute between the parties must be adjudicated in an evidentiary proceeding. See Section III.B., *supra*.

¹⁵⁰ Contempt Motion at 13.

¹⁵¹ *Id.* at 14-15.

¹⁵² U.S. CONST. amend. VIII; CAL. CONST. art. I, § 17.

¹⁵³ *People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.* (2005) 37 Cal.4th 707, 727-28.

¹⁵⁴ *United States v. Bajakajian* (1998) 524 U.S. 321, 334

penalty is proportionate, courts generally weigh, among other factors, (1) the defendant’s culpability and the relationship between the harm and the penalty, and (2) “the sanctions imposed in other cases for comparable misconduct.”¹⁵⁵ The Commission, too, has its own set of factors to determine the reasonableness of a penalty.¹⁵⁶

Here, although Cal Advocates spends several pages reciting various factors considered by the Commission in assessing fines, the gravamen of Cal Advocates’ argument is to seek the largest dollar value of fines possible to have a purported “deterrent effect” on SoCalGas’s purported “disregard [of] state laws and Commission requirements.”¹⁵⁷ As explained above, SoCalGas vociferously denies that it has engaged in any misconduct regarding the Subpoena—much less any conduct that would merit a contempt finding or fines. No fine is needed to deter anything.

In fact, this Contempt Motion—and its demand for \$4.5 million in fines—is part of Cal Advocates’ broader effort to seek to punish a regulated utility that asserts lawful legal objections. Not only does the Motion seek to punish SoCalGas for its purported “defiance” of the Subpoena, it also wants to punish SoCalGas (a) for filing a motion to quash a completely unrelated subpoena in a wholly unrelated matter—even though it acknowledges that an ALJ already denied the Safety and Enforcement Division’s effort to seek sanctions in that matter;¹⁵⁸ (b) for the actions of the Utility Workers Union of America, not SoCalGas, in San Luis Obispo; and (c) for purportedly engaging in efforts to “promote the use of natural and renewable gas, and to defeat state and local laws and ordinances proposed to limit the use of these resources.”¹⁵⁹ In short, Cal Advocates seeks to punish SoCalGas for exercising its due process rights and protecting its privileges and constructional protections, and for pursuing policy goals involving natural gas and renewable gas with which Cal Advocates apparently disagrees. This Commission should reject Cal Advocates’ inappropriate effort to use the Commission’s contempt authority to punish SoCalGas for taking a position that Cal Advocates disfavors.

¹⁵⁵ *Cooper Indus., Inc. v. Leatherman Tool Grp.* (2001) 532 U.S. 424, 434–35.

¹⁵⁶ See generally *In re Standards of Conduct Governing Relationships Between Energy Utilities and Their Affiliates*, D. 98-12-075, 84 CPUC 2d 155 (1998) [*i.e.*, severity of the offense, conduct of the utility, and the totality of the circumstances].

¹⁵⁷ Contempt Motion at 19.

¹⁵⁸ *Id.* at 4.

¹⁵⁹ *Id.* at 3.

E. Cal Advocates' Additional Unwarranted Demands Should Be Rejected

In its final breath, the Contempt Motion asserts a hodgepodge of unreasonable substantive and procedural demands that it insists the Commission order be imposed on SoCalGas. This is a blatant violation of due process. Half of the requests are merely new data requests in disguise—to which SoCalGas has the right to lodge objections which must be litigated. The other half seek burdensome procedural requirements that exceed Cal Advocates' constitutional and statutory authority. Cal Advocates' unlawful attempt to bypass due process should be rejected.

Article XII, section 2 of the California Constitution allows the Commission to set its own procedures “[s]ubject to statute and due process.” Further, Public Utilities Code section 309.5(e) specifies that Cal Advocates may compel production or disclosure of information “necessary to perform its duties from any entity regulated by the commission, *provided that any objections to any request for information shall be decided in writing . . .*”¹⁶⁰

Thus, if Cal Advocates wants new information or data from SoCalGas, it must do so via a data request or a valid subpoena—not as part of a conclusion to a motion for sanctions related to a completely different request. And SoCalGas has procedural rights to object to those data requests, which civil discovery rules and the Commission's own precedent define.¹⁶¹ Cal Advocates' new requests for information should therefore be rejected wholesale.

Independently, several of these demands are improper in that they repeat (indeed, compound) the offense to SoCalGas's constitutional rights from Cal Advocates' earlier requests. Demands 3(d), (e), and (f) request that SoCalGas “identify” information subject to the First Amendment and its California Constitution counterpart—but, as discussed at length above, to

¹⁶⁰ *Id.* [emphasis added].

¹⁶¹ See Pub. Util. Code § 309.5(e). For example, Cal Advocates' requests in 3(a)-(e) appear to seek information that SoCalGas need not provide, if it requires the creation of new documents responsive to the request. See, e.g., *In the Matter of the Joint Application of Verizon Communications Inc. and MCI, Inc., Administrative Law Judge's Ruling Addressing Motion of Qwest to Compel Responses* (CPUC Aug. 5, 2005) No. A.05-04-020, 2005 WL 1866062 at p. 7 [in relation to motion to compel emphasized that “Verizon is not required to create new documents responsive to the data request”]; *In the Matter of the Joint Application of SBC Communications Inc. and AT&T Corp., Administrative Law Judge's Ruling Regarding ORA's Second Motion to Compel* (CPUC June 8, 2005) A.05-02-027, 2005 WL 1660395, at *4 [in ruling on motion to compel stressed that SBC Communications “shall not be required to produce new studies specifically in response to this DR”].

identify that information is to lose that protection altogether. Ordering this done prior to adjudication of that right further offends SoCalGas's right to due process.¹⁶²

Finally, the procedural demands in 3(g)-(h) and 4(a)-(c) violate due process in seeking to strip away SoCalGas's ability to meaningfully object to Cal Advocates' unreasonable demands by setting arbitrary deadlines regardless of the breadth and scope of Cal Advocates' data requests, and imposing requirements that far exceed those required by either GO 66-D or the Commission's Discovery Custom and Practice Guidelines. Cal Advocates wishes to cut SoCalGas's response time in half, demand which officer of the company verify the data request responses, and do so under penalty of perjury. These are unsupported by law. Further, the requirement that an attorney certify confidentiality claims under penalty of perjury exceeds the requirements of GO 66-D and is a pernicious attack on SoCalGas's attorney-client privilege, because an attorney would be unable to so declare without necessarily revealing his or her own advice to the client regarding same.

If Cal Advocates wishes to pursue additional discovery demands, it knows how to do so: It can serve an appropriate data request or subpoena. (Indeed, on June 30, 2020, Cal Advocates served its fifteenth data request, seeking among other things records and invoices relating to SoCalGas's outside counsel, Willenken LLP.) Tacking on such requests to this Motion, and seeking to strip away SoCalGas's due process rights in the current "non-proceeding," is improper and should be rejected.

IV. CONCLUSION

The Commission should deny the Contempt Motion on the grounds that it is premature and procedurally improper. Should the Commission decide not to deny this Contempt Motion outright, the Commission should stay consideration of the motion until SoCalGas's Motion to Quash is fully adjudicated, and after it opens an adjudicatory proceeding, in which SoCalGas will be afforded the full process due under the law, including but not limited to an evidentiary hearing on issues of disputed material fact. If the Contempt Motion is heard on the merits, the Commission should deny the motion by holding that SoCalGas is not in contempt, that SoCalGas has not violated Rule 1.1 of

¹⁶² Moreover, Cal Advocates' requests for information regarding 100% shareholder-funded activities, by definition, has no relation to its statutory mission "to obtain the lowest possible rate for service consistent with reliable and safe service levels." Pub. Util. Code § 309.5(a).

the Commission's Rules of Practice and Procedure, that no fines should be assessed, and that Cal Advocates' additional discovery demands should be denied.

Respectfully submitted on behalf of SoCalGas,

By:



Jason H. Wilson

JASON H. WILSON
KENNETH M. TRUJILLO-JAMISON
AMELIA L. B. SARGENT
Willenken LLP
707 Wilshire Blvd., Suite 3850
Los Angeles, California 90017
Telephone: (213) 955-9240
Facsimile: (213) 955-9250
Email: jwilson@willenken.com

July 2, 2020

Attorneys for:
SOUTHERN CALIFORNIA GAS COMPANY

PROOF OF SERVICE

I, Ashley Moser, declare as follows:

I am employed in the County of San Francisco, State of California, I am over the age of eighteen years and am not a party to this action; my business address is 555 Mission Street, Suite 3000, San Francisco, CA 94105-0921, in said County and State. On March 8, 2021, I served the following document(s):

PETITION FOR WRIT OF REVIEW, MANDATE, AND/OR OTHER APPROPRIATE RELIEF, MOTION FOR EMERGENCY STAY OR OTHER INJUNCTIVE RELIEF, DECLARATION OF JULIAN W. POON, AND PROPOSED ORDER, AND MEMORANDUM OF POINTS AND AUTHORITIES; IMMEDIATE RELIEF REQUESTED BY TUESDAY, MARCH 16, 2021 OF ORDER BY CALIFORNIA PUBLIC UTILITIES COMMISSION TO PRODUCE CONSTITUTIONALLY PROTECTED MATERIAL

EXHIBITS TO THE PETITION FOR WRIT OF REVIEW, MANDATE, AND/OR OTHER APPROPRIATE RELIEF (VOLUMES 1-10)*

on the parties stated below, by the following means of service:

<p>California Public Utilities Commission</p> <p>Rachel Peterson Executive Director 505 Van Ness Avenue, San Francisco, CA 94102 415-703-3808 Rachel.Peterson@cpuc.ca.gov</p> <p>Arocles Aguilar General Counsel 505 Van Ness Avenue, San Francisco, CA 94102 415-703-2015 Arocles.Aguilar@cpuc.ca.gov</p>	<p>California Advocates</p> <p>Elizabeth Echols Director 505 Van Ness Avenue, San Francisco, CA 94102 415-703-2588 elizabeth.echols@cpuc.ca.gov</p> <p>Darwin Farrar General Counsel 505 Van Ness Avenue, San Francisco, CA 94102 415-703-1599 darwin.farrar@cpuc.ca.gov</p> <p>Traci Bone Counsel 505 Van Ness Avenue, San Francisco, CA 94102 415-703-2048 traci.bone@cpuc.ca.gov</p>
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*Volume 10 was not served on California Advocates for reasons discussed in Petitioner’s Application for Leave to File Under Seal, but was served by messenger service to the California Public Utilities Commission and the Court of Appeal.

- BY MESSENGER SERVICE:** I placed a true copy in a sealed envelope or package addressed to the persons at the addresses listed above and provided them to a professional messenger service for delivery before 5:00 p.m. on the above-mentioned date.
- BY ELECTRONIC SERVICE THROUGH TRUEFILING:** I caused the documents to be electronically served through TrueFiling.
- BY ELECTRONIC SERVICE:** On the above-mentioned date at _____ [a.m./p.m] , I caused the documents to be sent to the persons at the electronic notification addresses as shown above.
- (STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 8, 2021.



Ashley Moser